

Bengal Smoke-Nuisances Act, 1905

3 of 1905

[03 May 1905]

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An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces of fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal WHEREAS it is expedient to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal. It is hereby enacted as follows:--

1. Short Title And Extent :-

(1) This Act may be called the Bengal Smoke-nuisances Act, 1905; and (2) it extends to the whole of West Bengal.

2. Power To Extend Act :-

Omitted by s. 3 of the Bengal Smoke-nuisances (Amendment) Act, 1978 (West Ben. Act L of 1978).

3. Definitions :-

In this Act, -- (1) "Furnace" means any furnace or fireplace used-- (a) for working engine by steam, oil, gas or any fuel with combustion inside or outside the engine; or (b) any reaction tower, digester, distillation plant, mechanical, chemical, electrical or any processing plant emitting or causing to emit smoke, fumes, carbonaceous, organic or inorganic vapours, soot, grit, dust, obnoxious gases by any process whatsoever; or (c) for any other purpose: Provided that no furnace or fireplace-- (i) used for working the engine of any automobile, aircraft, water craft, launch, steamer or ship, or (ii) used for the burning of the dead, or (iii) used in a private house for bona fide domestic purpose other than the purposes specified in clauses (a), (b) and (c), shall be deemed to be a furnace or fireplace within the meaning of this Act; (2) "Inspector" means the Chief Inspector of Smoke-nuisances, a Deputy Chief Inspector of Smoke-nuisances or an Inspector of Smoke-nuisances, appointed under this Act; (3) "The Commission" means the West Bengal Smoke-nuisances Commission constituted Under this Act; (4) the expression "owner" when used with reference to a furnace, flue or chimney, means-- (i) any person who owns the furnace, flue or chimney; (ii) any agent or hirer using the furnace, flue or chimney; and (iii) any foreman or other person superintending the working of the furnace, flue or chimney; (5) "Magistrate" means a Metropolitan Magistrate or a Judicial Magistrate of the first class; and (6) "Smoke" means-- (i) any product or products or combustion of fuel, in a furnace, containing carbonaceous or inorganic suspended matter, (ii) any carbonaceous or inorganic suspended matters obtained or emitted by distillation of coal, wood, oil or any other matter whatsoever, or (iii) any carbonaceous or inorganic suspended particulate matters, fumes, obnoxious gases, soot, grit or dust emitted from the operation of any process whatsoever,

4. Constitution Of Commission :-

(1) The State Government shall, by notification in the Official Gazette, constitute a Commission, to be called the West Bengal Smoke-nuisances commission, to supervise and control the working of this Act. (2) The said Commission shall consist of the following members, namely:-- (i) a president, (ii) the Chief Inspector of

Smoke-nuisances, who shall be the Member-Secretary of the Commission, and (iii) such number of other persons as the State Government may determine. (3) Of the members referred to in clauses (i) and (in) of subsection (2), not more than one-half shall be officials nominated by the State Government; and the remainder shall be non-officials nominated in such manner as the State Government may direct, by bodies or associations whose interests are likely to be affected by this Act. (4) Subject to the provisions of sub-section (3), all members of the Commission shall be appointed, and all vacancies in the Commission shall, as occasion requires, be filled up by the State Government by notification in the Official Gazette. (5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Commission.

5. Appointment Of Inspectors :-

(1) The state Government may, by notification in the Official Gazette, appoint a Chief Inspector of Smoke-nuisances and such number of Deputy Chief inspector of Smoke-nuisances and Inspectors of smoke-nuisances as it may think fit. (2) Deputy Chief Inspectors of Smoke-nuisances and Inspectors of smoke-nuisances shall be subordinate to the Chief Inspector of Smoke-nuisances, who shall be subject to the control of the Commission. (3) An Inspector appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

6. Power To Prohibit The Erection Or Use Of Kilns Or Furnaces, Or The Manufacture Of Coke In Specified Areas :-

(1) The State Government may by a notification published in the prescribed manner prohibit, within any specified area,-- (a) the erection or use of any specified class of brick, tile or lime-kilns or, Clamps for making bricks or (b) the erection or use of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals, or for the conversion of pig-iron into wrought-iron, or (c) the manufacturer of coke, in ovens, or with special appliances, or (d) the making of coke without ovens or special appliances, or (e) the operation any process emitting or causing emission of smoke: Provided that where prior to the issue of such notification, a licence has been granted under the provisions of Chapter XXXIII of the Calcutta Municipal Act, 1999 (Ben. Act 111 of 1899) or of Chapter XXVI of the Calcutta Municipal Act 1923 (Ben. Act II of 1923) Or of Chapter

