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Plachimada Coca-Cola Victims Relief and Compensation Claims Special Tribunal Bill, 2011

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THE PLACHIMADA COCA-COLA VICTIMS RELIEF AND
COMPENSATION CLAIMS SPECIAL TRIBUNAL

BILL, 2011

(As Passed by the Assembly)

A

BILL

to provide for the establishment of a Special Tribunal for the expeditious adjudication of disputes and recovery of compensation for the victims from the Hindustan Coca-Cola Beverages Private Limited and matters connected therewith or incidental thereto.

Preamble.—WHEREAS it is expedient to establish a Special Tribunal for the adjudication of disputes and recovery of compensation for the damages caused by the Hindustan Coca-Cola Beverages Private Limited by entertaining original applications and by transferring cases pending before the various courts and other authorities to the Tribunal and to provide for matters connected therewith or incidental thereto ;

AND WHEREAS, there has been environmental degradation, soil degradation, water contamination by over extraction of ground water and thereby causing scarcity of drinking water by the coca-cola company at Plachimada ;

AND WHEREAS, there has been a steady decline in the agriculture production due to the irresponsible disposal of sludge by the Company ;

AND WHEREAS, the presence of metals like cadmium, lead and chromium in the sludge affected the general health of people with skin ailments, breathing problems and other debilities ;

AND WHEREAS, on account of the social, health and economic factors caused by pollution, children have dropped out of the school ;

AND WHEREAS, the Government intends to settle once and for all the disputes relating to the above matters by establishing a Special Tribunal for taking a final decision thereon within a fixed time limit ;

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 Plachimada Coca-Cola Victims Compensation Claims Special Tribunal Act, 2011.

(2) It shall come into force at once.

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

(a) “Administrative Member” means the administrative member of the Tribunal appointed under section 4 ;

(b) “Application” means an application made to the Tribunal under section 11 ;

(c) “Chairperson” means the Chairperson of the Tribunal appointed under section 4 ;

(d) “Company” means Hindustan Coca-Cola Beverages Private Limited registered under the Company’s Act, 1956 (Central Act 1 of 1956) ;

(e) “Dispute” means any issue in respect of matters arising out of violation of the provisions of laws relating to environment, air and water pollution between residents of Perumatty and Pattanchery Panchayats or such other Panchayat as may be specified by Government and the Company ;

(f) “Expert member” means the expert member of the Tribunal appointed under section 4 ;

(g) “Government” means the Government of Kerala ;

(h) “Notification” means a notification published in the Official Gazette ;

(i) “person” means a resident of Perumatty or Pattanchery Panchayats or such other Panchayats as may be specified by the Government in this behalf ;

(j) “prescribed” means prescribed by rules ;

(k) “State” means the State of Kerala ;

(l) “Tribunal” means the Special Tribunal established under section 3 of the Act.

3. *Establishment of the Tribunal.*—The Government shall, by notification, establish a Special Tribunal called the “Plachimada Coca-Cola Victims Compensation Claims Special Tribunal” to exercise the powers, functions and authority conferred on such Tribunal by or under this Act.

4. *Composition and Functions of the Tribunal.*—(1) The Tribunal shall consist of three members appointed by Government by notification of whom one shall be a Chairperson and the others, shall be an administrative member and an expert member, for such period as may be prescribed ;

(2) The Chairperson and the other members shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

(3) The Chairperson shall exercise such financial and administrative powers that are necessary for the functioning of the Tribunal and may delegate the same subject to such terms and conditions as may be prescribed.

(4) Save as otherwise expressly provided in this Act, the Tribunal shall adjudicate all applications and cases relating to disputes filed, transferred or referred to the Tribunal and matters connected therewith or incidental thereto in respect of persons and, for such adjudication, exercise powers and authority that are exercisable by a Civil Court of competent jurisdiction.

(5) It shall be competent for the Chairperson or any other member, as authorised by the Chairperson in this behalf, to hold sitting individually and exercise jurisdiction, functions and powers of the Tribunal relating to the applications and cases as entrusted by the Chairperson.

