

Kerala Fishermen Debt Relief Commission Act, 2008

18 of 2008

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An Act to provide for urgent relief to the fishermen who are in distress due to indebtedness, by constituting a Commission for recommending relief measures to such fishermen and for solving their problems through conciliation, negotiation and adjudication and for matters connected therewith or incidental thereto; WHEREAS, majority of the traditional fishermen, earning livelihood by fishing in sea and in inland waters, are now entrapped in great indebtedness; AND WHEREAS, loan was obtained in large scale from various agencies, banks and individuals for the purchase of

fishing equipments and the situation of inability to repay the debt exist for years due to disgust in production, fall in price and unemployment and exploitation by intermediaries and the liability of debt has been accruing; AND WHEREAS, the liability of fishermen is increasing due to natural calamities, sea erosion, Tsunami and the ruins due to monsoon etc., occurring again and again the loss of work and the losses caused to the fishing equipments etc; AND WHEREAS, they are entrapped in great indebtedness and are unable to repay their loan obtained for years with interest; AND WHEREAS, it is expedient to provide for urgent relief to the Fisherman who are in distress due to indebtedness by constituting a commission for recommending appropriate relief measures to such fishermen and for solving their problems through conciliation negotiation and adjudication and for matters connected therewith or incidental thereto; BE it enacted in the fifty-eighth year of the Republic of India as follows:-

1. Short Title And Commencement :-

(1) This Act may be called the Kerala Fishermen Debt Relief Commission Act, 2008.

(2) It shall come into force at once.

2. Definitions :-

In this Act, unless the context otherwise requires,-

(i) "appropriate level of debt" means the amount of debt to be repaid by the debtor as determined by the Commission under clause (b) of sub-section (1) of section 5 of this Act;

(ii) "Commission" means the Kerala state Fishermen Debt Relief Commission constituted under section 3;

(iii) Co-operative society means a society registered or deemed to have been registered under the Kerala Co-operative societies Act, 1969 (21 of 1969);

(iv) Creditor means any person engaged in money lending, whether under a licence or not and includes his heirs, legal representatives, assignees, middle men and includes any other person as may be notified by the Government;

(v) debt means any liability, in money, whether secured or unsecured, due from a fisherman whether payable under a contract, or under a decree or order of any Court or Tribunal, or otherwise and includes,-

(a) any sum payable to;

- (i) an institutional creditor;
 - (ii) a co-operative society;
 - (iii) a Fishermen society;
 - (b) any sum received from a creditor by a fisherman;
 - (c) any type of loan taken by a fisherman from financial institutions and specified by the Government by Notification;
- but does not include any loan amount taken by a fisherman for commercial purposes or luxury other than fishing purposes to augment his income and the amount payable to Central or State Governments or other State Governments or Governments of Union Territories and the amount due to Local Self Government Institutions, Statutory bodies, Central or State Public Sector Undertakings or other Institutions as may be specified by the Government by notification;
- (vi) disaster affected area means districts/district or the fishermen zones forming part thereof in the State, declared by the Government under section 6, for the purpose of this Act, on the recommendations of the Commission;
 - (vii) "district" means a revenue district;
 - (viii) fair rate of interest means the rate of interest determined by the Commission under clause (b) of sub-section (1) of section 5 of this Act;
 - (ix) "financial institution" means any financial institution constituted by or under any Central Act or State Act for the time being in force and owned and controlled by the Government.";
 - (x) fish means various bio-aquatic resources caught from sea or backwater or other reservoirs of water and also includes any other aquatic resources as may be specified by the Government by notification;
 - (xi) fishermen welfare society means society constituted under the Kerala Fishermen Welfare Societies Act, 1980 (7 of 1981);
 - (xii) fishing means,-
 - (a) fishing by traditional method or by using traditional or mechanised vessels.
 - (b) sale of sea water/fresh water/saline water fish products by the family members of a fisherman by travelling to various places by two wheelers or by head load.but does not include fishing by using mechanised boat, for which licence has to be taken under section 6 of the Kerala Marine Fishing Regulation Act, 1980 (10 of 1981) and as may be specified by the Government by the Notification.
 - (xiii) fisherman means, a person who accept fishing as the foremost

means of livelihood and whose annual income does not exceed the annual income limit fixed by the Government from time to time and it includes the widow of a fisherman;

