

Bengal Smuggling Of Arms Act, 1934

4 of 1934

[12 April 1934]

CONTENTS

1. Short Title And Extent
2. Definition
3. Power To Declare Notified Area
4. Report By Commissioner Of Police Or District Magistrate
5. Issue Of Warrant On Receipt Of Report
6. Central Government To Place Report Before Advising Judges
7. Order Of Removal By Central Government
8. Evasion Orders
9. Identification Order
10. Penalty For Breach Of Order Number Section 7
11. Penalty For Breach Of Order Under Section 9
12. Operation Of Other Penal Laws Not Barred

Bengal Smuggling Of Arms Act, 1934

4 of 1934

[12 April 1934]

An Act for the prevention of smuggling of arms and ammunition in Bengal. WHEREAS it is expedient to make better provision for the prevention of smuggling of arms and ammunition in Bengal; AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act; It is hereby enacted as follows:--

1. Short Title And Extent :-

- (1) This Act may be called the Bengal Smuggling of Arms Act, 1934.
- (2) It extends to the whole of West Bengal.

2. Definition :-

In this Act, unless there is anything repugnant in the subject or context,-- (1) "arms" and "ammunition" have the same meaning as in section 4 of the Indian Arms Act, 1878 (XI of 1878); (3) "Commissioner of Police" means the officer vested with the

administration of police in Calcutta under the Calcutta Police Act, 1866, (Ben. Act IV of 1866) the Calcutta Suburban Police Act, 1866, (Ben. Act II of 1866) and the Calcutta Port Act, 1890 (Ben. Act III of 1890); (4) "notified area" means any area which is declared to be a notified area under section 3; (5) "smuggler of arms" includes any person who-- (a) smuggles arms or ammunition into or from West Bengal, or abets such smuggling; (b) sells, purchases, receives or transports, or abets the sale, purchase, receipt or transport of, arms or ammunition which he knows or has reason to believe to have been smuggled; (c) has been convicted by any Court in India of an offence connected with the smuggling of arms and ammunition; or (d) has been externed from any part of India outside West Bengal for any act connected with the smuggling of arms or ammunition.

3. Power To Declare Notified Area :-

The Central Government may, by notification in the Official Gazette, declare that any area specified in the notification shall be a notified area for the purposes of this Act.

4. Report By Commissioner Of Police Or District Magistrate :-

Whenever it shall appear to the Commissioner of Police or any District Magistrate that there is within a notified area within his jurisdiction any person who-- (a) is a smuggler of arms, and (b) resides within or habitually visit or frequents such notified area, the Commissioner of Police or the District Magistrate may make a report to the Central Government with a recommendation that such person be dealt with under the provisions of this Act.

5. Issue Of Warrant On Receipt Of Report :-

(1) on receipt of the report of the Commissioner of Police or of the District Magistrate, as the case may be, the Central Government may make an order for the issue of a warrant for the arrest of the person against whom the report has been made. (2) The warrant shall be in such form as shall be prescribed by the Central Government by notification in the Official Gazette and shall be issued by the Commissioner of Police or the District Magistrate, as the case may be, and shall contain a statement of the heads of the charges against such person, and shall require him to submit by petition to the advising Judges appointed under sub-section (1) of section 6, by such date as may be specified in the warrant, any representation that he may desire to make. (3) The person arrested

under such warrant shall be detained in custody until the final order of the Central Government under section 7 is communicated to him, unless the officer by whom the warrant is issued directs, in his discretion, that such person shall be released from custody on his executing, to the satisfaction of such officer, a bond with sufficient sureties for his attendance at such place and at such time or times as may be specified in the warrant and thereafter as such officer may direct: Provided that while such person is detained in custody he shall be given reasonable facilities, under proper safeguards, for communication with his legal adviser. (4) The Commissioner of Police or the District Magistrate by whom such warrant is issued shall have-- (i) for the enforcement of the attendance of the person, against whom the warrant is issued, at such place and at such time or times as may be specified therein (and thereafter as the Commissioner of Police or the District Magistrate may direct), in order to communicate to such person the final order of the Central Government made under section 7, and (ii) for the forfeiture, under section 514 of the Code of Criminal Procedure, 1898, (Act V of 1898) of any bond, executed for the attendance of such person at such place and at such time or times, all the powers of a Presidency Magistrate or of such District Magistrate, respectively, under the Code of Criminal Procedure, 1898; and the warrant shall for the purpose set forth in clauses (i) and (ii) be deemed to be a warrant issued by a Presidency Magistrate or a District Magistrate, as the case may be, for the arrest of the said person to answer a charge in respect of a non-bailable offence committed by him within the jurisdiction of such Magistrate.

