

THE KERALA MUNICIPALITIES (AMENDMENT) BILL, 2008

A bill further to amend the Kerala Municipalities Act, 1994.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Municipalities Act, 1994 (20 of 1994) for the purposes hereinafter appearing;

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

1. *Short title and commencement of the Act.*—(1) This Act may be called the Kerala Municipalities (Amendment) Act—
(2) It shall come into force at once.

2. *Amendment to Section 77.*—In Section 77 of the Kerala Municipalities Act, 1994 (hereinafter referred to as the Principal Act), after sub-section (2) the following explanation shall be added, namely:—

“*Explanation.*—a person who is detained as an under trial prisoner in a jail or is in the custody of police or any other agency or as an inpatient in any hospital shall be considered as a person absenting himself temporarily from his place of residence.”

3. *Amendment of Section 132.*—In Section 132 of the Principal Act, in sub-section (5), for the words “or otherwise, or is in the lawful custody of the Police”, the words “for a period more than one year or for an offence involving moral turpitude” shall be substituted.

4. *Amendment of Section 320.*—The existing Section 320 of the Principal Act shall be numbered as sub-section (1) and after the sub-section so numbered, the following sub-sections shall be inserted, namely:—

“(2) Ward Committees or Ward Sabhas may take decisions for the establishment of public latrines and recommend to the council for implementation.

(3) The Ward Committee or Ward Sabhas shall consider if representation signed by more than 25 persons for the establishment of public latrines is received and take decisions on merits with in a maximum period of three months.

(4) The Council shall on receipt of recommendations from the Ward Committee or Ward Sabha for the establishment of public latrines, the Council shall establish the same as early as possible as but not later than six months.”

5. *Amendment of Section 327.*—In Section 327 of the Principal Act, to subsection

(2A), the following proviso shall be added, namely:—

“Provided that plastic waste shall be segregated from other waste.”

6. *Amendment of Section 331.*—In Section 331 of the Principal Act, to subsection

(3), the following shall be added, namely:—

“and for the generation of electricity and biogas”

7. *Amendment of Section 332.*—The existing Section 332 of the Principal Act, shall be numbered as sub- section (1) and after sub-section (1) so numbered the following sub-sections shall be inserted, namely:—

“(2) All institutions like Hotels, Restaurants, Catering Units, Marriage halls, Hospitals, Canteens, Meet and Fish processing units etc. which produce large quantity of waste shall provide their own waste processing arrangements. Issue of licence or its renewal shall be made only after satisfying that they have made the necessary facilities for the processing of waste.

(3) There shall be provision for Vermi compost production or biogas production with every residential building. Making such a provision shall be a condition precedent for issuing building permit to any person.

(4) All institutions like Hotels, Restaurants, Catering Units, Marriage Halls, Hospitals, Canteen, Bakeries etc., where energy required in large quantities shall install appropriate installations or systems or units suitable to produce the energy required from alternative sources of energy like sunshine, wind, geothermal etc., within such time as the Municipality may grant failing which the Municipality is empowered to take steps to cancel the licence issued to the institution concerned.”

8. *After Section 345 of the Principal Act, the following section shall be added, namely:—*

“345 A. *Constitution of monitoring committee.*—(1) Government shall constitute in every Municipality a monitoring committee for the effective implementation of the provisions of sections 326 to 345.

(2) The committee shall consist of the MP or MP's of the area representing the Municipality and the MLA's of the areas representing the Municipality.

(3) The Government shall nominate the MP and if there is more than one MP representing the area of the Municipality, one of the MP as the Chairman of the Committee.

(4) The Secretary of the Municipality shall be the Convener of the Committee.

(5) The Committee shall meet once in two months to monitor the implementation of the provision of Sections 326 to 345.

(6) The Committee is empowered to give directions to the Secretary for the effective implementation of the provisions.

(7) The Committee shall be responsible for the implementation of the provision of the Act aforesaid. The Committee may also give publicity through newspaper and other media the actions taken by them for the effective implementation of the provisions.”

9. *In Section 381, after sub-section (1) the following shall be added:—*

“(2) No rules or notification or orders shall be made or issued, regularizing unauthorized constructions, if the said construction has got the effect of adversely affecting the public safety, public convenience and public health.”

