

Kerala Gazette No. 28 dated, 10th July, 2007.

PART II



SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 1777/Legn.2/07/Leg.

Dated, Thiruvananthapuram, 10th July 2007.

The Kerala Fishermen Debt Relief Commission Bill, 2007 together with the Statement of Object and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

DR. N. K. JAYAKUMAR,
Secretary,
Legislative Assembly.

Twelfth Kerala Legislative Assembly
Bill No. 92

[Translation in English of “2007-ലെ കേരള മത്സ്യത്തൊഴിലാളി കടാശ്വാസ കമ്മീഷൻ ബിൽ” published under the authority of the Governor.]

THE KERALA FISHERMEN DEBT RELIEF COMMISSION BILL, 2007

A

BILL

to provide for urgent relief to the fishermen who are in distress due to indebtedness, by constituting a Commission for recommending relief measures to such fishermen and for solving their problems through conciliation, negotiation and adjudication and for matters connected therewith or incidental thereto;

Preamble.—WHEREAS, majority of the traditional fishermen, earning livelihood by fishing in sea and in inland waters, are now entrapped in great indebtedness;

AND WHEREAS, loan was obtained in large scale from various agencies, banks and individuals for the purchase of fishing equipments and the situation of inability to repay the debt exist for years due to disgust in production, fall in price and unemployment and the liability of debt has been accruing;

AND WHEREAS, the liability of fishermen is increasing due to natural calamities, sea erosion, Tsunami and the changes in the climate occurring again and again the loss of work and the losses caused to the fishing equipments etc;

AND WHEREAS, they are entrapped in great indebtedness and are unable to repay their loan obtained for years with interest;

AND WHEREAS, it is expedient to provide for urgent relief to the Fisherman who are in distress due to indebtedness by constituting a Commission for recommending appropriate relief measures to such fishermen and for solving their problems through conciliation negotiation and adjudication and for matters connected therewith or incidental thereto;

BE it enacted in the Fifty-eighth year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Fishermen Debt Relief Commission Act, 2007.

(2) It shall come into force at once.

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

(i) “appropriate level of debt” means the amount of debt to be repaid by the debtor as determined by the Commission under clause (b) of subsection (1) of section 5 of this Act;

(ii) “Commission” means the Kerala State Fishermen Debt Relief Commission constituted under section 3;

(iii) ‘Co-operative society’ means a society registered or deemed to have been registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969);

(iv) ‘Creditor’ means any person engaged in money lending, whether under a licence or not and includes his heirs, legal representatives, assignees, middle men, co-operative society and includes any other person as may be notified by the Government;

(v) ‘debt’ means any liability, in money, whether secured or unsecured, due from a fisherman on or before the commencement of this Act whether payable under a contract, or under a decree or order of any court or Tribunal, or otherwise and includes,

(a) any sum payable to ;

(i) an institutional creditor ;

(ii) a co-operative society ;

(b) any sum borrowed by a debtor from a creditor ;

but does not include any loan amount taken by a fisherman for commercial purposes or luxury other than fishing purposes to augment his income and the amount payable to Central or State Governments’ or other State Governments or Governments of Union Territories and the amount due to Local Self Government Institutions, Statutory bodies, Central or State Public Sector Undertakings or other Institutions as may be specified by the Government by notification;

(vi) ‘distress affected area’ means revenue district/districts or part thereof in the State declared by the Government as per section 6, for the purpose of this Act, on the recommendations of the Commission ;

(vii) “district” means a revenue district ;

(viii) ‘fair rate of interest’ means the rate of interest determined by the Commission under clause (b) of sub-section (1) of section 5 of this Act ;

(ix) ‘fish’ means various types of bio and non-bio-aquatic products caught from sea and inland water sources and aqua-culture products, fish, prawn, lobster, oyster, shell, crab etc. growing in aqua culturing centers and also include any other bio and non-bio-aquatic products as may be specified by notification by the Government ;

(x) ‘fishing’ means,—

(a) all types of fishing such as traditional or mechanised ;

(b) sale of sea water fish products/pure water/saline water fish products by a family member of fisherman travelling to various places by bye-cycles or head load ;

(xi) ‘fisherman’ means a person who accept fishing as the foremost means of livelihood and whose annual income does not exceed rupees two lakhs and includes the widow of a fisherman;

(xii) ‘Government’ means the Government of Kerala;

(xiii) ‘interest’ means any amount payable in excess of the principal amount borrowed or pecuniary obligation incurred, by whatsoever name such amount may be called, whether the same is expressly mentioned or not in the document or contract, if any;

