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THE KERALA ROAD FUND ACT, 2001*

(Act 10 of 2001)

An Act to provide for the establishment of a Fund for investments in the transport facility projects in the State, to constitute a Board for administration of the said Fund and to monitor and supervise the activities financed from the Fund.

Preamble.—WHEREAS it is expedient to provide for the establishment of a Fund for investments in the transport facility projects in the State, to constitute a Board for the administration of the said Fund and to monitor and supervise the activities financed from the Fund

BE it enacted in the Fifty-second year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Kerala Road Fund Act, 2001.

(2) It shall be deemed to have come into force on the 7th day of September, 2001.

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

(a) “Board” means the Kerala Road Fund Board constituted under section 3,

(b) “bridge” means a bridge with permanent structure, including approach and exit roads, guide bunds and protective works thereto or a bridge with temporary structure of ferry services, as the case may be, and includes a bridge across railway lines, roads or waterways, underpass or overbridge;

(c) “collecting agent” means any person entrusted with management and collection of user fee by any concessionaire, his agent, servant or sub contractors entitled to collect user fees;

* Received the assent of the Governor on the 23rd November, 2001 and published in Kerala Extraordinary Gazette No. 1853 dated 23rd November, 2001.

(d) "concession agreement" means a tripartite agreement among the concessionaire, the Board and a Government agency or a statutory body specifically authorised by Government for the purpose whereby the concessionaire undertakes to finance, construct, maintain or operate a transport facility in accordance with the provisions of this Act

(e) "concessionaire" means a party with which a concession agreement is entered into by the Board and a Government agency or a statutory body specifically authorised by Government for the purpose,

(f) "construction" includes new construction, reconstruction, rehabilitation, repair and maintenance;

(g) "development cost" means initial cost incurred on the development of any transport facility project before it is offered to a person for implementation and includes cost incurred on data collection, pre-feasibility studies or feasibility studies;

(h) "escrow account" means a bank account in which cash is to be deposited or from which cash is to be withdrawn in the manner as may be specified in the concession agreement,

(i) "executive committee" means the executive committee of the Board;

(j) "Fund" means the Kerala Road Fund established under section 6;

(k) "Government" means the Government of the State of Kerala.

(l) "Government agency" means a corporation owned or controlled by the Government or a company established by the Government for the purpose of construction or maintenance of roads or bridges or a highway authority;

(m) "highway authority" means the highway authority appointed under section 4 of the Kerala Highway Protection Act, 1999 (6 of 2000),

(n) "Member Secretary" means the Member Secretary of the Board;

(o) "motor vehicle" means any mechanically propelled vehicle adapted for use upon roads, whether the power of propulsion is transmitted thereto from any external or internal source and includes a chassis to which the body has not been attached and a trailer,

(p) "owner" includes, where the person in possession of a vehicle is a minor, the guardian of such minor and in relation to a vehicle which is the subject of a hire purchase agreement, the person in possession of the vehicle under that agreement,

(q) "person" includes a body corporate, a company, a firm or an association of individuals whether incorporated or not;

(r) "prescribed" means prescribed by rules made under this Act,

(s) "project management agency" means the Roads and Bridges Development Corporation of Kerala Ltd, established by the Government under the Companies Act, 1956 (Central Act 1 of 1956),

(t) "regulations" means regulations made by the Board under this Act;

(u) "road" means any road, way or land declared as a highway under section 3 of the Kerala Highway Protection Act, 1999 (6 of 2000), and includes any land acquired or demarcated for construction of a road.

(v) "rules" means rules made by the Government under this Act,

(w) "section of road or bridge" means a continuous length of road and or bridge as notified by the Government in the Gazette on which user fee shall be charged,

(x) "senior loan" means a loan in respect of which a claim on assets is prior to the claim on the assets in respect of other loan and which is specified as such in an agreement for providing finance,

(y) "State" means the State of Kerala,

(z) "subordinate loan" means a loan in respect of which a claim on assets is subsequent to the claim on the assets in respect of another loan and which is specified as such in an agreement for providing finance,

(aa) "subsidy" means financial assistance in cash or kind provided by the Fund,

(ab) "transport facility" means, depending upon the case, a bridge or a tunnel including approach and exit roads thereto or a road or any section of bridge or tunnel or road or a specified combination of all or some of them;

(ac) "using the transport facility" means, depending upon the case, passing over a bridge or through a tunnel including approach and exit roads thereto or passing through a road or any section of bridge or tunnel or road or a specified combination of all or some of them,

(ad) "user fee" means the user fee collected in accordance with the provisions of this Act.

