

West Bengal Advocates Welfare Corporation Act, 2012

5 of 2012

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West Bengal Advocates Welfare Corporation Act, 2012

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An Act to establish an Advocates Welfare Corporation in West Bengal.

Whereas it is expedient to provide for the establishment of Advocates Welfare Corporation for the welfare, rehabilitation and settlement of the Advocates practising in West Bengal and for matters connected therewith or incidental thereto;

It is hereby enacted in the Sixty-third Year of the Republic of India by the Legislature of West Bengal, as follows:-

1. Short title, extent and commencement :-

(1) This Act may be called the West Bengal Advocates Welfare Corporation Act. 2012.

(2) It extends to the whole of West Bengal.

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

2. Definitions :-

(1) In this Act, unless the context otherwise requires,-

(a) "advocate" means an advocate whose name is entered in the State roll and who is a member of a Bar Association, but does not include an advocate to whom the provisions of this Act do not apply under section 29;

(b) "notification" means a notification published in the Official Gazette;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "State Government" means the State Government in the Judicial Department;

(e) "stipend" means an allowance to be paid by the Corporation monthly for the purposes of this Act.

(2) Words and expression used in this Act, but not defined shall have the same meaning as respectively assigned to them in the West Bengal Advocates Welfare Fund Act, 1991.

3. Incorporation :-

(1) The State Government may, by notification, establish a Corporation to be known as the West Bengal Advocates Welfare Corporation.

(2) The Corporation shall be a body corporate by the name notified under sub-section (1), having perpetual succession and a common seal, and shall by the said name sue and be sued.

4. Constitution of the Corporation :-

(1) The Corporation shall consist of the following members, namely:-

(a) Minister-in-charge, Law and Judicial Department, ex officio Chairperson;

(b) the Secretary, Judicial Department, Government of West Bengal, ex officio;

(c) the Secretary or an officer not below the rank of Joint Secretary, Law Department, Government of West Bengal, ex officio;

(d) the Legal Remembrancer, Government of West Bengal, ex

officio;

(e) the Managing Director of the Corporation;

(f) such number of other members, not exceeding five, as the State Government may, by notification, appoint.

(2) The State Government shall appoint, if it thinks fit, one of the members as the Vice-Chairperson of the Corporation.

(3) The term of office, and the manner of filling casual vacancies in the offices, of the members of the Corporation shall be such as may be prescribed.

5. Disqualifications for membership :-

A person shall be disqualified for being chosen as, and for being, a member of the Corporation-

(a) if he is a lunatic or a person of unsound mind, or

(b) if he has been adjudged insolvent, or

(c) if he has been convicted of an offence involving moral turpitude, or

(d) if he has any financial interest in any work undertaken by the Corporation for execution.

6. Validity of acts and proceedings :-

No act or proceeding of the Corporation shall be invalid by reason only of the existence or any vacancy amongst its members of any defect in the constitution thereof.

7. Transaction of business :-

(1) The Corporation shall meet at such time and place and shall, subject to the provisions of sub-sections (2) and (3), observe such rules of procedure in regard to transaction of business at its meetings as may be provided by regulations made under this Act.

(2) The person to preside at a meeting of the Corporation shall be the Chairperson thereof or, in his absence from any meeting, the Vice-Chairperson, if any, or, in the absence of both the Chairperson and the Vice-Chairperson, such member as may be chosen by the members present from amongst themselves.

(3) All questions at a meeting of the Corporation shall be decided by majority of votes of the members present and voting and, in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have a second or casting vote.

8. Managing Director, Chief Accounts Officer and other staff
:-

(1) The Corporation shall have a Managing Director, a General Manager and a Chief Accounts Officer, who shall be appointed or deputed by the State Government.

(2) The Corporation may appoint such other officers and employees as it considers necessary for the efficient performance of its functions subject to the approval by the State Government.

(3) The conditions of appointment, and the scales of pay, of the officers and other employees of the Corporation shall,-

(a) as respects the Managing Director, the General Manager and the Chief Accounts Officer, be such as may be prescribed; and

(b) as respects the other officers and employees, be such as may,

subject to the approval of the State Government, be determined by regulations made under this Act.

(4) The Managing Director shall be the executive head of the Corporation and all other officers and employees of the Corporation shall be subordinate to him.

9. Officers and other employees of the Corporation not to have any interest in contract etc :-

No person who has, directly or indirectly by himself or by his partner or agent, any interest in any contract, by or on behalf of the Corporation or in any work undertaken by the Corporation, shall become or remain an officer or other employee of the Corporation.

10. Power of State Government to Depute officers :-

The State Government shall for the purposes of this Act depute officers to the Corporation on such terms and conditions as may be prescribed.

