

GUJARAT LOCAL FUND AUDIT ACT, 1963

49 of 1963

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GUJARAT LOCAL FUND AUDIT ACT, 1963

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An Act to consolidate and amend the law, to provide for and regulate the audit of local funds under the management or control of certain local authorities in the State of Gujarat. It is hereby enacted in the Fourteenth Year of the Republic of India as follows:-

1. Short title, extent and commencement. :-

- (1) This Act may be called the Gujarat Local Fund Audit Act, 1963.
- (2) It extends to the whole of the State of Gujarat.

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

2. Definitions :-

In this Act, unless the context otherwise requires.-

(a) "auditor" means the Examiner or any other person empowered by the State Government to perform the functions of an auditor under this Act;

(b) "Chairman" means the president or chairman of the local authority and includes in the case of a dissolved or superseded local authority, the person or persons lawfully appointed to exercise the powers and perform the duties of such local authority ¹[and where such local authority is a gram panchayat, the expression "Chairman" includes the Sarpanch of such panchayat]:

(c) "detailed audit" means an audit of accounts for whole year:

(d) "Examiner" means an officer appointed by the State Government to be the Examiner of Local Fund Accounts² [and includes any officer appointed by the State Government to perform all or any of the functions of the Examiner under this Act generally or in respect of any class of local authorities].

(e) "local authority" means a local authority as defined in clause (26) of Section 3 of the Bombay General Clauses Act, 1904 (Bom. I of 1904), includes a school board constituted under the Bombay Primary Education Act, 1947 (LXI of 1947);

(f) "local fund" means any fund to the control or management of which a local authority is legally entitled and includes the proceeds of any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority:

(g) "prescribed" means prescribed by rules made under this Act:

(h) "special audit" means an audit of accounts pertaining to a specified item or series of items requiring through examination.

1. Inserted by Gujarat 7 of 1968.

2. Substituted by Gujarat 7 of 1968.

3. Liabilities of local authorities to submit their accounts for audit. :-

The accounts of any local authority whose accounts are declared by the State Government, by a notification in the Official Gazette, to

be subject to audit under this Act shall, notwithstanding anything contained in any enactment by which such local authority is constituted or in any rules made thereunder, be subject to audit in all respects in the manner provided by or under this Act.

4. Accounts to be submitted for audit at such period or periods as may be required. :-

The Chairman of every local authority, whose accounts are declared under Section 3 to be subject to audit under this Act, shall present or cause to be presented for audit all account of its local fund in such manner and form as may be prescribed to the auditor yearly or at such period or periods as may be required by the Commissioner.

5. Power of auditor to require production of documents and attendance of persons concerned etc. :-

(1) For the purpose of any audit under this Act, an auditor may-

(a) require in writing the production at the head office of the local authority of such vouchers, statements, returns, cor correspondence. notes or other documents in relation to the accounts as he may think fit:

(b) require in writing any salaried servant of the local authority accountable for, or having the custody or control of such vouchers, statements, returns, correspondence, notes or other documents or any person having directly or indirectly. by himself or his partner, any share or interest in any contract with or under the local authority to appear in person before him at the head office of the local authority, and answer any question:

(c) in the event of an explanation being required from the Chairman or other honorary officer or member of a local authority, in writing, invite such person .to meet him at the head office of the local authority and shall in writing specify the point on which his explanation is required:

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

(2) The auditor may, in any requisition or invitation made under sub-section (1), fix a reasonable period, not being less than three days, within which the said requisition or invitation shall be complied with.

(3) The auditor shall give to the local authority not less than two

weeks' notice in writing of the date on which he proposes to commence the audit.

(4) Notwithstanding anything contained in sub-section (3) the auditor may, for special reasons recorded in writing, give a notice of period lesser than two weeks or if the Government, the Commissioner or the Examiner so directs, commence a special or detailed audit without giving any notice.

6. Penalty for disobeying requisition under section 5. :-

.- (1) Any person who wilfully neglects or refuses to comply with any requisition lawfully made upon him under clause (a) or clause (b) of sub-section (1) of Section 5 shall be liable, on conviction before a Magistrate, to a fine which may extend to one hundred rupees.

(2) No proceedings under this section shall be instituted except on the written sanction of the Commissioner.

(3) Before giving sanction under sub-section (2), the Commissioner shall call upon the person to show cause why the sanction should not be given.

(4) No court inferior to that of a Magistrate of the first class shall try any offence against this Act.

