

The Kerala Beedi and Cigar Workers' Welfare Fund Act, 1995

Act 18 of 1995

Keyword(s):

Chief Welfare Fund Inspector, Contribution, Employee, Employer, Family, Fund, Self-Employed Wages, Welfare Fund Inspector

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THE KERALA BEEDI AND CIGAR WORKERS' WELFARE FUND ACT, 1995 [\[1\]](#)

(ACT 18 OF 1995)

An Act to provide for the constitution of a fund to grant relief to, promote the welfare of, and to pay pension to beedi and cigar workers and self-employed persons in beedi and cigar industries in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide for the constitution of a fund to grant relief to, to promote the welfare of and to pay pension to beedi and cigar workers and self-employed persons in beedi and cigar industries in the State of Kerala and matters connected therewith or incidental thereto;

BE it enacted in the Forty-sixth Year of the Republic of India as follows: —

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Beedi and Cigar Workers' Welfare Fund Act, 1995.

(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.*—(1) In this Act, unless the context otherwise requires,—

(a) 'Board' means the Kerala Beedi and Cigar Workers' Welfare Fund Board constituted under section 7;

(b) 'Chief Welfare Fund Inspector' means the Chief Welfare Fund Inspector appointed under sub-section (1) of section 10;

(c) 'contribution' means the sum of money payable to the Fund under section 5;

(d) 'employee' means a person employed directly or through any agency, whether for wages or not, in any beedi or cigar establishment to do any work, skilled, unskilled, manual or clerical and includes,—

(i) any person who is given raw materials by an employer or a contractor for converting them into beedi or cigar at home;

(ii) any person not employed by an employer or a contractor but working with the permission of, or under agreement with the employer or contractor; and

(iii) any person employed by a petty shop owner for wages or not, for making beedi or cigar;

(e) 'employer' means,—

(i) in relation to contract labour, the principal employer; and

(ii) in relation to any other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment and includes any other person to whom the affairs of the establishment are entrusted, whether called the manager, superintendent or by any other name;

(f) 'family' means,—

(i) husband, wife, minor sons, unmarried daughters; and

(ii) father and mother who are solely dependent on the beedi or cigar worker or the self employed person;

(g) 'Fund' means the Kerala Beedi and Cigar Workers' Welfare Fund established under section 3 and the Scheme;

(h) 'member' means an employee or self-employed person registered in the Scheme under section 4;

(i) 'prescribed' means prescribed by rules made under this Act;

(j) 'Schedule' means the Schedule to this Act;

(k) 'Scheme' means the Scheme framed under this Act;

(l) 'self-employed person' means a person who purchases raw materials and produces beedi or cigar and sells in the market for his livelihood, but does not include an employee as defined in clause (d);

(m) 'wages' means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include,—

(i) the cash value of any food concession;

(ii) overtime allowance, bonus and commission;

(n) 'Welfare Fund Inspector' means a Welfare Fund Inspector appointed under sub-section (1) of section 10.

(o) 'year' means the financial year.

(2) All other words and expressions used but not defined in this Act but defined in the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Central Act 32 of 1966), shall have the meanings respectively assigned to them in that Act.

3. Beedi and Cigar Workers' Welfare Fund Scheme.—(1) The Government may, by notification in the Gazette, frame a Scheme to be called the Beedi and Cigar Workers' Welfare Fund Scheme for the establishment of a Fund under this Act for employees and self-employed persons in beedi and cigar industry and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

(2) There shall be credited to the Fund,—

(a) the contribution specified under section 5;

(b) grants or loans or advances made by the Government of India or the State Government or any authority or institution;

(c) any donation from whatever source;

(d) any amount raised by the Board from other sources to augment the resources of the Board;

(e) penalties and fines realised or imposed under sections 19, 20 and 21.

(3) The Fund shall vest in, and be administered by, the Board constituted under section 7.

(4) Subject to the provisions of this Act, the Scheme may provide for all or any of the matters specified in the Schedule.

(5) The Fund may be utilised for all or any of the following purposes, namely:—

(a) for payment of pension,—

(i) to a person who, immediately before the commencement of this Act, was an employee or self-employed person for a continuous period of not less than three years and has completed the age of fifty-eight years; and

(ii) to a member who is paying contribution to the Fund continuously for a period of not less than three years and has completed the age of fifty-eight years;

(b) for payment of educational assistance to the children of the members;

(c) for payment of medical benefits to the members and their family;

(d) for payment of financial assistance to the members for constructing houses for their residential purposes;

(e) for payment of financial assistance to the dependents of the members who die in harness;

(f) for meeting the administrative expenses of the Board;

(g) for any other purposes as may be provided in the Scheme.

