

Smoke-Nuisances Act, 1963

GUJARAT

India

Smoke-Nuisances Act, 1963

Act 3 of 1964

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An Act for the abatement of nuisances arising from the smoke of furnaces in the City of Ahmedabad and certain other areas adjacent thereto and to provide for the extension thereof to other areas in they State of Gujarat.It is hereby enacted in the Fourteenth Year of the Republic of India as follows:

1. Short title and extent

(1)This Act may be called the Gujarat Smoke-nuisances Act, 1963.(2)It extends in the first instance to the City of Ahmedabad and to the remaining areas within a radius of five miles from the clock lower on Bhadra Gate in the City of Ahmedabad exclusive of the area included within the limits of the Ahmedabad Cantonment.

2. Power further to extend Act

(1)The State Government may, by notification published in the Official Gazette and in such other manner as the State Government may determine, declare its intention to extend this Act to any specified area in any part of the State of Gujarat:Provided that if a military Cantonment is situated within any area to which it is proposed to extend this Act, no notification shall be published under this sub-section in respect of such area without the previous sanction of the Central Government.(2)Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension, submit his objection in writing to the State Government within a period of three months from the publication of the said notification in the Official Gazette.(3)At any time after the expiration of the said period, and after considering the objections, if any, submitted under sub-section (2), the State Government may, by notification in the Official Gazette, extend this Act to the said area.

3. Definitions

In this Act, unless the context otherwise requires, (1) furnace means any furnace or fire-place used (a) for working engines by steam, or (b) for any other purpose whatsoever: Provided that no furnace or fire-place (i) used for the burning of the dead; (ii) used in a private house for domestic purposes other than the purpose specified in clause (a); shall be deemed to be a furnace or fire-place within the meaning of this Act; (2) flue or chimney means any flue or chimney joined to, connected with or forming part of a furnace; (3) Inspector means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act; (4) the Commission means the Gujarat Smoke-nuisances Commission constituted under this Act; (5) occupier means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the land or building in respect of which the word is used; (6) owner (a) when used in reference to a furnace, flue or chimney includes any agent or, lessee using the furnace, flue or chimney and any foreman or other person superintending the working of the furnace, flue or chimney; (b) when used in reference to any premises, has the meaning assigned to it in section 2 of the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949); (7) Magistrate means a Magistrate of the first class or a Bench of Magistrates exercising first class powers under the Code of Criminal Procedure, 1898 (V of 1898). (8) prescribed means prescribed by rules; (9) rules means rules made under this Act.

4. Constitution of Commission

(1) The State Government shall, by notification in the Official Gazette, constitute a Commission to be called the Gujarat Smoke-nuisances Commission to supervise and control the working of this Act. (2) The said Commission shall consist of a President nominated by the State Government and so many other members as the State Government may determine. (3) One-half of the members (exclusive of the President) shall be nominated by the State Government; and the remainder shall be elected, in such manner and for such period as, the State Government may direct, by bodies or associations whose interests are likely to be affected by this Act; and the appointment of all members whether nominated or elected shall be notified in the Official Gazette. (4) Where a casual vacancy occurs in the case of a nominated member the State Government shall make a fresh nomination, and where a casual vacancy occurs in the case of an elected member the election shall be made by the same body or association as that which elected, the member whose place is to be filled; and a member so nominated or elected shall hold office so long as the member whose place he fills would have been entitled to hold office had the vacancy not occurred. (5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in or any defect in the constitution of the Commission.

5. Appointment of inspectors

(1) The State Government may, by notification in the Official Gazette, appoint a Chief Inspector of Smoke-nuisances and so many Assistant Inspectors of Smoke-nuisances as it may think fit. (2) Every Assistant Inspector appointed under sub-section (1) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the Commission.