7. Audit report to be sent to certain officers and bodies as State Government may direct. :-

As soon as practicable after the completion of the audit, but not later than three months thereafter, the Examiner shall prepare a report on the accounts audited and examined and shall send such report to the local authority concerned and copies thereof to such officers and bodies as the State Government may direct.

8. Contents of audit report. :-

The Examiner shall include in his report a statement of-

(a) every payment which appears to him to be contrary to law,

(b) the amount of any deficiency or loss which appears to have been caused by the gross negligence or misconduct of any person.

(c) the amount of any sum received which ought to have been but is not brought into account by any person, and

(d) any other material impropriety or irregularity which he may

observe in the accounts.

9. Local authority to remedy defects Procedure to be followed after report of the Examiner under Section 7. :-

(1) On receipt of a report under Section 7 .the Chairman shall remedy any defects or irregularities which may have been pointed out in the report, and shall place the report, together with a statement of the action taken or proposed to be taken thereon and an explanation in regard thereto before a meeting of the local authority. He shall also, within four months of the receipt of the report, send to the Examiner intimation of his having remedied the defects or irregularities, if any, pointed out in the report, or shall, within the said period, supply the Examiner any further explanation in regard to such defects or irregularities as the local authority may wish to give.

(2) On receipt of such intimation or explanation the Examiner may in respect of all or any of the matters discussed in his report.

(a) accept the intimation or explanation given by the Chairman and withdraw the objection, or

(b) direct that the matter be re investigated at the next audit or at any earlier date, or

(c) hold that the defects or irregularities pointed out in the report or any of them have not been removed or remedied.

(3) The Examiner shall send a report of his decision to the Commissioner within one month of the date of the receipt by him of the intimation or explanation of the Chairman referred to in sub-section (1) or in the event of the Chairman failing to give such intimation or explanation, on the expiry of the period of four months mentioned in the said sub-section and shall forward to the Chairman a copy of such report specifying therein in particular the portions thereof to be published under sub-section (4). If the Examiner holds that any defects or irregularities have not been removed or remedied he shall state in the report whether, in his opinion, the defects or irregularities can be regularised and if so, by what method; and if they do not admit of being regularised, whether they can be condoned and, if so, by what authority, he shall also state whether the amounts to which the defects or irregularities relate should, in his opinion, be surcharged or charged:

Provided that in the case of report on the accounts of such local authorities as are specially notified by the State Government in this behalf the report referred to in this sub-section shall be sent by the Examiner to such officer, being the head of a department as the State Government may direct specifying therein in particular the portions thereof to be published under sub section (4). Such officer shall take such action as may be necessary regarding any defects or irregularities falling under clause (c) of sub-section (4) which may have been brought to notice in the report. If he is of the opinion that the amounts to which any such defects or irregularities relate should be sur-charged or charged he shall forward the report to the Commissioner together with his recommendation in that behalf.

(4) The local authority concerned shall publish in its next administration report, such portions of the report under Section 7 as deal with defects and irregularities falling under clause (c) of sub-section (2) together with the explanation thereof, if any, given under sub-section (1) and the final report of the Examiner thereon under sub-section (3). Such report of defects and irregularities, explanation-and final report shall be open to the inspection of the public at the office of the local authority for a period of one month from the date of their receipt and shall also be published in the Gujarati language in any news paper circulating in the district selected by the local authority within one month of the receipt by it of the copy of the report sent to the Commissioner under sub-section (3):

Provided that-

(i) a local authority, whose annual income is less than Rs.1,00,000 but exceeds Rs. 50,000 may. instead of so publishing the whole of such report of defects and Irregularities. explanation and final report in such newspaper, publish in such newspaper a summary thereof in the Gujarati Language, and

(ii) a local authority, whose annual income is Rs. 50,000 or less, may. Instead of so publishing such report of defects and irregularities, explanation and final report in the newspaper, publish the same by affixing a copy thereof at its office and at such other conspicuous places within its limits as it may think fit and simultaneously notify in the Gujarati language in a newspaper circulating in the district selected by the local authority the fact of such publication.

(5) If the Chairman fails to give the intimation or explanation referred to in sub-section (1) within the period therein mentioned the Commissioner may, at the instance of the Examiner, publish in the Gujarati language the whole of the Examiner's report under Section 7 . or such portions thereof as are specified by the Examiner under sub-section (3), together with any observations which the Commissioner may make thereon in any newspaper circulating in the district which the Commissioner may select and the cost of such publication shall be forthwith paid by the local authority concerned. If such cost is not so paid, the Commissioner may make a n order directing any person, who for the time being has custody of any moneys on behalf of the local authority, as its officer, treasurer, banker or otherwise, to pay the amount of such cost from such moneys as he may have in his hands or may from time to time receive, and such person shall be bound to obey such order. Every payment made pursuant to such order shall be sufficient discharge to such person from all liability to the local authority in respect of any amount paid by him out to the money of the local authority so held by him.