5. *Qualification for appointment as Chairperson, Administrative Member and Expert Member.*—(1) No person shall be qualified for appointment as Chairperson of the Tribunal unless he is or has been a District Judge.

(2) No person shall be qualified for appointment as Administrative Member of the Tribunal unless he,—

- (i) is or has been a Head of the Department, not below the rank of an Additional Secretary to Government ;
- (ii) holds a Bachelors Degree in Engineering or Science from a recognized University ; and
- (iii) possesses experience of at least three years in dealing with problems relating to water and hydrology, public affairs and administration.

(3) No person shall be qualified for appointment as an Expert Member unless he,—

- (i) holds a Masters Degree in Life Science and environmental matters ; and
- (ii) possesses experience of at least ten years in dealing with problems relating to environmental policy, planning and management.

(4) No person who,—

(i) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government ; or

(ii) has in the opinion of the Government, interest which is likely to affect prejudicially the discharge of his functions as a member ; or

(iii) has such other disqualifications as may be prescribed by the Government,

shall be appointed as a member of the Tribunal.

6. *Term of office and other conditions of service of the Chairperson and other Members.*—(1) The Chairperson and other Members shall hold office for a term of two years, from the date on which they enter upon their office or until the Chairperson or the Members, as the case may be, attains the age of sixty-five years and sixty years, respectively, whichever is earlier ;

(2) The salaries and allowances payable and other terms and conditions of service of the chairperson and members of the Tribunal shall be such as may be prescribed ;

(3) If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or the members of the Tribunal then the Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy arose.

(4) The Chairperson or the Members of the Tribunal may, in writing under his hand addressed to the Government resign his office:

Provided that the Chairperson or members of Tribunal shall, unless he is permitted by the Government to relinquish his office, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earlier.

(5) The Chairperson or members of the Tribunal shall be removed from their office by the Government on the ground of proved misconduct or incapacity, in such manner as may be prescribed.

(6) The Government may, by rules regulate the procedure for the investigation of misconduct or incapacity of the Chairperson or members of the Tribunal.

7. *Orders establishing Tribunal to be final and not to invalidate its proceedings.*—No order of the Government appointing any person as Chairperson or members of the Tribunal shall be called in question in any manner and no act

or proceedings before a Tribunal shall be called in question in any manner on the ground merely of any defect in the establishment of a Tribunal.

8. *Staff of the Tribunal.*—(1) The Government shall in consultation with the chairperson provide such number of officers and other employees that are necessary for the smooth functioning of the Tribunal by deputation from the Law Department or such other Departments in the Secretariat, in the manner as may be prescribed.

(2) The salaries and other allowances payable and other terms and conditions of service of the Officers and other employees of the Tribunal shall be such as may be prescribed.

9. *Transfer of cases to the Tribunal.*—(1) Notwithstanding anything contained in any other law for the time being in force or order, decree or judgment, all cases in respect of a person on matters arising out of violations of law relating to environment, air and water pollution in which the Company is a party and are pending before any court or other authority, except the High Court or Supreme Court, shall stand transferred to the Tribunal immediately on the establishment of the Tribunal under this Act.

(2) It shall be the duty of all courts and other authorities except the High Court and the Supreme Court to ensure that all records relating to such disputes have been duly transferred to the Tribunal within thirty days of the establishment of the Tribunal under this Act.

10. *Power of High Court to refer cases to the Tribunal.*— Notwithstanding anything contained in any other law for the time being in force or order, decree or judgment, the High Court of Kerala may refer any matter pending before it relating to the company for which Tribunal is empowered to adjudicate under this Act, for final decision thereon:

Provided that on such reference the Tribunal shall proceed with the matter as if it were filed before it originally and pass orders under this Act, which shall be final.

11. *Applications before the Tribunal.*—(1) The Tribunal shall also entertain applications for compensation or restitution of property damaged, against the Company arising out of grievances due to violation of laws relating to environment, air and water pollution or in the implementation thereof.

(2) Every application under sub-section (1) shall be made to the Tribunal in such form containing such particulars and accompanied by such documents as may be prescribed.

