

THE KERALA INDUSTRIAL EMPLOYMENT (PROHIBITION OF OBSTRUCTIVE PRACTICES) BILL, 2002

Background Note.

Amongst the practices that have been developed in certain parts of the State, which have acted as disincentives to the establishment of industries and therefore also to increases in employment and about which potential investors have been complaining, are those resorted to by some groups of persons ostensibly belonging to trade unions, local dwellers or political parties – by way of obstruction of even preliminary work connected with the industry. There have been repeated request and suggestions that there should be a ban on such practices, which are not really in the nature of trade union activities. It has also adversely affected the employment opportunities of the educated and skilled youth in our State. In order to promote the industrial investment in our State and to enhance the employment opportunities among the youth it is necessary to prohibit all such obstructive practices. Therefore, an investor who has obtained necessary clearances to start an industry will be protected from all such obstructive practices and he has given the right to undertake all legitimate activities in connection with such investment.

The growth of such practices over the years has adversely affected investment in the State. It has also denied employment opportunities to educated and skilled youth in the State.

The committee has considered the matter in consultation with Industries and Labour Department. It has drafted a Bill for the prohibition of obstructive practices in respect of works relating to the commencement and establishment of industry and to give the right to an investor, who has obtained the necessary clearances (which will include clearance from the Local Government), to undertake all legislative activities for establishing the industry, free from such obstructive practices. The draft Bill is appended.

**THE KERALA INDUSTRIAL EMPLOYMENT (PROHIBITION
OF
OBSTRUCTIVE PRACTICES) BILL, 2002.**

A

BILL

to prohibit certain **obstructive practices** that have crept into certain parts of the State in respect of works relating to or involving the commencement, establishment or development of industries or commercial or service establishments and all other infrastructural projects and for matters connected therewith.

Preamble – **WHEREAS**, in the interests of promoting industrial investment and consequently enhancing employment opportunities; it is desirable to prohibit certain obstructive practices that have crept into certain parts of the State in respect of works relating to or involving the commencement, establishment or development of industries or commercial or service establishments and all other Infrastructural Projects;

BE it enacted in the Fifty-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 Industrial Employment (Prohibition of Obstructive Practices) Act, 2002.

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

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

(4) It shall apply to,-

(a) every work or activity or process starting from the acquisition of land to the commencement of production or establishment or development of industries and all infrastructural projects;

(b) such other work or activity or process or establishment or undertaking as the Government may, by notification in the official gazette, specify in this behalf.

Explanation.- For the purpose of this section every work starting from the acquisition of land to the commencement of production or establishment or development include the erection of boundary walls, construction of buildings, roads ,bridges, tunnels, canals, drains, dams and any other works relating to or involved in the course of these work.

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

(a) “Government” means the Government of Kerala;

(b) “industry” means any work or activity relating to the acquisition of land, licensing of projects, establishments or undertakings, erection of boundary

walls, construction of buildings, roads, bridges, tunnels, canals, drains, transportation of goods or materials involved in the commencement, establishment or development of any commercial or industrial units or all other infrastructural projects and including any factory, shop, plantation or any other establishment which the Government may by notification in the Official Gazette declare from time to time for the purpose of this Act;

(c) “investor” means a person or Company or trust or firm or corporation or society or any other association of persons whether they are registered or not, intending to invest money for the commencement or establishment or development of an industry in the State and who has obtained the necessary clearances if any, and includes a contractor , managing agent or manager , superintendent or any other person by any other name who acts for and on behalf of the investor.

Explanation. - For the purposes of this section ‘contractor’ in an industry means a person who undertakes to produce a given result for the industry, other than a mere supply of goods or articles of manufacture to such industry, through contract labour or who supplies contract labour for any work of the industry and includes a sub- contractor;

(d) “mischief ” means mischief as defined in section 425 of the Indian Penal Code, 1860 (Central Act 45 of 1860);

(e) “obstructive practices” means any conduct or work or activity set out in the Schedule to this Act;

(f) “prescribed “ means prescribed by rules made under this Act;

(g) “trade unions” means the trade unions registered under the Trade Unions Act, 1926 (Central Act 16 of 1926);

(h) “unauthorised entry” means criminal trespass as defined in section 441 of the Indian Penal Code 1860 (Central Act 45 of 1860).