10. *After 383A of the Principal Act, the following section shall be added, namely:—*

“383B. Regulation on the construction of flats.—(1) Notwithstanding anything contained in this Act, no person shall construct any flat without complying with the safety measures as may be prescribed.

(2) Government, while prescribing the safety measures, the following aspects shall be taken into consideration:—

(a) The safety of the inhabitants, especially the conditions imposed under the Kerala Municipality Building Rules, 1999 and the National Building Code.

(b) The safety of the neighbours including free flow of air without pollution, light and ventilation.

(c) The safety of the neighbouring buildings.

(d) The minimum distance from the neighbouring building.

(e) Neighbours right to know about the proposed building.

(f) Sufficient vacant space to be left on the four sides of the building for easy access to fire engines.

(g) Parking area for vehicles.

(h) Minimum floor area ratio to be maintained.

(3) Every application for permit for construction of flat shall be accompanied by environment impact assessment report prepared by an agency approved by the Science and Technology and Environment Department of the State of Kerala:

Provided that if the cost of the project is more than five crores, the agency by whom the Environment impact assessment report is to be prepared shall be selected by the Science and Technology and Environment Department of the State of Kerala.

343B. *Flats not to be kept vacant.*—(1) No person shall be allowed to keep any flat vacant to which completion certificate has been issued for more than three months, continuously.

(2) If any flat owner refuses to pay the monthly maintenance charges to the concerned Association/Organisation which is in charge of the maintenance of the building, for more than three months, it shall be presumed that the flat is not needed for his bona fide occupation of himself or for letting out to others.

(3) On receipt of a communication from the other flat owners of the building or the association, the Municipality/Municipal Corporation shall send a notice in writing directing the landlord to occupy the building and pay the said arrears of maintenance charges.

(4) On receipt of the said notice as per sub-section (3) above the landlord may explain the reasonable cause for non occupations if any.

(5) If the explanation offered by the landlord under sub-section (4) is not satisfactory or no explanation is offered, the Secretary or such other officer empowered shall take possession of the said flat for the purpose of letting out.

(6) The Secretary of the Municipality shall entrust such flats taken to any person for a period not exceeding eleven months, for a reasonable rent to be fixed by the Municipality. The Municipality/Municipal Corporation is empowered to retain such percentage of the rent received towards its service charges as fixed by the Municipality and the balance amount should be paid to the landlord.

(7) For the purpose of letting out the flat in accordance with sub-section (6) the Municipal Committee may frame regulations.

(8) If after letting out the flat by the Municipality, the landlord establishes satisfactorily or offers sufficient explanation before the Municipality that he requires bona fide the building for own occupation, the Secretary, Municipality shall give vacant possession to the landlord after evicting the tenant, the lapse of the tenancy period.

(9) Notwithstanding anything contained in the Kerala Buildings (Lease and Rent Control) Act, 1965, or any other corresponding law or other law for the time being in force, no person occupying the flat as entrusted by the Municipality under this section shall have any right to continue in the flat after the expiry of the period of entrustment or after earlier termination of the entrustment by notice giving 30 days time to vacate and the Municipality shall be entitled to take possession of the flat forthwith after such expiry of time.

387A. *Provision for putting up systems or installations for generating energy from alternative sources is essential in plans for buildings of all kinds.*—(1) In every plan of building, residential or non-residential there shall be appropriate provision for installing appropriate units or systems for generating energy from alternative energy sources like biomass, hydropower, wind, sunshine, waves, and waste.

The completion certificate in respect of such buildings shall be issued only on installation of such units or systems as indicated in the plan submitted.

(2) All public buildings, and other commercial buildings which are using electricity shall use only compact fluorescent light bulb (CFL) or Lighting Emitting Diodes (LED) for illumination.

(3) No lighting shall be permitted for any hoarding other than those using energy generated from alternative sources of energy.

(4) All new buildings which are above four floors shall be designed in such a manner as to minimize the use of energy.

(5) No commercial establishment shall be allowed to use electricity for the purpose of water heaters.

