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THE ORISSA HOME GUARDS ACT, 1961

An Act to provide for the constitution of the Home Guards in the State of Orissa.

WHEREAS it is expedient to provide a Volunteer Organization for use in emergencies and other purposes in the State of Orissa;

It is hereby enacted by the Legislature of the State of Orissa in the Twelfth Year of the Republic of India as follows:

1. Short title, extent and commencement :— (1) This Act may be called the Orissa Home Guards Act, 1961.

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

(3) It shall come into force in such areas and on such date [The Act came into force with effect from the 21st November, 1962 vide Notification No. 3152/21.11.1962, Published in the O.G.E.No. 675/22.11.1962.] as the State Government may, by notification, appoint and different dates may be appointed for different areas.

2. Constitution of Home Guards and appointment of Commandant-General and Commandant :— (1) The State Government shall constitute for the areas notified under Sub-sec. (3) of Section 1 a volunteer body called the Home Guards, the member of which shall

* [Published vide Orissa Gazette Ext. 18.11.1961, O.A. No. 22/1961. For Statement of Objects and Reasons, see Orissa Gazette Ext. No. 642/18.9.1961.]

discharge such functions and duties in relation to the protection of persons, the security of property and public safety and for such other functions as may be assigned to them in accordance with the provisions of this Act and the rules made there under.

(2) The State Government shall appoint a Commandant-General of the Home Guards in whom shall vest general supervision and control of the Home Guards in the State and may also appoint a Deputy Commandant-General to whom the Commandant-General may delegate such of his powers as he may consider necessary for supervision, control and training of the Home Guards.

(3) The State Government shall also appoint a Commandant for the Home Guards in each district.

3. Appointment of Members :— (1) Subject to the approval of the Commandant-General, the Commandant may appoint as members of the Home Guards within his jurisdiction such number of persons, who are fit and willing to serve, as may from time to time be determined by the State Government and may appoint any such member to any office of command in the Home Guards.

(2) Notwithstanding anything contained in Sub-sec. (1) the Commandant General may appoint any such member to any such office as aforesaid under his control.

CASE REFERRED : Sections 3, 4, 5 read with Rule 17 of the Orissa Home Guards Rules, 1962 - Home Guard - While on duty performs the power of a Police Officer-Provisions discussed: 67 (1989) CLT 116 : 1989 Cri.LJ 1566.

4. Calling out a member of the force :— (1) The Commandant-General or the Commandant within the district under his jurisdiction may, subject to the provisions of Sub-secs. (2) and (3) call upon any member of the Home Guards for training or .for discharging any function assigned to him by or under this Act.

(2) The District Magistrate or subject to his control the Superintendent of Police, may at any time call upon the District Commandant in such circumstances and in such manner as may be

prescribed, to mobilize any Unit within the district or a detachment of such Unit under his jurisdiction for the purpose of maintenance of law and order.

(3) Whenever the services of any such unit or detachment are requisitioned under Sub-sec. (2) the requisitioning authority shall communicate the action taken by it to such authority as may be prescribed by rules made in that behalf.

5. Powers, privileges and protection of the force :— A member of the Home Guards when called out under Sec. 4 shall have the same powers privileges and protection as an Officer of Police appointed under any law for the time being in force.

(2) No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions or duties as such member except with the previous sanction of the Commandant-General.

CASE REFERRED : (1988) 1 OCR 594.

6. Control by officer of Police Force :— The members of the Home Guards when called out under Sec. 4 in aid of the Police Force shall exercise such powers and shall be under the control of the officers of the Police Force in manner and to such extent as may be prescribed by rules made under this Act.

7. Certificate, arms, etc. to be delivered up by person ceasing to be member of the Home Guards :— (1) Every person who for any reason ceases to be a member of the Home Guards shall forthwith deliver up to the commandant or to such person and at such places as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessities furnished to him as such member.

