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Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001

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ACT 18 OF 2001

THE KERALA PROTECTION OF RIVER BANKS AND
REGULATION OF REMOVAL OF SAND ACT, 2001 [1]

AN ACT to protect river banks and river beds from large scale dredging of river sand and to protect their biophysical environment system and regulate the removal of river sand and for matters connected therewith or incidental thereto.

Preamble.--WHEREAS it has come to the notice of the Government that indiscriminate and uncontrolled removal of sand from the rivers cause large scale river bank sliding and loss of property;

AND WHEREAS large scale dredging of river sand also disturb the biophysical environment system of the river in different degrees;

AND WHEREAS due to the executive regulatory orders in force, complaints have been received regarding the hardship to the employees engaged in construction works;

AND WHEREAS, in the public interest, it is expedient to provide for regulatory measures for the protection of river banks and removal of sand from rivers;

BE it enacted in the Fifty-second year of the Republic of India as follows:--

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement.--(1) This Act may be called the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

(2) It extends to the whole of the State of Kerala.

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

2. Definitions.-- In this Act, unless the context otherwise requires,--

(a) "District Collector" means the Collector of the District;

(b) "District Expert Committee" means the District Expert Committee constituted under section 3;

(c) "Fund" means the River Management Fund maintained under section 17;

(d) "Government" means the Government of Kerala;

(e) "Kadavu" means a river ban, or water body where removal of sand is carried out;

(f) "Kadavu Committee" means the Kadavu Committee constituted under section 4;

(g) "Local Authority" means a Village Panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994) or a Municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(h) "Municipality" means a Town Panchayat or a Municipal Council or Municipal Corporation constituted under the Kerala Municipality Act, 1994 (20 of 1994);

(i) "Notification" means a notification published in the Gazette under this Act;

(j) "Prescribed" means prescribed by the rules made under this Act;

(k) "Section" means a section of this Act;

(l) "Grama Panchayat" means a Village Panchayat constituted under section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(m) "Block Panchayat" means a Block Panchayat constituted under section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(n) "District Panchayat" means a District Panchayat constituted under section 4 of the Kerala Panchayat Raj Act, 1994 (13 of 1994).

CHAPTER II

CONSTITUTION OF COMMITTEES

3. Constitution and composition of the District Expert Committee.--(1) As soon as may be, after the commencement of this Act, the Government shall, by notification constitute an Expert Committee for each district in the State with effect from such date, as may be specified in the notification.

(2) Every District Expert Committee shall consist of the following members, namely:-

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(a) the District Collector--Ex-officio

(b) a representative nominated by the Government from among the members of the District Panchayat representing any area abutting any river of the district;

(c) the District Labour Officer--Ex-officio

(d) the Superintendent of Police in charge of Law and Order in the district--Ex-officio

(e) the Deputy Director of Panchayat--Ex-officio

(f) a Municipal Chairman/Chairperson from among the Chairman/Chairpersons of the Municipal Councils abutting any river in the district-- to be nominated by the Government;

(g) two persons from among the Presidents of the Grama Panchayat abutting any river in the district-- to be nominated by the Government;

(h) one President from among the Presidents of the Block Panchayats abutting any river in the district-- to be nominated by the Government;

(i) a Hydrologist-- to be nominated by the Government;

(j) one Executive Engineer of the Irrigation Department working in this district;

(k) an Engineer not below the rank of an Executive Engineer of the Kerala Water Authority working in the district-- to be nominated by the Government;

(l) two environmentalists associated with river protection activities-- to be nominated by the Government;

(m) an Engineer (Roads and Bridges) of the Public Works Department, not below the rank of an Executive Engineer and working in the district to be nominated by the Government;

(n) the Geologist/District Officer, Department of Mining and Geology--Ex-officio;

(o) one Divisional Forest Officer-- to be nominated by the Government.

(3) The District Collector shall be the Chairman and the Executive Engineer of the Irrigation Department shall be the Convenor of the District Expert Committee.

(4) The District Expert Committee shall meet at such times and at such places as the Chairman may decide and exercise such powers and functions as may be conferred under this Act and the rules made thereunder.

