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NOTIFICATION

No.H.12018/219/2011-LJD, the 15th July, 2011. The following Act of the Mizoram Legislative Assembly which received the assent of the Governor of Mizoram is hereby published for general information.

**THE MIZORAM (ESTABLISHMENT OF INDEPENDENT LOCAL BODY)
OMBUDSMAN ACT, 2011 (Act No. 8 of 2011)**

{ Received the assent of the Governor of Mizoram on the 15th July, 2011 }

AN

ACT

to look into complaints of corruption and maladministration against the functionaries of Local Bodies, and to recommend suitable action.

It is enacted by the Legislative Assembly of Mizoram in the Sixty Second year of Republic of India as follows :-

PRELIMINARY

1. Short title, extent and commencement –

- (1) This Act may be called The Mizoram (Establishment of Independent Local Body) Ombudsman Act 2011.
- (2) It shall extend to the whole of the state of Mizoram.
- (3) It shall come into force on such date or dates and in such area or areas as the state Government may, by notification, appoint.

2. Definitions -

- (1) For the purpose of this Chapter, -
 - (a) 'Action' means action taken by way of decision, recommendation, resolution or finding or in execution thereof or in exercise of administrative or legal functions in any other manner and includes willful default in taking action or omission and all other expressions connoting such action shall be construed accordingly;

- (b) 'Allegation', -
- (a) in relation to a public servant means, any affirmation that such public servant, -
 - (i) has abused his position as such for any gain or favor to himself or to any other person or to cause undue harm or hardship to any other person;
 - (ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;
 - (iii) is guilty of corruption, favouritism, nepotism or lack of integrity;
 - (iv) is guilty of any action as public servant which facilitates or causes to make any loss, waste or misappropriation of money or other property of the Village Council.
 - (b) In relation to Village Council means any affirmation that such Village Council has defaulted or acted in excess of its powers in the discharge of its functions imposed on it by law or in implementing the lawful orders and directions of the State Government;
 - (c) 'Complaint' means a statement of allegation that a public servant or a Village Council is guilty of corruption or maladministration and includes any reference to an allegation in respect of which suo moto enquiry has been proposed or enquiry has been made by the Government;
 - (d) 'Corruption' includes anything punishable under Chapter X of the Indian Penal Code (Central Act 45 of 1860) or under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988);
 - (e) 'Investigating officer' means an officer authorized by the Ombudsman to conduct investigation in respect of an allegation or complaint.
 - (f) 'Maladministration' means action taken or purported to have been taken in the exercise of administrative function in any case, -
 - (i) Where such action, administrative procedure or practice governing such action involves injustice, oppression, discrimination or nepotism and will result in illegitimate gain or loss or in denying deserving benefits; or
 - (ii) Where there is willful negligence or delay in taking such action, or the administrative procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by malfeasance or misfeasance.
 - (g) 'Ombudsman' means the ombudsman referred to in section 3;
 - (h) 'Public Servant' means an employee or officer under the Village Council or an elected member of the Village Council and includes an employee or officer of any office or institution transferred to the Village Council under the provisions of this Act;
 - (i) 'Secretary' means the Secretary of the Ombudsman referred to in section 6;
 - (j) 'State' means the state of Mizoram.

3. ESTABLISHMENT AND APPOINTMENT OF OMBUDSMAN.-

- (1) There shall be an authority for Village Councils constituted for the state known as 'Ombudsman' for making investigations and enquiries, in respect of charges on any action involving corruption or maladministration or irregularities in the discharge of administrative functions by Village

Councils and Public Servants working under them, in accordance with the provisions of this Act and for the disposal of complaints in accordance with section 17.

- (2) The Ombudsman shall be a single member body appointed by a committee consisting of the Chief Minister of the State, the Speaker of the State Legislative Assembly and the Leader of the Opposition in the Legislative Assembly. The Ombudsman shall be selected from a panel of eminent persons of impeccable integrity and shall not be a serving State Government official.
- (3) A person appointed to be the Ombudsman shall, before he or she enters upon his office, make and subscribe before the Governor or some person appointed in that behalf by him, an oath or affirmation according to the form prescribed.

4. TERM OF OFFICE AND CONDITIONS OF SERVICE OF THE OMBUDSMAN.-

- (1) A person appointed as Ombudsman shall hold office for a term of three years from the date on which he enters upon his office:

Provided that, -

- (a) the Ombudsman may, by writing to the Governor, resign from his office; and
 - (b) the person appointed as Ombudsman may be removed from his office in the manner provided in section 5.
- (2) The person appointed as Ombudsman shall be entitled for salary and allowances as may be fixed by the State Government from time to time.
 - (3) On expiry of his term of office as Ombudsman, he shall not be eligible for reappointment as Ombudsman or for further appointment to any office of profit under the State Government or in any corporation, company, society or university by or under the control of the State Government.