(2) Any Magistrate, or after recording his reasons in writing any Police-officer not below the rank of Assistant or Deputy Superintendent of Police, may issue a warrant to search for and seize wherever they may be found, and certificate, arms, accoutrements, clothing or other necessities not so delivered and every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898) by a Police-officer or if the Magistrate or the Police-officer issuing the warrants so directs, by any other person,

8. Punishment of members for neglect of duties, etc. :- (1) Subject to the rules made in that behalf the Commandant shall have the authority to suspend, reduce in rank, dismiss or fine up to an amount not exceeding fifty rupees, any member of the Home Guards under his control, if such member without reasonable cause, on being called out under Sec. 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his functions or duties or is guilty of any breach of discipline or misconduct; and the Commandant-General shall have the like authority in respect of any member of the Home Guards under his control and shall further have the authority to dismiss any member of the Home Guards and on the ground of conduct which has led to his conviction for an offence involving moral turpitude.

(2) Notwithstanding anything contained in this Act the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such condition as may be prescribed by rules made under this Act, if in the opinion of the Commandant the services of such member are no longer required and the Commandant-General shall have the like authority in respect of any member of the Home Guards under his control.

(3) When the Commandant-General or the Commandant passes an order suspending, reducing in rank, fining or dismissing any member of the Home Guards under Sub-sec. (1) he shall record such order with the reasons therefore and a note of the enquiry in writing and no such order shall be passed by the said Commandant or Commandant-General unless the person concerned has been given an opportunity of being heard in his defense.

(4) Any member of the Home Guards aggrieved by an order of the Commandant or Commandant-General made under Sub-sec. (1) may appeal against such order to the State Government or such authority as may be prescribed by rules made in that behalf within thirty days of the date on which he was served with notice of such order and the State Government or the authority, as the case may be, after hearing the appellant may pass such orders as may be considered fit.

(5) The Commandant-General or the State Government may at any time call for an examination of the record of any order passed by the Commandant under Sub-sec. (1) for the purpose of satisfying themselves as to the legality or propriety of such order and pass such order as he or

they think fit.

(6) Every order, if no appeal is preferred therefrom as herein before provided and every order passed in appeal or revision under this section shall be final.

(7) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898 (5 of 1898) as if such fine were imposed by a Court-

(8) Any punishment inflicted on a member of the Home Guards under this/section shall be in addition to the punishment to which such member is liable under Sub-sec. (1) of Section 9 or any other law for the time being in force.

9. Award of punishment :—(1) If any member of the Home Guards, on being called out under Sec. 4, without reasonable excuse neglects or refuses to obey such order, or to discharge his functions as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his duties he shall, on conviction, be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

(2) If any member of the Home Guards willfully neglects or refuses to deliver his certificate of appointment or office or any other article in accordance with the provisions of Sub-sec. (1) of Section 7, he shall, on conviction, be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees or with both.

(3) No proceedings shall be instituted under Sub-sec. (1) or Sub-sec. (2) without the previous sanction of the Commandant-General.

(4) A Police-officer may arrest without warrant any person who commits an offence punishable under Sub-sec. (1) or Sub-sec. (2).

10. Rules :—(1) The State Government may 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, namely: (a) the exercise by any officer of the Home Guards of the powers conferred by Section 4 on the Commandant and Commandant-General;

(b) the exercise of control by officers of the Police Force over members of the Home Guards ,when acting in aid of the Police Force;

(c) the Organization, appointment, conditions of service, functions discipline, arms, accoutrements ,and clothing of members of the Home Guards and the manner in which they may be called out for service; and

(d) any other matter required, or expressly or impliedly authorized, by this Act to be prescribed by rules.

11. Home Guards to be public servants :– Members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

12. Home Guards not disqualified from contesting elections to State Legislature or Local bodies :– Notwithstanding anything to the contrary contained in any other law for the time being in force a member of the Home Guards shall not be disqualified for being chosen as or for being a member of the Orissa Legislative Assembly or of any local authority merely by reason of the fact that he is a member of the Home Guards.
