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The Bengal Sanitary Drainage Act, 1895

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THE BENGAL SANITARY DRAINAGE ACT, 1895

[BEN. ACT 8 OF 1895]

[30th October, 1895]

An Act to facilitate the construction of drainage works for improving the sanitary condition of local areas

Whereas it is expedient to facilitate the construction of drainage works for improving the sanitary condition of local areas within the territories administered by the Lieutenant-Governor of Bengal, and to lay down a procedure therefor, other than that provided by Section 37 B of the Bengal Municipal Act, 1884;

It is enacted as follows :—

PART I

CHAPTER I

Preliminary

1. Short title and extent.—(1) This Act may be called the Bengal Sanitary Drainage Act, 1895.

(2) Except as hereinafter otherwise provided, it shall extend to all the territories administered by the Lieutenant-Governor of Bengal, which are not included within the limits of any municipality.

(3) (*Commencement*). [*Rep. by the Amendment Act, 1903 (1 of 1903).*]

2. Definitions.—In this Act, unless there be something repugnant in the subject or context,—

(a) "cultivating *raiyyat*" shall have the meaning attached to it in the Cess Act, IX (B.C.) of 1880;

(b) "estate" shall have the meaning attached to it in the Cess Act, IX (B.C.) of 1880;

(c) "holder of an estate or tenure" shall have the meaning attached to it in the Cess Act, IX (B.C.) 1880;

(d) "local area" means the portion of a district or districts within which a rate is to be levied, in order to liquidate the cost of scheme adopted by a District Board;

(e) "tenure" shall have the meaning attached to it in the Cess Act, IX (B.C.) of 1880;

(f) "the Collector" means, except as hereinafter provided, the officer in charge of

the revenue jurisdiction of the district within the lands, which from the subject of a scheme under this Act, are situated;

- (g) "the Commissioner" means the Drainage Commissioners under this Act;
- (h) "the Engineer" means the District Engineer or any Engineer specially appointed by the State Government to perform the functions of an Engineer under this Act;
- (i) "tract" means the portion of a district or districts throughout which the Commissioners are authorised to exercise the functions conferred on them under this Act.

CHAPTER II

Appointment of the Commissioners

3. Appointment of "the Commissioners".—(1) Whenever an application is received from a District Board through the Collector and the Commissioner of the Division reporting that they believe that the sanitary condition of any tract within their jurisdiction has been deteriorated by the obstruction of drainage, whether from natural or artificial causes, the State Government may—

- (a) issue, if it thinks fit, an order indicating approximately the area of the tract affected and prescribing the appointment of a number of persons, not less than nine, to be the Drainage Commissioners;
- (b) direct the District Board to elect not less than half of such number from among the members of the District or Local Board as the case may be;
- (c) appoint the remainder of the Commissioners from among the holders of estates and tenures in the tract affected or from among the managers on behalf of such holders.

(2) The Commissioners so created shall elect one of their number to act as Chairman.

4. Procedure when several local authorities are interested.—(1) When an affected tract referred to in the last preceding section includes lands subject to the jurisdiction of more than one local authority, the State Government, by an order made on the application of any District Board concerned, may constitute a Joint Committee to be elected by all the local authorities concerned; the number to be elected by each being determined, by the State Government as far as possible in proportion to the interest of such local authority in the tract affected.

(2) The State Government may further confer on any Committee so constituted, or on such of them as may be specified in the order, all the powers of a District Board under this Act; and such order may contain such provisions respecting the proceedings of any such Committee, as may seem proper, and may provide for the payment by the local authorities represented thereby of the expenses "incurred by any such Committee and for the audit of their accounts.

5. Resignation of "the Commissioners".—The State Government may from

time to time accept the resignation of any of the Commissioners, or may add to their number; and in the event of any Commissioner dying, retiring or ceasing to reside in the district, in which such tract is situated, the vacancy so caused shall thereupon be filled by appointment or by election, as the case may be; the conditions of the original appointment or election being in each case strictly observed :

Provided that not less than half the number of the Commissioners shall always be members of the District or Local Board, as the case may be.

