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PART III — Acts of the West Bengal Legislature

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No.433-L.— 6th April, 2006. — The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information :—

West Bengal Act IX of 2006

THE WEST BENGAL PUBLIC WORKS CONTRACTORS (REGULATION AND CONTROL) ACT, 2006.

[*Passed by the West Bengal Legislature.*]

[Assent of the Governor was first published in the *Kolkata Gazette, Extraordinary*, of the 6th April, 2006.]

An Act to provide for regulation and control the activities of persons dealing with public works under the Government of West Bengal in the Public Works Department and for matters connected therewith or incidental thereto ;

WHEREAS it is expedient to regulate and control the activities of persons dealing with public works under the Government of West Bengal in the Public Works Department and for matters connected therewith or incidental thereto ;

It is hereby enacted in the Fifty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follows :—

CHAPTER I

Preliminary

Short title,
 extent and
 commencement.

1. (1) This Act may be called the West Bengal Public Works Contractors (Regulation and Control) Act, 2006.

(2) It extends to the whole of West Bengal.

(3) It shall come into force at once.

Definitions.

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

(a) “Advisory Board” means the Advisory Board constituted under section 6 ;

(b) “appellate authority” means the appellate authority appointed under sub-section (1) of section 9 ;

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(Regulation and Control) Act, 2006.
(Chapter II.— Registration.—Sections 3-5.)*

- (c) “categories of contractors” means to categorize the contractors, on the basis of financial limits along with the nature of public works they are to execute, by notification in the *Official Gazette* ;
- (d) “certificate of registration” means a certificate issued under section 4 ;
- (e) “contractor” means any person who undertakes a contract for carrying out public works ;
- (f) “malpractice” includes dishonesty, cheating, impersonation, obstruction in carrying out public works as specified in the contract and failure to observe, while submitting the tender, the instruction given in the tender Form including Schedule appended thereto ;
- (g) “notification” means a notification published in the *Official Gazette* ;
- (h) “person” shall include any company or body corporate or association or body of individuals, whether incorporated or not ;
- (i) “prescribed” means prescribed by rules made under this Act ;
- (j) “prescribed authority” means the authority, as may be appointed by the State Government, to be prescribed authority for any provision of this Act ;
- (k) “public works” means the public works of construction, maintenance, development, repairing and management of roads, buildings, bridges, highways, national highways, and includes the public works related to electrical, sanitary, plumbing within the State of West Bengal;
- (l) “State Government” means the Government of the State of West Bengal in the Public Works Department.

CHAPTER II

Registration

Registration.

3. (1) Every person, intending to carry out any public works, shall, on invitation by the State Government by means of advertisement, have to apply for registration for enlistment as contractor to the prescribed authority in such form, and in such manner, and with such fee, as may be prescribed :

Provided that different fees may be prescribed for different categories of contractors.

(2) Any person, who has already applied, before the date of coming into force of this Act, for registration for enlistment, shall also apply for registration in such manner, and with such fee, as may be prescribed.

(3) Notwithstanding anything contained in sub-section (1) or in sub-section (2), any person, already carrying out public works before the date of coming into force of this Act, shall, if not exempted by the State Government by any general or special order, apply for registration in such form, and in such manner, and with such fee, as may be prescribed.

(4) Every application for registration, made under this section, shall be disposed of within a period of three months from the date of receipt of such application.

Certificate of registration.

4. (1) The prescribed authority shall, unless registration is refused under section 5, direct the name and the particulars of persons be entered in the register maintained for the purpose and shall issue a certificate of registration for enlistment to such person in the prescribed form.

(2) Certificate issued under sub-section (1) shall be valid for the period specified therein or for such extended period as the prescribed authority may think fit to allow in any case.

Refusal to register.

5. (1) The prescribed authority may refuse registration for enlistment of contractors under this Act on any of the following grounds, namely :—

- (a) (i) If any person, who has applied for registration, is convicted of any offence punishable under any of the provisions of this Act or the rules made thereunder or theft, robbery, murder and sentenced ;

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(Chapter 11.—Registration.—Sections 6-8.—Chapter 111.—Appeal.—Section 9.)

- (ii) Notwithstanding anything contained in section 5(1)(a)(i) the person convicted of any offence is punishable under any law of the land and six months have not elapsed since the termination of the sentence imposed upon him ;
- (b) if any person has been declared an insolvent by a court of competent jurisdiction and six months have not elapsed since he has been discharged ;
- (c) if the name of any person has been removed from the register under clause (c) of section 7 and six months have not elapsed since he has been discharged ;
- (d) if the person does not hold a license or certificate required under any other law for the time being in force ;
- (e) if any person does not fulfil the qualifications required for registration.