(3) No application for such compensation or restitution of property damaged shall be entertained unless it is made within six months from the date of establishment of the Tribunal:

Provided that the Tribunal may entertain an application after the expiry of the said period of six months but not later than twelve months, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

12. *Power of the Tribunal to make Regulations.*—Subject to the previous sanction of the Government, the Tribunal shall, for the purpose of regulating its own procedure make regulations not inconsistent with the provisions of this Act and the rules made thereunder.

13. *Powers of the Tribunal.*—(1) The Tribunal shall for the purpose of exercising any power conferred by or under this Act, have 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 documents ;
- (c) receiving evidence on affidavits ;
- (d) issuing commissions for the examination of witnesses ;
- (e) reviewing its decisions ;
- (f) dismissing an application for default or deciding it ex-parte ;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex-parte ;
- (h) any other matter as may be prescribed.

14. *Procedure to be deemed to be judicial proceedings.*— All proceedings before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193,219 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

15. *Award of the Tribunal.*—(1) On receipt of an application for compensation or restitution of property damaged made under section 11, the Tribunal shall, after giving notice of the application to the Company and an opportunity of being heard to the parties, hold an enquiry into the claim or as the case may be, on each of the claims in the application pass an award

allowing or rejecting compensation or such other orders which appears to it just and reasonable and specifying the person who is entitled to receive the compensation from the Company.

(2) The Tribunal shall while passing any award or order, apply the principles of sustainable developments, precautionary principle and the polluter pays principle.

(3) The Tribunal shall cause to deliver copies of the award to all the parties concerned expeditiously and in any case it shall not go beyond a period of fifteen days from the date of the award.

(4) When an award is made under this section, the Company shall within thirty days from the date of receipt of a copy thereof, deposit the entire amount with the Tribunal in such manner as the Tribunal may direct.

(5) Where the Tribunal allows a claim for compensation made under this Act, it may also order that, in addition to the amount of compensation, simple interest at such rate shall also be paid from such date but not earlier than the date of making the application as it may specify in this behalf.

16. *Appeal.*—(1) The Government or any person aggrieved by the decision of the Tribunal may within sixty days of the date of receipt of a copy of award or decision, file an appeal before the High Court:

Provided that the High Court shall not entertain an appeal under subsection (1) unless there is a substantial question of law is involved in it.

(2) The appeal shall be in such form, verified in such manner and accompanied by such fee as may be prescribed.

17. *Mode of recovery of the award amount.*—Where any amount is due from the Company under an award or decision, as the case may be, the Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the District Collector and the District Collector shall proceed to recover the said amount with interest in the manner as if it were arrears of revenue due on land.

18. *Bar on Jurisdiction of Civil Court.*— No Civil Court shall with effect from the date of commencement of this Act, have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged which may be adjudicated upon by the Tribunal and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any claim for granting any relief or restitution of property damaged shall be granted by the Civil Court.

19. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Chairperson or Members of the Tribunal, its Secretary or employees for anything done or intended to be done in good faith in pursuance of this Act or any rule or order made thereunder.

20. *Power to make rules.*—(1) The Government may, by notification, make rules not inconsistent with this Act, for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may, provide for all or any of the following matters, namely:—

(i) all matters expressly required or allowed by this Act to be prescribed ; and

(ii) any other matter which has to be, or may be prescribed.

(3) 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 in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Legislature agree that the notification or rule should not be issued or made, the notification or 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 notification or rule.

21. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to any of the provisions of this Act, the Government may, by order published in the official Gazette, make such provisions or take such measures not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for the purpose of removing the difficulty:

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

(2) Any order made by the Government under sub-section (1) shall be laid as soon as may be after such order is made before the Legislative Assembly.

22. *Cessation of functioning of the Tribunal.*—(1) The Government, if it is satisfied that all applications filed and cases either transferred or referred to the Tribunal under this Act have been finally disposed of and functioning of the Tribunal is no more required, may by notification, order cessation of the functioning of the Tribunal and Tribunal shall thereupon cease to function and in

such case it shall be deemed to have been wound up with effect from the date of the notification.

(2) All records and other materials of the Tribunal shall on such cessation under sub-section (1) shall be transmitted to the District Court and such record shall be deemed to be part of the record of the District Court.