CHAPTER II

FREEDOM AND PROTECTION FOR INDUSTRIAL INVESTMENT

3. **Freedom and protection for industrial investment;** - Every investor who intends to establish or develop an industry in the State and who has obtained the necessary clearances if any, shall have the right to undertake all legitimate activities in connection with such investment and to protection from restrictive or obstructive practices from any person or group of persons or organizations of any nature or trade unions or local dwellers in the work or activities relating to or involved in the commencement, establishment or development of such industry.

4. **Prohibition of obstructive practices in the commencement, establishment or development of industry.** - No person or group of persons or trade unions or local dwellers or other social or political organizations or associations of any nature; shall resort to any obstructive practices in the work relating to or involved in the commencement, establishment or development of an industry.

5. **Prohibition of entry into private property.** – No person or group of persons or trade unions or local dwellers or other social or political organizations or associations of any nature shall unauthorise make any entry into the private property of an investor and commit any mischief or destruction or damage to the land and property of the investor whether or not such act constitute an offence under any other law for the time being in force.

CHAPTER III

APPOINTMENT AND POWERS OF LABOUR INSPECTOR AND INSPECTOR

6. **Appointment and powers of Labour Inspectors and Inspectors.-** (1) The Government may, by notification in the Official Gazette, appoint officers of the Labour Department not below the rank of a Assistant Labour Officer (Grade II) as Labour Inspector for the purposes of this Act and may define the local limits within which they shall exercise their jurisdiction.

(2) An Labour Inspector appointed under sub - section (1) may for the purpose of ascertaining whether any of the provisions of this Act has been violated or to prevent such violation,-

(a) either suo motu or on a written complaint made in this behalf by an investor, or any person aggrieved, enter to any premises connected therewith or any place at any reasonable time and with such assistance as he thinks necessary for the inspection, examination or enquiry or investigation with regard to such violations or apprehended violations.

(b) require an investor or any person to furnish such information as he may consider necessary;

(c) make copies of or to take extracts from, any book, register or other documents maintained in relation to the work carried out;

(d) exercise such other powers as may be prescribed:

(3) The Government may by notification in the Official Gazette, appoint officers of the Police Department of and above the rank of a Sub-Inspector as Inspectors for the purposes of this Act and may define the local limits within which they shall exercise their jurisdiction.

(4) An Inspector appointed under sub-section (3) may for the purpose of ascertaining whether any of the provisions of this Act has been violated or to prevent the commission of an offence,-

(a) either suo motu or on a written complaint made in this behalf by an investor, or any person aggrieved, enter any premises connected therewith or

any place at any reasonable time and with such assistance as he thinks necessary for the examination, enquiry or investigation into the alleged offence under this Act,

(b) require an investor or any person to furnish such information as he may consider necessary;

(c) make copies of or to take extracts from, any book, register or other documents maintained in relation to the work carried out;

(d) exercise such other powers as may be prescribed.

(5) Every Labour Inspector or Inspector appointed under sub section (1) or sub-section (3), as the case may be, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1960 (45 of 1860).

(6) Any person required to produce any document or thing or to give any information to a Labour Inspector or Inspector under this section shall be legally bound to do so within the meaning of section 175 and 176 of the Indian Penal Code, 1860 (45 of 1860).

CHAPTER IV

PENALTIES

7. Penalty for committing any obstructive practices in the commencement, establishment or development of an industry. - Whoever commits any obstructive practice or practices in the work relating to or involved in the commencement, establishment or development of an industry shall be punishable with imprisonment for a term which shall not be less than three months and which may extend to one year or with fine which shall not be less than two thousand rupees and which may extend to ten thousand rupees or with both.