11. Establishment of Construction and Engineering Wing :-

The Corporation shall establish construction in engineering wing for the purpose of the construction of housing and maintenance thereof as a part of welfare measure for the advocates coming under the purview of this Act:

Provided that the engineer from engineering cadre shall be deputed for the purpose of this Act from the Public Works Department of the State Government.

12. Conferment of powers on Managing Director :-

The Corporation may, subject to such conditions and limitations as it may specify, authorise the Managing Director to exercise such powers and perform such duties as it may deem necessary for the efficient administration of its business.

13. Authentication :-

All orders and decisions of the Corporation shall be authenticated by the signature of the Chairperson or any other member

authorised by the Corporation in this behalf and all other instruments issued by the Corporation shall be authenticated by the signature of the Managing Director or by any other officer of the Corporation authorised by the Managing Director in this behalf.

14. Functions of the Corporation :-

Subject to the provisions of this Act, the functions of Corporation shall be to undertake generally the task of such welfare of the advocates practising in the State of West Bengal, and on such terms and conditions, as may be prescribed.

15. Power of the Corporation :-

Subject to the provisions of this Act, the Corporation shall power-

(a) to acquire or hold such property, both movable and immovable, as the Corporation may deem necessary for the purpose of any of its functions and to lease, sell or otherwise transfer any property held by it;

(b) to purchase by agreement or to take on lease or under any form of tenancy any land and to erect thereon such buildings as may be necessary for the purpose of carrying on its undertakings;

(c) to enter into, or to perform, such contracts as may be necessary for the discharge of its functions and the exercise of its powers under this Act;

(d) to provide facilities for the consignment, storage and delivery of goods;

(e) to provide such stipends to the newly enrolled advocates for a period of one year or more as the State Government may by order determine;

(f) to provide housing facilities both rental and ownership basis to the advocates as per demand;

(g) to provide insurance coverage to all practising advocates who are below 60 years of age;

(h) to provide any other beneficial scheme like medical insurance, higher study loans, marriage loans, car purchase loans, etc.;

(i) to do with the prior approval of the State Government, all other things to facilitate the proper carrying on of the business and the functions of the Corporation.

16. Acquisition of land :-

The Corporation may take steps for acquisition of any land for discharging any of its functions under this Act in accordance with the provisions of the Land Acquisition Act, 1894.

17. The Corporation to act on business principles. :-

It shall be the general principle of the Corporation that in carrying on its undertakings it shall act on business principles.

18. Capital of the Corporation :-

The State Government may provide to the Corporation such capital as the State Government may consider necessary for the purpose of carrying out all or any of its functions under this Act, subject to such terms and conditions, not inconsistent with the provisions of this Act, as the State Government may determine:

Provided that any sum received from the Advocates Welfare Funds under the West Bengal Advocates Welfare Fund Act, 1991, shall also form a part of the capital of the Corporation.

19. Receipts into, and payments from, the general fund of the Corporation :-

All receipts of the Corporation shall be carried into its general fund and all payments by the Corporation shall be made therefrom.

20. Reserved and other funds :-

(1) The Corporation shall make such provisions for reserve and

other specially denominated funds as the State Government may from time to time direct.

(2) The management of the funds referred to in sub-section (1), the sums to be carried from time to time to the credit thereof and the application of the money comprised therein shall be determined by the Corporation.

(3) None of the funds referred to in sub-section (1) shall be utilised for any purpose not connected with the functions of the Corporation without the previous approval of the State Government.

21. Expenditure from fund :-

The Corporation shall have power to spend such sums as it thinks fit on objects authorised under this Act, and such sums shall be treated as expenditure payable out of the general fund of the Corporation or the funds referred to in sub-section (1) of section 20 as the case may be.

22. Budget :-

(1) The Corporation shall, by such date in each year as may be prescribed, prepare and submit to the State Government for approval the budget for the next financial year showing the estimated receipts and expenditure during that financial year in such form as may be prescribed.

(2) The Corporation may sanction any reappropriation within the grant from one head of expenditure to another or from a provision made for one work to that in respect of another, subject to the condition that the aggregate of the grant is not exceeded.

(3) The Corporation may, within such limits and subject to such conditions as may be prescribed, incur expenditure in excess of the limit provided in the budget approved by the State Government under any head of expenditure or in connection with any particular work.

(4) A copy of the budget shall be placed before the State Legislature as soon as may be after the budget has been approved by the State Government.

23. Audit by Auditor appointed by State Government :-

(1) The Corporation shall cause to be maintained books of account and other books in relation to its accounts in such form and in such manner as may be prescribed.