(xiv) ‘institutional creditor’ means the State Bank of India or any Subsidiary Bank within the meaning of clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 or any Nationalised or Scheduled Bank or Co-operative Bank;

(xv) ‘member’ means a member of the Commission and includes the Chairperson;

(xvi) ‘penal interest’ means any amount payable in excess of interest on a debt;

(xvii) ‘prescribed’ means prescribed by the rules made under this Act;

(xviii) ‘principal amount’ means the amount originally advanced together with the amount, if any, as has been subsequently advanced, notwithstanding any stipulation to treat any interest as capital and notwithstanding that the debt

has been renewed, whether by the same fisherman or by his heirs, assignees, or legal representatives or by any other person acting on his behalf or on his interest, and whether in favour of the same creditor or his heirs, assignees or of any other person acting on his behalf or on his interest;

(xix) ‘Secretary’ means the secretary to the Commission appointed under sub-section (5) of section 3;

3. *Constitution of the Commission.*— (1) For the purpose of exercising the powers and discharging the duties under this Act, the Government shall, as soon as may be after the commencement of this Act, by notification in the Gazette, constitute a Commission by name, “The Kerala State Fishermen Debt Relief Commission”.

(2) The Commission shall consists of four members, namely:—

(i) a retired district Judge: Chairman;

(ii) an expert in fisheries, social, technical, financial and administration: Member;

(iii) a representative of fishermen: Member;

(iv) a person nominated by the Government from the Co-operative Sector under sub-section (3): Member for the respective District.

(3) The Government shall nominate a member from each District among those persons who are engaged in fishermen service activities in that district for the purpose of item (iv) of sub-section (2) and he shall exercise the powers and discharge the duties as a member of the Commission, in respect of matters relating only to his district.

(4) The Chairman and members shall be nominated by the Government.

(5) The Government shall, appoint a Secretary and other employees as may be necessary, to assist the Commission in such manner as may be prescribed.

(6) In the discharge of their duties, the Secretary and other employees referred to in sub-section (5) shall be subject to the administrative control of the Chairman.

4. *Term of the Commission and the conditions of service of the members.*—(1) The term of the Commission shall be three years:

Provided that, the Government, as it deems necessary, may extend the term to such period.

(2) A member may at any time written by his own handwriting addressed to the Government, resign his office.

(3) A vacancy arising by reason of resignation of any member of the Commission under sub-section (2) or otherwise shall be filled up in accordance with the provisions contained in section (3) of this Act:

Provided that the person so appointed shall hold office only for the remaining period of the term of the person, in whose place he is appointed.

(4) Government may remove any member, if he,—

(a) is declared as an undischarged insolvent;

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence, which in the opinion of the Government, involves moral turpitude or financial irregularities;

(e) has, in the opinion of the Government, abused his official position so as to render his continuance in office prejudicial to the public interest.

(5) The Commission shall regulate its own procedure for the conduct of its business.

(6) The salary, allowances and other conditions of service of the Chairman and members shall be such as may be prescribed.

5. Powers and duties of the Commission.— (1) The Commission shall have all such powers as are necessary for achieving the objects of this Act, and in particular,—

(a) to recommend to the Government on application or otherwise, after such enquiry as the Commission may deem fit, and on the basis of the criteria as may be prescribed by the Government to declare a district or districts or part thereof as distress affected area;

(b) to determine, in the case of creditors other than institutional creditors, a fair rate of interest and an appropriate level of debt, as it may consider just and reasonable to be payable by the indebted fisherman in the distress affected area;

(c) to undertake conciliation for the settlement of disputes between the indebted fishermen and the creditors other than institutional creditors, on the basis of the fair rate of interest and appropriate level of debt determined under clause (b);

(d) to adjudicate the disputes between indebted fishermen in the distress affected area and the creditors, other than institutional creditors, and to pass awards which shall be binding on both parties:

Provided that before passing an award as per this clause the creditor shall be given an opportunity of being heard;

(e) to enter into negotiations with the creditors, for loan waiver, the interest rate relief, the loan rescheduling or loan moratorium to the fishermen in the distress affected areas;

(f) to recommend the Government regarding the extent and the manner in which the debt relief to be granted to the fishermen;

(g) to recommend to the Government to take over the whole or part of the debt and exonerate the fishermen, from the consequences of the debt;

(h) to recommend to the Government to do such acts as may be necessary to ensure that future credit requirements of the fishermen are met through such agencies, as may be prescribed;

(i) to make periodical reports to the Government generally on any matter pertaining to fishermen indebtedness; and

(j) to perform such other functions and exercise such other powers, as may be prescribed.

