

THE KERALA STATE AID TO INDUSTRIES ACT, 1963

(Act 34 of 1963)

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Act 34 of 1963 ***THE KERALA STATE AID TO INDUSTRIES ACT, 1963**

An Act to consolidate and amend the laws relating to the giving of State aid to industries in the State of Kerala.

Preamble.—WHEREAS it is expedient to consolidate and amend the laws relating to the giving of State aid to industries in the State of Kerala,

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

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala State Aid to Industries Act, 1963.

(2) It extends to the whole of the State of Kerala.

* Received the assent of the Governor on the 29th day of October, 1963 and published in the Gazette Extraordinary, dated 4th November, 1963.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

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

(1) 'Board' means the State Aid to Industries Board constituted under section 3,

(2) 'company' means a company as defined in section 3 of the Companies Act, 1956 (Central Act I of 1956) and includes a foreign company within the meaning of section 591 of that Act;

(3) 'Director' means the Director of Industries and Commerce and includes any person appointed by the Government either by name or by virtue of his office to perform all or any of the functions of the Director of Industries and Commerce under this Act;

(4) 'industry' means any industrial business or enterprise conducted in the State by any individual, institution, company, association or body of individuals whether incorporated or not and includes a cottage industry, a small scale industry, and a village industry; but shall not include an industry organised on co-operative basis which is eligible for financial assistance from the Central or State Government or a Co-operative Bank under any specific development programme;

(5) 'cottage industry' means an industrial business or enterprise carried on in any premises to which the Factories Act, 1948 (Central Act 63 of 1948), does not apply, and includes dairy farming, bee-keeping and keeping a poultry farm;

(6) 'small scale industry' means an industrial business or enterprise the capital invested in which does not exceed five lakhs of rupees;

(7) 'village industry' means any industry which forms the normal occupation, whether whole-time or part-time, of any class of the rural population of the State;

(8) 'machinery' includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process;

(9) 'owner' means the person who owns any industrial undertaking and includes the successor-in-interest of such person in respect of such undertaking;

(10) 'prescribed' means prescribed by rules made under this Act;

(11) 'State' means the State of Kerala;

(12) 'State aid' means any aid given by or on behalf of the Government under the provisions of this Act and the rules, if any, made thereunder.

CHAPTER II

The State aid to Industries Board

3. *Constitution of State Aid to Industries Board.*—(1) There shall be constituted a State aid to Industries Board consisting of the following members, namely.—

(a) The Director of Industries and Commerce, *ex officio*;

(b) An officer of the Finance Department of the Government Secretariat not below the rank of a Joint Secretary to be nominated by the Government ;

(c) An officer of the Industries Department of the Government Secretariat not below the rank of a Deputy Secretary to be nominated by the Government ;

(d) Three members to be elected by the members of the Kerala Legislative Assembly from among themselves in accordance with the system of proportional representation by means of the single transferable vote ;

(e) Three members representing industrial and commercial interests to be nominated by the Government ;

(f) Two members representing organised trade unions to be nominated by the Government , and

(g) One member representing economists or statisticians to be nominated by the Government.

(2) The Director of Industries and Commerce shall be the Chairman of the Board.

(3) The nomination, election, resignation or removal of the members of the Board shall be notified by the Government in the Gazette.

(4) The Board shall assist the Government in dealing with applications for the grant of State aid under this Act.

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

(6) No member shall vote on or take part in the discussion of any question coming up for consideration at a meeting of the Board if the question is one in which he has any direct or indirect pecuniary interest by himself or his partner or in which he is interested professionally on behalf of a client or as agent for any person other than the Government or a local authority.

(7) No proceedings of the Board shall be deemed to be invalid on account of any defect or irregularity in the Constitution of the Board or any vacancy thereof.

