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Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Act, 2011

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**THE KERALA PROTECTION OF RIVER BANKS AND
REGULATION OF REMOVAL OF SAND
(AMENDMENT) BILL, 2011**

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**THE KERALA PROTECTION OF RIVER BANKS AND
REGULATION OF REMOVAL OF SAND
(AMENDMENT) BILL, 2011**

Thirteenth Kerala Legislative Assembly
Bill No. 15

[Translation in English of “2011-ലെ കേരള നദീതീര സംരക്ഷണവും മണൽവാരൽ നിയന്ത്രണവും (ഭേദഗതി) ബിൽ “published under the authority of the Governor.]

**THE KERALA PROTECTION OF RIVER BANKS AND REGULATION
OF REMOVAL OF SAND (AMENDMENT) BILL, 2011.**

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BILL

to amend the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

Preamble.—WHEREAS it is expedient to amend the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 for the purposes hereinafter appearing ;

BE it enacted in the Sixty-second Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Act, 2011.

(2) It shall be deemed to have come into force on the 14th day of June, 2010.

2. *Amendment of section 2.*—In the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (18 of 2001) (hereinafter referred to as the principal Act), in section 2,—

(i) the existing clause (a) shall be relettered as (aa) and before clause (aa) as so relettered, the following clause shall be inserted, namely :—

“(a) “authorised officer” means the Commissioner of land Revenue authorised under section 2B and includes the officer appointed by the Government under the said section to assist him ;”;

(ii) after clause (b), the following clause shall be inserted, namely :—

“(ba) “State High Level Committee” means the State High Level Committee constituted under section 2A ;”;

(iii) after clause (k), the following clause shall be inserted, namely :—

“(ka) “Special Protection Force” means the Special Protection Force constituted under section 26 A ;”.

3. *Insertion of new sections 2 A and 2 B.*—In chapter II of the principal Act, before section 3, the following sections shall be inserted, namely :—

“2A. *Constitution of State High Level Committee.*—(1) Government shall, by notification in the Gazette, constitute a State High Level Committee to scrutinize and to grant approval to the schemes recommended by the District Expert Committee.

(2) The State High Level Committee constituted under sub-section (1) shall consist of the following members, namely :—

- (i) The Secretary to Government who
is in charge of the Revenue Department — Chairperson
- (ii) Law Secretary — Member
- (iii) Land Revenue Commissioner — Convenor
- (iv) Director of the Centre for Earth Science
Studies — Member
- (v) One Additional Director General of Police — Member
to be nominated by the Government
- (vi) One Superintending Engineer of the — Member
Irrigation Department to be nominated
by the Government
- (vii) two environmental scientists to be — Member
nominated by the Government

(3) The State High Level Committee shall meet at least twice in a month at such time and place as the Chairperson may decide.

(4) The quorum for the meeting of the State High Level Committee shall be five and one among them shall be a scientist coming under item (vii) of sub section (2).

(5) No administrative sanction shall be given to any scheme recommended by the District Expert Committee if it is not approved by the State High Level Committee.

2B. *Authorised Officer.*—(1) The Commissioner of Land Revenue shall be the authorised officer to exercise overall supervision of the implementation of the provisions of this Act and he shall be assisted by an officer not below the rank of Deputy Land Revenue Commissioner or Assistant Land Revenue Commissioner appointed by the Government for the purpose.

(2) All officers acting under the provisions of this Act shall be bound to comply with the directions given by the authorised officer under this Act.”.

4. *Amendment of section 3.*—In section 3 of the principal Act,—

(i) after clause (o) of sub-section (2), the following clauses shall be inserted, namely :—

“(p) the Sub Collector or the Revenue Divisional Officer or Revenue Divisional Officers having jurisdiction in the district ;

(q) three persons to be nominated by the Government from among the registered sand removing workers of the district.”

(ii) In sub-section (3) for the words, “the Executive Engineer of the Irrigation Department”, the words “the Sub Collector or the Revenue Divisional Officer in charge of the head quarters” shall be substituted.

5. *Amendment of section 4.*—In sub-section (1) of section 4 of the principal Act, after clause (i), the following clause shall be inserted, namely :—

“(j) three persons to be nominated by the District Collector from among the registered sand removing workers of the said area.”.

6. *Amendment of section 9.*—In section 9 of the principal Act, in clause (b), after the words, “Centre for Water Resources Development and Management”, the words “or other agencies in this field specified by the Government from time to time” shall be inserted.

7. *Amendment of section 12.*—In section 12 of the principal Act,—

(i) in sub-section (2), for the words and figures, “before 6 a.m. and after 3 p.m.”, the words and figures “before 7 a.m. and after 4 p.m.” shall be substituted ;

(ii) in sub-section (5), after the words “or any irrigation project”, the words “or pumping station of water supply projects or check dams or any retaining wall or from the venues of any religious or cultural activities conducted on the river bank” shall be inserted.