4. Constitution and Composition of Kadavu Committee.--(1) For the purpose of regulating the removal of sand in every Kadavu or river bank situated in a district, the District Collector shall constitute for each Kadavu or river bank a Kadavu Committee called by the name of that place where the Kadavu or river bank is situate, consisting of the following members, namely:--

(a) the President of the Grama Panchayat or the Chairman/Chairperson of the Municipality of the concerned Kadavu--Ex-officio;

(b) the secretary of the Grama Panchayat or the Secretary of the Municipality of the area--Ex-officio;

(c) the Assistant Labour Officer of the area--Ex-officio;

(d) the Grama Panchayat Member or the Municipal Councillor of the area--Ex-officio;

(e) the Assistant Engineer of Irrigation Department having jurisdiction in the area--Ex-officio;

(f) the Assistant Engineer, (Roads and Bridges) of the Public Works Department having jurisdiction in the area--Ex-officio;

(g) the Assistant Engineer of the Kerala Water Authority having jurisdiction in the area--Ex-officio;

(h) the Village Officer having jurisdiction in the area--Ex-officio;

(i) two Environmentalists to be nominated by the District Collector.

(2) The President of the concerned Grama Panchayat or, as the case may be, the Chairman/Chairperson of the Municipality shall be the Chairman of the Kadavu Committee and the Secretary of the Grama Panchayat or, as the case may be, the Secretary of the Municipality shall be the Convenor of the Kadavu Committee.

(3) The Kadavu Committee shall meet at such times, and at such places as the Chairman may decide and exercise such powers and functions as may be conferred under this Act and the rules made thereunder.

5. Term of Office.--(1) Save as otherwise provide in this Act, the terms of office of the members of the District Expert Committee and, as the case may be, the Kadavu Committee other than the Ex-officio and official members, shall be three years from the date of nomination and shall be eligible for re-nomination.

(2) A member referred to clause (1) of sub-section (2) of section 3 and clause (i) of sub-section (1) of section 4 may resign his office by giving notice in writing thereof to the Government or, as the case may be, to the District Collector concerned and shall cease to be a member on his resignation being accepted by the Government or, as the case may be, the District Collector concerned.

6. Acts of District Expert Committee and Kadavu Committee not to be invalidated by infirmity vacancy etc.--No Act done or proceeding taken by the District Expert Committee or the Kadavu Committee shall be invalidated merely by reason of,--

(a) any vacancy in, or any defect in the constitution of the aforesaid Committees;

(b) any irregularity in the procedure of the aforesaid Committee not affecting the merits of the case.

7. Vacancies.--(1) Any vacancy caused in the District Expert Committee, as the case may be, the Kadavu Committee shall be filled up as early as possible by nomination by the Government, as the case may be, by the concerned District Collector.

(2) Any person so nominated to fill up a casual vacancy shall hold office only so long as the member in whose vacancy he is nominated would have been entitled to hold office, if the vacancy had not occurred.

8. Meetings of the District Expert Committee.--(1) The District Expert Committee shall meet at least once in three months in a year.

(2) One third of the total number of members shall be the quorum for a meeting.

(3) The Chairman may nominate one among the members to preside over the meeting, in his absence.

9. Power and Functions of the District Expert Committee.-- Subject to the other provisions of this Act and the rules made thereunder, the District Expert Committee shall have the following powers and functions, namely:--

- (a) to identify the Kadavu or river bank in a district in which sand removal may be permitted;
- (b) to fix the total quantity of sand that can be removed from a Kadavu or river bank giving due regard to the guidelines of expert agencies like the Centre for Earth Science Studies and Centre for Water Resources Development and Management;
- (c) to control the transportation of sand from a Kadavu or river bank to another area;
- (d) to close a Kadavu or river bank opened for sand removal;
- (e) to ensure the protection of river banks and keep them free from encroachment;
- (f) to consider the opinion of the Kadavu Committee and take suitable measures to achieve the objectives of this Act;
- (g) to ensure that the Kadavu Committees of the District are performing their powers and functions conferred on them by this Act;

(h) to advise the Government on the measures to protect the biophysical environmental system of the river banks;

(i) to recommend to the Government the necessity to ban sand removal from any river or Kadavu during any season of the year;

(j) to carry out the Directions given by the Government, from time to time;

(k) to exercise such other powers and perform such other duties as are conferred on it by this Act and rules made thereunder;

(l) to advise on any other matter to carry out the provisions of this Act.

10. Meeting of the Kadavu Committee.--(1) The Kadavu Committee shall meet at least once in every month.

(2) One-third of the total number of members shall be quorum for the meeting.

(3) The Chairman may nominate one among the members to preside over the meeting, in his absence or if in any circumstances, nomination is not possible the members at the meeting may nominate a person to hold the position.