CHAPTER II

KERALA ROAD FUND BOARD

3. *Constitution and composition of the Kerala Road Fund Board.*—(1) As soon as may be after the commencement of this Act, the Government may, by notification in the Gazette, constitute a Board to be called "The Kerala Road Fund Board".

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

(3) The Board shall consist of the following members, namely:—

(a) the Chief Minister ex officio, who shall be the Chairman of the Board;

(b) the Minister in charge of Public Works ex officio; who shall be the Vice-Chairman of the Board,

(c) the Minister in charge of Finance—ex officio;

(d) the Minister in charge of Transport—ex officio;

(e) the Principal Secretary to Government in charge of Public Works Department—ex officio, who shall be the Member Secretary of the Board;

(f) the Law Secretary —ex officio;

(g) the Chief Engineer, Roads and Bridges—ex officio;

(h) three persons nominated by the Government from among the heads of financial institutions engaged in the business of infrastructure, Scheduled Banks or technical or engineering personnel working in National level institutions.

(4) Nominated members of the Board shall hold office during the pleasure of the Government

(5) Any nominated member may, at any time, resign his office by letter addressed to the Chairman of the Board.

(6) There shall be an executive committee for the Board consisting of the following members, namely:—

(a) the Minister in charge of Public Works who shall be the Chairman of the Executive Committee:

(b) the Principal Secretary to Government in charge of Public Works Department—ex-officio who shall be the Vice Chairman of the executive committee;

(c) the Finance Secretary to Government—ex-officio.

(d) the Law Secretary—ex-officio.

(e) the Chief Engineer Roads & Bridges—ex-officio;

(f) two members nominated by the Board from among the nominated members of the Board.

(7) The Board and the executive committee shall meet at such time and place as the Chairman of the Board or executive committee, as the case may be, may decide and shall observe such rules of procedure in regard to transaction of business at their meetings including quorum as may be prescribed.

(8) All questions at a meeting of the Board and executive committee shall be decided by a majority of the members present and voting.

(9) The Board or the executive committee may associate with itself in such manner and for such purposes as may be prescribed by regulations, any person whose assistance or advice the Board or the executive committee, as the case may be, may desire to have in the performance of any of their functions under this Act, and the persons so associated shall have the right to take part in the meetings of Board or the executive committee as the case may be, relating to that purpose but shall not be entitled to vote.

(10) The project management agency shall render necessary assistance to the Board in the discharge of its functions under this Act.

4. *Powers and functions of the Board.*—The Board shall have the following powers and functions, namely:—

(a) to formulate the criteria on the basis of which transport facility projects are to be financed out of the Fund;

(b) to take such measures as may be necessary to raise Funds for transport facility projects;

(c) to raise funds by borrowing money necessary for the due discharge of its functions; and

(d) to perform such other functions as may be prescribed.

5. *Powers and functions of the Executive Committee.*—(1) The executive committee shall have the following powers and functions, namely —

(a) to approve a concession agreement with respect to a transport facility project on the basis of the criteria formulated by the Board, and

(b) to sanction funds to a Government agency or a concessionaire for construction of a transport facility and monitor or supervise such transport facility projects and expenditure incurred thereon,

(2) Subject to such restrictions, conditions and limitations as may be imposed by the Board the executive committee shall also exercise all or any of the powers and functions of the Board under this Act.

(3) The executive committee shall also exercise such powers and functions as may be specified by regulations.

CHAPTER III

KERALA ROAD FUND

6. *Establishment of Fund.*—(1) As soon as may be after the constitution of the Board, there shall be established a Fund to be called the Kerala Road Fund

(2) There shall be credited to the Fund,—

(a) all moneys received from the Central Road Fund established under the Central Road Fund Act, 2000 (Central Act 54 of 2000),

(b) the contribution made by the Government under sub-section (3),

(c) all fees, fines and other amount collected by the Government as per the provisions of the Kerala Highway Protection Act, 1999 (6 of 2000),

(d) all payments made by the concessionaire as per the concession agreement;

(e) all amount standing to the credit of the Bridges Fund established under section 12 of the Kerala Tolls Act, 1976 (6 of 1977);

(f) the user fees collected by the Government agency or the statutory body under this Act;

(g) grants or loans or advances made by the Government of India or any institution;

(h) grants or loans or advances made by the Government;

(i) all returns on investments made by the Board directly or through a Government agency or statutory body,

(j) any amount borrowed by the Board.