8. Penalty for unauthorised entry and damage. - Whoever commits any unauthorised entry into the private property of an investor and creates any mischief or destruction or damage to the land or property of the investor whether or not such act constitute an offence under any other law for the time being in force, shall be punishable with imprisonment for a term which shall not be less than one year and which may extend to two years or with fine which shall not be less than five thousand rupees and which may extend to twenty thousand rupees or with both.

9. Penalty for obstruction of duties. - Whoever obstructs any Inspector or any other officer appointed under this Act in the discharge of his duties or refuses or willfully neglects to afford him reasonable facilities for making any entry, inspection, examination or enquiry authorised by or under this Act, shall be punishable with imprisonment for a term which shall not be less than one year and which may extend to two years or with fine which shall not be less than five thousand rupees and which may extend to twenty thousand rupees or with both.

10. Violation of the provisions of this Act not to attract other enactments.- Notwithstanding anything contained in any other law for the time being in force, the violation of any of the provisions of this Act shall not constitute a

dispute as defined in any other law and any such violation shall be dealt with in accordance with the provisions of this Act and the rules made thereunder.

11. Offences to be cognizable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the offences punishable under this Act shall be deemed to be cognizable offences within the meaning of that Code.

12. Information and complaints regarding offences. - (1) An investor who anticipates the occurrence of an offence under this Act may give a written information to the Inspector having jurisdiction over the area, whose duty is to prevent or take cognizance of the commission of any such offence.

(2) An investor aggrieved by the conduct of any person or group of persons or trade unions or local dwellers or other social or political organisations or associations of any nature in the implementation of this provisions of this Act may raise a complaint before the Inspector immediately after its occurrence:

Provided that no such complaint shall be entertained after the expiry of thirty days after the date of occurrence of such aggrieved conduct unless the Inspector is satisfied that the complainant had sufficient cause for not making the complaint within the said period. Provided that no such complaint shall be entertained after a period of three months.

(3) As soon as a complaint is received under sub- section (2) the Inspector shall, to the best of his ability, for the purpose of preventing the commission of an offence or for the purpose of ascertaining whether any offence under this Act has been committed by any person or group of persons or trade unions or local dwellers or other social or political organisations or associations of any nature exercise all or any of the powers conferred on him under this Act or the rules made thereunder.

CHAPTER V

MISCELLANEOUS

13. Delegation of Powers. -The Government may by notification in the Official Gazette, direct that any power exercisable by them under this Act or the Rules made thereunder, other than the powers conferred by this section, sections 14, 16 and 17 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, can be exercised also by such officer or authority subordinate to the Government, as may be specified in the notification.

14. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act, or the Rules made thereunder, the Government may, by order, do anything, not inconsistent with the provisions of this Act which appears to them to be necessary or expedient for the purpose of removing the difficulty:

Provided that, no such order shall be passed after 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.

15. **Protection of action taken in good faith.** - No suit, prosecution or other legal proceeding shall lie against the Government or any authority or officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made under this Act.

16. **Power to amend Schedule.** - (1) The Government may, if it is of opinion that it is expedient or necessary in the public interest so to do, by notification in the Official Gazette, add to or delete or alter or amend the Schedule and on any such notification being issued, the Schedule shall be deemed to have been amended accordingly.

(2) Every such notification shall as soon as possible after it is issued, be laid before the Legislation Assembly.

17. **Power to make rules.** - (1) The Government may, by notification in the Gazette, make rules, for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may,-

- (a) prescribe the obligations of the investor;
- (b) prescribe the method of summoning witnesses, production of documents relevant to the subject-matter of the investigation or enquiry before the Inspector or any other officer authorised by the Government;
- (c) prescribe the powers of Inspectors and other officers appointed for the purpose of this Act;
- (d) prescribe the modalities for preferring complaint, and matters consequential thereto;
- (e) provide for any other matter which is to be or may be prescribed for the effective implementation of the provisions of this Act.