11. Powers and functions of the Kadavu Committee.--Subject to the other provisions of this Act and the rules made thereunder, the Kadavu Committee shall supervise and monitor all activities of sand removal and recommend to the District Expert Committee on the following matters, namely:--

(a) the suitability of the Kadavu or river bank for sand removal;

(b) the quantity of sand that may be removed from a particular Kadavu;

(c) the additional measures to be taken for protection of the Kadavu or river bank;

- (d) the necessity to ban sand removal during any season of the year;
- (e) to recommend to the Grama Panchayats and the Municipalities for publication of list of country boats used for and labourers engaged in sand removal operations;
- (f) to carryout the instructions issued by the Government and the District Expert Committees, from time to time; and
- (g) advise on any other matter to carry out the provisions of this Act.

CHAPTER III

PROTECTION OF RIVER BANKS AND BIO-PHYSICAL

ENVIRONMENT SYSTEMS OF THE RIVER

12. General conditions for the sand removal operations in a Kadavu.--(1) The Grama Panchayat or the Municipality concerned shall, before carrying out the sand removal operation obtain passes from the Geology Department which shall issue them on the recommendation of the District Expert Committee for a period of one month in advance, on payment of royalty as provided for in the law applicable for the payment of royalty.

(2) No sand removal operation shall be carried out in a Kadavu before 6 a.m. and after 3 p.m.

(3) The Grama Panchayat or Municipality concerned shall subject to the other provisions of this Act and the rules made thereunder, make necessary arrangements to carry out the sand removal operations.

(4) Removal of sand shall be permitted only from the riverbed and no sand removal operation shall be done within 10 metres of the river bank.

(5) No sand removal operation shall be done within a distance of 500 metres from any bridge or any irrigation project.

(6) The vehicle for loading sand shall be parked at a distance of at least 25 metres from the river bank, and no vehicle shall be brought to the river bank for loading.

(7) No sand removal shall be done in a Kadavu or river bank in excess of the quantity fixed by the District Expert Committee.

(8) No 'Kollivala', pole scooping or any mechanized method shall be carried out in the sand removal operation.

(9) No sand removal shall be done where there is likelihood of saline water mixing with river water.

(10) No sand removal shall be done in a river or in any river bank where Government have expressly prohibited the same by general or special order.

13. Power of Government or District Collector to order closure of Kadavu or river bank.--(1) Notwithstanding anything contained in this Act, or in any decree or order of any Court, the Government may, for sufficient reasons by general or special order, direct for the closure of a Kadavu opened for sand removal.

(2) The District Collector may notify the ban on sand removal from any river or river bank during any period particularly during monsoon season in a year based on a report from the District Expert Committee or otherwise that dredging of sand disturbs the bio-physical environment system of the river:

Provided that the order of ban shall not extend beyond a period of two weeks at a time, which may be extended for a further period not exceeding two weeks.

(3) Notwithstanding anything contained in any other law, for the time being in force, the provisions of the Land Conservancy Act, 1957 or the provisions of Code of Criminal Procedure, 1973 shall apply for the removal of any encroachment or obstruction in any river bank or Kadavu.

(4) The Government may notify the rivers and the period for which and removal from such rivers shall not be allowed.

14. Control on price of sand etc.--(1) The Kadavu Committee shall, after taking into account the availability and accessibility of sand in any area, fix the price of sand for each Kadavu;

(2) The price to be fixed under sub-section (1) shall be by public auction.

(3) The price of sand to be fixed by public auction shall include expenses towards loading sand in vehicle and the labour charges as fixed by the Kadavu Committee.

15. Obligation of the Local Authorities to maintain the Kadavu or river banks in safe condition.--(1) Every Local Authority in the State having Kadavu or river bank for sand removal shall maintain such Kadavu or river bank in a safe condition and protect its bio-physical environment system by taking effective steps to control river bank sliding.

(2) Every local authority shall erect concrete pillars at the Kadavu or river bank in such a way that no vehicle shall have direct access to the bank of the river.

(3) The local authority shall establish a check post at each Kadavu or riverbank and maintain proper account of the sand removed from the Kadavu.

(4) Bamboo and "Attuvanchi" may be planted on the river bank with the help of Forest Department to control river bank sliding.

CHAPTER IV

REGULATION TO UPKEEP THE BIO-PHYSICAL ENVIRONMENT

16. River Bank Development Plan.--(1) Subject to the provisions of this Act and the rules made thereunder and any general or special orders of the Government, if any in this behalf, the District Expert Committee may prepare a River Bank Development Plan for establishing, co-ordinating and protecting river banks within the district, in such manner and containing such particulars as may be prescribed, for the upkeep of the bio-physical environment of the river banks:

Provided that the River Bank Development Plan shall be consistent with the development plan, if any, undertaken by the Government in the Irrigation Department.

