

THE KERALA STATE COMMISSION FOR ECONOMICALLY WEAKER SECTIONS IN GENERAL CATEGORY BILL, 2022

A

BILL

to constitute a State Commission for Economically Weaker Sections in General Category and to provide for matters connected therewith or incidental thereto.

Preamble. - WHEREAS, it is expedient to constitute a State Commission for Economically Weaker Sections in General Category and to provide for matters connected therewith or incidental thereto;

Be it enacted in the Seventy third 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 Commission for Economically Weaker Sections in General Category Act, 2022.

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

(3) It shall come in to force at once.

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

- a) "Commission" means the Kerala State Commission for Economically Weaker Sections in General Category constituted under Section 3;
- b) "Economically Weaker Sections" means the Economically Weaker Sections in General Category as notified by the Government from time to time on the basis of family income and other indicators of economic disadvantage;
- c) "General Category" means all sections of citizens other than the classes mentioned in Clauses (4) and (5) of Article 15 and Clause (4) of Article 16 of the Constitution of India;
- d) "Government" means the Government of Kerala;

- e) "Member" means a member of the Commission and includes the Chairperson;
- f) "Prescribed" means prescribed by Rules made under this Act.

CHAPTER II

CONSTITUTION OF THE COMMISSION

3. Constitution of the Kerala State Commission for Economically Weaker Sections in General Category. - (1) The Government shall, as soon as may be after the commencement of this Act, by notification in the Official Gazette, constitute a Commission known as the "Kerala State Commission for Economically Weaker Sections in General Category" to exercise the powers conferred on it and to perform the functions under this Act.

(2) The Commission shall consist of the following members nominated by the Government, namely:

- (a) a person who is or has been a Judge of the High Court and he shall be the Chairperson of the Commission;
- (b) two persons from the General Category having special knowledge in matters relating to the economic backwardness of the citizens belonging to General Category;
- (c) An officer not below the rank of Additional Secretary to Government belonging to General Category from the Administrative Department of the Commission, appointed by the Government and he shall be the Member Secretary of the Commission.

4. Term of office and conditions of service of Chairperson and Members. - (1) Each member nominated by the Government may continue in office for a term of three years from the date on which he assumes office.

(2) The Chairperson or Members of the Commission may, at any time, by giving intimation to the Government in writing under his hand and seal, resign his office.

(3) The Government shall remove the Chairperson or a member from his office, if that person,-

- (a) becomes an undischarged insolvent;
- (b) has been convicted and sentenced to imprisonment for an offence which involves moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent Court;
- (d) refuses to work or becomes incapable to work;
- (e) failed to attend three consecutive meetings of the Commission without obtaining leave of absence from the Commission;
- (f) in the opinion of the Government, has so abused the official position of Chairperson or Member as to render that person's continuance in office detrimental to the interest of the Economically Weaker Sections in General Category or public interest:

Provided that no person shall be removed under this sub-section unless that person has been given an opportunity of being heard in the matter.

(4) A vacancy occurred under sub-sections (2),(3) or otherwise shall be filled up by the Government by fresh nomination and he shall hold office only for the remaining period of the Member in whose vacancy such Member has been nominated.

(5) The salary and allowances payable to and the other terms and conditions of service of the Chairperson and Members shall be such as may be prescribed.

5. Appointment of Officers and employees of the Commission.- (1) The Government shall provide such officers and employees as are necessary for exercising the powers and performing the functions of the Commission under this Act.

(2) The salary and allowances payable to and other terms and conditions of service of the officers and employees of the Commission shall be such as may be prescribed.

(3) The rules applicable to the Government employees in respect of the salary and allowances, discipline and other conditions of service shall be applicable to the officers and employees of the Commission.

6. Salary, allowances and administrative expenses to be paid out of grant. – The salary and allowances payable to the Chairperson and Members and the administrative expenses including salary, allowances and pension payable to the officers and other employees referred to in Section 5 shall be paid out of the grant referred to in sub-section (1) of Section 14.

7. Vacancies etc. not to invalidate proceedings of the Commission. – No Act or proceedings of the Commission shall be invalid on the ground of any defect in the constitution of the Commission or the existence of any vacancy in the Commission.

8. Procedure to be regulated by the Commission.– (1) The Commission shall meet as and when necessary at such time and place as the Chairperson thinks fit:

Provided that such meeting shall be held at least once in three months.

(2) The Commission shall have the power to regulate its own procedure.

(3) All orders and decisions of the Commission shall be authenticated by the Member Secretary or any other officer of the Commission duly authorized in writing in this behalf by the Chairperson.

9. Special provision for advancement and reservation to Economically Weaker Sections in General Category. – (1) The Government shall provide 10% reservation to Economically Weaker Sections in General Category for admission to educational institutions including private educational institutions, whether aided or unaided by the State other than minority educational institutions referred to in Clause (1) of Article 30 of the Constitution of India and for appointment in public employment.

(2) For providing 10% reservation as provided in sub section (1), the Economically Weaker Sections in General Category identified by the Commission constituted as per G.O.(MS) No.05/2019/P&ARD dated 12th March,2019 and accepted and implemented by the Government as per GO(P) No.01/2020/P&ARD dated 3rd January, 2020 shall continue as such till it is reviewed by the Government.