4. *Term of office of members.*—Subject to the provisions of this Act every member of the Board other than the *Ex officio* member shall hold office for a period of three years from the date of the first meeting of the Board but shall be eligible for re-nomination or re-election, as the case may be :

Provided that a member whose term of office has expired shall continue to hold office until his successor assumes office :

Provided further that a member nominated or elected under sub-section (1) of section 3 shall cease to be a member of the Board—

(i) in the case of a member nominated under clause (b) or clause (c) of sub-section (1) of section 3, when he ceases to be an officer of the Finance Department or the Industries Department as the case may be ;

(ii) in the case of a member elected under clause (d) of sub-section (1) of section 3, when he ceases to be a member of the Legislative Assembly ; and

(iii) in the case of a member nominated under clause (e) or clause (f) or clause (g) of sub-section (1) of section 3, in the opinion of the Government, when he ceases to have the representative capacity specified in the said respective clauses,

but the member shall continue to hold office until the vacancy is filled up :

Provided also that a member nominated or elected to fill a casual vacancy shall assume office forthwith, but shall hold office so long only as the member in whose place he is nominated or elected as the case may be, would have been entitled to hold office if the vacancy had not occurred.

5. *Resignation.*—Any member of the Board other than the *ex officio* member may resign by tendering his resignation in writing to the Government and, on such resignation being accepted by the Government, shall be deemed to have vacated office.

6. *Removal of members.*—(1) The Government may remove from office any member of the Board other than the *ex officio* member if he—

(a) becomes subject to any physical or mental disability, which, in the opinion of the Government renders him unfit to be a member of the Board, or

(b) is convicted of any such offence or is subjected by any Criminal Court to any such order as in the opinion of the Government implies a defect of character which renders him unfit to continue as a member of the Board, or

(c) without excuse sufficient in the opinion of the Board, absents himself without the consent of the Board from more than three consecutive meetings of the Board, or

(d) contravenes the provisions of sub-section (6) of section 3 :

Provided that before removing any member from his office under this sub-section he shall be given an opportunity to show cause against the action proposed to be taken.

(2) The Government may, by notification in the Gazette, fix a period during which any person so removed shall not be eligible for re-nomination or re-election, as the case may be.

7. *Filling up of vacancies.*—When the office of any member of the Board becomes vacant by the expiration of his term, resignation, removal or death, a new member shall be nominated or elected, as the case may be, to fill the vacancy.

8. *Presidency at meetings.*—(1) The Chairman shall preside at the meetings of the Board and shall have and exercise a second or casting vote in the case of an equality of votes.

(2) In the absence of the Chairman, an officer of the Government in the Board, shall preside and he shall while so presiding, have all the powers of the Chairman.

(3) No business shall be transacted at any meeting of the Board unless one-half of the sanctioned number of members of the Board are present at the meeting.

9. *Dissolution of the Board.*—If, in the opinion of the Government, the Board persistently makes default in the performance of the duties imposed on it, or exceeds or abuses its powers, the Government may, by notification in the Gazette, dissolve the Board and thereupon the Chairman and the other members of the Board shall be deemed to have vacated their offices and all the functions of the Board shall thereafter be exercised by such person or persons as may be appointed in that behalf by the Government until a new Board is constituted by the Government :

Provided that no order of dissolution shall be passed unless the Board is given an opportunity to show cause against the action proposed to be taken.

10. *Industries which may be aided.*—(1) The industries to which aid may be given under this Act shall be such as have an important bearing on the economic development of the country and shall be—

- (i) a new or nascent industry ;
- (ii) an industry to be newly established in an area where such industries are undeveloped or are likely to be successful ;
- (iii) an industry which is likely to become more profitable by an investment of more capital ;
- (iv) small scale industries ;
- (v) cottage industries ;
- (vi) old or established industries ; or
- (vii) such other industrial concerns, as in the opinion of the Government, deserve State aid to be given in conformity with the provisions of this Act :

Provided that no State aid shall be given to any joint stock company unless—

- (i) the company is registered in India with a rupee capital, and
- (ii) the company agrees to maintain the prescribed proportion of Indians as members of its Board of Directors :

Provided further that every recipient of State aid shall make such provision for the training of apprentices as may be prescribed.

(2) The decision of the Government after consulting the Board as to whether the conditions of this section are fulfilled shall be final and shall not be called in question in any court of law.

