

The Kerala Local Fund Audit Act, 1994

KERALA

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Act 14 of 1994

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The Kerala Local Fund Audit Act, 1994(Act 14 of 1994)An act to provide for and to regulate the audit of the local funds under the managements or control of certain local authorities in the State of Kerala.Preamble. - Whereas it is expedient to provide for and to regulate the audit of the local funds under the management or control of certain local authorities in the State of Kerala;Be it enacted in the Forty-Fifth Year of the Republic of India as follows:-

1. Short title and commencement.

(1)This Act may be called the Kerala Local Fund Audit Act, 1994.(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.

- In this Act unless the context otherwise requires,-(a)"auditor" means the Director of Local Fund Audit and includes any other Officer of the Local Fund Audit Department empowered by the Director to perform the functions of an auditor under this Act.(b)"concurrent audit" means continuous audit of accounts of a local authority by auditors specially appointed by the Government by virtue of the powers conferred on them by the relevant enactments;(c)"detailed audit" means an audit of accounts of the entire transactions for the whole year or for the period specified by the Director;(d)"Director" means the Director of Local Fund Audit and includes any person empowered by the Government to perform the functions of the Director of Local Fund Audit;(e)"Executive authority" means the principal executive officer of a local authority;(f)"local authority" means(i)A Municipal corporation constituted under the Kerala Municipal Corporation Act, 1961 (30 of 1961) or a Municipality constituted under the Kerala Municipalities Act, 1960 (14 of 1961)or Township specified in section 2 of the Guruvayur Township Act, 1961 (43 of 1961) or a Panchayat constituted or deemed to have been constituted for the local administration of a Panchayat area under the Kerala Panchayats Act, 1960 (32 of 1960) or a Panchayat or a Municipality or a Metropolitan

Planning committee constituted in the State in accordance with the provisions in Part IX and Part IXA respectively, of the Constitution of India;(ii)any other authority, body or institution established by or under any law or orders of the Government and responsible for the administration of a local fund;(g)"local fund" means-(i)A fund administered by a local authority which , though not part of a Government Department has been established by or under a law or orders of the Government, and(ii)any other fund which the Government may, by notification in the Gazette, declared to be a local fund for the purpose of this Act;(h)"Prescribed" means prescribed by rules made under this Act;(i)"Schedule" means the Schedule appended to this Act;(j)"special audit" means an audit of accounts pertaining to a specified item or series of item requiring thorough examination, and includes re-audit of the accounts for a period already covered by audit as specified by the Director;(k)"state" means the State of Kerala;(l)"surcharge" means an amount for which the auditor, in exercise of the powers vested in him under this Act, makes a person liable for loss waste, misapplication or misappropriation of any money or other property belonging to any local authority

3. Appointment of Director.

(1)The Government shall, by notification in the Gazette, appoint a person , having such qualifications as may be prescribed to be the Director of Local Fund Audit in charge of the audit of accounts of a local authority or a local fund included in the Schedule(2)The Government may appoint such other officers in the Local Fund Audit Department to assist the Director in the exercise of his powers and the discharge of his functions and duties under this Act.(3)All officers and staff of the Local Fund Audit Department shall be subordinate to the Director who shall have general superintendence and control over them in the performance of their functions under this Act or the rules made thereunder.(4)Notwithstanding anything contained in sub-section (1)-(a)the Examiner of Local Fund Accounts in the State functioning as such immediately preceding the commencement of this Act shall be deemed to be the Director appointed under sub-section (1) and shall continue to function as such Director till a new Director is appointed under that sub-sections; and(b)the Joint Examiner of Local Fund Accounts and the Deputy Examiner of Local Fund Accounts functioning as such in the Local Fund Audit Department of the State immediately preceding the commencement of this Act shall, at such commencement , be known as the 'joint Director of Local Fund Audit' and the 'Deputy Director of Local Fund Audit', respectively.

4. Audit of accounts.

(1)Notwithstanding anything contained in any other law for the being in force, but subject to the provisions of the Controller and Auditor General, (Duties, powers and Conditions of Service) Act, 1971 (Central Act 56 of 1971) the Director shall , in the manner provided by or under this Act, conduct the audit of accounts of a local authority or local fund included in the Schedule.(2)Government may, by notification in the Gazette and for reason to be specified therein, add any other authority, body, institution or local fund to the Schedule referred to in sub-section (1) and on the publication of the notification, such authority, body, institution or local fund shall be deemed to be added to the schedule.(3)No authority, body institution or local fund included in the Schedule referred to in sub-section (1) shall be omitted there from except by the authority of a law

made by the State Legislature.