- (iii) after sub-section (10), the following sub-section shall be inserted, namely :—

“(11) the activities of sand removal in a kadavu and the transportation of the said sand shall be done only subject to the conditions and restrictions as prescribed.”.

8. *Amendment of section 17.*—In section 17 of the principal Act, in sub-section (4), for the words “the Secretary of the local authority concerned”, the words “the Secretary of the local authority concerned and an officer of the Revenue Department officially nominated by the District Collector for each Panchayat in the District” shall be inserted.

9. *Substitution of new sections for section 23.*—For section 23 of the principal Act, the following sections shall be substituted, namely :—

“23. *Seizure of vehicles, loading equipments, tools etc.*—(1) Where any person removes sand from any kadavu or transport sand therefrom without complying with the provisions of this Act or the rules made thereunder, the tools, implements, loading equipments, vehicles or other articles used or intended to be used for such activities, including sand, shall be seized by an officer not below the rank of a village officer of the Revenue Department or by a police officer not below the rank of a station house officer or by a member of the Special Protection Force.

Explanation.—For the purposes of this section, the term ‘vehicle’ shall also include country boat, raft and any other vessel.

23A. *Confiscation of sand, vehicles, etc.*—(1) Where any property is seized under section 23, the officer seizing such property shall seal all such properties for indicating that the same has been seized and shall, whether prosecution proceedings have been initiated or not, within forty eight hours of such seizure make a report of such seizure to the Sub Divisional Magistrate having jurisdiction over the area from where such property has been seized.

(2) On receipt of a report under sub-section (1), the Sub Divisional Magistrate shall issue notice to the owner or the person having control of the vehicle, tool, implements, loading equipment, or other article to show cause in writing, within the time as may be specified in the notice, why the property seized under section 23 shall not be confiscated.

(3) Where the owner of the articles seized or the person having control of the same has not given explanation or the explanation given is not satisfactory, and the Sub Divisional Magistrate is satisfied that the articles seized

under section 23 have to be confiscated, he shall, by an order, confiscate the same and the matter shall be informed to its owner or the person having its control:

Provided that the owner of the articles seized or the person having its control shall be given the freedom to reclaim it in lieu of confiscated articles, except sand by remitting an amount equal to the value of the confiscated articles, as fixed by the Collector :

Provided further that the sand confiscated shall not be released under any circumstance by realising the value.

(4) The amount received under the proviso to sub-section (3) shall, subject to the provisions of section 23 D, be remitted to the River Management Fund.

(5) Where an order of confiscation is passed under sub-section (3), complaint against the person concerned, in respect of the offence committed under this Act, shall be filed before the court having jurisdiction, by the Revenue Divisional Officer or shall be got filed by an officer referred to in section 25.

(6) The sand confiscated under sub-section (3) shall be sold to Nirmithi Kendra or to Kalavara at such rate, as may be fixed by the Public Works Department, from time to time, and such amount shall also be remitted to the River Management Fund.

(7) The confiscation under this section shall be in addition to the punishment provided for such offence under this Act.

23B. Revision to the District Collector.—Any person aggrieved by an order of confiscation under section 23 A may, within fifteen days from the date of such order, prefer a revision to the District Collector and the District Collector may, if he is satisfied on the basis of documents that the said order requires reconsideration, revise, modify or annul such order :

Provided that the District Collector may, if he is satisfied that the revision petitioner had sufficient cause for not filing the revision within the time limit, condone the delay up to fifteen days, but further delay shall not be condoned.

23 C. Appeal to the District Court.—(1) Any person aggrieved by an order of the District Collector under section 23 B may, within thirty days from the date of order of the District Collector, file an appeal before the District Court having jurisdiction over the area from which, the property was seized.

(2) The decision of the District Court under sub-section (1) shall be final.

23 D. *Return of the confiscated article or the amount paid in lieu of confiscation.*—Where the District Collector, on the basis of a revision filed under section 23 B or the District Court on the basis of appeal filed under section 23 C, as the case may be, modify or annul an order under section 23 B or section, 23 C, the articles confiscated or the amount paid in lieu of confiscation shall be returned to the owner or person having its control and in case of refund of the amount, it shall be paid from the River Management Fund.”.

10. *Amendment of section 25.*—In section 25 of the principal Act, for the words “a person authorised in this behalf by the Government or the District Collector”, the words, numbers, letters and brackets, “an officer referred to in sub-section (2) of section 23 A” shall be substituted.

11. *Insertion of new sections 26 A, 26 B and 26 C.*—After section 26 of the principal Act, the following new sections shall be inserted, namely :—

“26 A. *Constitution of Special Protection Force.*—(1) The Government shall constitute a Special Protection Force to prevent any activities in violation of the provisions of this Act and to ensure the compliance of the provisions of this Act in each kadavu.

(2) The composition, powers and functions of the Special Protection Force shall be such as may be prescribed.

26B. *Protection of action taken in good faith.*—No litigation, prosecution or other legal proceedings shall lie against any person in respect of anything done or intended to be done in good faith under this Act or any rules made thereunder.

