

THE KERALA PROTECTION OF RIVER BANKS AND REGULATION OF REMOVAL OF SAND (AMENDMENT) BILL

The present Act is intended to protect River ecology but the Act needs new provisions for effectively implementing it as a whole so that the avowed object sought to be achieved by the Act can be realized in a more satisfactory and speedy manner.

BE it enacted in the fifty ninth year of the Republic of India.

1. Short title and commencement of the Act.—(1) This Act may be called the Protection of River Banks and Regulation of Removal of Sand (Amendment) Act ———

(2) It shall come into force on such date as the Government may notify in the Gazette.

2. Amendment to Section 9.—(1) The existing provision may be numbered as sub-section (1) of that section and the following may be added as subsections (2), (3) and (4).

“(2) The District Expert Committee shall not allow sand mining from any Kadavu unless the condition specified in Section 12 of the Act are capable of implementation and actually implemented also.

(3) No quantity of sand shall be allowed to be mined in excess of the quantity fixed by the Centre for Earth Science Studies or Centre for Water Resources Development and Management.

(4) If any local authority fails to obtain any expert body report as contemplated by Section 9 (1) (b) of the Act for the concerned period, no sanction shall be allowed for mining of the sand from the Kadavu concerned by the centrally Empowered Committee.”

3. Amendment to Section 12 of the Act.—In sub-section (5) of Section 12 instead of the figures and words “500 meters” the figure and words “1 k.m.” may be substituted. Further the following Explanation may also be added to the sub-section.

“*Explanation.*—The term ‘Irrigation Project’ shall have the same meaning as in the Travancore Cochin Irrigation Act, 1956.”

4. Amendment to Section 15 of the Act.—After sub-section (4) of Section 15 the following sub-sections may be added as sub-sections (5), (6) and (7).

“(5) All places other than the places where the Kadavus are permitted, should be closed by putting up chains or pillars so as to ensure that no vehicles are taken to River Banks and illegal mining and removal of sand are allowed to be carried on.

(6) The area from where sand is permitted to be mined shall be demarcated by visible marks.

(7) All boats and such other conveyances used for mining shall be given a separate identity number and only such boats and conveyances shall be allowed to be used for removal of sands from the mines.”

5. Addition of two new sections as section 17 A and Section 17B after Section 17 of the Act.—After Section 17 of the Act the following sections may be added:

“17 A. *Constitution of River Management Authority.*—(1) There shall be a River Management Authority for the protection of the River ecology and to regulate the uncontrolled mining of sand from the rivers in Kerala.”

(2) The River Management Authority shall be headed by a chairman and two other members. The chairman shall be a person who is capable of understanding the River ecology and environment, preferably a retired High Court Judge. The other two members shall be environmental experts who are well versed in River ecology and environment.

(3) The River Management Authority shall take appropriate decisions at the appropriate time to protect the rivers in Kerala.

(4) The River Management Authority is empowered to overrule any decision taken under Section 13 or Section 30 of the Act.

(5) No Court shall entertain any suit or other proceeding in respect of any decision taken by the River Management Authority and the decision by them shall be final and binding.

(6) The River Management Authority shall be the custodian of the River Management Fund and shall utilize such fund for the protection of the Rivers and the river ecology.

17B. Prohibition of Construction Activities.—(1) No person shall be allowed to make any construction within 100 meters from the River boundaries:

Provided that if the construction is intended for the protection of the River or the adjoining property, such construction can be carried out after obtaining written permission from the River Management Authority.

6. Amendment to Section 23 of the Act.—Section 23 may be substituted with the following side heading and provision of law:—

“23. *Prohibition of the transport of illegally extracted sand.*—(1) No Vehicle shall be used to carry or transport any sand without valid passes given for the extraction of sand by the competent authority.

(2) Any Police officer not below the rank of a Sub Inspector is authorized to seize the vehicle which is found to carry any illegally mined sand.

(3) As soon as the vehicle is seized, the same shall be reported to the nearest Magistrate. The vehicle shall be kept under safe custody of the concerned police station.

(4) The concerned Magistrate shall pass appropriate orders summarily either releasing the vehicle on furnishing of security or pass appropriate orders for the confiscation of the vehicle, if it is found that such vehicle has indulged in transporting illegally mined sand.

(5) If any person is found carrying sand without any valid passes in contravention of subsection (1) above, the owner of the vehicle shall be equally liable as if he has committed the offence.

(6) The driver and the owner involved in the offence as stated above, shall be liable to punishment of imprisonment upto one year or fine upto three lakhs of Rupees. This will be in addition to the confiscation of the vehicle involved in the case.”

7. Add a new provision as 45B in the Water (Prevention and Control of Pollution) Act, 1974.

45B. Offender must pay damages for the losses suffered.—Whoever commits any act or omission in contravention of any of the provisions in this Act shall be liable to compensate the losses suffered by any person as a direct consequence of such act or omission.

Such persons affected may apply for damages for losses suffered by them before the authority constituted by the Board as per rules and in the manner and within the time prescribed by rules. The authority may after hearing both sides and following a fair and just procedure determine the losses caused if the claim is established and pass an award.

Such awards shall be treated as a decree passed by the Civil Court and can be executed applying the procedure under the Revenue Recovery Act.

Any person aggrieved by such award may prefer an appeal before the District Court within whose jurisdiction the violation has taken place and the decree passed in the appeal shall be final and binding on both parties.”

Statement of Objects and Reasons

Prevention of indiscriminate mining of sand from rivers has become necessary in Kerala State in view of the large scale illegal mining operations being carried on in the rivers. A strict law in this regard is a felt necessity not merely to prevent illegal sand mining but also to preserve the rivers and punish the offenders. Hence the Commission feels that an amendment of the existing enactments is necessary. Rivers should be dealt with as national assets and utilized for national good under the direct control of technocrats. The Bill contemplates the Constitution of a River Management Authority. Offenders are also sought to be made liable for damages for the losses suffered by contravention of the provisions of the Act. The Bill seeks to achieve the above objects.