PART II

CHAPTER I

Drainage Scheme

6. The Commissioners to direct survey, etc., and forward survey and preliminary schemes to the Collector.—(1) When the Commissioners have been appointed under Section 3 or Section 5, they shall, without delay, direct the Engineer to prepare a survey, plans and estimates (hereinafter called "the survey") for the restoration or improvement of the drainage of the tract found by him to be affected and such survey shall be drawn up in accordance with rules to be framed under Section 35(1)(a).

On the completion of the survey the Commissioners shall, within a period to be fixed by the District Board which made the application (hereinafter called "the District Board"), forward the same to the Collector of the district within which the tract affected, or the principal part of it, is situated, together with a report (hereinafter called "the preliminary scheme") containing—

- (a) a statement descriptive of the proposed undertaking, and showing how the drainage is obstructed, with a map of the tract affected;
- (b) an estimate of the total cost of the undertaking, including the cost of any land to be acquired under Section 16;
- (c) an estimate of the annual cost of maintaining the works :

Provided that, if this tract affected includes any municipal area, the estimate to be framed under clauses (b) and (c) of this section shall show separately the portion of the cost under each clause, which will be incurred in respect of such municipal area :

Provided further that, if one or more Municipalities fall within the tract, a separate estimate shall be framed of the cost of constructing and maintaining such portion of the works as lie within the area of any such Municipality.

- (2) The Collector shall thereupon cause to be prepared—
 - (d) a statement showing the valuation for cess purposes of the lands included in the tract affected, and the total amount of cesses actually payable on the same;
 - (e) an estimate showing the rate bearing a definite proportion to the road cess payable direct to Government, which would provide for the payment with

interest in the course of thirty years of the amount under clause (b) and the capitalized value of the amount under clause (c) of this section, excluding the portion to be incurred in respect of the municipal area, if any.

7. The Collector to publish notification.—As soon as possible after the receipt of the survey and preliminary scheme, the Collector shall publish in every village in the tract affected a notification in the language of the district, calling for objections.

Such notification shall be in the form in the Schedule hereto annexed, and may be published by posting the same at each post office and police-station within such tract and in some conspicuous part of each village and at the Court of the Munsif within whose jurisdiction such village, or any part thereof is situated.

8. The Commissioners to consider the survey, preliminary scheme and objections and report thereon.—As soon as practicable after the expiry of the period fixed by such notification, the Collector shall forward to the Commissioners the survey and preliminary scheme, together with the petitions of objection, if any, received by him, and shall call upon them to consider such survey and preliminary scheme together with such objections, and or within a specified time to forward such survey and preliminary scheme to the Chairman of the District Board together with their report upon the objections, if any, as well as upon the state of public feeling in regard to such survey and preliminary scheme, and their advice as to their adoption or rejection.

9. District Board to consider the survey and preliminary scheme.—On receipt of such survey and preliminary scheme, the District Board shall within one month's time proceed to take them into consideration at a meeting specially called for the purpose.

10. Procedure, if survey and preliminary scheme are rejected.—If the District Board reject such survey and preliminary scheme, the cost of such survey and the salary, if any, of the Engineer directed to prepare the same shall be paid by the District Board.

11. Procedure, if survey and preliminary scheme are adopted.—If at such meeting, a majority of the members present acting on the advice of the Commissioners, or, with the approval of majority of not less than two-thirds of such members (such meeting to consist of not less than one-half of the total number of the members of the Board), acting against the advice of the Commissioners, adopt the survey and preliminary scheme, they shall revise the preliminary scheme in the following manner :—

- (i) they shall deduct from the aggregate amount estimated under clauses (b) and (c) of section 6 the sums, if any, which have been either anticipated or promised as private subscriptions or contributed by the District Board, or provisionally promised by the State Government;
- (ii) they shall thereupon submit the preliminary scheme so revised, together with the survey and the report prepared by the Commissioners under Section 8, to the Collector.