XXVI of the Calcutta Municipal Act 1951 (XXXIII of 1951), for the erection of a furnace for use for any of the purposes mentioned in clauses (a) and (b) or for the manufacture of coke as described in clauses (c) and (d) or for the operation of any process referred to in clause (e) such notification shall not affect such furnace, or such manufacture or such operation till the expiry of such time as the chief Inspector of Smoke-nuisances may allow in this behalf. (2) If any kiln, clamp or furnace is erected or used in contravention of any notification issued under clause (a) or clause (b) of sub-section (1), the owner thereof shall, on conviction, be punished for the first offence with imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both and for a second or subsequent offence with imprisonment for a term which may extend to two months or with fine which may extend to five thousand rupees or with both. (3) If any person manufactures coke in contravention of any notification issued under clause (c) of sub-section (1) he shall, on conviction, be punished for the first offence with imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both and for a second or subsequent offence with imprisonment for a term which may extend to two months or with fine which may extend to five thousand rupees or with both. (4) If any person makes coke in or upon any building or land in contravention of any notification issued under clause (d) of subsection (1),-- (a) such person and (b) the owner (if he knowingly permits the coke to be made by such person), or occupier of such building or land, shall, on conviction, be jointly and severally liable to a fine which may extend to two thousand rupees and for a second or subsequent offence to a fine which may extend to five thousand rupees and the coke so made may be seized by an Inspector pending the order of the Magistrate. (5) In any prosecution under sub-section (4), the Magistrate may, beside imposing a fine as aforesaid, record an order directing the confiscation of any coke seized as in that sub-section provided; and, in such a case, it shall be lawful for the Commission to dispose of the same in such manner as the State Government may, by rule made under section 10, prescribe. (6) For the purpose of sub-section (4).-- (i) the expression "occupier" means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the building or land in respect of which the word is used, and includes an owner living in, or otherwise using, his own building or land; and (ii) the expression "owner"

includes the person for the time being receiving the rent of any building or land or of any part of any building or land, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or as a receiver, or who would so receive such rent if the building, land, or part thereof, were let to a tenant.

7. Power To Order Demolition Of Kilns Or Furnaces Erected Or Used Within Prohibited Areas :-

(1) Whenever a Magistrate imposes a fine on any person under section 6, sub-section (2), for erecting or using a kiln, clamp or furnace in contravention of any notification issued under section 6, sub-section (1), clause (a) or clause (b), he may by order direct such person to demolish the kiln, clamp or furnace within a period to be specified on the order. (2) If such person fails to demolish such kiln, clamp or furnace, as the case may be, within the period referred to in sub-section (1), he shall, on conviction, be punished with fine which may extend to two thousand rupees.

8. Penalty When Smoke Is Emitted To A Greater Extent Than Is Permitted By Rules :-

If smoke be emitted from any furnace in greater density or at a lower altitude or for a longer time than is permitted by rules made under this Act the owner of the furnace shall, on conviction, be punished for the first offence with fine which may extend to two thousand rupees and for a second or subsequent offence with fine which may extend to live thousand rupees. Section

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- Restriction on the erection of furnaces, etc. and penalties After the commencement of the Bengal Smoke-nuisances (Amendment) Act, 1978 (West Bengal Act L of 1978)--(a) no furnace, flue chimney or smoke abating equipment shall be erected, and (b) no furnace, flue chimney or smoke abating equipment, erected prior to the commencement of the said Act, shall be re-erected, altered or added to, otherwise than in accordance with plans sanctioned by the Chief Inspector of Smoke-nuisances, (c) no furnace, flue, chimney or smoke abating equipment shall be used except with permission granted by the Chief Inspector of Smoke-nuisances. (2) Every permission granted under clause (c) of sub-section (1) shall be valid for a period of one year and may on application made in this behalf be renewed from time to time for a period of one year on each occasion. (3) (a) In the event of any contravention of the provisions of clause (a) or clause (b) of sub-section (1), the owner of the furnace, flue or chimney, as the case may be, shall, on

conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both. (b) In the event of any contravention of the provisions of clause (c) of sub-section (1), the owner of such furnace, flue or chimney, as the case may be, shall, on conviction be punished with imprisonment for a term which may extend to two months or with fine which may extend to five thousand rupees or with both and the trying Magistrate may also direct the owner to comply with the provisions of clause (c) of sub-section (1) or pass an order for the demolition of the unauthorised furnace, flue or chimney as the case may be, within a period of three months from the date of issue of such order. (c) In the event of failure of such owner to demolish the furnace, flue or chimney, as the case may be, in pursuance of an order under clause (b) the trying Magistrate may, on a report of the Inspector of Smoke-nuisances having jurisdiction, pass necessary orders for the demolition of such furnace, flue and chimney at the owners cost.