5. Power of audit of accounts of certain authorities, bodies, institutions or funds.

- The Director may with the previous sanction of the Government, and without prejudice to the proclued in the Schedule subject to such terms and conditions as may be agreed upon between the Director and the person responsible for the administration of such authority, body, institution of fund.

6. Audit of accounts of stock and stores and verification of cash balance.

(1)The auditor shall have authority to audit and report on the accounts of stores and stock kept by a local authority in the Schedule.(2)The Director may, with the sanction of Government , seek the services of any, technical expert for the purpose referred in sub- section (1) if, in his opinion , it is necessary to do so.(3)An officer not below the rank of a Deputy Director shall have authority to make surprise inspection of the stock and stores kept by a local authority specified in the Schedule.(4)The Director shall have authority to verify the cash balance of the fund at the time of audit and inspection.

7. Manner in which audit is to be conducted.

- The auditor shall conduct the audit annually and at such intervals as may be decided by the Director or, may conduct concurrent audit of such of those local authorities as are found necessary under the provisions of any law governing them or as may be decided by the Direction in consultation with the Government.

8. Auditor to be deemed to be public servant.

- An Auditor shall, for the purpose of powers and duties conferred and imposed on him by or under this Act, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).

9. Liability of local authorities to prepare and present accounts for audit.

(1)The accounts of a local authority or local fund included in the Schedule relating to a financial year shall be prepared or caused to be prepared by the Executive authority, in such form and in such manner as may be prescribed , and presented for audit within four months of the close of that financial year.(2)Where an Executive authority makes default in the preparation and presentation of accounts for audit within the period specified under sub-section (1), he shall be punishable, on conviction, with fine which may extended to three thousand rupees but which shall not be less than one thousand rupees:Provided that the court may, for any adequate and special reasons to be recorded in the judgement, impose a fine of less than one thousand rupees.(3)No proceedings under

subsection (2) shall be taken by the Director without giving the person affected thereby an opportunity to show cause, within fifteen days, why such proceedings should not be taken against him.

10. Completion of audit of accounts.

- The audit of the accounts prepared and presented for audit under section 9 shall be completed by the auditor within six months of the date of its presentation for audit, failing which the officer responsible for the audit shall be liable to be proceeded against under the provisions of the Kerala Civil Service (Classification, Control and Appeal) Rules, 1960.

11. Power of auditor to require production of accounts and attendance of persons.

(1) For the purpose of an audit under this Act, an auditor may, - (a) require in writing, the production at the place of audit such vouchers, statements returns, correspondence, notes or any other documents for the perusal or examination of which he believes to be necessary for the elucidation of the accounts; (b) require in writing any employee of the local authority accountable for or having the custody or control of such vouchers, statements, returns, correspondences, notes or other documents or any person having directly or indirectly, any share or interest in any contract with or under the local authority to appear in person before him at the head office of that local authority or at the place of audit and answer any question and require any person so appearing to make and sign a declaration with respect to such document or to prepare and furnish any statement relating there to; and (c) in the event of any explanation being required from any officer or member of a local authority, in writing invite such person and shall in writing, specify the points on which his explanation is required. (2) The auditor may, in any requisition made under sub-section (1), fix a reasonable period of not less than three days within which the said requisition shall be complied with. (3) The auditor shall give notice in writing to the Executive authority of the institution concerned at least two weeks before the date on which he propose to commence the audit; Provided that the auditor may, for special reasons to be recorded in writing, give shorter notice than two weeks or commence a special or detailed audit without notice, on the order of the Director. (4) The auditor shall, in suitable cases, and if so required by Government, give public notice of the date and time of audit by publication in the notice board of the local authority to be audited and also in a newspaper in the local language having wide circulation in the area where it is situated and shall consider the objections, if any, made in writing by any person.

12. penalty for disobeying requisition under section 11.