(6) The Scheme framed under sub-section (1) shall be laid, as soon as may be after it is framed, 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 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 Scheme, the Scheme shall thereafter have effect only in such modified form; so however that, any such modification shall be without prejudice to the validity of anything previously done under the Scheme.

4. *Registration of beedi and cigar workers.*—Every employee or self-employed person who is entitled to be a member shall register his name in the manner specified in the Scheme as a beneficiary of the Fund in the Register to be maintained by the Chief Welfare Fund Inspector or other officers authorised by him in this behalf.

5. *Contribution to the Fund.*—(1) The contribution which shall be paid by the employer to the Fund shall be at the rate of six rupees per mensem in respect of each employee and the employee's contribution to the Fund shall be at the rate of three rupees per mensem.

(2) Every self-employed person shall contribute to the Fund five rupees per mensem.

(3) Every employer shall, along with his contribution, pay to the Fund, the contribution in respect of the employees engaged by him.

(4) The Government shall contribute to the Fund every year by way of grant or on a matching basis an amount equal to the contribution paid by the employees under sub-section (1).

(5) Notwithstanding anything contained in any other law for the time being in force, the employer shall be entitled to recover the employees' contribution paid by him by deduction from his wages or in such other manner as may be prescribed, and such deduction shall be deemed to be a deduction authorised by or under the Payment of Wages Act, 1936 (Central Act 4 of 1936).

6. *Modification of the Scheme.*—(1) The Government may, by notification in the Gazette, add to, amend or vary the Scheme either prospectively or retrospectively.

(2) Every notification under sub-section (1) shall be laid, as soon as may be after it is issued, 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 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 notification or decides that the notification should not be issued, the notification 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 amendment shall be without prejudice to the validity of anything previously done under that notification.

7. *Constitution of Board.*—(1) The Government may, by notification in the Gazette, constitute, with effect from such date as may be specified in such notification, a Board to be called the "Beedi and Cigar Workers' Welfare Fund Board" for the administration of the Fund and to supervise or carry out the activities financed from the Fund.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall, by the said name sue and be sued.

(3) The Board shall consist of such number of Directors as may be appointed by the Government:

Provided that the Board shall include an equal number of Directors representing the Government, the employers and the employees.

(4) One of the Directors of the Board shall be appointed by the Government to be its Chairman.

(5) The Government shall publish in the Gazette the names of the Chairman and Directors of the Board.

(6) The Board shall administer the Fund in such manner as may be specified in the Scheme.

(7) The Board may, with the previous approval of the Government, delegate to the Chairman or to the Chief Welfare Fund Inspector or to any Welfare Fund Inspector such of its powers and functions under this Act or the Schemes it may consider necessary for the efficient administration of the Fund, subject to such restrictions and conditions, if any, as it may specify.

8. *Term of office of the Directors.*—(1) A Director appointed under sub-section (3) of section 7 shall hold office for a period of three years.

(2) Notwithstanding anything contained in section 9, the Government may, at any time, for reasons to be recorded in writing, remove from office any Director of the Board after giving him reasonable opportunity of showing cause against the proposed removal:

Provided that it shall not be necessary to record in writing, the reason for removal or to give an opportunity of showing cause against the proposed removal, if the Government are of opinion that it is not expedient, in the public interest, to record the reasons in writing or to give such opportunity.

(3) Any Director may resign his membership by giving notice in writing to the Government, but shall continue in office until his resignation is accepted by the Government.

9. *Removal of non-official Directors.*—(1) The Government may, by notification in the Gazette, remove any non-official Director of the Board from office,—

(a) if he has, without the permission of the Board been absent from the meetings of the Board for three consecutive meetings:

Provided that such absence may be condoned by the Board before the publication of the notification in the Gazette;

(b) If in the opinion of the Government, he is unsuitable, or has become incapable of acting as a Director or has so abused his position as a Director as to render his continuance as such Director detrimental to the public interest:

Provided that before removing a Director under this sub-section, he shall be given a reasonable opportunity to show cause why he should not be removed.