12. Procedure to be followed by the Collector.—The Collector shall thereupon—

- (a) calculate the amount, which, if expressed as a rate bearing a definite proportion to the road cess leviable within the tract affected, would pay off the balance in equal annual installments within thirty years (such installments being fixed), so as to provide for the payment of interest on any sums borrowed from Government or the public;
- (b) forward such survey and preliminary scheme through the Commissioner of the Division to the State Government for consideration :

Provided that, if the installments so fixed shall exceed the amount annually payable as road cess within the tract affected, the Collector shall return such preliminary scheme to the District Board for further consideration.

13. "Scheme" and "local area".—The "survey and preliminary scheme" thus adopted or modified shall be hereinafter called the "scheme" and the tract within which the new drainage rate is to be imposed shall be hereinafter called the "local area".

14. Powers of State Government.—The State Government shall consider the scheme thus adopted or revised, together with the report of the Commissioners, and may approve, modify or reject the same; and if it approve or modify the scheme, it shall thereupon return it, so approved or modified, to the District Board through the Commissioner of the Division, with an intimation of the amount, which the State Government will contribute towards the scheme:

Provided that, if the modification adds materially to the cost of the operations, the scheme thus modified shall again be laid before the District Board for their consideration.

15. District Board may re-consider scheme, etc., adopted by them.—(1) The District Board may, with the previous consent of the State Government, at any time re-consider the scheme adopted by them, and add to, alter or modify the same; and if any addition, alteration or modification is thereupon made by them, they shall lay before the State Government the scheme so added to, altered or modified, and State Government may sanction the same or any portion thereof; and thenceforth the provisions of this Act shall apply to the scheme as ultimately sanctioned by the State Government.

(2) Every material addition, alteration or modification made by the State Government or by a District Board to, or in, any scheme after the adoption thereof, shall be published in the manner provided in Section 7, and the provisions of Sections 8 to 12 (both inclusive) shall apply.

16. Land required for drainage works how to be acquired.—Any land, likely to be needed in carrying out any scheme, sanctioned by the State Government under this Act, may be acquired under the provisions of the Land Acquisition Act, 1894, or any similar Act for the time being in force for the acquisition of land for public purposes :

Provided that no compensation shall be paid for land recorded as a water-course in

the last revenue survey map published under Section 4 Of Act 9 of 1847 or any similar enactment for the time being in force, unless it be proved that such land has been under cultivation for a period of not less than twelve years previous to (he acquisition.

17. State Government may order execution of drainage works by an Engineer appointed by it.—(1) All works under this Act shall be executed by the District Board, unless the State Government order such works, or any portion of them, to be executed by more than one District Board or by an Engineer appointed in that behalf by itself.

(2) Any person duly authorized to execute any works under this Act may himself, or by his agents and workmen, enter into or upon any land forming part of the local area and carry out such works thereupon as may be required.

CHAPTER II

Expenditure and Apportionment

18. What amounts should be included in cost of construction.—All amounts paid—

- (a) as compensation for any lands taken for the purposes of this Act;
- (b) as-salaries of the Engineer, officers, servants or establishments specially employed by the Collector, the Commissioners or the District Board for the purposes of this Act;
- (c) for any surveys, plans, estimates, valuations and incidental expenses connected therewith, whether antecedent or subsequent of the scheme,

together with all amounts expended in carrying out the purposes of this Act, shall be included, in, and be deemed to constitute, the cost in construction of works.

19. Engineer to report progress and completion of works.—(1) The Engineer shall, once in every three months, until the works shall be finally completed, submit to the District Board a detailed report showing the progress of the works and the amount expended thereon up-to-date from the commencement of the work or from the date of the last report; and when the works are completed and the accounts closed, he shall submit to the District Board a final report showing the total cost.

(2) If the local area includes areas subject to the jurisdiction of more than one local authority, the proportion of such cost shall be defrayed by each local authority as far as possible in proportion to their interest in the work executed.