5. REMOVAL OF OMBUDSMAN.-

- (1) The Ombudsman shall not be removed from his office, except by an order of the Governor, passed after an address by the State Legislative Assembly, supported by a majority of the total membership of the House and by a majority of not less than three-fifth of the members of the Legislative Assembly present and voting, has been presented to the Governor in the same session for such removal, on the ground of proved misbehavior or incapacity.
- (2) The procedure for the presentation of an address under sub-section (1) and for the investigation and proof of the misbehavior or incapacity of the Ombudsman shall be in accordance with the provisions of law made by the Legislative Assembly.

6. STAFF OF OMBUDSMAN.-

- (1) The Ombudsman shall have a Secretary, and such other officers and employees as the State Government may determine in consultation with the Ombudsman to assist the Ombudsman in the exercise of its powers and discharge of its functions under this Act.
- (2) The appointment and conditions of service of the Secretary and the employees shall be such as may be specified by the State Government and as far as possible appointment on deputation from the State Government shall be resorted to.
- (3) The Ombudsman may require the assistance of any officer of any State Government Department in order to ascertain the veracity of an allegation under investigation and such officer shall be bound to render such assistance in addition and without detriment to his official duties.

- (4) The Ombudsman may utilize the services of any person having experience and expertise in any particular subject in deciding the questions before it.

7. FUNCTIONS OF THE OMBUDSMAN.-

- (1) The Ombudsman shall perform all or any of the following functions, namely: -
- (a) Investigate into any allegation contained in a complaint or on a reference from the State Government, or that has come to the notice of the Ombudsman;
 - (b) Enquire into any complaint in which corruption or maladministration of a public servant or a Village Council is alleged;
 - (c) Pass an order on the allegation in the following manner, namely: -
 - (i) Where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate authority for investigation.
 - (ii) Where the irregularity causes loss or inconvenience to a citizen, direct the Village Council to give him compensation and to reimburse the loss from the person responsible for the irregularity;
 - (iii) Where the irregularity involves loss or waste or misuse of the fund of the Village Council, realize such loss from those who are responsible for such irregularity, and
 - (iv) where the irregularity is due to omission or inaction cause to redress the omission and to rectify the mistake.
- (2) In addition to the functions enumerated in sub-section (1), the Ombudsman may pass an interim order restraining the Village Council from doing anything detrimental to the interest of the complainant if it is satisfied that such loss or injury will be caused to the complainant due to the alleged act.
- (3) The Ombudsman may by order, impose penalty in addition to compensation if it is of the opinion that the irregularity involves corrupt practice for personal gain.

8. TIME LIMIT FOR INVESTIGATION OF COMPLAINTS.-

A time limit may be prescribed for the Ombudsman to complete its investigations into complaints by the State Government.

9. POWERS OF THE OMBUDSMAN.-

- (1) The Ombudsman shall, for the purpose of any investigation or enquiry under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely: -
- (a) summoning and enforcing the attendance of any witness and examining him;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public records, or copy thereof from any court or office;
 - (e) issuing commissions for the examination of witnesses;
 - (f) such other powers as are prescribed;
- (2) Where the Ombudsman finds that the allegation contained in a complaint is without any substance or trivial in nature it may by order direct the complainant to pay to the opposite party so much of the amount specified in the order by way of cost.
- (3) Where the allegation contained in a complaint is about the loss or waste or misappropriation of the fund of the Village Council or in respect of the loss or inconvenience caused to a citizen,

the Ombudsman may, during enquiry, collect evidence, determine the loss and direct in its order the amount to be realized from the person responsible.

- (4) If the amount to be paid as per the order passed by the Ombudsman under sub-section (2) or sub-section (3) is not paid within the period specified by it, the same shall be recoverable by Revenue Recovery Proceedings as if it were an arrears of land revenue.

10. SERVICE OF STATE GOVERNMENT DEPARTMENTS.-

The State Government may, at the request of the Ombudsman make available the services of officers and employee of the State Government including police personnel to assist the Ombudsman in the conduct of investigation and enquiry and in respect of such functions such Officer or employee shall be deemed to be the officer or employee of the Ombudsman.

11. INVESTIGATION.-

- (1) The Ombudsman may, according to the provisions of this Act, enquire into any complaint filed before it under this Act.
- (2) Notwithstanding anything contained in this Act the State Government may refer any allegation of corruption or maladministration against a Village Council or a public servant which is within its knowledge or brought to its notice, to the Ombudsman and the Ombudsman shall enquire into it as if it was a complaint filed under this Act.
- (3) The Ombudsman may, on receipt of a complaint, conduct an investigation in the matter and where there is prima facie case it may conduct a detailed enquiry.
- (4) The Ombudsman shall not enquire into matters relating to, -
 - (a) any matter in respect of which a formal and public enquiry has been ordered by State Government;
 - (b) any matter in respect of which an enquiry has been ordered under the Commission of Inquiries Act, 1952 (Central Act 60 of 1952) or any matter pending before a court;
 - (c) any complaint filed after the expiry of three years from the date on which the matter complained against has taken place:

Provided that the Ombudsman may entertain such complaint if the complainant satisfies that he had sufficient reason for not filing the complaint within the specified period.