6. Inspectors to be public servants

Every Inspector appointed under this Act shall, for the purposes of this Act, be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

7. Power to prohibit erection of kilns or furnaces, or manufacture of coke, in specified areas and its inflict penalties

(1)The State Government may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions and within such area as may be specified in the notification,(a)the erection of brick, tile or lime kilns.(b)the erection or re-erection of, or addition to, or alteration in, furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals or for the conversion of pig-iron into wrought iron, or(c)the manufacture of coke in ovens or with special appliances, or(d)the making of coke without ovens or special appliances.(2)If any furnace be erected, re-erected, altered or added to or any kiln be erected in contravention of any notification issued under clause (a) or (b) of sub-section (1) the owner thereof shall be liable to fine which may extend to two hundred and fifty rupees.(3)If any person manufactures coke in contravention of any notification issued under clause (c) of sub-section (1), he shall be liable to fine which may; extend on first conviction to two hundred and fifty rupees, and on any subsequent conviction to five hundred rupees.(4)If any person makes coke in contravention of any notification issued under clause (d) of sub-section (1), he shall be liable to fine which may extend on first conviction to twenty-five rupees, and on any subsequent conviction to fifty rupees.(5)If any coke is made in any building or place in contravention of a notification issued under clause (d) of sub-section (1), the owner or occupier of such building or place shall be liable to fine which may extend on first conviction to twenty-five rupees, and on any subsequent conviction to fifty rupees.(6)Where any coal is in process of being made or has been made into coke in contravention of a notification issued under clause (d) of sub-section (1) an Inspector may seize such coal or coke, and report the seizure to Magistrate who may, after such enquiry as he thinks necessary, order such coke or coal to be confiscated, and to be sold in the prescribed manner.

8. Power to order demolition of kilns or furnaces unlawfully erected

(1)A Magistrate imposing a fine on any person under sub-section (2) of section 7 may by order direct such person to demolish the kiln or furnace within a period to be specified in the order.(2)Any such person failing to demolish any kiln or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for reasons to be stated, allow, shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

9. Penalty for excessive emission of smoke

(1)If smoke emitted from any furnace in greater density, or at a lower altitude, or for a longer time, than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which

may extend on first conviction to two hundred and fifty rupees, and on any subsequent, conviction to five hundred rupees.(2)Sub-section (1) shall not apply to any furnace which is used(a)in connection with a brick, tile or lime kiln, or(b)for the purpose mentioned in clause (d) of sub-section (1) of section 7.

10. No furnace etc. to be erected, etc. or used except with approval or permission of Commission

(1)(a)No furnace, flue or chimney shall be erected, altered, added to or re-erected except in accordance with plans and for the purpose approved by the Commission.(b)No furnace, flue or chimney erected, altered, added to or re-erected otherwise than in accordance with the plans approved by the Commission shall be used for any purpose except with the permission of the Commission and in accordance with the terms and conditions subject to which such permission may be granted.(c)No furnace, flue or chimney erected, altered, added to or re-erected in accordance with the plans and for the purpose approved by the Commission shall be used for any other purpose except with the fresh approval of the Commission.(2)If any furnace, flue or chimney be erected, altered, added to or re-erected in contravention of the provisions of clause (a), or used in contravention of the provisions of clause (b) or clause (c) of sub-section (1), as the case may be, the owner of such furnace, flue or chimney shall, on conviction, be punished with fine which may extend to one hundred rupees and in the case of a continuing contravention of the said clause (b) or clause (c) with an additional fine which may extend to twenty rupees for every day during which such contravention continues after conviction for the first such contravention.