(3) This District Board shall forward a copy of this report to the State Government through the Commissioner of the Division, with such remarks as to them shall seem fit and in the event of any local authority objecting to the proposed apportionment, the State Government shall determine the proportion to be paid by them. The decision of the State Government thereon shall be final.

20. Amount to be appointed how to be determined.—The total cost of construction mentioned in Section 1.8 shall be ascertained by adding together—

- (a) the actual amount expended;
- (b) the interest payable on the loans under the Local Authorities Loans Act, 1897 if any;

the capitalized value of the estimated cost of maintenance.

From this sum shall be deducted the amounts subscribed or contributed as contemplated in Sections 11 and 14.

21. The Collector to determine rate.—On receipt of the final report mentioned in Section 19, the District Board shall require the Collector, within three months, to determine the amount of rate, which shall be collected with the road cess annually payable direct to Government within the local area, and shall be sufficient to provide for the payment of the cost of construction as defined in Section 20, in the course of not more than thirty years, excluding the portion to be incurred in respect of the municipal area, if any.

22. Rate to be published and to be paid with the road cess.—(1) The rate so determined shall be published as provided in Section 40 of the Cess Act, 1880; and shall be paid together with the road cess payable by those liable to pay such cess direct to Government within the local area, until such time as the period of not more than thirty years from the date of publication shall have expired, or the cost of construction of the works has been liquidated.

(2) All arrears of such rates shall be recoverable under the law for the time being in force for the recovery of public demands.

23. Share to be recovered by estate or tenure-holder.—Any holder of an estate or tenure, who shall pay to the Collector any installment of such rate payable under the last preceding section shall be entitled to recover half the amount of the installment so paid from the holder of a tenure or cultivating *raiyat* holding lands within the local area under such holder of an estate or tenure in the same proportion and in the same manner as he is entitled to recover road cess or public works cess, payable under the provisions of the Cess Act, 1880.

24. Amount to be recovered by tenure-holder from raiyat.—Any holder of a tenure, who shall pay to the holder of an estate or tenure the sum due to such holder under the last preceding section, shall be entitled to recover half the sum so paid from the cultivating *raiyats* holding lands within the local area under such holder of a tenure, in the same proportion and_ in the same manner, as he is entitled to recover road cess or public works cess payable under the provisions of the Cess Act, 1880.

25. Recovery of municipal portion of cost.—(1) When the local area includes a municipal area, the amount payable under Section 19 shall be defrayed by the Municipality.

(2) In order to provide for the payment with interest of such municipal share at the rate payable to Government by the District Board within a period of not less than thirty years, the amount required may be raised by an additional rate to be added to the tax upon persons or to the rate on the annual value of holdings as the case may be.

PART III

CHAPTER I

Miscellaneous

26. Drainage works subject to laws relating to public embankments.—All outlets and water-channels, natural or artificial, which shall be cleared, altered, enlarged, excavated or cut under the provisions of this Act, and the construction and maintenance of embankments and dams and works therein or connected therewith, shall be subject to the laws for the time being in force regulating the construction and maintenance of public embankments, rivers, channels and outlets.

27. Penalty for constructing weirs, etc., obstructing public drainage.—(1) Any person who, without lawful authority, erects or causes to be erected, any weir or other obstruction in any outlet or water-channel, or cultivates the bed of a water-channel, so as to obstruct natural drainage, shall, upon conviction before a Magistrate, be liable to a penalty not exceeding two hundred rupees for every such offence.

(2) It shall be in the discretion of such Magistrate to direct any such offender to remove and pay for the entire cost of the removal of any such obstruction.

28. Lands taken and works constructed under Act to be under District Board.—All lands which are taken under the provisions of this Act for the purpose of the construction of works therein or thereon, and all works constructed under the provisions of this Act, as well as all outlets, water-channels, embankments and dams so constructed, altered, enlarged, excavated or cut, shall be under the control and administration of the District Board.