(2) Issue orders keeping in abeyance with the repayment of all debts of fishermen in the distress affected areas to the creditors other than institutional creditors considering the shortage in the availability of fish, fall in price, loss due to natural calamity etc. for a period of time limit not exceeding the period between six months and one year:

Provided that the issuance of orders shall be subject to the awards and directions of Commission under sub-section (1).

(3) Notwithstanding anything contained in any other provisions of this Act, any debt relief granted to a fisherman arrived at after settlement by way of waiver in the principal, interest and penal interest, if any, shall be seventy five

percent, if such debt is fifty thousand rupees or less, in the case where the amount exceeds fifty thousand rupees, it shall be an amount not exceeding fifty percent or one lakh rupees whichever is less.

(4) An award passed by the Commission under clause (d) of sub-section (1) shall be final and shall not be called in question in any court.

(5) The awards of the Commission as per clause (d) of sub-section (1) may be executed as a decree of Civil Court under the provisions of Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(6) The Commission shall, for the purpose of exercising the powers conferred by or under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) issuing commission for the examination of witnesses or for local investigation;

(e) inspecting any property or thing concerning with any decision has to be taken;

(f) requisitioning of any public record or copy thereof from any court, authority or office; and

(g) any other matter which may be prescribed.

6. *Declaration as distress affected area.*—As soon as may be after the receipt of a recommendation under clause (a) of sub-section (1) of section 5, Government shall declare the concerned District or Districts, Panchayat/Municipality/Municipal Corporation or part thereof as distress affected area.

7. *Application for debt relief.*—A fisherman claiming debt relief under this Act shall file an application before the Commission in the manner and in the form, as may be prescribed.

8. *Sittings of the Commission.*—(1) The Commission shall hold its sittings at such places and at such times as may be determined by it:

Provided that the Commission shall hold its sittings in the respective district or districts declared as distress affected areas to consider matters relating to the distress affected areas.

(2) The Commission may while holding sittings in any district, invite the following persons as observers to attend its proceedings, namely:—

(a) the members of Lok Sabha, representing the constituencies of the district;

(b) the members of Legislative Assembly representing the Constituencies of the district;

(c) the District Collector concerned;

(d) the District Panchayat President concerned; and

(e) the Chairpersons of the Municipalities and Presidents of the Panchayats of the district concerned.

(3) The quorum for the sitting of the Commission shall be two.

(4) The Commission may, in appropriate cases it deems fit, hold sittings in districts by constituting a Bench consisting of two or more members:

Provided that a member representing fisherman in the Commission shall be included in the Bench so constituted:

Provided further that in case of the Bench constituted by the Commission the quorum of the Bench shall be the number of all members of the Bench or two whichever is less.

9. *Area of jurisdiction.*—The Commission may separate the State into three regions as Thiruvananthapuram, Ernakulam and Kozhikode and carry out its functions on regional basis.

10. *Special provisions in respect of settlement of certain loans taken by a fisherman of distress affected area.*—(1) Notwithstanding anything contained in this Act or in any other law or contract or decree or order of any Court or Tribunal, a member authorised by the Commission may initiate negotiation to,—

(a) reschedule short-term loans into medium term loans and medium term loans into long term loans, in respect of the debts availed of by the fisherman from commercial banks or other scheduled banks; or

(b) provide necessary facilities for one time settlement of loans falling under the category of non-performing assets, as per the guidelines issued by the Reserve Bank of India; or

(c) waive penal interest as per the norms fixed by the Reserve Bank of India, with the concurrence of the Reserve Bank of India and the National Bank for Agriculture and Rural Development.

(2) Where any settlement of loan is made under sub-section (1), the fisherman shall be bound to repay such loan with interest to the bank concerned, within the period allowed by such bank.

11. *Re-scheduling of loans taken by a fisherman from financial institutions.*—(1) Notwithstanding anything contained in this Act or in any other law or contract or decree or order of any Court or Tribunal, the Commission may reschedule the recovery of loans availed by the fisherman of a distress affected area due on or before the date of declaration under section 6 from any financial institution owned or fully controlled by the Government.

(2) Where the rescheduling of the loan is made under sub-section (1), the fisherman shall be bound to repay such loan with interest to the financial institution concerned within the period allowed by Commission:

Provided that the Commission may, on application by the fisherman, exempt him, by order, from the payment of the same for the period so rescheduled, for the reasons to be recorded:

Provided further that the fisherman shall be bound to repay the same on such later dates, fixed by the Commission.

