

Fourteenth Kerala Legislative Assembly

Bill No. 219

**THE KERALA MUNICIPALITY (AMENDMENT)
BILL, 2019**

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Kerala Legislature Secretariat

2019

KERALA NIYAMASABHA PRINTING PRESS.

Published on 28-10-19

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[Translation in English of "2019-ലെ കേരള മുനിസിപ്പാലിറ്റി (ഭേദഗതി) ബിൽ"
published under the authority of the Governor.]

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further to amend the Kerala Municipality Act, 1994.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Municipality Act, 1994 (20 of 1994) for the purposes hereinafter appearing;

BE it enacted in the Seventieth Year of the Republic of India, as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Municipality (Amendment) Act, 2019.

(2) Section 5 of the Act shall be deemed to have come into force on the 2nd day of March, 2019 and the remaining provisions shall be deemed to have come into force on the 6th day of March, 2019.

2. *Amendment of section 48.*—In the Kerala Municipality Act (20 of 1994) (hereinafter referred to as the principal Act) in section 48,—

(1) in sub-section (1), the words "borne on such cadre, as may be prescribed", shall be omitted;

(2) for sub-section (3), the following sub-sections shall be substituted, namely:—

“(3) The pay and allowances of the Secretary as fixed by the Government from, time to time, shall in the first instance to be paid from the State Fund. The pay and allowances paid to the Secretary and the contributions towards his leave salary, pension and provident fund to the extent required by the conditions of his service under the Government, to be made by him or on his behalf shall be credited monthly to the State fund by the Municipality.

“(3A) Subject to the provisions of this Act, the Government shall by rules made under the Kerala Public Services Act, 1968 (19 of 1968), regulate the classifications, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the Secretaries appointed under sub-section (1) and such rules may provide for the constitution of a separate service or cadre, either for the whole State or for each district, for the Secretaries along with such other Government servants as are considered necessary by the Government.”.

3. *Amendment of section 222*.— In section 222 of the principal Act,—

(1) in the marginal heading, for the words “Constitution of a common municipal service”, the words “Officers and employees of Municipality” shall be substituted;

(2) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) The officers and employees of a Municipality, other than contingent employees, shall be Government servants.

(1A) The Municipality shall pay the officers and employees such salary and allowances as may from, time to time, be fixed by the Government and shall also make such contribution towards their leave salary, pension and provident fund, as may be required by the conditions of their service under the Government, to be made by them or on their behalf.

(1B) Subject to the provisions of this Act, the Government shall by rules made under the Kerala Public Services Act, 1968 (19 of 1968), regulate the classifications, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and the employees and such rules may provide for the constitution of a separate service, for any class of officers or employees of Municipalities either for the whole State or for each district”.

4. *Amendment of section 224*.— In sub-section (2) of section 224 of the principal Act, for the words “Municipal Common Service” the words “Local Self Government Department Common Service” shall be substituted.

5. *Amendment of section 326.*—In section 326 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding anything contained in this Act or any other law for the time being in force, for the purpose of carrying out the provisions contained in sub-section (4), the Government shall have the power to take over any land belonging to the Local Self Government Institutions, in which the project as specified in the said sub-section is proposed to be implemented, by publishing a notification in the Official Gazette.”.

6. *Repeal and saving.*—(1) The Kerala Municipality (Amendment) Ordinance, 2019 (28 of 2019) 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 Ordinance 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 sub-sections (3) of section 326 of the Kerala Municipality Act, 1994 (20 of 1994) a Municipality may make arrangement on contract basis, in whole or in part for the collection and disposal of solid waste from public or private premises. As per sub-section (4) of the said section, notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, if satisfied that it is necessary to do so in the public interest, make arrangements on contract basis or otherwise for the collection, transportation, disposal and processing of solid waste, rubbish, filth and such other materials from two or more Local Self Government Institutions, either directly or through the agency authorised by the Government or undertake any project, for the collection, transportation, disposal and processing of solid waste, rubbish, filth and such other materials, involving considerable expenditure.

For the purpose of implementation of the above said projects, land is required for installing modern equipments. In the above circumstances, the Government have decided to amend the Kerala Municipality Act, 1994 (20 of 1994) by incorporating a provision empowering the Government to take over the land belonging to the Local Self Government Institution in which the above said projects are proposed to be implemented.

As the above said proposal had to be given effect to immediately and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2019 was promulgated by the Governor of Kerala on the 2nd day of March, 2019 and the same was published as Ordinance No.18 of 2019 in the Kerala Gazette Extraordinary No. 552 dated 2nd day of March, 2019.

The Hon'ble Governor of Kerala, in the address to the Legislative Assembly of the State of Kerala in 2016, had announced that the Government would operationalise the policy decision taken in February 2011 to integrate the different cadres under the Department of Local Self Government into a Common service. On the basis of that, the Government have decided to amend section 48 of the Kerala Municipality Act, 1994 pertaining to the provisions of Municipal Secretary and section 222 pertaining to the provisions of constitution of a common municipal service and section 224 pertaining to the provisions regarding appointing authority, so as to integrate the different services under Local Self Government Department, that is, Panchayat, Rural Development, Urban Affairs, Town and Country Planning, Local Self Government Engineering Service and Municipal Common Service, in to a Common Service.

