

West Bengal Public Works Contractors (Regulation and Control) Act, 2006

WEST BENGAL

India

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Act 9 of 2006

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027.

Passed by the West Bengal Legislature. Received the assent of the Governor and was first published in the Kolkata Gazette, Extraordinary, of the 6th April, 2006, vide notification No. 433-L., dated 6th April, 2006An Act to provide for regulation and control the activities of persons dealing with public works [or jobs] [Inserted by section 2 of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010).] under the Government of West Bengal in the Public Works Department and for matters connected therewith or incidental thereto;Whereas it is expedient to regulate and control the activities of persons dealing with public works [or jobs] [Inserted by section 3, ibid (w.e.f. 10.9.2010).] under the Government of West Bengal in the Public Works Department and for matters connected therewith or incidental thereto;It is hereby enacted in the Fifty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follows :

Chapter I Preliminary

1. Short title, extent and commencement

. (1) This Act may be called the West Bengal Public Works Contractors (Regulation and Control) Act, 2006.(2)It extends to the whole of West Bengal.(3)[It shall come into force on such date as the

State Government may, by notification in the Official Gazette, appoint.] [Sub-section (3) substituted by section 4, *ibid* (w.e.f. 10.9.2010), which read as under : (3) It shall come into force at once.]

2. Definitions

. In this Act, unless the context otherwise requires, (a)"Advisory Board" means the Advisory Board constituted under section 6;(b)[xxx] [[Clause (b) omitted by section 5(1), *ibid* (w.e.f. 10.9.2010), which read as;(b)appellate authority means the appellate authority appointed under sub-section (1) of section 9;.] (ba)["Approval Committee" means the Approval Committee constituted under section 6A;] [Clause (ba) inserted by section 5(2), *ibid* (w.e.f. 10.9.2010).] (c)["categories of contractors" shall include the following : [[Clause (c) substituted by section 5(3) of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010), which read as under : (c)categories of contractors means to categorize the contractors, on the basis of financial limits along with the nature of public works they are to execute, by notification in the Official Gazette;.] (i)enlisted contractors, that is, those persons who have been granted registration under this Act by the prescribed authority to carry out public works under Public Works Department; and(ii)General Works contractors;(ii)Plumbing Works contractors; and(iii)Electrical Works contractors;] (ii)outside contractors, that is, those persons other than enlisted contractors;] (ca)["categories of enlisted contractors" shall include the following : [Clause (ca) inserted by section 5(4), *ibid* 10.9.2010).] (d)"certificate of registration" means a certificate issued under section 4;(da)["classes of enlisted contractors" mean the groups of enlisted contractors for a particular category of public works classified on the basis of financial limits of contracts; [Clauses (da) and (db) inserted by section 5(5), *ibid* (w.e.f. 10.9.2010).] (db)"contract" means an agreement in writing by and between the State Government and the person whose tender or quotation for carrying out the specified public works or jobs under Public Works Department has been accepted by the State Government] (e)"contractor" means any person who undertakes a contract for carrying out public works;(ea)["jobs" include the following:- [Clause (ea) inserted, by section 5(6), *ibid* (w.O. 10.9.2010).] (i)supplies to be made;(ii)carriage to be made; and(iii)services to be rendered under Public Works Department;] (f)["malpractice" includes dishonesty, cheating, impersonation, obstruction in carrying out public works or jobs as specified in the contract and failure to observe, while submitting tender or quotation, the instruction given in the tender or quotation documents including Schedule appended thereto;] [[Clause (f) substituted by section 5(7), *ibid* (w.e.f. 10.9.2010), which read as under;(f)malpractice includes dishonesty, cheating, impersonation, obstruction in carrying out public works as specified in the contract and failure to observe, while submitting the tender, the instruction given in the tender Form including Schedule appended thereto;.] (g)"notification" means a notification published in the Official Gazette;(h)["person" shall include any company or body corporate or association or body of individuals, whether incorporated or not who intends to undertake a contract to carry out public works or jobs under Public Works Department;] [[Clause (h) Substituted by section 5(8) of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010), which read as under :'(h) person shall include any company or body corporate or association or body of individuals, whether incorporated or not;'.] (i)"prescribed" means prescribed by rules made under this Act;(j)["prescribed authority" means the Officer on Special Duty and ex officio Deputy Secretary to the Government of West Bengal in Public Works