26C. *Certain persons deemed to be public servants.*—Any person authorised under section 23 or section 23 A 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).”.

12. *Repeal and saving.*—(1) The Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Ordinance, 2011 (20 of 2011) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Act shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

As per the existing provisions in the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, power to supervise implementation of the provisions of the Act was not given to any officer. The Government deemed to consider it necessary to give such powers to the Land Revenue Commissioner for implementing the said Act effectively. Moreover, the Government also consider that necessary provisions are to be incorporated for the functioning of a Committee in the State level as per the said Act to scrutinize and pass the River Banks Protection projects recommended by the District Expert Committee. Representatives of labourers have not been included in the existing District Expert Committee and Kadavu Committee. The Government have realized that inclusion or representatives of labourers also would give more efficiency to the said Committees.

2. Certain drawbacks in the existing provisions of the said Act for Confiscation and seizure of the vehicles and equipments used for unauthorized removal of sand often becomes helpful to obtain favourable verdicts to those engaged in unauthorized transporting of sand. Therefore, it is necessary to include provisions in the Act in this respect without loopholes. Moreover, certain other difficulties which had to be faced at the practical level by the officers enforcing the Act have also been brought by them in the notice of the Government. Provisions to overcome that also have to be incorporated in the Act.

3. In the existing system, now the unauthorized transporting of sand cannot be prevented effectively. Considering the fact that sufficient efficiency cannot be attained when these functions are also discharged along with several other functions, by the District Administration level, It is necessary to constitute a Special Protection Force towards this.

4. As the Legislative Assembly was not in session and the above proposal had to be given effect to immediately, the Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Ordinance, 2010 (31 of 2010) was promulgated by the Governor on the 12th day of June, 2010 and the same was published in the Kerala Gazette Extraordinary No. 1334 dated 14th June, 2010.

5. A Bill to replace the said Ordinance No. 31 of 2010, by an Act of the State Legislature could not be introduced in, and passed by. the Legislative Assembly of the State of Kerala during its session which commenced on the 28th .day of June, 2010 and ended on the 29th day of July, 2010. In order to keep alive the provisions of the said Ordinance, the Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Ordinance, 2010

(38 of 2010) was promulgated by the Governor on the 8th day of August, 2010 and the same was published in the Kerala Gazette Extraordinary No. 1818, dated 8th August, 2010.

6. Though a Bill to replace Ordinance No. 38 of 2010, by an Act of the State Legislature, was published as Bill No. 395 of the 12th Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 21st day of December, 2010 and ended on the 3rd day of January, 2011. Therefore in order to keep alive the provisions of the said Ordinance, the Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Ordinance, 2011 (14 of 2011) was promulgated by the Governor on the 22nd day of January, 2011 and the same was published in the Kerala Gazette Extraordinary No. 152 dated 23rd January, 2011.

7. Though a Bill to replace Ordinance No. 14 of 2011, by an Act of the State Legislature, was published as Bill No. 405 of the 12th Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 4th day of February 2011 and ended on the 24th day of February 2011. Therefore in order to keep alive the provisions of the said Ordinance, the Kerala Protection of River Banks and Regulation of Removal of Sand (Amendment) Ordinance, 2011 (20 of 2011) was promulgated by the Governor on the 17th day of March, 2011 and the same was published in the Kerala Gazette Extraordinary No. 649 dated 18th March, 2011.

8. The Bill is intended to replace Ordinance No. 20 of 2011 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure out of the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Section 2 A proposed to be inserted in the Act by clause 3 of the Bill empowers the Government to constitute a State High Level Committee by notification in the Gazette, to scrutinize and to grant approval to the schemes recommended by the District Expert Committee.

2. Sub-Section (11) proposed to be inserted in section 12 of the Act by sub-clause (iii) of clause 7 of the Bill, empowers the Government to prescribe by rules the conditions and restrictions on the activities of collecting the sand in a kadavu and transportation of the said sand.

3. Sub-section (2) of section 26A proposed to be inserted in the Act by clause 11 of the Bill, empowers the Government to prescribe by rules the composition, powers and functions of the Special Protection Force.

4. The matters in respect of which the notifications are to be issued or the rules are to be made are matters of procedure or routine matters or matters of administrative nature. Further, the rules, after they are made, will be subject to scrutiny of the Legislative Assembly. Hence, the delegation of legislative power is of a normal character.

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CONSTITUTION OF COMMITTEES

(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 Panchayath abutting any river in the district—to be nominated by the Government ;

(h) one President from among the Presidents of the Block Panchayaths 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) to 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 Convener 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 a 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.

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9. *Power and Functions of the District Expert Committee.*—Subject to the other provisions of this Act and 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 ;

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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.

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

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(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.

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17. *River Managment 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.

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

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23. *Confiscation of vehicles.*—Whoever transports sand without complying with the provisions of the Act shall be liable to be punished and the vehicle used for transportation is liable for confisation by the Police or Revenue Officials.

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

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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.

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)

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