CHAPTER III

General provisions regarding the giving of State Aid

11. *Forms of State aid.*—Subject to the provisions of this Act and of the rules made thereunder, the Government shall have power to give State aid to an industry in one or more of the following ways:—

- (a) by granting a loan ;
- (b) by guaranteeing of cash credit, overdraft or a fixed advance with a bank ;
- (c) by taking fully paid up shares or debentures :

Provided that the amount paid by the Government for such shares and debentures shall not exceed the amount already paid by other persons for shares and debentures in the same industry ;

- (d) by guaranteeing interest on preference shares or debentures,
- (e) by guaranteeing a minimum return on the whole or part of the capital of a joint stock company,

(f) by the granting on favourable terms of land, raw materials, firewood, water or any other property of the Government subject to such terms and conditions as respects the repayment of the value of the aid granted, as may be prescribed ;

(g) by paying a subsidy for the conduct of research or the purchase of machinery subject to such terms and conditions as respects the repayment of the value of the aid granted, as may be prescribed ;

(h) by supplying machinery on hire purchase system.

12 *Conditions for the guarantee and grant under section 11 (e) and (f).*—The condition for any payment under guarantee of a minimum return on the whole or part of the capital of a joint stock company or for the grant by the Government of land, raw materials, firewood, water or any other property on favourable terms shall ordinarily be that an amount equal to the sum paid or to the value of the grant or concession as fixed at the time when it is paid, shall be repaid to the Government at the close of a fixed term of years if within that term the industry shall be shown to be paying interest or a dividend upon the capital invested in excess of such rates as the Government may fix.

13. *Conditions for grant of loan.*—(1) No loan shall exceed the prescribed percentage of the value of the assets of the industry to which it is granted and of other property, if any, offered as collateral security without deducting the encumbrances, if any, existing thereon at the time when the application for the loan is made, the value being ascertained by the sanctioning authority in the prescribed manner.

(2) No loan shall be granted if the encumbrances on the assets of the industry and on other property offered as collateral security exceed 50 per cent of the value of such assets and collateral securities in the case of an existing industry and thirty-three and one third per cent in the case of a new industry.

(3) The authority granting the loan shall, from out of the loan discharge all encumbrances on the assets of the industry and other property, if any, offered as collateral security existing at the time when the application for the loan is made, and shall secure a first charge on the assets and other property aforesaid.

(4) Every loan shall be repayable in instalments within a period not exceeding twenty years after the date of advance of the loan, or where the loan is advanced in instalments, after the date of the advance of the last instalment.

(5) In special cases the Government, for reasons to be recorded in writing, may, on the application of the owner of an industry to which such loan has been granted, vary the terms fixed by the order granting the loan.

(6) All the insurable assets of the applicant offered as security shall be insured against loss or damage with the State Insurance Department and the policy assigned in favour of the Director of Industries and Commerce.

14. *Loans how secured.*—Every loan granted under this Act shall be secured by a mortgage upon the whole or such portion of the assets of the business or enterprise as the sanctioning authority may consider sufficient and where the whole of the assets of the business or enterprise is in the opinion of the sanctioning authority insufficient, by such collateral security as may be required by the sanctioning authority and shall bear interest payable on such dates and at such rates as the Government may determine.

15. *Application for State aid and authorities by whom aid may be granted.*—(1) All applications for State aid shall be made in the prescribed form to the District Industries Officer of the concerned district. The District Industries Officer shall make such enquiries as may be prescribed and such other enquiries as he deems fit on every such application. In the case of an application in which the sanctioning authority under sub-section (4) is the Regional Joint Director of Industries and Commerce, the Director of the Government, the District Industries Officer shall forward the application to the sanctioning authority together with the report of the enquiry conducted by him. Where the sanctioning authority is the Director, the application shall be forwarded to him through the Regional Joint Director of Industries and Commerce and where the sanctioning authority is the Government, the application shall be forwarded to the Government through the Regional Joint Director of Industries and Commerce and the Director.

(2) If the extent of the State aid applied for exceeds fifty thousand rupees and in any other case in which he so considers the Director shall publish a notice in the prescribed manner, calling upon any person who objects to the grant of the State aid applied for to state his objections at a time and place to be specified by the Director and shall hear such objections and make such enquiry as may be necessary.

(3) Every application for State aid exceeding Rs. 15,000 shall be placed before the Board and shall be granted only with its concurrence.