12. *Bar of suits, applications, criminal proceedings and other proceedings.*—No suit for recovery of debt shall be instituted, or application for execution of a decree in respect of a debt shall be made against a fisherman residing in a distress affected area and no appeal, revision petition or application for review against any decree or order in any such suit or application shall be presented or made against such a fisherman in any Civil Court, or Tribunal or other authority, and such suits, applications, appeals and petitions instituted or made against such a fisherman before the date of declaration of a district or part thereof as a distress affected area and pending on such date shall stand stayed, for such period as the Commission may recommend in that behalf.

13. *Payment of debt in instalments.*—(1) Notwithstanding anything contained in any law or contract or in any decree or Order of any Court or Tribunal, a fisherman residing in a distress affected area may discharge his debts in suitable instalments together with fair rate of interest as recommended by the Commission on the principal amount outstanding at the time of each payment in

the manner as may be directed by the Commission and on payment of the same in the manner directed by the Commission, the whole debt shall be deemed to be discharged.

(2) Where any instalment of a debt is not paid on the due date as directed by the Commission, the creditor shall be entitled to recover the same in the manner as may be determined by the Commission:

Provided that before taking a decision by the Commission under this section, the fisherman shall be given an opportunity of being heard.

14. *Annual report to be laid before the Legislative Assembly.*—(I) The Commission shall prepare a report of its function of that year under this Act and the same shall be submitted to the Government in such form on or before such date as may be prescribed.

(2) The Annual Report submitted to the Government by the Commission under sub-section (1) shall be laid before the Legislative Assembly as soon as may be, after the same is received by the Government.

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

(2) The accounts of the Commission shall be audited annually and the audit report shall be laid before the Legislative Assembly.

16. *Overriding effect of the Act.*—The provisions of the Act or any rule or order made thereunder shall have effect, notwithstanding anything inconsistent therewith contained in any law, other than this Act, or any instrument having effect by virtue of any law other than this Act.

17. *Member of the Commission to be public servant.*—Every member of the Commission nominated under sub-section (1) of section 3 and the Secretary and other employees appointed under sub-section (5) shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

18. *Protection of action taken in good faith.*—No suit or legal proceeding shall lie against any member of the Commission or Secretary or other Officers for anything which is done or purported to be done in good faith under this Act.

19. *Bar of Jurisdiction of Civil Court.*—No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under the Act or the rule made thereunder are required to be settled, decided or dealt with or to be determined by the Commission or the Government:

Provided that nothing in this section shall be applicable to the execution proceedings under sub-section (5) of section 5.

20. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion may require, do anything not in consistent with the provision of the Act which appears to them necessary for the purpose of removing such difficulty:

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

(2) Every order made under this section shall be laid before the Legislative Assembly.

21. *Power to make rules.*—The Government may by notification in the Gazette, make the rules to carry out the provisions of this Act.

(2) Every rule made under this section, shall be laid as soon as may be after its 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.

STATEMENT OF OBJECTS AND REASONS

Majority of traditional fishermen fishing in Sea and in Inland waters for livelihoods are now entrapped in great indebtedness.

2. For the purchase of fishing equipments loan was obtained in large scale from various agencies, banks and individuals, due to shortage of production, fall in price and unemployment, a situation is subsisting for years in respect of non-repayment of loans and the liability of debt is increasing.

3. Due to the natural calamities sea erosion changes in the climate occurring every now then, the loss of work and the loss caused to fishing equipments etc., the debt liability of fishermen is increasing.

4. The loan obtained for years together with interest grown to a stage of non-repayment and are entrapped in the debt liability.

5. Due to natural calamities and the loss caused to the fishing vessels the problem of debt liabilities of the fishermen has grown to a grave extend. The stringency in the economic field, the unfair rate of interest imposed by the private money-lenders and their unlawful acts are certain reasons for this. As the fishermen, are exploited like this, the Government consider it necessary to provide adequate relief to them.

6. Therefore for the one time settlement of loan and for enquiring into the complaints of the fishermen in the State of Kerala and to suggest relief measures and for matters connected therewith or incidental thereto, in respect of the reduction in interest rate, or for the exemption of the same or for grating time for repayment, or for writing off of the principal amount if necessary, and accordingly to make it easy to grant relief to the debt liability of fishermen in the State, the Government consider it necessary to constitute the Kerala Fishermen Debt Relief Commission with judicial character and with elaborate powers.