(6) Nothing in this section or in Section 8 shall preclude the Examiner at any time from bringing to the notice of the Commissioner, for such action as the Commissioner may consider necessary, any information which appears to the Examiner to support a presumption of criminal misappropriation or fraud or which in his opinion deserves special attention or immediate investigation.

10. Commissioner to surcharge or charge illegal payment or loss caused by gross negligence or misconduct. :-

(1) The Commissioner may, after considering the recommendation of the Examiner or. as the case may be. of any head of a department, under sub-section (3) of Section 9 and after taking the explanation of the person concerned or making such further inquiry, as he may consider necessary. disallow any item which appears to him to be contrary to law and surcharge the same on the person making, or authorizing the making . of, the illegal payment: and may charge against any person responsible therefor the amount of any deficiency or loss caused by the gross negligence or misconduct of that person, or any sum received which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such

person.

(2) The Commissioner shall state in writing the reasons for his decision in respect of every surcharge or charge and shall send by registered post a copy thereof to the person against whom it is made.

(3) If a person to whom a copy of the Commissioner's decision is sent under sub-section (2) refuses to take delivery thereof he shall be deemed to have duly received it on the day on which it was refused by him.

11. Recovery of surcharges and charges how made. :-

(1) Every sum certified by the Commissioner to be due from any person under sub-section (1) of Section 10 shall be paid by such person into the treasury or bank in which the funds of the local authority concerned are lodged, within one month from the receipt by him of the decision of the Commissioner, unless within that time such person has applied to the Court or to the State Government as provided in Section 12 .

(2) The said sum, if not duly paid or, if an application has been made to the Court or to the State Government against the decision of the Commissioner as provided in sub-section (1) of Section 12 , then-

(i) such sum as the Court shall declare to be due. shall be recoverable, on an application made by the Collector to the Court, in the same way as an amount decreed by the Court in favour of the Collector:

(ii) such sum as the State Government shall declare to be due, shall be recoverable as arrears of land revenue under the law relating to collection of land revenue in force in the area.

12. Application against order of surcharge or charge. :-

(1) Any person aggrieved by any order of surcharge or charge made by the Commissioner under sub-section (1) of Section 10 may. within one month from the receipt by him of the decision of the Commissioner. either-

(a) apply to the District Court to set aside such order: and the Court, after taking such evidence as it thinks necessary. may confirm, modify or remit such surcharge or charge and make such

order as to costs as it thinks proper in the circumstances: or

(b) in lieu of such application apply to the State Government which shall pass such orders thereon as it thinks fit.

(2) Pending disposal of the application all proceedings on the certificate shall be stayed if the person aggrieved makes out a prima facie case for a stay order.

13. Expenses in respect of requisitions of auditors to be payable out of local fund. :-

All expenses incurred by a local authority in complying with any requisition of an auditor under sub-section (1) of Section 5 shall be payable out of its local fund.

14. Rules. :-

(1) The State Government may make rules, not inconsistent with this Act, for the purpose of carrying into effect the provisions 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 following matters, namely:-

(a) the manner and form in which the accounts of a local authority whose accounts are subject to audit under this Act, shall be kept and presented:

(b) the powers and duties of auditors and the procedure to be followed by them for conducting an audit and the times at which such audit may be conducted:

(c) the manner in which all matters required to be published under this Act shall be published: and

(d) any other matter which is expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or such modification as the State Legislature may make during the session in which they are so laid, or the session

immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

15. Repeal and Savings. :-

(1) On the commencement of this Act the Bombay Local Fund Audit Act, 1930 (Bom. XXV of 1930), that Act as applied to the Kutch area of the State and the Saurashtra Local Fund Audit Act, 1952 (Sau. Act VII of 1952) shall stand repealed.

(2) The provisions of the Bombay General Clauses Act 1904 (Bom. 1 of 1904), apply to such repeal:

Provided that anything done or any action taken under the provisions of the Acts hereby repealed shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force until superseded by anything done or any action taken under the provisions of this Act:

Provided further that the repeal of the Bombay Local Fund Audit Act, 1930 (Bom. XXV of 1930). shall not affect the continuance of amendments made Section 16 thereof in the Bombay District Municipal Act, 1901 (Bom. III of 1901) and the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925).