- (4) Subject to the provisions of sub-section (3) the following authorities shall be competent to grant as State aid the amount or value specified against each :—

| | |
|--|---|
| District Industries Officer | Not exceeding five thousand rupees, |
| Regional Joint Director of Industries and Commerce | Exceeding five thousand, but not exceeding ten thousand rupees. |
| Director | Exceeding ten thousand, but not exceeding twenty-five thousand rupees |
| Government | Exceeding twenty-five thousand rupees. |

(5) Nothing in sub-section (4) shall be deemed to empower the District Industries Officer or Regional Joint Director of Industries and Commerce or the Director to grant State aid on different occasions in respect of the same industry, if the aggregate amount or value of such aid exceeds five thousand rupees or ten thousand rupees or twenty-five thousand rupees, as the case may be.

16. *Supervision of assisted industry.*—During the continuance of State aid to any industry which has received aid under the Act, the Government may, by appointing directors or Inspectors, or otherwise, take such steps as they deem advisable so to supervise the conduct of the industry as to safeguard the interests of the Government therein.

17. *Inspection and returns.*—In any case in which State aid has been applied for under this Act, the applicant and at any time during the currency of State aid that has been granted under it, the grantee, shall be bound—

(a) to comply with any general or special order of the Government relating to the inspection of the premises, building, or plant or stock in hand of the industrial business or enterprise ;

(b) to permit the inspection of all accounts relating to the industrial business or enterprises ;

(c) to furnish full returns of all products manufactured or sold both as regards description and quantity ;

(d) to maintain such special accounts or to furnish such statements as the Government may from time to time require ,

(e) to submit the accounts of the industrial business or enterprise to such audit as the Government may prescribe.

18. *Disposal of profits when condition of State aid is not fulfilled.*—(1) During the continuance of State aid to any industry the profits of such industry shall, if distributed, be distributed only after interest due on debentures and loans has been paid and a reasonable amount has been set aside for depreciation or obsolescence of machinery and buildings and a further reasonable amount has been carried to reserve fund to be utilised in the prescribed manner.

(2) No dividend shall be paid to shareholders and no profit shall be taken by the owner in excess of such percentage rate upon the

amount of the capital of the industry as the Government may fix from time to time during the continuance of State aid to any industry.

19. *Power of Government to adjust security during currency of loans.*— If at any time the amount of any loan outstanding together with such interest as may be due thereon on account of any State aid given is found to exceed the percentage fixed under sub-section (1) of section 13, the Government may either recover so much of such balance as is in excess of such percentage or take such additional or collateral security as they may deem sufficient.

20. *Power of authority sanctioning the loan to terminate aid.*—(1) If the authority sanctioning the loan is satisfied—

(i) that the whole or any portion of the State aid given has been misapplied, or

(ii) that there has been a breach by the grantee of the aid of the provisions of this Act, or of any rule made thereunder or of any conditions of the grant, or

(iii) that the application on which the State aid has been granted contained or was accompanied by, any material statement by the grantee of the aid which he knew to be false or did not believe to be true or any intentional concealment by him of any material fact, which in the opinion of the authority sanctioning the loan it was his duty to disclose, or that any such false statement or concealment was intentionally made in any inquiry made under this Act by or with the connivance of the owner or in any return under this Act or in reply to any requisition for information under this Act, or

(iv) that the industry is being managed in such manner as to endanger the repayment of the value of State aid granted thereto repayable under this Act,

the authority may by order in writing terminate the State aid specifying the reason or reasons therefor.

(2) No such order as mentioned in sub-section (1) shall be passed without giving the grantee an opportunity to show cause within a specified time why action should not be taken under this section.

(3) Where an order terminating the aid is made under sub-section (1), then, notwithstanding anything contained in this Act or in any other law, the authority sanctioning the aid may proceed to recover from the grantee of the aid, as arrears of land revenue,—

(a) the entire amount of any loan outstanding together with interest as may be due thereon, or

(b) in cases where the aid is given otherwise than by loan, the money value of the aid as fixed at the time when it was made, together with interest due thereon, and

(c) in the case mentioned in clause (a) or clause (b), the cost of recovery, and, if the Government so direct the cost of any inquiry made in connection therewith.

(4) An order made under this section shall be final and shall not be called in question in any court of law.