(2) The accounts of the Corporation shall be audited by the Auditor appointed by the State Government in this behalf at such times and in such manner as may be prescribed.

(3) As soon as the accounts of the Corporation have been audited, the Corporation shall send a copy thereof together with a copy of the report of the Auditor thereon to the State Government.

24. Power of State Government to issue instructions :-

The State Government may issue to the Corporation general instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, and the conditions of service and training, of its employees, the wages to be paid to the employees, the reserves to be maintained by it and the disposal of its property, movable or immovable, and the Corporation shall be bound to follow such instructions.

25. Furnishing of returns etc :-

(1) The Corporation shall furnish to the State Government such returns, statistics, accounts and other information with respect to its property or activities or in regard to any proposed work as the State Government may from time to time require.

(2) The Corporation shall furnish to the State Government an

annual report on its working as soon as may be after the end of each year and a copy of the annual report shall be placed before the State Legislature as soon as may be after it is received by the State Government.

26. Supersession of the Corporation :-

(1) The State Government may, by order published in the Official Gazette, supersede the Corporation for such period as may be specified in the order after giving a reasonable opportunity to the Corporation to show cause against the order proposed to be issued and after considering the objection, if any, of the Corporation:

Provided that it shall not be necessary to give any opportunity to the Corporation to show cause against the order proposed to be issued if the State Government is of the opinion that it is neither expedient nor necessary to do so in the public interest.

(2) Upon the publication of the order under sub-section (1) superseding the Corporation,-

(a) all the members of the Corporation shall as from the date of supersession vacate their respective offices as such members;

(b) all the powers and duties which may by or under the provisions of this Act or of any other law for the time being in force be exercised or performed by or on behalf of the Corporation shall during the period of supersession be exercised and performed by such person or persons as the State Government may direct;

(c) all property vested in the Corporation shall during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession as specified in the order issued under sub-section (1), the State Government may-

(a) extend the period of supersession for such further term as it may consider necessary, or

(b) reconstitute the Corporation in the manner provided in this Act for establishing the Corporation.

27. Liquidation of the Corporation :-

No provision of any law relating to the winding up of companies or corporations shall apply to the Corporation and the Corporation shall not be placed in liquidation save by order of the State Government and save in such manner as may be directed by the State Government.

28. Recovery of sums due :-

Any sum payable to the Corporation shall be recoverable as an arrear of land-revenue under the Bengal Public Demands Recovery Act, 1913.

29. Act not to apply in certain cases :-

The provisions of this Act shall not apply to an advocate-

(a) if he is not a member of a Bar Association; or

(b) if his name has been removed by the Bar Council from the State roll either under section 26A, or under clause (d) of sub-section (3) of section 35, of the Advocates Act, 1961; or

(c) if he is suspended from practice under clause (c) of sub-section (3) of section 35 of the Advocates Act, 1961:

Provided that the provisions of this clause shall not apply to him beyond the period of suspension; or

(d) if he is an undischarged insolvent; or

(e) if he is convicted by a competent court for an offence involving moral turpitude:

Provided that the provisions of this clause shall cease to apply to him on the expiry of a period of two years from the date of his release from jail or from the date of payment of fine by him in case he is sentenced to pay a fine only, as the case may be; or

(f) if he carries on any occupation, trade or business in contravention of the provisions of any law for the time being in force; or

(g) if he voluntarily suspends practice:

Provided that the provisions of this clause shall cease to apply to him upon the resumption of practice by him; or

(h) if he has received, by virtue of his service in any post and in accordance with the terms and conditions of such service, any financial benefit (including Provident Fund, Gratuity, Pension or Compensation) upon retirement, resignation, retrenchment or termination of service; or

(i) if he is a law officer or an employee of the Central Government or of any State Government or of any corporation or other body constituted under any law for the time being in force who has been enrolled as an advocate under the Advocates Act, 1961 and the rules made thereunder notwithstanding his being a full-time salaried employee.

30. Power to make rules :-

(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters which under any provisions of this Act, may be or are required to be prescribed or made by rules.

(3) Every rule made under this section shall, as soon as they are made, be laid before the State Legislature.

31. Power to make rules :-

31Regulations.

(1) The Corporation may, with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the time and place of meetings of the Corporation and the procedure to be followed in regard to transaction of business at such meetings;

(b) the conditions of appointment and service, and the scales of pay, of officers and other employees of the Corporation other than the Managing Director, the General Manager and the Chief Accounts Officer.

32. Power to remove difficulties :-

If any difficulty arises in giving effect to the provision of this Act, the State Government may, by order, not inconsistent with provisions of this Act, remove difficulties.