Department;] [[Clause (j) Substituted by section 5(9), *ibid* (w.e.f. 10.9.2010), which read as under : (j) prescribed authority means the authority, as may be appointed by the State Government, to be prescribed authority for any provision of this Act;'.]] (k) ["public works" means construction, development, repairing, maintenance and management of [[Clause (k) Substituted by section 5(10), *ibid* (w.e.f. 10.9.2010), which read as under : '(k) public works means the public works of construction, maintenance, development, repairing and management of roads, buildings, bridges, highways, national highways, and includes the public works related to electrical, sanitary, plumbing within the State of West Bengal;'.]] (i) Communications that is to say, roads, bridges and ferries; (ii) Land; (iii) Buildings; (iv) Archaeological sites and remains; (v) Sanitary and Plumbing Works; and (vi) Electrical Works either vested in or under the possession of the State and shall include such other works as the State Government may, by order, specify by the notification;] (ka) ["qualified persons" mean the persons who have been found eligible by the Advisory Board to be recommended for registration under this Act as enlisted contractors; [Clauses (ka) and (kb) inserted by section 5(11), *ibid* (w.e.f. 10.9.2010).] (I) "State Government" means the Government of the State of West Bengal in the Public Works Department; (kb) "quotation" means the estimate in writing of any person against invitation by the State Government through notice in such form, and in such manner as may be prescribed for carrying out the job, as specified in the said notice, under Public Works Department;] (m) ["tender" means a valid and sufficient offer, specifically and unconditional offer in writing, of any person against invitation by the State Government through notice in such form, and in such manner as may be prescribed by the State Government for carrying out the public works, as specified in the said notice, under Public Works Department.] [Clause (m) inserted by section 5(12), *ibid* (w.e.f. 10.9.2010).]

Chapter II

Registration

3. Registration

. [(1) Every person, intending to become an enlisted contractor shall on invitation by the State Government by means of advertisement, have to apply, for the purpose of registration for enlistment under Public Works Department, to the prescribed authority in such form, in such manner and with such fee, as may be prescribed Provided that different fees may be prescribed for different categories of enlisted contractors as well as different classes of enlisted contractors.] [[Sub-section (1) Substituted by section 6(1) of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010), which read as under : (1) Every person, intending to carry out any public works, shall, on invitation by the State Government by means of advertisement, have to apply for registration for enlistment as contractor to the prescribed authority in such form, and in such manner, and with such fee, as may be prescribed : Provided that different fees may be prescribed for different categories of contractors.]] (2) Any person, who has already applied, before the date of coming into force of this Act, for [the purpose of registration for enlistment under Public Works Department] [Substituted by section 6(2), *ibid* (w.e.f. 10.9.2010) for the words registration for enlistment.], shall also apply for registration in such manner, and with such fee, as may be prescribed. (3) Notwithstanding anything

contained in sub-section (1) or in sub-section (2), any person, already carrying out public works before the date of coming into force of this Act, shall, if not exempted by the State Government by any general or special order, apply for registration in such form, and in such manner, and with such fee, as may be prescribed.(4)Every application for registration, made under this section, shall be disposed of within a period of [six months] [Substituted by section 6(3), *ibid* (w.e.f. 10.9.2010) for the words three months.] from the date of receipt of such application.

4. [Certificate of registration.

(1) The prescribed authority shall, subject to the provisions contained under sections 5 and 6A direct the name and the particulars of persons be entered in the register maintained for the purpose and shall issue a certificate of registration for enlistment to the qualified person in the prescribed manner,(2)Certificate issued under sub-section (1) shall be valid for a period of five years from the date of issue and shall be renewable in such manner and on payment of such fees as may be prescribed.] [[Section 4 Substituted by section 7, *ibid* (w.e.f. 10.9.2010), which read as under :

4. Certificate of registration. (1) The prescribed authority shall, unless registration is refused under section 5, direct the name and the particulars of persons be entered in the register maintained for the purpose and shall issue a certificate of registration for enlistment to such person in the prescribed form.

(2)Certificate issued under sub-section (1) shall be valid for the period specified therein or for such extended period as the prescribed authority may think fit to allow in any case.]]

5. Refusal to register

. (1) [The Advisory Board may not recommend registration] [Substituted by section 8(1) of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010) for the words The prescribed authority may refuse registration for enlistment of contractors.] under this Act on any of the following grounds, namely:(a)(I)If any person, who has applied for registration, is convicted of any offence punishable under any of the provisions of this Act or the rules made thereunder or theft, robbery, murder and sentenced;(ii)[* * * *] [[Sub-clause (ii) omitted by section 8(2), *ibid* (w.e.f. 10.9.2010), which was as under :(ii)Notwithstanding anything contained in section 5(1)(a)(1) the person convicted of any offence is punishable, under any law of the land and six months have not elapsed since the termination of the sentence imposed upon him;.]];(b)if any person has been declared an insolvent by a .court of competent jurisdiction and six months have not elapsed since he has been discharged;(c)if the name of any person has been removed from the register under clause (c) of section 7 and six months have not elapsed since he has been discharged;(d)if the person does not hold a license or certificate required under any other law for the time being in force; .(e)if any person does not fulfil the qualifications required for registration.(2)No application for registration shall be refused, unless the person applying for registration has been given a reasonable opportunity

of being heard.