(xiv) Government means the Government of Kerala;

(xv) interest means any amount payable in excess of the principal amount borrowed or pecuniary obligation incurred, by whatsoever name such amount may be called, whether the same is expressly mentioned or not in the document or contract, if any;

(xvi) institutional creditor means the State Bank of India or any Subsidiary Bank within the meaning of clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959 or any Nationalised or Scheduled Bank;

(xvi) member means a member of the Commission and includes the Chairperson;

(xvii) penal interest means any amount payable in excess of interest on a debt;

(xviii) prescribed means prescribed by the rules made under this Act;

(xix) principal amount means the amount originally advanced together with the amount, if any, as has been subsequently advanced, notwithstanding any stipulation to treat any interest as capital and notwithstanding that the debt has been renewed, whether by the same fisherman or by his heirs, assignees, or legal representatives or by any other person acting on his behalf or on his interest, and whether in favour of the same creditor or his heirs, assignees or of any other person acting on his behalf or on his interest;

(xx) secretary means the secretary to the Commission appointed under sub-section(5) of section 3;

3. Constitution Of The Commission :-

(1) For the purpose of exercising the powers and discharging the duties under this Act, the Government shall, as soon as may be after the commencement of this Act, by notification in the Gazette, constitute a Commission by name, "the Kerala State Fishermen Debt Relief Commission".

(2) The Commission shall consists of five members, namely:-

(i) a retired High Court Judge - Chairperson;

(ii) an expert in fisheries, social, technical, and financial administration - Member;

(iii) three representatives of fishermen - Members

(3) The Chairperson and members shall be nominated by the Government.

(4) The Government shall, appoint a Secretary and other employees as may be necessary, to assist the Commission in such manner as may be prescribed.

(5) In the discharge of their duties, the Secretary and other employees referred to in sub-section (4) shall be subject to the administrative control of the Chairperson.

4. Term Of The Commission And The Conditions Of Service Of The Members :-

(1) The term of the Commission shall be three years:

Provided that, the Government, as it deems necessary, may extend the term to such period.

(2) A member may, by writing in his own hand addressed to the Government, resign his office at any time.

(3) A vacancy arising by reason of resignation of any member of the Commission under sub-section (2) or otherwise shall be filled up within three months in accordance with the provisions contained in section 3 of this Act:

Provided that the person so appointed shall hold office only for the remaining period of the term of the person, in whose place he is appointed.

(4) Government may remove any member, if he,-

(a) is declared as an undischarged insolvent;

(b) becomes incapable of continuing as such, due to physical or mental disability;

(c) becomes unsound mind and stands so declared by a court of competent jurisdiction;

(d) has been convicted for an offence, which in the opinion of the Government, involves moral turpitude or financial irregularities;

(e) has, in the opinion of the Government, abused his official position so as to render his continuance in office prejudicial to the public interest;

(f) has, in the opinion of the Government committed nepotism or corruption.

(5) The Commission shall regulate its own procedure for the conduct of its business.

(6) The salary, allowances and other conditions of service of the Chairperson and members shall be such as may be prescribed.

5. Powers And Duties Of The Commission :-

(1) The Commission shall have all such powers as are necessary for achieving the objects of this Act, and in particular,--

(a) to recommend to the Government on application or otherwise, after such enquiry as the Commission may deem fit, and on the basis of the general criteria as may be prescribed by the Government to declare any districts or district or fishermen zone forming part thereof as disaster affected area for a proposed period;

(b) to determine, in the case of creditors other than institutional creditors, a fair rate of interest and an appropriate level of debt, as it may consider just and reasonable to be payable by the indebted fisherman in the distress affected area;

(c) to undertake conciliation for the settlement of disputes between the indebted fishermen and the creditors other than institutional creditors, on the basis of the fair rate of interest and appropriate level of debt determined under clause (b);

(d) to adjudicate the disputes between indebted fishermen in the disaster affected area and the creditors, other than institutional creditors, and to pass awards which shall be binding on both parties:

Provided that before passing an award as per this clause the creditor shall be given an opportunity of being heard;