- Any person who wilfully neglects or refuses to comply with any requisition lawfully made upon him under clause (a) or clause (b) of sub-section (1) section 11 shall be punishable, on conviction, with fine which may extend to one thousand rupees: Provided that before proceedings are taken, the Director shall call upon the person against whom the proceeding are contemplated to show cause, within fifteen days, why such proceeding should not be taken

13. Audit reports to be sent to certain officers and bodies as Government may direct.

- As soon as practicable after the completion of the audit, but not later than three months thereafter the auditor shall send to the local authority concerned a report on the accounts audited and examined by him and the copies of the report shall also be sent to such officers and such bodies as the Government may direct or as may be specified under the law governing that local authority.

14. Contents of audit report.

- The auditor shall include in the audit report a statement of-(a)every payment which appears to him to be contrary to law;(b)the amount of any deficiency or loss which appears to have been caused by the negligence or misconduct of any person;(c)the cases of misappropriation or mis-utilisation of the local fund;(d)the amount, if any, received which is required to be brought into account but has not been brought into account by any person; and(e)any other material impropriety or irregularity which he has observed in the accounts.

15. Procedure to be followed after getting the report of the Director under section 13.

(1)On receipt of a report under section 13, the Executive authority concerned shall either remedy the defects or irregularities which may have been pointed out in the report and send to the Director within two months of the receipt of the report or with in such period as may be specified under the law governing the local authority, intimation of his having done so, or shall within the said period , supply to the Director any further explanations as he may wish to make in regard to the defects or irregularities.(2)On receipt of such intimation or explanation, the auditor may, in respect of all or any of the matters discussed in his report - (a) accept the intimation or explanation and drop the objection; or (b) hold that the defects or irregularities pointed out in the report or any of them have not been removed or remedied.(3)(a)The auditor shall send a report of his decision to the executive authority concerned within two months from the date of receipt by him of the intimation or explanation referred in subsection (1) or if no such intimation or explanation is received, on the expiry of the period of two months mentioned in that sub-section.(b)If the auditor holds that any defects or irregularities have not been removed or remedied he shall state in the report,-(i)Whether, in his opinion , the defects or irregularities can be regularised and ,if so, by what method;(ii)if they do not admit of being regularised, whether they can be condoned and, if so, by what authority; and(iii)whether the amounts to which the defects or irregularities relate should , in his opinion , be charged and, if so, against whom.(4)The local authority concerned shall publish in its next administration report such portions of the report under section 13, dealing with defects and irregularities falling under clause (b) of sub-section (2) together with the explanation thereof , if any, given under sub-section (1) and the final report of the auditor thereon under sub-section (3). The report of defects and irregularities, the explanation thereon and the final report shall be open to inspection by the public at the office of the local authority for a period of one month from the date of their receipt.(5)Nothing in this section or in section 13 shall preclude the auditor, at any time , from

bringing to the notice of the Government or of any officer of Government for such action as may be necessary, any information which appears to the auditor to support a presumption of criminal misappropriation or fraud or which, in his opinion, deserves special attention or immediate investigation.

16. Auditor to surcharge illegal payments and loss caused by negligence or misconduct.

(1)The auditor may disallow any item which appears to him to be contrary to law and surcharge the same against the person making or person or body of persons authorising the making of the illegal payment and may charge against any person responsible therefore, the amount of any deficiency or loss caused by the negligence or misconduct of that person or any sum received which ought to have been, but has not been brought into account by that person and shall, in every such case, certify the amount due from such person.(2)The auditor shall state, in writing , the reasons for his decision in respect of every disallowance, surcharge or charge and shall communicate the same by registered post to the person against whom it is made together with an extract of the relevant objection in the audit report.(3)Any person aggrieved by disallowance, surcharge or charge made may, within one month after he has received or been served with the decision of the auditor, apply to the District Court, to set aside such disallowance, surcharge or charge and the court, after taking such evidence as is necessary, may confirm, modify or remit such disallowance, surcharge or charge.(4)Every sum certified to be due from any person by the auditor under this Act shall be paid by such person to the Executive authority within one month after the intimation to him of the decision of the Director unless, within that time, such person has filed an application before the District Court against the decision under sub-section (3) and such amount ,if not so paid, or such amount as the District Court shall declare to be due, shall be recoverable under the provisions of the Kerala Revenue Recovery Act, 1968 (15 of 1968) for the time being in force , as if it were an arrear of public revenue due on land.

17. Powers and duties of the Director.

(1)The Director shall exercise general supervision and control over the discharge by the auditors of their duties under this Act.(2)He may condone a payment made from a local fund, which appears to him to be contrary to law, if-(i)In his opinion there was no negligence or misconduct on the part of the person making or authorising such payment and(ii)such payment does not exceed rupees one hundred in each case.