(2) No application for registration shall be refused, unless the person applying for registration has been given a reasonable opportunity of being heard.

Constitution of
Advisory Board.

6. (1) The State Government may, by notification in the *Official Gazette*, constitute an Advisory Board for judging the suitability for registration of person under this Act.

(2) The Advisory board shall, constituted under sub-section (1), consist of a Chairperson who shall be the Engineer-in-Chief of Government of West Bengal, two members from Senior Engineers and two members from Senior non-technical Officers below the rank of Secretary from the Public Works Department :

Provided that the State Government may, by order, appoint the Chairperson and other four members under this section.

(3) The Advisory Board shall recommend the names of the persons, to be registered under this Act, to the prescribed authority.

(4) The State Government may, by order—

- (a) specify the further duties of, and regulate the procedure, of the Advisory Board ;
- (b) determine the tenure of office of the members of the Advisory Board; and
- (c) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of the Advisory Board in the performance of his duty.

Removal of name
from register.

7. The prescribed authority may, by order in writing, remove the name of any person from the register and cancel its certificate of registration on any of the following grounds, namely :—

- (a) if the person ceases to deal with the public works for a prescribed period;
- (b) if the person is convicted of an offence punishable under any of the provisions of this Act or the rules made thereunder or of any offence punishable under any law of the land;
- (c) if the person is declared an insolvent by a court of competent jurisdiction;
- (d) if any complaint of malpractice is received, on proof of complaint of such malpractice:

Provided that the action taken under this section shall not protect any person from being prosecuted under any of the provisions of this Act.

Notice of removal.

8. Before removing the name of person from the register under section 7, the prescribed authority shall give a notice, in writing, to the concerned person stating therein the ground or grounds on which it is proposed to take action and shall give him a reasonable opportunity of being heard.

CHAPTER III

Appeal

Appeal.

9. (1) Subject to the provisions of sub-section (2), an appeal shall lie from every order of the prescribed authority, under this Act, to the appellate authority, to be appointed by the State Government.

(2) Every such appeal shall be preferred within ninety days from the date of communication of the order:

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(Regulation and Control) Act, 2006.
(Chapter IV. —Offences and Penalties.—Sections 10-15.)*

Provided that the appellate authority may entertain an appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing it in time.

(3) The appellant have a right to appear by a counsel, and the prescribed authority may be represented by such officer or person as may be appointed by the State Government in that behalf.

(4) On receipt of any such appeal, the appellate authority shall, after giving the appellant a reasonable opportunity of being heard and after making such inquiry as it deems proper, dispose of the appeal for reasons to be recorded in writing.

(5) The proceedings before the appellate authority shall be completed within a period of four months of its institution.

CHAPTER IV Offences and Penalties

Penalty for false statement.

10. Any person, required to make a statement under this Act, wilfully makes a false statement or suppresses a material fact with an intention to mislead the prescribed authority, shall be liable to punishment with imprisonment which shall not be less than three years but may extend to seven years.

Penalty for malpractice.

11. Any person, who commits malpractice or contravenes any of the provisions of this Act, for which no specific penalty has been provided, shall be liable to punishment with imprisonment which shall not be less than three years but may extend to seven years.

Certificate not to be assigned.

12. Any person, who lends, transfers or assigns the certificate of registration issued under this Act, shall be liable to punishment with imprisonment which shall not be less than three years but may extend to seven years.

Certificate and document to be shown on demand.

13. (1) Any person, registered under this Act, shall, at all times, on demand, produce and show his certificate of registration or any other document required under this Act to —
(a) the prescribed authority or any officer duly authorized by him in this behalf; and
(b) any Engineer of the State Government.

Explanation. — For the purposes of this section, the expression “Engineer” means the Engineer belonging to the cadre of the West Bengal Senior Service of Engineers, the West Bengal Senior Service of Engineers (Electrical/ Mechanical), the West Bengal Service of Engineers, the West Bengal Service of Engineers (Electrical/ Mechanical), the West Bengal Subordinate Engineering Service (Electrical/ Mechanical) of the State Government.

(2) Any person, registered under this Act, who refuses, on demand, to show his certificate or documents or disallows it to be read by any of the persons authorized to demand it, shall be liable to punishment with fine not exceeding rupees five hundred.

Obstructing the lawful authorities.