(2) A non-official Director of the Board removed under clause (a) of sub-section (1) shall be disqualified for reappointment as a Director of the Board for a period of three years from the date of his removal unless otherwise ordered by the Government.

(3) A non-official Director of the Board removed under clause (b) of sub-section (1) shall not be eligible for re-appointment until he is declared by an order of the Government to be no longer ineligible.

10. *Appointment of officers.*—(1) The Government may appoint a Chief Welfare Fund Inspector and as many Welfare Fund Inspectors and such other staff as they consider necessary to assist the Chief Welfare Fund Inspector in the discharge of his duties under this Act.

(2) The Chief Welfare Fund Inspector shall be the Chief Executive Officer of the Board.

(3) The method of appointment, salary and allowances, discipline and other conditions of service of the Chief Welfare Fund Inspector and the Welfare Fund Inspectors and other staff shall be such as may be prescribed by the Government.

11. *Duty of employer to file return.*—Every employer shall, before fifth day of every month, file a return showing the details of contributions paid into the Fund, in such manner as may be specified in the Scheme..

12. *Determination of amount due from employers.*—(1) The Chief Welfare Fund Inspector or any other Welfare Fund Inspector authorised by him in this behalf may, by order, determine the amount due from any employer under the provisions of this Act or of the Scheme and for this purpose, may conduct such inquiry as he may deem necessary.

(2) Any Officer conducting the inquiry under sub-section (1) shall, for the purpose of such inquiry, have the same powers as are vested in 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) enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses.

(3) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and for the purposes of section 196 of that Code.

(4) No order determining the amount due from any employer shall be made under sub-section (1) unless the employer has been given a reasonable opportunity of being heard.

(5) Any person aggrieved by an order under sub-section (1) may, within sixty days from the date of receipt of the order, prefer an appeal to the Government or any other authority as may be specified by the Government in this behalf and the decision of the Government or of such authority on such appeal shall be final.

13. *Provisional assessment of contribution.*—(1) Every employer shall, pending determination under section 12 of the amount due from him, pay on or before the 5th day of every month by way of advance contribution an amount equivalent to one-twelfth of the amount payable annually by him in respect of his establishment, according to the latest determination under the said section or, if the amount due from him has not been previously determined under the said section, an amount equivalent to one-twelfth of the amount which, according to the assessment of the employer is payable by him annually in respect of his establishment.

(2) The contribution shall be remitted to the individual account of each member and the employer shall file a statement showing the amount due to each member while remitting the monthly contribution.

(3) The contribution in respect of a self-employed person for a month shall become payable on or before the 5th day of the succeeding month.

(4) Where the advance contribution is not paid on or before the due date, the Welfare Fund Inspector shall issue a notice to the defaulter showing the amount of arrears and, if the amount is not paid within seven days of the receipt of such notice, it may be recovered in the same manner as arrears of public revenue due on land.

(5) The amount paid under sub-section (1) by an employer shall be adjusted against the amount determined under section 12 of that year.

14. *Mode of recovery of money due from employer.*—Any amount due from the employer in pursuance of the provisions of this Act or the Scheme, other than an amount payable under sub-section (1) of section 12 may, if the amount is in arrears, be recovered together with interest thereon at the rate of sixteen per cent per annum in the same manner as an arrear of public revenue due on land.

15. *Protection against attachment.*—(1) The amount standing to the credit of any member in the Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member, and no receiver appointed under the Insolvency Act, 1955 (2 of 1956) shall be entitled to or have any claim on any such amount.

(2) Any amount standing to the credit of a member in the Fund at the time of his death and payable to his nominee under the Scheme shall, subject to any deduction authorised by the Scheme, vest in the nominee and shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member.

16. *Priority of payment of contributions over other debts.*—Where any employer liable to pay contribution under section 5 is adjudicated insolvent or in case the employer is a company and an order for winding up of such company is made, the amount due from such employer under this Act or the Scheme shall, where the liability therefore has accrued before the order of adjudication or winding up is made, be deemed to be included among the debts which under section 64 of the Insolvency Act, 1955 (2 of 1956) or under section 530 of the Companies Act, 1956 (Central Act 1 of 1956) are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company being wound up, as the case may be.

17. *Employer not to reduce wages, etc.*—No employer shall by reason only of his liability for the payment of any contribution to the Fund, reduce, whether directly or indirectly, the wages of any employee to whom the Scheme applies or the total quantum

of benefits to which the employee is entitled under the terms of his employment, express or implied.