(e) to enter into negotiations with the creditors, for loan waiver, the interest rate relief, the loan rescheduling or loan moratorium to the fishermen in the disaster affected areas;

(f) to recommend the Government regarding the extent and the manner in which the debt relief to be granted to the fishermen;

(g) to recommend to the Government to take over the whole or part of the debt and exonerate the fishermen, from the consequences of the debt;

(h) to recommend to the Government to do such acts as may be necessary to ensure that future credit requirements of the fishermen are met through such agencies, as may be prescribed;

(i) to make periodical reports to the Government generally on any matter pertaining to fishermen indebtedness; and

(j) to perform such other functions and exercise such other powers, as may be prescribed.

(2) Issue orders keeping in abeyance with the repayment of all debts of fishermen in the distress affected areas to the creditors other than institutional creditors considering the shortage in the availability of fish, fall in price, loss due to natural calamity etc. for

a period of time limit not exceeding the period between six months and one year.

Provided that the issuance of orders shall be subject to the awards and directions of Commission under sub-section (1).

(3) Notwithstanding anything contained in any other provisions of this Act, the limit of debt relief granted to a fisherman by way of waiver in the principal, interest and penal interest, shall not exceed the limit as may be fixed by the Government from time to time.

(4) An award passed by the Commission under clause (d) of sub-section (1) shall be final and shall not be called in question in any court.

(5) The awards of the Commission as per clause (d) of sub-section (1) may be executed as a decree of Civil Court under the provisions of Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(6) The Commission shall, for the purpose of exercising the powers conferred by or under this Act, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely: -

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit;

(d) issuing commission for the examination of witnesses or for local investigation;

(e) inspecting any property or thing concerning with any decision has to be taken;

(f) requisitioning of any public record or copy thereof from any court, authority or office; and

(g) any other matter which may be prescribed.

6. Declaration As Disaster Affected Area :-

(1) As soon as after the receipt of a recommendation under clause (a) of sub-section (1) of section 5, Government shall take appropriate decision within the time limit as may be prescribed and accordingly may declare the concerned Districts or District or fishermen zones forming parts thereof as disaster affected area.

(2) Notwithstanding anything contained in any other provisions of this Act, with respect to all debts of the fishermen till 31st day of December, 2007 the entire State of Kerala shall be deemed as disaster affected area.

7. Application For Debt Relief :-

A fisherman claiming any debt relief under this Act, shall file an application before the Commission in such manner and in such form, as may be prescribed.

8. Sitting Of The Commission :-

(1) The Commission shall hold its sittings at such places and at such time as may be determined by it:

Provided that the Commission shall hold its sittings in the respective district or districts declared as disaster affected area for considering matters related to the disaster affected area.

(2) The Commission may while holding sitting in a district, invite the following persons as observers to attend its proceedings, namely:-

(a) the Members of Lok Sabha, representing the concerned constituencies of the district;

(b) the Members of Legislative Assembly representing the concerned Constituencies of the district;

(c) the District Collector;

(d) the District Panchayat President;

(e) the Chairpersons of the concerned Municipalities and Presidents of the Grama Panchayats and Block Panchayats of the district; and

(f) representatives nominated by the Government from the fishermen organisations of the concerned district.

(3) The quorum for the sitting of the Commission shall be three.

(4) The Commission may, in appropriate cases it deems fit, hold sittings in districts by constituting a Bench consisting of two or more members:

Provided that a member representing fisherman in the Commission shall be included in the Bench so constituted.

9. Special Provisions In Respect Of Settlement Of Certain Loans Taken By A Fisherman Of Disaster Affected Area :-

(1) Notwithstanding anything contained in this Act or in any other law or contract or decree or order of any Court or Tribunal, a member authorised by the Commission shall have power, through mutual understanding to, -

(a) reschedule short-term loans into medium term loans and medium term loans into long term loans availed of by the fisherman of a disaster affected area from commercial banks or other scheduled banks; or

(b) provide necessary facilities for one time settlement of loans falling under the category of non-performing assets, as per the guidelines issued by the Reserve Bank of India; or

(c) waive interest penal interest, or both, as per the norms fixed by the Reserve Bank of India, with the concurrence of the Reserve Bank of India and the National Bank for Agriculture and Rural Development.