(3) The criteria for identification of the Economically Weaker Sections in General Category for providing reservation as specified in GO(P) No.01/2020/P&ARD dated 3rd January, 2020 may be reviewed periodically, preferably in every 3 years, and for that purpose the Government may entrust the Commission constituted under this Act.

CHAPTER III

FUNCTIONS AND POWERS OF THE COMMISSION

10. Functions of the Commission.- For the purpose of advancement of the Economically weaker Sections in General Category, the Commission shall perform the following functions, namely,-

- (a) to identify the economically Weaker Sections in General Category;
- (b) to evolve schemes and programmes for the advancement of the Economically Weaker Sections in General Category and to recommend the same to the Government;
- (c) to study and analyze the issues of the Economically Weaker Sections in General Category and recommend welfare measures;
- (d) to make recommendations for the effective implementation of measures necessary for the socio-economic development of the Economically Weaker Sections in General Category and submit report to the Government annually or at such time, as the Commission may deem fit;
- (e) to conduct studies, research and analysis on the issues relating to social, economic and educational progress of the Economically Weaker Sections in General Category;
- (f) to suggest appropriate measures to be adopted by the Government for the advancement of the Economically Weaker Sections in General Category;
- (g) to submit periodical or special report to the Government on the difficulties ,if any, being faced by the Economically Weaker Sections in General Category;
- (h) to discharge such other functions in relation to the protection, welfare, development and advancement of the Economically Weaker Sections in General Category as may be directed by the Government;

and

- (i) to perform any other matter pertaining to Economically Weaker Sections in General Category as may be prescribed.

11. Powers of the Commission. – (1) The Commission, while performing its functions under this Act shall have all the powers of a Civil Court while trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person from any part of the State and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) demanding any public record or copy thereof from any Court or Office;
- (e) the examination of witnesses and inspection of records; and
- (f) any other matters as may be prescribed.

(2) The Commission may, for the purpose of taking evidence in connection with enquiries, utilize the services of any officer of the Government or any agency and if necessary by resorting to the devices provided by the Information Technology.

(3) The officer or agency, whose service has been utilized under sub-section (2), shall take evidence and the report thereon shall be submitted to the Commission within the period fixed by the Commission in this behalf.

(4) The Commission shall satisfy itself regarding the correctness of any findings submitted under sub-section (3) and for this purpose it may examine any person.

12. Statements given by persons to the Commission. – The Statement given by a person about himself at the time of giving evidence before the Commission shall not be used against such person in any Civil or Criminal proceedings, except in prosecution proceedings for giving false evidence by such statement:

Provided that such statement is given as reply to questions put by the Commission.

13. Persons likely to be affected prejudicially to be heard. – At any stage of taking evidence, if the Commission is of the opinion that it is necessary to enquire into the conduct of any person prejudicially affected, such person shall be given a reasonable opportunity of being heard and to produce evidence to defend in the enquiry.

CHAPTER IV

FINANCE, ACCOUNTS AND AUDIT

14. Grants by the Government. – (1) The Government shall, after due appropriation made by the State Legislature by law in this behalf, pay to the Commission, by way of grants such sums of money, which is considered to be necessary for being utilized for the purposes of this Act.

(2) The Commission may spend such sums, out of grants, as it thinks fit, for performing the functions under this Act and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

15. Accounts and Audit.– (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed.

(2) The accounts of the Commission shall be audited annually by the auditor entrusted by the Comptroller and Auditor General in this behalf.

(3) All the accounts and other records of the Commission shall be made available to the auditor for the purpose of audit.

16. Annual report.– The Commission shall, for each financial year, prepare annual report giving complete information of its activities in the previous financial year in the prescribed form and shall forward the same to the Government directly.

17. Annual Audit report to be laid before the Legislature.– The Government shall cause the annual report along with audit report to be laid, as soon as may be, after they are received, before the Legislative Assembly.

CHAPTER V

MISCELLANEOUS.

18. Chairperson, Members and employees of the Commission to be public servants.—The Chairperson, Members, Officers and employees of the Commission shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

19. Certificate. – The Government may authorize such officers, by notification in the Official Gazette, to issue certificate to the persons belonging to Economically Weaker Sections in General Category residing in the State for claiming reservation for admission to Educational institutions and for appointment in public employment or for any other purposes in the manner and form as may be prescribed.

20. Validation of orders and action taken.– Notwithstanding anything contained in this Act or the Rules made thereunder, the orders issued in G.O.(P) No.01/2020/P&ARD dated 3rd January, 2020 and the actions taken or things done thereunder by Government or any Authority shall be and shall always be deemed to have been validly made and shall be in force at all material times.

21. Dissolution of the existing Commission.– With effect from the date of coming into operation of the Commission constituted under this Act, the existing Kerala State Commission for Economically Backward Classes among Forward Communities constituted under Section 3 of the Kerala State Commission for Economically Backward Classes Act, 2015 (Act 2 of 2016) shall be deemed to have been dissolved and thereupon all the assets and liabilities shall ,subject to such directions as may be issued by the Government in this behalf, vest with the Commission constituted under this Act.