(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.

THE SCHEDULE

(Section 2 (f))

Obstructive Practices

1. Obstructing or impeding the activities relating to the acquisition of land, licensing of projects, establishments or undertakings, erection of boundary walls, construction of buildings, roads, bridges, tunnels, canals, drains, transportation of goods or materials involved in the commencement, establishment or development of any commercial or industrial units or all other infrastructural projects and including

any factory, shop, plantation or any other establishment which the Government may by notification in the Official Gazette declare from time to time for the purpose of this Act.

2. Obstructing or impeding the investor in the activities relating to the acquisition of land , licensing of projects, establishments or undertakings, erection of boundary walls, construction of buildings, roads, bridges, tunnels, canals, drains, transportation of goods or materials involved in the commencement, establishment or development of any commercial or industrial units or all other infrastructural projects and including any factory, shop, plantation or any other establishment which the Government may by notification in the Official Gazette declare from time to time for the purpose of this Act, with the objective of obtaining employment or for giving preference in employment to the members of the trade unions or local dwellers or other social or political organisations.

STATEMENT OF OBJECTS AND REASONS

Amongst the practices that have been developed in certain parts of the State, strike have acted as disincentives to the establishment of industries and therefore also to increases in employment and about which potential investors have been complaining, are those resorted to by some groups of persons ostensibly belonging to trade unions, local dwellers or political parties – by way of obstruction of even preliminary work connected with the industry. There have been repeated request and suggestions that there should be a ban on such practices, strike are not really in the nature of trade union activities. It has also adversely affected the employment opportunities of the educated and skilled youth in our State. In order to promote the industrial investment in our State and to enhance the employment opportunities among the youth it is necessary to prohibit all such obstructive practices. Therefore, an investor who has obtained necessary clearances to start an industry will be protected from all such obstructive practices and he has given the right to undertake all legitimate activities in connection with such investment.

This has adversely affected the employment opportunities of the educated and skilled youth in our State. In order to promote the industrial investment in our State and to enhance the employment opportunities among the youth it is necessary to prohibit all such obstructive practices. Therefore, an investor who has obtained necessary clearance to start an industry will be protected from all such obstructive practices and he has given the right to undertake all legitimate activities in connection with such investment.

2. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

Sub-clause (3) of clause 1 of the Bill seeks to empower the Government by notification in the Gazette to fix a date for bringing into force of the Act.

2. Sub-clause (b) of clause 2 of the Bill seeks to empower the Government by notification to declare the names of establishment that may come under the term industry for the purpose of the Act.

3. Sub-clause (1) of clause 6 of the Bill seeks to empower the Government by notification appoint officers in the Labour Department not below the rank of an Assistant Labour Officer as Labour inspectors for the purposes of the Act and also define the local limits within which such officers shall exercise their jurisdiction.

4. Sub-clause (3) of clause 6 of the Bill seeks to empower the Government by notification appoint officers in the Police department of and above the rank of a Sub-Inspector as inspectors for the purposes of the Act and define the local limits within which such officers shall exercise their jurisdiction.

5. Clause 13 of the Bill seeks to empower the Government by notification delegate the administrative powers of the Government under the Act to such officer or authority subordinate to the Government.

6. Sub-clause (1) of the clause 14 of the Bill seeks to empower the Government issue orders for removing any difficulty that may creep in while enforcing the provision of the Act.

7. Clause 16 of the Bill seeks to empower the Government by notification add to or delete or alter or amend the schedule to the Act.

8. Sub-clause (i) of clause 17 of the Bill seeks to empower the Government by notification frame rules for the purposes of carrying into effect the provisions of the Act.

9. The matter to be prescribed or the orders or notifications to be issued are matters of procedure and details and are of routine and administrative in nature. Further the rules and orders are subject to the scrutiny of the Legislative Assembly after issue. The delegation of legislative powers therefore, of a normal character.