(6) An amount equal to 3% of the electricity charges shall be payable by the consumers of electricity who consumes more than 300 units per month as carbon tax.

11. *Amendment of Section 438.*—For section 438 of the Principal Act, the following section shall be substituted namely:—

“438. *Power to dispose of stray cattle, pigs, dogs and poultry.*—

(1) Municipality shall not allow to stray cattle, pigs, dogs and poultry in public roads and public places.

(2) Municipality shall make arrangements for the seizure and disposal of stray cattle, pigs, dogs and poultry. Animals carrying virus of rabies or suspected to carry virus of rabies shall be put to death.

(3) Any person who comes across with stray cattle, pigs, dogs and poultry in the public roads and public places may file complaint to the Secretary of the Municipality and the Secretary shall immediately take necessary action for the redressal of the complaint.

(4) The Secretary or the officer of the Municipality who fails to carry out the provisions of sub-sections (1), (2) and (3) shall liable to be punished for a fine not exceeding Rs. 2,500.”

12. *Amendment to Schedule 1.*—In Schedule 1 (A) Mandatory Provisions—After entry 26 the following may be added as entry 26A and 26B.

“26A. Prohibition of manufacture, sale and use of Alcohol or any other substance containing Alcohol, Panmasala, Narcotic Drugs and Psychotropic substances within the entire area coming within the jurisdiction of the Municipality or any particular Ward or any other specified area of the Municipality.

26B. Issuance and cancellation of Licence for sale, manufacture and use of Alcohol or any substance containing Alcohol, Panmasala and Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances subject to such conditions as the Municipality decides.”

Statement of Objects and Reasons

In the light of the provisions in Sections 77 and 132 as it now stands, the voters whose names are on the electoral rolls but are living in jails as undertrial prisoners or in Police stations or in Hospitals situated outside the localities where they were ordinarily residing at the time of preparation of the rolls, are not allowed to vote in the elections to the Municipalities and Corporations on the ground that they are not ordinarily resident in the place where the jail, police station or hospitals are situated and on the ground that they are either in jail or police custody even though they are not convicted of any offence. Such denial cannot be constitutionally justified though the ratio of the decision by the Supreme Court in the decision reported in **Anukul Chandra Pradhan v. Union of India** (1997) 6 SCC 1, would apparently justify such a denial. None of the reasons stated by the Supreme Court in the above decision seems to be constitutionally valid and as such it is necessary to remove the effect of the said decision by amending Section 77 and Section 132 of the Act. It is considered necessary to have some more provisions for the disposal of waste. It is felt necessary to constitute a committee consisting of MP and MLA representing the municipal area for the monitoring of the disposal of rubbish, solid waste and filth by the Municipality. Hence it is decided to make provision for the same in the Act. No unauthorized construction shall be regularized at any time which has to the effect of adversely affecting the public safety, public convenience and public health. Hence Section 381 has to be amended on that line. Schedule 1 is amended being for preventing the manufacture, sale and use of Alcohol, or any other substance containing Alcohol, Narcotic Drugs and substances containing Narcotic Drugs and Psychotropic substances within the whole or any particular area of the jurisdiction of the Municipality or any particular ward of the Municipality. Power to

issue licence for manufacture, sale and use and cancellation of such licence is also being given to the Municipality as part of the process of decentralization.

A number of flats owned by Non-resident Indians and others remain unoccupied for continuously long period even without remitting the maintenance charges to the Association of owners. It is an undesirable development in various ways. To put an end to the above undesirable tendency a provision has been included giving power to the Municipality to take over such flats and to let them out to persons who are in need of accommodation on rent subject to strict conditions safeguarding the interest of the landlord also. Another provision added is to make it compulsory, to provide a provision for

installation of appropriate systems for generating energy from alternative sources of energy in all plans submitted to Municipality for putting up all kinds of buildings residential or otherwise. The provision has been incorporated specially for encouraging the use of energy produced from alternative sources and thus to avoid dependence on one source of energy alone. Yet another provision makes it obligatory on the part of the Municipality to make effective arrangements to seize and dispose of stray animals and animals carrying virus of rabies or suspected to carry any virus of rabies. The Bill is intended to achieve the above objection.