29. Powers of the Commissioners, etc., in taking evidence.—The Commissioners, the Collector, and the Commissioner of the Division shall have all such powers as are conferred on Civil Courts by the Code of Civil Procedure for the purpose of compelling the attendance of witnesses and the production of evidence, and for the purpose of examining witnesses in any enquiry or appeal, which they may be empowered to make or entertain under the provisions of Act.

30. Proceedings not to be invalidated by irregularities.—No proceeding under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission.

31. State Government may empower any person to act for the Collector.—State Government may specially empower any person to do all such acts, to discharge all such functions, and to exercise all such powers as may be done, discharged or exercised by a Collector under this Act; and on any person being so specially empowered, such person may do all such acts, discharge all such functions, and exercise all such powers, and such person shall be deemed to be the Collector for the purposes of the scheme, in respect of which he is so specially empowered,

32. The Collector may delegate his authority to another.—(1) The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy or Assistant Collector, the performance of any acts or the discharge of any functions

which the said Collector may perform or discharge under this Act.

(2) Upon such delegation, such Deputy Collector or other officer may do such acts, discharge such functions, and exercise such powers for the performance of the same, as the Collector may exercise under this Act:

Provided that all acts done, functions discharged, and powers exercised by such officer, shall be done, discharged, or exercised subject to the control and supervision of the Collector.

33. Proceedings of the Commissioners and the Collector subject to control of Commissioner of Division.—Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division, or, when the tract or local area affected comprises land situated in more than one Division, of such Commissioner as the [State] Government may direct.

34. State Government may direct cessation of work and revision of the scheme.—If at any time the State Government is satisfied that the cost of any scheme of works, including the cost of maintenance, has been erroneously estimated, it may direct that the scheme be no further proceeded with, until the same has been revised.

CHAPTER II

Rules

35. Power of State Government to make rules and to cancel them.—(1) It shall be lawful for the State Government, from time to time, to make, and, when made, to alter or repeal rules not inconsistent with this Act for the purpose of—

- (a) prescribing the forms of accounts, surveys, plans, estimates, periodical statements and reports;
 - (b) regulating the conduct of business at the meetings of the Commissioners;
 - (c) regulating the installments by which and the mode in which sums payable under this Act shall be paid;
 - (d) regulating the carrying out and maintenance of works, when one or more local authorities are concerned;
 - (e) ascertaining the capitalized value of the estimated cost of maintenance of drainage works;
 - (f) providing for professional supervision over the preparation of surveys, plans and estimates, and the execution and maintenance of drainage works;
 - (g) allotting the duties of the Collector under this Act among Collectors of different districts as may be convenient; and
 - (h) generally carrying out the purposes of this Act.
- (2) State Government shall, before making, altering or repealing rules under this

section, publish a draft of the proposed rules and alteration and a notification of the proposed repeals in three consecutive numbers of the Official *Gazette*, and shall specify a date not less than one month from the date of publication, at or after which such draft and notification will be taken into consideration,

(3) The State Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft and notification before the date so specified.

(4) Every rule so made or altered, and every repeal of any such rule under this section shall be thereafter published in the Official *Gazette*.

SCHEDULE

(See Section 7)

BENGAL SANITARY DRAINAGE ACT, 1895

To all whom it may concern

Take notice that, with the object of improving the sanitary condition of (he country, it is proposed to restore or improve the drainage in the thanas of.....district.....

Copies of the plans and estimates of the work proposed, which will affect (so many) villages, are now in the office of..... and may be inspected by any persons interested at any time between 11 a.m. and 5 p.m., Sundays and holidays excepted, up to and including the.....day of.....

It is estimated that, if the said drainage scheme is earned out, a rate will be payable by the residents of the villages affected which will be equivalent to.....on every rupee now paid as Road Cess for a period of thirty years from the dak oi the completion of the works, unless the District Board shall decide to collect the amount within a shorter period.

Any person objecting to the execution of the said works shall submit a petition in writing, duly signed, to the Collector of.....on or before the.....day of.....

Any person who does not object in the manner and within the time mentioned shall be held to have assented to the execution of the works.

Collector.