7. The Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of Kerala Fishermen Debt Relief Commission. As per clause 4, the Commission requires the payment of salary, travelling allowances, sitting fee and office expenses to its Chairperson and members. The Bill if enacted and brought into operation, Government will have to provid fund for meeting various expenditure of the Commission as may

be necessary for the efficient functioning of the Commission. For the smooth functioning of the Commission, Office facilities and staff are necessary. Expenditure in the nature of recurring and non-recurring are expected for the Office of the Commission functioning under the Secretary. Recurring expenditure is expected for meeting the expenses like the sitting fee and salary of its Chairman and Members and to meet the expenses similar to travelling expenses and to provide facilities to the staff and members of the Commission, to conduct sittings by functioning temporary offices in various places, for the arrangement of office, and to meet other expenses for the office. The total average anticipated expenditure on annual basis is estimated to be Rs.20 lakhs. Since the tenure of the Commission is 3 years, amount expected for the I year is Rs.30 lakhs, and Rs. 15 lakhs each for the II and III years respectively. The anticipated minimum expenditure in recurring and non-recurring nature will be as follows.

Recurring expenditure	Rs. 40,00,000
Non-recurring expenditure	Rs. 20,00,000
Total	<u>Rs. 60,00,000</u>

2. Clause 5 of the Bill provides powers to the Commission to pass awards, which shall be binding on the fishermen and creditors, to waive loans, relief in interest, to recommend the government to take over partial or entire debt and exonerate the fishermen from the effects of debt.

3. There may be variations in the amounts to be spent under the above items depending on the amount that may be fixed by the Government as salaries, number and venue of meetings convened by the Commission, number of cases disposed of by the Commission etc. Exact amount that may be involved and to be allotted by the State Government every year from the budgetary provision cannot be calculated at any degree of accuracy.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Sub-clause (iv) of clause 2 of the Bill seeks to empower the Government to notify any other creditor coming within the definition of creditor.

2. Sub-clause (v) of clause 2 of the Bill seeks to empower the Government to notify by fixing any other establishments not to be included in determining the debt.

3. Sub-clause (ix) of clause 2 of the Bill seeks to empower the Government to notify any other bio, non-bio aqua resources within the definition of fish.

4. Sub-clause (1) of clause 3 of the Bill seeks to empower the Government to constitute a Commission by name the Kerala State Fishermen Debt Relief Commission by notification in the Gazette.

5. Sub-clause (5) of clause 3 of the Bill seeks to empower the Government to establish an office and to prescribe the manner of appointment of a Secretary and other necessary staff to assist the Commission.

6. The proviso to sub-clause (1) of clause 4 of the Bill seeks to empower the Government to extend the tenure of the Commission from three years if it deems necessary.

7. Sub-clause (4) of clause 4 of the Bill seeks to empowers the Government to remove a member if he is declared as undercharged insolvent, disqualified to continue in the work due to physical or mental incapacity, become unsound and declared so by a Court of competent jurisdiction, convicted for an offence which the Government consider that it involves moral turpitude or financial irregularities, and if it is convinced that he misused his official position in such a way prejudicial to the public interest.

8. Sub-clause (6) of clause 4 of the Bill seeks to empower the Government to prescribe the salary and allowances and other conditions of service of the Chairman and the Members.

9. Item (a) of sub-clause (1) of clause 5 of the Bill seeks to empower the Government to prescribe the general criteria for declaring any District or Districts or any part thereof as distress affected area.

10. Item (h) of sub-clause (1) of clause 5 of the Bill seeks to empower the Government to prescribe the agencies for carrying out the debt relief to the fishermen.

11. Item (j) of sub-clause (1) of clause 5 of the Bill seeks to empower the Government to prescribe the other functions to be performed and other power to be exercised by the Commission.

12. Item (g) of sub-clause (6) of clause 5 of the Bill seeks to empower the Government to prescribe any other matters in addition to item (a) to (f) for exercising all the powers of the Civil Court while trying a suit under the Code Civil Procedure, 1908.

13. Clause 6 of the Bill seeks to empower the Government to declare the related districts or part thereof as distress affected area on the recommendation of the Commission.

14. Clause 7 of the Bill seeks to empower the Government to prescribe the form and manner for filing application before the Commission for debt relief.

15. Sub-clause (1) of clause 14 of the Bill seeks to empower the Government to prescribe the form for submitting the annual report of its function.

16. Sub-clause (1) of clause 15 of the Bill seeks to empower the Government to prescribe the form for maintaining accounts and other relevant records and annual statement of accounts.

17. Sub-clause (1) of clause 20 of the Bill seeks to empower the Government to remove any difficulty in giving effect to the provisions of this Act through an order.

18. Sub-clause (1) of clause 21 of the Bill seeks to empower the Government to make rules for carrying out the purposes of this Act.

19. The matters in respect of which rules or notification may be made or orders may be issued are matters of procedure, which are of routine or administrative in nature. Further, the rules are subject to the scrutiny of the Legislative Assembly. The delegation of Legislative powers is, therefore of a normal character.

S. SHARMA