11. Power to order demolition of furnace, flue or chimney unlawfully erected

(1)A Magistrate imposing a fine on any person under sub-section (2) of section 10 may, by order, direct such person to demolish the furnace, flue or chimney within a period to be specified in the order.(2)Any-such person failing to demolish any furnace, flue or chimney within the period specified in the order, or within such longer period as the Magistrate may, for reasons to be stated, allow, shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

12. Powers of Inspectors

(1)Any Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person in charge(a)enter and inspect, during working hours, any building or place which contains a furnace, flue or chimney, and inspect such furnace, flue or chimney;(b)under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from such furnace, flue or chimney; and(c)under the written authority of the Commission, direct that any such furnace, flue or chimney be worked experimentally, during his visit to such building or place in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purposes of the experiment.(2)The owner of a furnace, flue or chimney in respect of which a

direction is given under clause (c) of sub-section (1) who fails to secure compliance with such direction, shall be liable to fine which may extend to one hundred rupees: Provided that where any Inspector has reason to believe that any offence under sub-section (2), (3) or (4) of section 7 has been or is being committed on any premises, it shall be lawful for him to enter on such premises without previous notice and without written authority from the Commission.

13. Rules

(1) The State Government after consultation with the Commission in regard to matters concerning it may, subject to the condition of previous publication, by notification in the Official 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 sub-section (1), such rules may (a) regulate the transaction of business by the Commission; (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties; (c) prescribe a scale for the purpose of determining the density of smoke; (d) prescribe the degree of density of smoke that may be emitted from a furnace; (e) prescribe the time during which smoke of such density may be emitted from a furnace; (f) prescribe the altitude below which smoke may not be emitted from a furnace; (g) prescribe a procedure for giving a warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of causes between the giving of such warning and the institution of a prosecution; (h) prescribe the procedure regarding the submission and approval of plan under sub-section (1) of section 10; (i) fix the amount of fee payable to each or any member of the Commission attending a meeting of the Commission; (j) prescribe a procedure for the sale and disposal of the receipts of the sale of coke or coal confiscated under sub-section (6) of section 7; and (k) any other matter expressly required or allowed by this Act to be prescribed by, rules. (3) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature, or to such modifications as the State Legislature may make, during the session in which they are so laid, or the session immediately following. (4) Any rescission or modifications so made by the State Legislature shall be published in the Official Gazette and shall thereupon take effect.

14. Cognizance of offences

A Magistrate may take cognizance of an offence against this Act only (a) upon a complaint made by, an inspector with the previous sanction of the Commission or of a sub-committee appointed by the Commission, and (b) within a period of three months from the date on which the alleged commission of the offence came to the knowledge of the Inspector.

15. Exercise of the powers of the Commission by the President or any member authorized by the President

(1) The President of the Commission or in the event of the illness or absence of the President from the head-quarters any member of the Commission authorized in writing by the President in this

behalf may exercise the powers of the Commission under sections 10, 12 and 14.(2)The President or member authorized under sub-section (1) shall report to the Commission before its next ordinary meeting any action taken by him in the exercise of the powers under sections 10, 12 or 14.

16. Repeal and savings

(1)On the commencement of the Gujarat Smoke-nuisances Act, 1963 (Guj. 3 of 1964), the Bombay Smoke-nuisances Act, 1912 and the Bombay Smoke-nuisances Act, 1912 (Bom. VII of 1912) as adapted and applied to the Saurashtra area of the State of Gujarat shall stand repealed.(2)Notwithstanding the repeal of the, Bombay Smoke-nuisances Act, 1912(a)the Smoke-nuisances Commission constituted under section 4 of the Bombay Smoke-nuisances Act, 1912 (Bom. VII of 1912) by Government Notification in the Education and Labour Department No. BSN-1362-66050-I, dated the 26th October 1962 shall be deemed to be the Smoke-nuisances Commission, under this Act in relation to the whole State and the members of the Commission shall hold office up to the end of the 31st October 1964 or until a Commission is constituted under this Act, whichever is earlier, and(b)the rules made under the Bombay Smoke-nuisances Act, 1912 (Bom. VII of 1912) and in force immediately before the date of the commencement of this Act shall be deemed to be the rules made under this Act in relation to the whole State, and shall be in force until superseded by rules made under this Act.(3)Anything done or action taken (including any appointment made, notification, order, direction or notice issued) by or under the provisions of any of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force unless and until it is superseded by anything done or any action taken under this-Act.

1. Received the Assent of the Governor on the 26th January, 1964, is hereby published for general information.