By the above said amendment, it is also intended to empower the Government to make Local Self Government State Service Rules and Subordinate Service Rules under the Kerala Public Services Act, 1968 (19 of 1968).

As the above said proposal had to be given effect to immediately, and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Second Amendment) Ordinance, 2019 was promulgated by the Governor of Kerala on the 6th day of March, 2019 and the same was published as Ordinance No.23 of 2019 in the Kerala Gazette Extraordinary No.599 dated 6th day of March, 2019.

Though a Bill to replace the said Ordinances by an Act of the State Legislature was published as Bill No. 203 of the Fourteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by the Legislative Assembly, during its session which commenced on the 27th day of May, 2019 and ended on the 4th day of July, 2019.

As the provisions of the said Ordinances had to be kept alive and the Legislative Assembly of the State of Kerala was not in session, the Kerala Municipality (Amendment) Ordinance, 2019 (28 of 2019) was promulgated by the Governor of Kerala on the 6th day of July, 2019 and the same was published in the Kerala Gazette Extraordinary No. 1505 dated 6th day July, 2019.

The Bill seeks to replace Ordinance No. 28 of 2019 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (3A) of section 48 proposed to be inserted in the principal Act by clause 2 of the Bill, seeks to empower the Government to make rules under the Kerala Public Services Act, 1968 (19 of 1968) to regulate the classifications, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the Secretaries and to provide for the constitution of a separate service or cadre, either for the whole State or for each district, for the Secretaries along with such other Government servants as are considered necessary by the Government.

Sub-section (1B) of section 222 proposed to be inserted in the principal Act by clause 3 of the Bill, seeks to empower the Government to make rules under the Kerala Public Services Act, 1968 (19 of 1968) to regulate the classifications, method of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and the employees and provide for the constitution of a separate service for any class of officers or servants of Municipalities either for the whole State or for each district.

Sub-section (5) of section 326 proposed to be inserted in the principal Act by clause 5 of the Bill, seeks to empower the Government to take over any land belonging to the Local Self Government Institutions in which the project as

specified in the sub-section(4) is proposed to implemented, for the purpose of carrying out the provision contained in said sub-section, by a notification published in the Official Gazette.

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

A. C. MOIDEEN.

Explanation.—In this section minor penalty has the same meaning as is given to minor penalty in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

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ESTABLISHMENT

222. *Constitution of common municipal service.*—(1) The Government may subject to such rules as may be prescribed, constitute a common municipal service for the employees under the service of the Municipalities in the State and regulate the recruitment and conditions of service of the employees of the Municipalities.

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(9) Every Municipality shall, make available the services, of its officers and employees, for the performance of the functions, entrusted by the Government, which involved the implementation of any scheme, project or plan.

Provided that no application for review shall be entertained after the expiry of thirty days from the date the order sought to be reviewed was received by the applicant:

Provided further that an order affecting any party shall be passed only after giving that party an opportunity of submitting a representation:

Provided also that no review shall be done by the Government suo motu after the expiry of one year from the date of the order sought to be reviewed.

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224. *Appointing Authorities.*—(1) The Council shall be the appointing authority in respect of the contingent posts in the Municipal Service and appointment orders in respect of them shall be issued by the secretary, with the approval of the council.

(2) The Government or the officer authorized by them in this behalf shall be the appointing authority in respect of all other posts whether they are included in the Municipal Common Service or not.

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MANAGEMENT OF WASTE

326. *Municipality to arrange for the removal of rubbish, solid wastes and filth.*—(1) Every Municipality shall make adequate arrangements for,—

(a) the regular sweeping and cleansing of the streets and removal of sweepings therefrom;

(b) the daily removal of the filth and the carcasses of animals from private premises;

(c) the removal of solid wastes; and

(d) the daily removal of rubbish from dustbins and private premises, and with this object, it shall provide:

(i) depots, receptacles and places for the deposit of filth, rubbish and the carcasses of animals;

(ii) covered vehicles or vessels for the removal of filth;

(iii) vehicles or other suitable means for the removal of the carcasses of large animals and rubbish; and

(iv) dustbins, receptacles and places for the temporary deposit of domestic waste, dust, ashes, refuse, rubbish, offensive matter, trade refuse, institutional refuse, carcasses of dead animals.

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(3) A Municipality may make arrangement on contract basis, in whole or in part for the collection and disposal of solid waste from public or private premises.

(4) Notwithstanding anything contained in this Act or any other law for the time being in force, the Government may, if satisfied that it is necessary to do so in the public interest, make arrangements on contract basis or otherwise for the collection, transportation, disposal and processing of solid waste, rubbish, filth and such other materials from two or more Local Self Government Institutions, either directly or through the agency authorised by the Government or undertake any project, for the collection, transportation, disposal and processing of solid waste, rubbish, filth and such other materials, involving considerable expenditure.

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