(k) any other amount authorised for credit to the Fund under the provisions of this Act or rules made thereunder or any other law for the time being in force.

(3) The Government shall contribute to the Fund every year an amount equal to ten per cent of the tax collected by them in the previous year under the provisions of the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976), and the said amount shall be charged on the Consolidated Fund of the State.

(4) The amount standing to the credit of the Fund may be utilised for all or any of the following purposes, namely —

(a) for providing financial assistance to a concessionaire on behalf of a Government agency in respect of a transport facility approved by the Board.

(b) for meeting any development cost.

(c) for defraying the administrative expenses of the Board, and

(d) for meeting any expenditure as may be prescribed.

(5) The balance to the credit of the Fund shall not lapse at the end of the financial year.

(6) All moneys specified in sub-section (2) and forming part of the Fund shall be deposited in any nationalised or scheduled Bank, State Co-operative Bank or District Co-operative Bank or in such other financial institutions as may be decided by the Board and the said account shall be operated by the Member Secretary of the Board in such manner as may be specified by regulations.

Provided that the Board may invest any sum not required for immediate use in such securities or debentures as may be approved by the Board

7 *Accounts and Audit.*—(1) The Board shall cause to be maintained such books of accounts and other books in relation to its accounts and prepare an annual statement of accounts and balance sheet in such form and in such manner as may be specified in the regulations.

(2) The accounts of the Board shall be audited by such auditor appointed by the Board with the permission of the Government.

(3) The accounts of the Board as certified by the auditor together with the audit report thereon shall be forwarded annually to the Government and it shall cause the same to be laid annually before the Legislative Assembly.

CHAPTER IV

CONSTRUCTION OF TRANSPORT FACILITIES AND LEVY OF USER FEES

8 *Power of Government agencies and statutory bodies to enter into concession agreements.*—(1) Notwithstanding anything contained in the Kerala Highway Protection Act, 1999 (6 of 2000), or in any other law for the time being in force, any Government agency or with the permission of the Government any statutory body may enter into a concession agreement in accordance with the provisions of this Act for the construction of a transport facility.

(2) When an agreement is entered into under sub-section (1) the concessionaire or the Government agency or the statutory body, as the case may be, is entitled to levy and collect user fees on a motor vehicle using the transport facility of such rate, for services or benefits rendered by him which shall be fixed by the Board considering the expenditure involved in building maintenance, management and operation of the whole or part of such transport facility, interest on capital invested, reasonable return, the volume of traffic and the period of such agreement.

Provided that the user fees collected by a concessionaire shall be retained by him and utilised in accordance with the provision of the concession agreement.

(3) The concessionaire or the Government agency or the statutory body, as the case may be, shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) on the roads or the bridges and tunnels together with their approach and exit roads forming subject matter of such concession agreement for proper management thereof.

9 *Approval of Transport Facility Projects.*—(1) A proposal of a Government agency or a statutory body for participation by a party in financing construction, re-construction, improvisation, repair maintenance or operation of a transport facility shall be forwarded through the project management agency to the Member Secretary along with information relating thereto as may be prescribed by regulations.

(2) As soon as may be after the receipt of the proposal under sub-section (1), the Member Secretary shall place the same for the consideration of the executive committee.

(3) The executive committee shall consider it along with the concession agreement and return it along with the concession agreement to the Government agency or to the statutory body concerned with modifications or recommendation, if any.

(4) The Board and the Government agency or the statutory body concerned may enter into a concession agreement with a person who is selected through a competitive public bidding or in the manner prescribed for the financing and construction of a transport facility.

(5) A concession agreement may provide that the Board may revise the user fees, referred to in sub-section (2) of section 8 having regard to the rate of inflation, variation in the rate of foreign exchange and such other factors, as may be prescribed.

10. *Assistance by Government, etc.*—The Government, or a Government agency, or the Board or the statutory body may provide to a concessionaire or a Government agency or to a statutory body assistance for the financing and construction of a transport facility in the following manner, namely:—

(a) Funded assistance by,—

- (i) participating in the equity of the transport facility not exceeding forty-nine per cent of the total equity,
- (ii) providing subsidy not exceeding twenty-five per cent of the cost of the transport facility;
- (iii) extending senior or subordinate loans; or
- (iv) such other manner as may be prescribed.

(b) Non-funded assistance by,—

- (i) guaranteeing in respect of liability arising out of a concession agreement;
- (ii) conferring of development rights in respect of any land; or
- (iii) such other manner as may be prescribed.