14. Any person, who wilfully obstructs or offers any resistance to, or otherwise interferes in the discharge of, the functions of the prescribed authority or any Engineer, referred to in sub-section (1) of section 13, exercising any power or performing any duty conferred or imposed upon him in pursuance of this Act or the rules made thereunder, shall be liable to punishment with imprisonment which shall not be less than three years but may extend to seven years.

Institution of proceedings.

15. No prosecution shall be instituted against any person for any offence under this Act except on a complaint made by the prescribed authority or a Police Officer not below the rank of Sub-Inspector.

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(Regulation and Control) Act, 2006.*

(Chapter IV.—Offences and Penalties.—Sections 16, 17.—Chapter V.—Miscellaneous.—Sections 18-23.)

Powers of the prescribed authority to summon and enforce attendance of witnesses and other persons.

16. The prescribed authority shall have all the powers as of Civil Court constituted under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :—

- (1) summoning and enforcing the attendance of the complainant or the person against whom complaint is made under this Act and the witnesses required in connection therewith;
- (2) compelling the production of any document; and
- (3) examining witnesses on oath;

and may summon and examine *suo moto* any person whose evidence appears to be material.

Explanation.— For the purposes of enforcing the attendance of witnesses and other persons mentioned in this section, the local limits of the jurisdiction of the prescribed authority extend to the whole of the State of West Bengal.

Composition of offences.

17. (1) The prescribed authority may accept from any person accused of an offence under this Act, a sum of money by way of composition of such offence and may, out of the money so received, compensate the person, against whom such offence has been committed, to such extent as the prescribed authority deems reasonable.

(2) On the composition of offence under sub-section (1), no further proceeding in respect thereof shall be taken against the accused and if any proceeding has already been instituted against him in any court, the composition shall have the effect of acquittal.

CHAPTER V

Miscellaneous

Notice of changes.

18. (1) Whenever a business, for which a certificate of registration is held by a person under this Act, devolves by inheritance or otherwise upon any other person or undergoes a change in respect of any particular entry in the register under this Act, such person shall, within sixty days of the date of such devolution or change, give notice in writing in respect of the facts to the prescribed authority.

(2) The prescribed authority shall, on being satisfied after inquiry, and on payment of such fees as may be prescribed, make necessary changes in the register maintained for the purpose and in the certificate of registration.

(3) Notwithstanding anything contained in sub-section (2), the prescribed authority may remove from the register the name of the person in whose favour the certificate of registration was issued and cancel such certificate if the successor is not qualified to be registered under this Act.

Return of certificate of registration.

19. If a certificate of registration is cancelled under this Act, the person holding such certificate shall, within seven days from the date of publication of the order of cancellation in the *Official Gazette*, return it to the prescribed authority.

Duplicate certificate.

20. If a certificate of registration issued under this Act is lost, damaged or destroyed, as the case may be, the prescribed authority shall, on an application made in this behalf by the person holding such certificate, and on payment of the prescribed fees, issue a duplicate certificate.

Certificate of registration to be kept prohibited.

21. The certificate of registration shall be certified by the person holding it in a conspicuous place at the principal place of his business and if he has no place of business, he shall keep it on his person.

Publication of list of persons removed from the register.

22. The prescribed authority shall publish in the *Official Gazette*, the names and addresses of the persons whose names have been removed from the register and who have been refused certificate of registration under this Act.

Indemnity.

23. No suit, prosecution or other legal proceedings shall lie against the State Government or any person in respect of anything which is in good faith done or intended to be done under this Act.

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(Regulation and Control) Act, 2006.
(Chapter V. — Miscellaneous.—Sections 24-26.)*

Reservation of
power of local
authority.

24. Nothing contained in this Act shall take away or diminish any of the powers vested in any local authority by, or under any law for the time being in force.

Power to make
rules.

25. (1) The State Government may, after previous publication, by notification, make rules for carrying out the purposes of this Act.

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

- (a) the maintenance of register, books and Forms by the person for conduct of business;
- (b) the Form for application of registration and for certificate of registration;
- (c) the fees for registration;
- (d) the matter of giving notice;
- (e) qualifications for registration;
- (f) manner of publication of the names and addresses of the person removed from the register or to whom registration has been referred to be given;
- (g) the place where the prescribed authority shall hold inquiry; and
- (h) all matters expressly required to be prescribed under this Act.

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

Powers to
remove
difficulties.

26. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

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

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

By order of the Governor,

SHYAMAL KANTI CHAKRABORTY,
*Secy. to the Govt. of West Bengal,
Law and judicial Departments.*