12. ENQUIRY.-

- (1) After an investigation if the Ombudsman is satisfied that, -
 - (a) the complaint is frivolous or vexatious or is not made in good faith; or
 - (b) there is no sufficient ground to initiate proceedings; or
 - (c) other remedies are available to the complainant and it would be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case, it may dispose of the complaint as rejected after recording its findings stating the reason therefore, and communicate the same to the complainant.
- (2) If, the Ombudsman is of opinion that there is a prima-facie case against the person or the Village Council complained of, it shall record its findings to this effect and send notices of the proposed enquiry to the complainant and to the opposite party.
- (3) The Ombudsman shall, subject to the provisions of this Act and the rules made there under, have power to regulate its procedures by fixing the time and place of sitting.

- (4) In any proceedings before the Ombudsman, no legal practitioner will be permitted to represent any person, unless the Ombudsman permits, by an order, a person to be represented by a legal practitioner for reasons to be recorded in writing.

13. EXISTING CASES TO BE TRANSFERRED TO OMBUDSMAN.-

- (1) Notwithstanding anything contained in any other law, if any proceedings, filed and not disposed of under the said Act, before the constitution of Ombudsman as per the provisions of this chapter, relate to a public servant or Village Council as per the provisions of this Act, all cases with regard to such proceedings shall be transferred to the Ombudsman and the Ombudsman shall decide the cases in accordance with the provisions of this Act.
- (2) All cases, with regard to the loss, wastage and misappropriation of any land of the Village Council, pending before the State Government or any other authority and not disposed of just before the constitution of Ombudsman shall be disposed of by the ombudsman in accordance with the provisions of this Act.

14. POWER TO INVESTIGATE AND RECOMMEND ACTION IN CERTAIN CASES.-

The Ombudsman shall have the power to investigate and recommend action in complaints or grievance regarding abuse of office, corruption, maladministration against the Village Councils or its elected members, or where suspension of any resolution passed by the Village Councils or dissolution of the Village Councils is alleged. The State Government shall not have power to suspend or rescind any resolution passed by the Village Councils or take action against the elected representatives on the ground of abuse of office, corruption etc. or to supersede or dissolve the Village Councils. In all such cases, Ombudsman will send his report to the Governor for further action.

15. STATE GOVERNMENT TO PLACE RECORDS BEFORE OMBUDSMAN IN CERTAIN CASES.-

If the State Government feels that there is need to take immediate action against the Village Councils or their elected representatives on one or more of the grounds of abuse of office, corruption etc., it shall place the records before the Ombudsman for urgent investigation. In all such cases the Ombudsman will send his report to the Governor in a specific period.

16. INITIATION OF PROSECUTION.-

- (1) If, after an investigation or inquiry, the Ombudsman finds that there is a prima-facie case against the accused involving a criminal offence, the Ombudsman may refer the complaint and the findings to a competent authority with recommendation to initiate prosecution.
- (2) The authority responsible, for initiating such prosecution shall conduct a detailed enquiry if necessary and charge a case.

17. DISPOSALS OF COMPLAINTS.-

- (1) The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, -
 - (i) Award compensation to a citizen in case of loss or grievance;
 - (ii) Order the recovery of loss caused to the Village Council from the person responsible;
 - (iii) Order the supply of omission or rectification of defects due to inaction;
 - (iv) Order the recovery of loss from the accused failing which, order realization through Revenue Recovery Proceedings;
 - (v) Order other necessary remedial measures considering the facts and circumstances of the case.
- (2) Where the Ombudsman finds that the procedure or practice regarding the administration of Village Council gives room for complaint, it may give suggestions to the State Government or Village Councils relating to the measures for avoiding the recurrence of such complaint.

- (3) The Ombudsman shall give annually a detailed report regarding the performance of its functions under this Act to the State Government and the State Government shall lay it before the Legislative Assembly with an explanatory memorandum.

18. REPORT TO BE SENT TO GOVERNOR.-

In case of complaints and grievances regarding corruption and maladministration against the Village Councils in general and its elected functionaries, the Ombudsman shall send its report to the Governor.

19. REASONS FOR DISAGREEMENT WITH THE REPORT TO BE PLACED IN PUBLIC DOMAIN.-

If there is disagreement with the recommendations of the Ombudsman in case of complaints and grievances regarding corruption and maladministration against the Village Councils in general and its elected functionaries, the Governor must place the reasons in the public domain.

20. PROCEDURES TO BE PRESCRIBED.-

The State Government may make rules in respect of the following matters, namely: -

- (i) The conditions of service of the Ombudsman and Ombudsman's staff;
- (ii) The manner of filing complaints before the Ombudsman and the manner of filing cases either suo moto or on reference by State Government
- (iii) The manner and procedure of conducting investigation;
- (iv) Procedure for moving the appropriate authority for the initiation of prosecution;
- (v) Procedure to be followed during the inquiry, which as far as possible should be summary proceedings;
- (vi) The manner of implementing the order of the Ombudsman and further proceedings;
- (vii) Any other matter which the State Government may deem necessary to prescribe.

Sd/-
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