(2) The District Collector shall obtain the approval of the Government before implementation of the River Bank Development Plan.

17. River Management Fund and issue of Passes.--(1) The District Collector shall maintain a Fund called the "River Management Fund" from which all expenses towards management of the Kadavu or river bank shall be met.

(2) Every Local Authority having a Kadavu or river bank shall contribute fifty per cent of the amount collected by the sale of sand towards the River Management Fund maintained by the District Collector:

Provided that the cost of collection of sand and the Royalty paid shall not be included in the amount of collection.

Explanation.-- For the purpose of this sub-section, "cost of collection" shall include the maintenance charges and the cost of erection of concrete pillars in the Kadavu.

(3) The Department of Mining and Geology shall ensure that no pass is issued to the Local Authority without settling the accounts as provided in sub-section (5).

(4) Every pass issued by the Department of Mining and Geology shall contain the signature of the authorised officer of that Department and his seal, which shall be countersigned by the Secretary of the Local Authority concerned before the sand removal operation.

(5) The amount payable towards contribution to fund by a Local Authority shall be paid by means of cheque or demand draft to the District Collector or an officer authorised by him in

this behalf, who shall countersign it in token of having received it. The account shall be settled before the 10th day of the succeeding month by remitting the balance amount due for payment.

18. Accounts.--(1) The District Collector shall maintain a complete account of the Fund and it shall be audited every year in such manner as may be prescribed.

(2) The account shall be open to inspection by Government or by any officer specifically empowered for the purpose.

19. Amount to be transferred to the fund.-- Any amount collected by the District Collector towards River Management Fund based on any executive order of the Government as on the date of coming into force of this Act, shall stand transferred to and vested in the Fund constituted under this Act and shall form part of the Fund.

CHAPTER V

OFFENCES AND PENALTIES

20. Penalty for contravention of this Act.--Whoever contravenes any of the provisions of this Act or rules made thereunder shall, on conviction be punished with imprisonment for a term of which may extend to two years or with fine which may extend to twenty-five thousand rupees or with both and in case of continuing contravention with an additional fine which may extend to one thousand rupees for every day during which such contravention continues.

21. Abetment of offences.--Whoever abets any offence punishable by or under this Act or attempts to commit any such offence shall be punished with the penalty provided by this Act for committing such offence.

22. Punishment under other laws not barred.--Nothing in this Act shall prevent any person from being prosecuted under any other law for the time being in force for any act or omission made punishable under this Act.

23. Confiscation of vehicles.--Whoever transports sand without complying with the provisions of this Act shall be liable to be punished and the vehicle used for the transaction is liable for seizure by the Police or Revenue Officials.

Explanation.-- The term 'vehicle' for the purpose of this section includes 'country boat' and raft.

24. Offences under this Act to be cognizable.-- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), all offences under this Act shall be cognizable.

25. Cognizance of offences.--No court shall take cognizance of any offence punishable under this Act, except upon a complaint in writing made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology.

CHAPTER IV

MISCELLANEOUS

26. Power to make rules.--(1) The Government may, by notification in the Gazette, make rules to carry out all or any of the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it 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 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 anything previously done under that rules.

27. Power of Government to conduct inspection.--The Government shall have power to call for reports and to examine the files relating to any decisions taken by a District Expert Committee, or a Kadavu Committee, or a local authority, under this Act or the rules made thereunder and to give directions to the Chairman of the District Expert Committee for taking further proceedings thereon.

28. Act to override other laws.--The provisions of this Act and rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

29. Sand auditing.--The Government may, with a view to ensure protection of every river, provide for periodical measurement of the quantity of sand available for removal by such method and in such manner as may be prescribed.

30. Appeal.--(1) Any person aggrieved by any order or decision taken by the Kadavu Committee or the Local Authority under this Act or the Rules made thereunder may prefer an appeal to the Chairman of the District Expert Committee, within fifteen days from the date of the said decision or order.

(2) Any appeal received under sub-section (1) shall be disposed of within thirty days, and the decision on such appeal shall be final.

31. Removal of difficulties.--(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order, do anything, not inconsistent with the provisions of this Act, which appears to them to be necessary or expedient for the purpose of removing the difficulty;

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

(2) Every order made under this section shall be laid, after it is made, in the session of the Legislative Assembly that immediately follows.