6. Central Government To Place Report Before Advising Judges :-

(1) After issue of the warrant under section 5, the Central Government shall forthwith cause the report of the Commissioner of Police or of the District Magistrate, as the case may be, with all material facts and circumstances in its possession relevant to the same, to be placed before two advising Judges, of whom one shall be the District and Sessions Judge having local jurisdiction over the notified area or any portion thereof concerned and the other a District and Sessions Judge or Additional District and Sessions Judge who has held judicial office not below that of an Additional District and Sessions Judge for a total period of not less than three years. Explanation.--For the purposes of this sub-section the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866,

(Ben. Act IV of 1866) together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866, (Ben. Act II of 1866), and the Port of Calcutta as defined by notification under section 5 of the Indian Ports Act, 1908 (XV of 1908) shall be deemed to be included within the limits of the local jurisdiction of the District and Sessions Judge of the district of the 24-Parganas. (2) The advising Judges shall consider in camera the report and the other facts and circumstances, if any, adduced before them by the Central Government, and any representation, submitted to them by the person against whom the report has been made within the time fixed by section 5 or such further time as they may allow, and shall call for such further information, if any, and may examine such witnesses, if any, as shall appear to them to be necessary to enable them to tender their advice on the report. They shall also give to the person against whom the report has been made, if he so desires, an opportunity of appearing in person before them to offer his explanation, and may at the instance of that person require the attendance of any other person, whose statement may support that explanation: Provided that-- (a) nothing in this section shall be deemed to entitle the person whose case is before the advising Judges to appear or be represented before them by pleader, nor shall the Central Government be so entitled, (b) the advising Judges shall not disclose to the person in question any fact the communication of which might endanger the safety of any individual, and (c) the advising Judges shall not be bound to observe the rules of evidence and shall not permit the putting of any question which may endanger the safety of any individual. (3) Any statement made to the advising Judges by any person other than the person whose case is before them shall be deemed to be information given to a public servant within the meaning of section 182 of the Indian Penal Code, (Act XLV of 1860) and the advising Judges shall for the purpose of securing the attendance of any person under the provisions of sub-section (2) have all the powers of a District Magistrate under the Code of Criminal Procedure, 1898 (Act V of 1898). (4) When the advising Judges have reached their conclusions, they shall report the same in writing to the Central Government. (5) If the person whose case is under their consideration claims, when submitting his representation or when appearing before the advising Judges, that both he and his father were born in West Bengal or that he is a member of a family which has definitely settled in West Bengal and is himself so settled, the

advising Judges shall give him an opportunity of establishing his claim, and shall also give to the Commissioner of Police or the District Magistrate, as the case may be, an opportunity of rebutting the same, and at the time of submission of their report to the Central Government shall record their opinion as to whether such person has established his claim.

7. Order Of Removal By Central Government :-

(1) On receipt of the report of the advising Judges the Central Government, if satisfied that the person against whom the report has been made, should be removed elsewhere, may by an order reciting the conclusions of the advising Judges, as reported by those Judges,-- (a) direct him to leave West Bengal within such time, by such route or routes, and for such period as may be stated in the order, or (b) where the Central Government is satisfied that both he and his father were born in West Bengal, or that he is a member of a family which has definitely settled in West Bengal and is himself so settled, direct him to leave the notified area within such time, by such route and for such period as may be stated in the order, and may in that case further order that he shall during the same period notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence to the officer appointed by the Central Government in his behalf. (2) The order of the Central Government under sub-section (1) shall be final, and shall not be called in question in any subsequent proceeding under section 10 or section 11: Provided that the Central Government may, at any time, cancel or suspend such order or reduce the period for which the said person is required to leave West Bengal or the notified area

8. Evasion Orders :-

Where any person on whom a warrant has been served under section 5-- (i) fails to attend at the place and at the time or times specified in the warrant and thereafter when required in order to receive the order of the Central Government under section 7, or (ii) prior to the issue of that order, leaves West Bengal or the notified area, as the case may be, the Central Government may issue the order under section 7 in the absence of that person by publishing the same in the Official Gazette, and such person shall be deemed to have absconded in order to evade that order: Provided that the Central Government may condone a failure to attend under clause (i), on reasons for such non-attendance being furnished to its satisfaction, and in that case such person shall not be deemed to

have absconded in order to evade the order.

9. Identification Order :-

Every person in respect of whom an order has been made under section 7 shall, if so directed by the Commissioner of Police or the District Magistrate, as the case may be,-- (i) present himself to be photographed; (ii) allow his finger impression to be recorded; (iii) if literate, furnish such officer with specimens of his writing and signature; and (iv) attend at such times and places as the Commissioner of Police or the District Magistrate, as the case may be, direct for all or any of the aforesaid purposes.

10. Penalty For Breach Of Order Number Section 7 :-

When any person, against whom any order has been made under section 7, fails to comply with such order within the time specified therein or after complying with the same order returns to, or after evading the same order returns to or remains in, any place within West Bengal or the notified area, as the case may be, before the expiry of the period stated in the order, or fails to give to the officer appointed to receive it the information in regard to residence or absence set forth in section 7, such person may be arrested without a warrant by a police officer and shall, on conviction before a Presidency Magistrate or a Magistrate of the first class, be liable to be punished with rigorous imprisonment for a term which may extend to two years, or with fine, or with both.

11. Penalty For Breach Of Order Under Section 9 :-

(1) Any person who fails to comply with, or attempts to evade, any direction given in accordance with the provisions of section 9 shall be liable to be arrested without a warrant and shall, on conviction before a Presidency Magistrate or a Magistrate of the first class, be liable to be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (2) Any offence under this section or under section 10 shall be deemed to be a non-bailable offence.

12. Operation Of Other Penal Laws Not Barred :-

Nothing contained in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence punishable under such other law.