(c) Other assistance by,—

- (i) opening and operation of escrow account;
- (ii) providing assistance in obtaining project support from the Government in the form of Government signing a State Support Agreement;
- (iii) providing assistance in the form of exemption from the payment of, or facilitating deferred payment of any tax or fee levied by the Government under any law, or
- (iv) such other manner as may be prescribed.

11. *Financial security for operation and maintenance of transport facility.*—Where a provision is made in a concession agreement requiring the concessionaire to operate and maintain the transport facility constructed by him for a period as specified in such agreement, there shall be opened an escrow account by the concessionaire and the money shall be expended for the maintenance of the transport facility only in accordance with the provision in the concession agreement or in any other agreement.

12. *Transfer of certain rights.*—Where the transport facility is transferred to the Government, according to the provisions of the concession agreement, all the rights of the concessionaire in respect of the transport facility shall stand transferred to the Government.

13. *Termination of concession agreement.*—(1) Where a concession agreement is terminated by the Government agency or Board or the statutory body without the consent of the concessionaire or in the absence of any default by the concessionaire, the concessionaire shall be entitled to such amount of compensation for such termination as specified in the concession agreement.

(2) A concession agreement may provide that if a default specified therein is committed by the concessionaire, the Government agency or the Board or the statutory body shall, after giving to the concessionaire a reasonable opportunity of being heard, have the right to terminate the concession agreement and,—

(a) take over the transport facility without repaying the amount invested by the concessionaire in the equity and shall assume the liability of the concessionaire towards loans taken by him in respect of the transport facility; or

(b) enter into a concession agreement with another party, whose name is recommended by the Board, on the same terms and conditions as are specified in the concession agreement so terminated.

14. *Collection of user fee.*—(1) The user fees leviable under this Act shall be collected by the concessionaire, or the Government agency or the Statutory body as the case may be its agents, servants and sub contractors, in such manner as may be specified by regulations for such period as may be stated in the concession agreement

(2) Any person employed in the management and collection of user fees under this section shall be liable to the same responsibilities as would belong to him if employed in the collection of basic tax . . .

Explanation.—In this sub-section basic tax means the basic tax payable under the Kerala Land Tax Act 1961 (13 of 1961).

(3) The concessionaire, depending upon its constitution, through its authorised representative shall be responsible to ensure that user fees are collected at not more than the agreed rates, and the user fee collection is smooth and does not cause undue hardship to the transport facility users and for all other matters connected with the user fee collection on the transport facility.

(4) Where any user fee is not paid on demand, the collecting agent shall seize any motor vehicle on which it is chargeable or any goods carried by such motor vehicle and if the user fee and the cost arising from such seizure, remains unpaid for twenty four hours the case shall be brought before an officer appointed by the Government by notification in the Gazette to Superintendent the collection of the user fee.

(5) Where a case is brought before an officer under sub-section (4), he may sell the property seized in public auction for discharge of the user fees and all expenses occasioned by such non-payment, seizure and sale of the property in public auction, and any balance that may remain after such discharge shall be returned on demand to the owner of the motor vehicle or goods, as the case may be:

Provided that if at any time before the sale has actually begun, the person whose property has been seized tenders the amount of all expenses incurred and double the user fees payable by him, the property seized shall forthwith be released.

15. *Exemption.*—The Government may in public interest, by notification in the Official Gazette, exempt any motor vehicle from the levy of user fees under the provisions of this Act

16. *Assistance by Police Officers* —All Police Officers shall be bound to assist the collecting agents and concessionaire when required, in the execution of this Act, and for that purpose shall have the same powers which they have in the exercise of their ordinary police duties.

17. *Power to offer discount on user fees*—Any collecting agent or concessionaire may offer a discount for any period not exceeding one year to any person for a certain sum to be paid by such person for any motor vehicle kept by him, on the rates of user fees authorised to be levied under this Act, subject to such conditions and restrictions as may be specified by regulations.

18. *Penalties*.—(1) Every person, other than collecting agent or concessionaire, who levies or demands any user fees on any transport facility shall, on conviction by a Magistrate, be liable to imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

(2) Every collecting agent or concessionaire who unlawfully demands a higher rate of user fee or under the colour of this Act seizes or sells any property knowing that such seizure or sale is unlawful, or in any manner unlawfully extorts money or any valuable thing from any person under the colour of this Act, shall, on conviction by a Magistrate, be liable to imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

(3) Whoever,—

(i) attempts of using the transport facility without paying the user fees payable by him under this Act; or

(ii) obstructs any collecting agent from discharging his duties imposed by or under this Act,

shall on conviction by a Magistrate, be liable to imprisonment for a term which may extend to three months or fine which may extend to one thousand rupees or with both.