9. Powers Of The Inspectors :-

(1) An Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person-in-charge,-- (a) enter and inspect, during working hours, any building or place within his jurisdiction which contains a furnace and inspect such furnace; (b) under the written authority of the Chief Inspector of Smoke-nuisances, use and test any appliance used for preventing the emission of smoke from any such furnace; and (c) under the written authority of the Chief Inspector of Smoke-nuisances, direct that any such furnace be worked or stoked experimentally, during his visit to such building or place in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purpose of the experiment. (2) If any owner of a furnace in respect of which a direction has been given under clause (c) of sub-section (1) fails to comply with such direction, he shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees or with both. (3) Notwithstanding anything contained in sub-section (1), an Inspector may enter and inspect without notice and at any time by day or by night any building or place within his jurisdiction in which he has reason to believe that a furnace has been erected or that coke is being made otherwise than in accordance with the provisions of this Act and the rules made thereunder and to inspect such furnace, building or place: Provided that if in any such building which is a private dwelling house there is an apartment in

the actual occupancy of a woman who according to custom does not appear in public, such Inspector shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing. (4) Whenever the Chief Inspector of Smoke-nuisances issues any authority under clause (b) for clause (c) or sub-section (1), he shall, as soon thereafter as conveniently may be, report the fact to the Commission. Section

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- Delegation The Powers of an Inspector under this Act shall also be exercisable by a District Magistrate, a Deputy Commissioner, an Additional District Magistrate, an Additional Deputy Commissioner or a Subdivisional Executive Magistrate within his jurisdiction.

10. Rules :-

(1) The State Government may after consultation with the Commission, make rules to carry out the object of this Act. (2) In particular, and without prejudice to the generality of subsection (1), such rules may-- (a) regulate the transaction of business by the Commission; (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties; (bb) prescribe the manner of publication of notifications prohibiting the erection or use of kilns or furnaces or the manufacture of coke in specified areas; (c) prescribe a scale for the purpose of determining the density of smoke; (d) prescribe the density of smoke that may be emitted from a furnace; (e) prescribe the time during which smoke of such density may be emitted from a furnace; (f) regulate, with due regard to the safety of shipping, the emission of smoke from the furnace or engines of vessels; (g) prescribe the altitude below which smoke may not be emitted from a furnace; (h) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution; (i) authorise the payment of a fee, not exceeding forty rupees, to each or any member of the Commission attending the meeting of the Commission; (j) regulate the disposal of coke confiscated under section 6, sub-section (5); (jj) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and grant and renewal of permission for the working of furnaces, flues and chimneys and

generally for the service of Inspectors; (k) prescribe a procedure to give effect to the provisions of sections 8 and 8A; (2A) In making any rule the State Government may direct that a breach thereof shall be punishable with imprisonment for a term not exceeding three months; or with fine not exceeding five thousand rupees or with both. (2B) On the amount of any fees due to the State Government levied under the rules framed under this section which remains unpaid after the date prescribed for their payment interest shall be payable at the rate of twelve per cent. per annum and the said amount with interest shall be recoverable as an arrear of land revenue as if it were payable to the Collector. (5) All rules made under this section shall be published in the Official Gazette.

11. Cognizance Of Offences :-

A Magistrate may take cognizance of an offence against this Act only-- (a) upon a complaint made by, or with the written authority of, an Inspector, and (b) within a period of four months from the date of the commission of the offence.

12. Offences By Companies, Etc. :-

Where a person committing an offence under this Act is a company, a body corporate, a partnership, a Hindu joint family firm, or any association of individuals, every director, partner, manager, secretary, agent or other person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission, be deemed to be guilty of such offence.

13. Repeal :-

Rep. by s. 3 and the Second Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act 1 of 1939).