18. Delegation of powers and Functions.

- The Director may, delegate all or any of the powers to be exercised or functions to be performed by him under this Act to any officer of the Local Fund Audit Department and may in like manner withdraw such powers or functions so delegated.

19. Payment of charges for audit.

(1)The charges for audit of accounts under this Act shall be paid by the local authority concerned at such rates as may be fixed by the Director with the approval of the Government.(2)The Government may, by general or special order, exempt a local authority from the liability to pay audit charges under sub-section (1), either wholly or in part,(3)If the audit charges due under sub-section (1) is not paid within one year from the date of its becoming due, Government may adjust the same from the grant or other sums, if any, payable to such local authority.(4)Where a local authority does not pay the audit charges within one year from the date of its becoming due and where no grant or other sum is payable by the government to the local authority, the amount of audit charges may be recovered from the local authority, as if it were arrears of public revenue due on land, under the provisions of the Kerala Revenue Recovery Act, 1968(15 of 1968), for the time being in force.

20. Power to dispense with detailed audit.

- The Directory may, when circumstances so warrant, dispense with detailed audit of any account or class or transactions and apply such limited check in relation to such accounts or transactions as may seem fit.

21. Defalcation or loss in money or stores to be reported by the Executive authority.

- Whenever any defalcation or loss in money or stores of local authority is discovered the fact shall be promptly reported by the executive authority to the Director and to the Controlling authority or the Government, as the case may be, giving in detail the circumstances which led to such defalcation or loss. Note. - In this sub-section Controlling Authority means the Head of the Department concerned or the officer empowered to countersign the grant-aid Bill. (2) On receipt of a report under sub-section (1), the Director shall immediately conduct or cause to be conducted a special audit of the accounts of that local authority: Provided that nothing in this section shall prevent the local authority from taking criminal proceedings against any person suspected of, involved in, any defalcation or loss of money or stores, where such a course is considered expedient.

22. Act to override other enactment.

- If any provision contained in any other law for the time being in force relating to the audit of accounts of a local authority or a local fund included in the Schedule is repugnant to the provisions of this Act, the latter shall prevail and the former be void to the extent of such repugnancy.

23. Laying of audit report.

- The Director shall send to the Government annually a consolidated report of the accounts audited by him containing such particulars which he intends to bring to their notice and the Government shall, within a period of three months after the receipt of the same, cause it to be laid before the

Legislative Assembly.

24. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the Director or any officer acting under the provisions of this Act for anything which is in good faith done or intended to be done under this Act or the Rules made thereunder.

25. Bar of jurisdiction of civil courts.

- Save as otherwise provided in sub-section (3) of section 16, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any action taken or to be taken by the Government or the Director or any officer in pursuance of any power conferred by or under this Act.

26. Special provision for pending audit.

- All audit of accounts pending at the commencement of this Act in , respect of any local authority or local fund included in the Schedule shall, notwithstanding anything contained in this Act, be continued and completed by the Director, within such time as may be prescribed , in the same manner in which such accounts were being audited by him, as if this Act had not been enacted. such time as may be prescribed , in the same manner in which such accounts were being audited by him, as if this Act had not been enacted.

27. Cognizance of offences.

- No court shall take cognizance of any offence punishable under this Act except on a complaint in writing of the facts constituting such offence , made by the Director or any officer authorised by him in this behalf.

28. Power of Government to make rules.

(1)The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.(2)In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-(a)the manner and the form in which the accounts of a local authority whose accounts are subject to audit under this Act, shall be kept and presented:(b)the powers and duties of auditors and procedure to be followed by them for conducting an audit and period at which such audit may be conducted;(c)the manner in which the matters required to be published under this Act shall be published; and(d)all other matters, which may be or are required to 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 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 any thing previously done under that rule.

29. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion may require, do anything not inconsistent with the provisions of this Act which appears to them to be necessary or expedient for the purpose of removing the difficulty: Provided that no such order shall be issued after the expiry of two years from the date of commencement of this Act.

30. Savings.

- The provisions of this Act shall not apply to any case, suit, appeal, revision petition or any other proceedings that may be pending at the commencement of this Act before an auditor, civil court or the Government and the law in force immediately before the commencement of this Act shall, notwithstanding anything contained in this Act, continue to apply to such cases, suits, appeals, revision petitions and other proceedings.