(4) No Magistrate shall take cognisance of any offence under this Act except on a complaint in writing made by an officer authorised by the Government in this behalf or by an authorised representative of the concessionaire depending upon its constitution, in respect of such transport facility being under user fees imposed.

19 *Exhibition of table of user fees and statement of penalties*—A table of user fees authorised to be taken in respect of a transport facility shall be put in a conspicuous place near the collection booth of such transport facility legibly written or printed in words and figures in English, Malayalam and in the language of the locality.

20. *Bar to proceedings*.—No suit, prosecution or other legal proceedings shall lie against any collecting agent or concessionaire for anything which is in good faith done or intended to be done under this Act.

CHAPTER V

MISCELLANEOUS

21. *Protection of acts done in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Board or any member of the Board for anything which is done or intended to be done in good faith in pursuance of the provisions of this Act or any rules and regulations made thereunder.

22. *Bar of jurisdiction of Civil Courts.*—No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government or the Board or any officer authorised by the Government or the Board.

23. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with this Act or the rules made thereunder, which appears to them necessary for the purpose of removing the difficulty.

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

(2) Every order made under sub-section (1) shall be laid before the State Legislature.

24. *Special provisions regarding certain bridges.*—(1) Notwithstanding anything contained in this Act, where any bridge has been constructed before the commencement of this Act by any person on a build, operate and transfer basis in pursuance of an agreement executed by him with Government and a development authority constituted under the Town Planning Act, 1108 (IV of 1108) or the Madras Town Planning Act, 1920 (VII of 1920), such agreement shall be deemed to have been executed under the provisions of this Act and a user fee may be levied and collected by such person on every vehicle entering such bridge.

(2) The user fees leviable under sub-section (1) shall be at such rates and for such period as, the Government may by notification, declare in accordance with the provisions of the agreement.

(3) The provisions under sub-section (3) of section 8, sections 14 to 20 and section 23 shall *mutatis mutandis* apply to the collection of user fees under sub-section (1).

25 *Power to make rules.*—(1) The Government may by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for,—

- (a) the term of office and other conditions of service of the members of the Board;
- (b) the power and duties of the Chairman, the Member Secretary and other members of the Board;
- (c) any other matter which is required 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 for a 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.

26. *Power to make regulations.*—(1) The Board may make regulations not inconsistent with the provisions of this Act and the rules made thereunder, for enabling it to discharge its functions under this Act.

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

- (a) the time and the place of the meetings of the Board and rules of procedure to be observed by the Board in regard to transaction of business at its meeting under this Act;
- (b) the rate of user fees and the method of collections;
- (c) any other matter which is, or may be, necessary for the efficient conduct of the affairs of the Board.

27. *Annual report.*—(1) The Board shall during each financial year prepare in such form and at such time as may be provided by regulations, an annual report giving a true and full account of its activities in the previous financial year and copies of such report shall be forwarded to the State Government.

(2) The State Government shall cause every such report to be laid before the State Legislature as soon as may be after the receipt of the same.

28. *Acts and proceedings of Board presumed to be valid.*—No act or proceeding of the Board shall be invalid merely by reason of,—

- (a) any vacancy therein or any defect in the constitution thereof;
- (b) any defect in the appointment of a person acting as a member of the Board; or
- (c) any irregularity in its procedure not affecting the merit of the case.

29. *Amendment of Act 6 of 2000.*—In the Kerala Highway Protection Act, 1999 (6 of 2000),—

(1) in section 2 after clause (i), the following clause shall be inserted, namely:—

“(1a) “Kerala Road Fund” means the Kerala Road Fund established under section 6 of the Kerala Road Fund Act, 2001”;

(2) after section 11, the following section shall be inserted, namely:—

“11A *Fees for services or benefits rendered on highways.*—(1) The Government may, by notification in the Gazette levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relations to the use of ferries, permanent bridges, the cost of construction of each of which is more than thirty five lakhs rupees, temporary bridges and tunnels on highways and the use of sections of highway:

Provided that if the Government is of opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this section.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act and remitted to the Kerala Road Fund established under the Kerala Road Fund Act, 2001.

(3) The Government may levy fees under sub-section (1) on all bridges in respect of which the realisation of toll under the provisions of the Kerala Tolls Act, 1976 (6 of 1977), is completed.”

30. *Repeal and saving.*—(1) The Kerala Road Fund Ordinance, 2001 (34 of 2001), 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 this Act.