18. *Directors of Board, etc., to be public servants.*—Every Director of the Board, the Chief Welfare Fund Inspector and other officers and members of the Board 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).

19. *Penalties.*—(1) Whoever, for the purpose of avoiding any payment to be made by him under this Act or under the Scheme or of enabling any other person to avoid any payment to be made under this Act or the Scheme, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes or makes default in complying with any of the provisions of this Act or of the Scheme shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Chief Welfare Fund Inspector.

20. *Enhanced punishment for default in payment of employees' contribution already deducted.*—(1) Whoever makes default in the payment of the employees' share of the contribution to the Fund after having deducted it from the wages of the employees in accordance with the provisions of this Act or the Scheme, shall be punishable with imprisonment for a term which may extend to one year, but which shall not be less than three months, and with fine which may extend to four thousand rupees:

Provided that the court may, on any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), an offence under sub-section (1) shall be cognizable.

21. *Enhanced punishment for second or subsequent offence.*—Whoever having been convicted by a court of an offence punishable under this Act, again commits the same offence shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year, but which shall not be less than three months, and with fine which may extend to five thousand rupees:

Provided that the court may, on any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

22. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section, —

(a) “company” means any body corporate and includes a firm or other association of individuals;

(b) “director” in relation to a firm means a partner in the firm

23. *Directions by Government.*—(1) The Government may, after consultation with the Board, give to the Board general directions to be followed by the Board.

(2) In the exercise of its powers and performance of its duties under this Act the Board shall not depart from any general directions issued under sub-section (1), except with the previous permission of the Government.

24. *Power to order inquiry.*—(1) The Government may, at any time, appoint any person to inquire into the working of the Board and to submit a report to the Government.

(2) The Board shall give the person so appointed all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts and information in the possession of the Board as he may require.

25. *Power to supersede the Board.*—(1) If on consideration of the report under section 24 or otherwise, the Government are of opinion that the Board has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or the Scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification:

Provided that before issuing a notification under this sub-section, the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1),—

(a) all the Directors of the Board shall, as from the date of such publication, vacate their offices, as such Directors;

(b) all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such officer or officers as may be specified in the notification;

(c) all funds and other properties vested in the Board shall, during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession, the Government shall reconstitute the Board in the manner provided in section 7.

26. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against any Director of the Board or the Chief Welfare Fund Inspector or any other person in respect of anything which is in good faith done or intended to be done under this Act or any rule made thereunder or under the Scheme.

27. Bar of jurisdiction of civil courts.—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act or the Scheme require to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Welfare Fund Inspector or any other officer appointed under section 10.

28. Power to make rules.—(1) The Government may, by notification in the Gazettee, make rules for the purpose of carrying into effect the provisions 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 in 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 rule.

29. Repeal.—The Kerala Beedi and Cigar Workers' Welfare Fund Ordinance, 1995 (12 of 1995) is hereby repealed.

SCHEDULE

(See sub-section (4) of section 3)

Matters for which provision may be made in the Scheme

1. Registration of employees and self employed persons.
2. The manner in which contributions shall be made to the Fund by employers and by, or on behalf of, employees (whether employed directly, or through an agency) and by self employed persons and the manner in which such contributions may be recovered.
3. The manner in which employees' contribution may be recovered by contractors from employees employed by or through such contractors.
4. The constitution of any committee for assisting the Board.
5. The manner in which account shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government.
6. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.
7. The conditions and procedure for the payment of pension, Financial assistance, educational assistance and medical benefit to the members, children and family, as the case may be.
8. The fixation by the Government in consultation with the Board of the rate of interest payable to members.
9. The form in which an employee shall furnish particulars about himself and his family whenever required.
10. The nomination of a person to receive the amount standing to the credit of a member after his death and the cancellation or variation of such nomination.
11. The registers and records to be maintained with respect to employees and the returns to be furnished by the employers or agencies.
12. The form or design of any identity card for the purpose of identifying members and for issue, custody and replacement thereof.

13. The fees to be levied for any of the purposes specified in this Schedule.
14. The further powers, if any, which may be exercised by the officers appointed under this Act.
15. The manner in which the Directors of the Board shall be chosen and appointed.
16. The conditions of service, duties and remuneration of officers appointed under this Act.
17. The conditions under which any amount due to the Board may be written off.
18. Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.