(2) Upon dissolution of the existing Commission, the term of office of the Chairperson and Members of the dissolved Commission shall be ceased to exist:

Provided that the Chairperson and Members of the dissolved Commission may, subject to such orders as may be issued by the Government in this behalf, continue as the Chairperson and Members of the Commission constituted under this Act and hold the office and exercise the powers and perform the functions under this Act till a Commission under this Act is constituted under section 3 of this Act.

(3) Upon the constitution of the Commission under this Act, the officers and employees of the dissolved Commission may, subject to such orders as may be issued by the Government in this behalf, continue as the officers and employees of the Commission constituted under this Act under the same terms and conditions of service.

22. Protection of actions taken in good faith. – No suit, prosecution or legal proceeding shall lie against the Chairperson or any Member of the Commission or any officer or any employee acting under the instructions of the Commission for anything which is done or intended to be done in good faith under this Act.

23. Power to remove difficulties. – (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette, make provisions not inconsistent with the provisions of this Act which appear to it to be necessary or expedient, for removing the difficulty:

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

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

24. Power to make rules. – (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act, either prospectively or retrospectively.

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

- (a) salaries and allowances payable to and the other terms and conditions of service of, the Chairperson and Members under sub-section (5) of Section 4 and of officers and other employees under sub-section (2) of Section 5;
- (b) any other matter under Clause (h) of Section 10;
- (c) any other matter under clause (f) of Section 11;
- (d) the form of annual statement of accounts to be prepared under sub-section (1) of Section 16;
- (e) the manner and form of issuing certificate under Section 19;

(f) any other matter which is to be or as 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 while it is in session for a total 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.

25. Repeal and Savings.- (1) The Kerala State Commission for Economically Backward Classes among Forward Communities Act, 2015 (Act 2 of 2016) is hereby repealed.

(2) Notwithstanding such repeal anything done or deemed to have been done or any action taken or deemed to have been taken under the said Act shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

As per the Constitution (One Hundred and Third Amendment) Act, 2019 Clause 6 has been inserted in Article 15 empowering the State to make provision for advancement and reservation up to 10% to the Economically Weaker Sections of Citizens other than the classes mentioned in Clauses 4 and 5 for admission to educational institutions except the minority institutions and Clause 6 has been inserted in Article 16 to provide reservation up to 10% for appointment or posts to Economically Weaker Sections of Citizens other than the classes mentioned in Clause 4. As per the above Constitutional Amendment the State is empowered to make provision for advancement of the Economically Weaker Sections of Citizens other than the classes mentioned in Clauses (4) and (5) of Article 15 and also for reservation to the Economically Weaker Sections for admission to educational institutions. However well before this Amendment Act the State had enacted the Kerala State Commission for Economically Backward Classes among Forward Communities Act by repealing the Kerala State Commission for Forward Communities Ordinance 2015 (9 of 2015). This Act is for constituting a Commission for suggesting measures for identifying the forward communities in the State and for suggesting measures for advancement of

such communities. It appears that there was no Constitutional sanction for making provision for advancement to either to the Economically Backward Classes among Forward Communities or to the Forward Communities and so much so the above Act may not legally sustain. In pursuance of the One Hundred and Third Constitutional Amendment inserting Clause (6) to Article 15 and Clause (6) to Article 16, the State is empowered to make provision for both advancement and reservation to Economically Weaker Sections of Citizens other than the classes mentioned in Clauses (4) and (5) of Article 15 and Clause (4) of Article 16 which is being referred to as the Economically Weaker Sections in General Category. Therefore the Kerala State Commission for Economically Backward Classes among Forward Communities Act 2015 may have to be repealed. In the above circumstances, the Kerala Law Reforms Commission has prepared a draft bill as the Kerala State Commission for Economically Weaker Sections in General Category Bill, 2022.

Pursuant to the One Hundred and Third Constitutional Amendment, the State Government had constituted a Commission vide G.O(MS) No.5/2019/P&ARD dt. 12.03.2019 for recommending the criteria for identifying the Economically Weaker Sections in non reserved communities and the Government had accepted the report submitted by that Commission and issued GO(P) No. 1/2020/P&ARD dated 3rd January, 2020 whereby 10% reservation has been provided for admission to educational institutions other than minority Educational Institutions and also for public employment. In the said Order it is stated that the criteria for identifying Economically Weaker Sections in General Category may be reviewed and modified periodically, preferably by following a time frame of three years. So the Commission constituted under the proposed Bill can be authorised to suggest the criteria for identifying the Economically Weaker Sections in General Category and for suggesting measures for advancement of the Economically Weaker Sections of Citizens in General Category for which provisions have been made in the present Bill. The Bill also provides special provisions with respect to validation of actions taken by the authorities as per G.O.(P) No. 1/2020/P&ARD dated 3rd January, 2020 and dissolution of the existing Commission and other enabling provisions for the advancement of Economically Weaker Sections in General Category.

The Bill seeks to achieve the above objects.