(2) Where any settlement of loan is made under sub-section (1), the fisherman shall be bound to repay such loan with interest to the bank within the period as per the settlement provision.

10. Re-Scheduling Of Loans Taken By A Fisherman From Financial Institutions :-

(1) Notwithstanding anything contained in this Act or in any other law or contract or decree or order of any Court or Tribunal, the Commission may reschedule the recovery of loans availed by the fisherman of a disaster affected area due on or before the date of declaration as disaster affected area under section 6 from any financial institution owned or fully controlled by the Government.

(2) Where the rescheduling of the loan is made under sub-section (1), the fisherman shall be bound to repay such loan with interest to the financial institution concerned within the period allowed by Commission:

Provided that the Commission may, on application by the fisherman, exempt repayment for such rescheduled period, by order, for reasons to be recorded:

Provided further that the fisherman shall be bound to repay the same on such later dates as may be fixed by the Commission.

11. Bar Of Suits, Applications, Criminal Proceedings And Other Proceedings :-

No suit for recovery of debt shall be instituted, or application for execution of a decree in respect of a debt shall be made against a fisherman residing in a disaster affected area and no appeal, revision petition or application for review against any decree or order in any such suit or application shall be presented or made against such a fisherman in any Civil Court, or Tribunal or other authority, and such suits, applications, appeals and petitions instituted or made against such a fisherman before the date of declaration of a district or part thereof as a disaster affected area and pending on such date shall stand stayed, for such period as the

Commission may recommend in that behalf.

12. Payment Of Debt In Installments :-

(1) Notwithstanding anything contained in any law or contract or in any decree or Order of any Court or Tribunal, a fisherman of a disaster affected area may discharge his debts in suitable instalments together with fair rate of interest as recommended by the commission on the principal amount outstanding at the time of each payment in the manner as may be directed by the Commission and on payment of the same in the manner directed by the Commission, the whole debt shall be deemed to be discharged.

(2) Where any instalment of a debt is not paid on the due date as directed by the Commission, the creditor shall be entitled to recover the same in the manner as may be determined by the Commission: Provided that before taking a decision by the commission under this section, the fisherman shall be given an opportunity of being heard.

13. Annual Report To Be Laid Before The Legislative Assembly :-

(1) The Commission shall prepare a report of its function of that year under this Act and the same shall be submitted to the Government in such form on or before such date as may be prescribed.

(2) The Annual Report submitted to the Government by the Commission under sub-section (1) shall be laid before the Legislative Assembly as soon as may be, after the same is received by the Government.

14. Accounts And Audit :-

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in the form as may be prescribed.

(2) The accounts of the Commission shall be audited annually and the audit report shall be laid before the Legislative Assembly.

15. Overriding Effect Of The Act :-

The provisions of the Act or any rule or order made thereunder shall have effect, notwithstanding any thing inconsistent therewith contained in any law, other than this Act, or any instrument having effect by virtue of any law other than this Act.

16. Members Of The Commission To Be Public Servant :-

Every member of the Commission nominated under sub-section (1) of section 3 and the Secretary and other employees appointed under sub-section (4) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code 1860 (Central Act 45 of 1860).

17. Protection Of Action Taken In Good Faith :-

No suit or legal proceeding shall lie against any member of the Commission or Secretary or other Officers for anything which is done or purported to be done in good faith under this Act.

18. Bar Of Jurisdiction Of Civil Court :-

No Civil Court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under the Act or the rule made thereunder are required to be settled, decided or dealt with or to be determined by the Commission or the Government:

Provided that nothing in this section shall be applicable to the execution proceedings under sub-section (5) of section 5.

19. Power To Remove Difficulties :-

(1) If any difficulties arises in giving effect to the provisions of this Act, the Government may, by order, as occasion may require, do anything not inconsistent with the provision of the Act which appears to them necessary for the purpose of removing difficulties:

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid before the Legislative Assembly.

20. Power To Make Rules :-

(1) The Government may, by notification in the Gazette, make rules to carry out the provisions of this Act.

(2) Every rule made under this section, shall be laid as soon as may be after its 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 any thing previously done under that rule.