6. Constitution of Advisory Board

. (1) [There shall be] [Substituted by section 9(1), *ibid* (w.e.f. 10.9.2010) for the words The State Government may, by notification in the Official Gazette, constitute.] an Advisory Board for judging the suitability for registration of person under this Act.(2)[The Advisory Board to be constituted under sub-section (1), by an order, shall consist of the following persons : (I)Engineer-in-chief and ex officio Chairperson;Secretary,Public Works Department(ii)Additional Chief Engineer, Convenor;(Head Quarter)Public Works Directorate(iii)Technical Secretary, Member;Public Works Department(iv)Such other officers not more than three of whom two shall be in the rank of Additional Chief Engineer and one in the rank of Superintending Engineer to be nominated as members by the State Government, by order :Provided that the State Government may, by an order, bring about any change in the composition of Advisory Board whenever deemed expedient to do so.] [[Sub-section (2) Substituted by section 9(2), *ibid* (w.e.f. 10.9.2010), which read as under :(2)The Advisory Board shall, constituted under sub-section (1), consist of a Chairperson who shall be the 'Engineer-in-Chief of Government of West Bengal, two members from Senior Engineers and two members from Senior Non-technical Officers below the rank of Secretary from the Public Works Department :Provided that the State Government may, by order, appoint the Chairperson and other four members under this section.]](3)The Advisory Board shall recommend the names of [the qualified persons] [Substituted by section 9(3)(a) of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010) for the words the persons.], to be registered under this Act, to [the Approval Committee] [Substituted by section 9(3)(b), *ibid* (w.e.f. 10.9.2010) for the words the prescribed authority.].(4)The State Government may, [by order, in addition to those already specified in sub-section (3)] [Substituted by section 9(4), *ibid* (w.e.f. 10.9.2010) for the words by order.](a)specify the further duties of, and regulate the procedure, of the Advisory Board;(b)determine the tenure of office of the members of the Advisory Board; and(c)give directions as to the payment of fees to, and the travelling expenses incurred by, any member of the Advisory Board in the performance of his duty.

6A. [Approval Committee. (1) There shall be an "Approval Committee" for according approval to the names of the persons duly recommended by the Advisory Board to be registered under this Act for enlistment.

(2)The Approval Committee under sub-section (1) shall consist of the following members : (i)Secretary, Public Works Department Chairperson;(ii)Engineer-in-chief and ex officio Vice-Secretary, Chairperson;Public Works Department(iii)Chief Engineer, Public Works Convenor;Directorate(iv)Such other officers not more than Members :three, all of whomshall be in the rank of ChiefEngineer to be nominated byorder, by the State GovernmentProvided that the State Government may, by an order, bring about any change in the composition of the Committee wherever deemed expedient to do so.(3)The duties, functions, tenure of office of the members and amounts of fees and travelling expenses payable to the members in connection with the

performance of their duties shall be such as may be prescribed.] [Section 6A inserted by section 10, ibid (w.e.f. 10.9.2010).]

7. Removal of name from register

. The prescribed authority may, [subject to the approval of the Advisory Board,] [Inserted by section 11 of the West Bengal Public Works contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010).] by order in writing, remove the name of any person from the register and cancel its certificate of registration on any of the following grounds, namely : (a) if the person ceases to deal with the public works for a prescribed period; (b) if the person is convicted of an offence punishable under any of the provisions of this Act or the rules made thereunder or of any offence punishable under any law of the land; (c) if the person is declared an insolvent by a court of competent jurisdiction; (d) if any complaint of malpractice is received, on proof of complaint of such malpractice : Provided that the action taken under this section shall not protect any person from being prosecuted under any of the provisions of this Act.

8. Notice of removal

. Before removing the name of person from the register under section 7, the prescribed authority shall give a notice, in writing, to the concerned person stating therein the ground or grounds on which it is proposed to take action and shall give him a reasonable opportunity of being heard.

Chapter III

[* * * *] **[[Chapter III containing section 9 omitted by section 12 of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9 2010), which was as under :**

Chapter III

Appeal

9. Appeal.-- (1) Subject to the provisions of sub-section (2), an appeal shall lie from every order of the prescribed authority, under this Act, to the appellate authority, to be appointed by the State Government.

(2) Every such appeal shall be preferred within ninety days from the date of communication of the order : Provided that the appellate authority may entertain an appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing it in time. (3) The appellant have a right to appear by a counsel, and the prescribed authority may be represented by such officer or person as may be, appointed by the State Government in that

behalf.(4)On receipt of any such appeal, the appellate authority shall. after giving the appellant a reasonable opportunity of being heard and after making such inquiry as it deems proper. dispose of the appeal for reasons to be recorded in writing.(5)The proceedings before the appellate authority shall be completed within a period of four months of its institution.'.]]

9. Appeal.

- [* * *] [[Chapter III containing section 9 omitted by section 12 of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9 2010), which was as under :

Chapter III Appeal

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(2)Every such appeal shall be preferred within ninety days from the date of communication of the order :Provided that the appellate authority may entertain an appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing it in time.(3)The appellant have a right to appear by a counsel, and the prescribed authority may be represented by such officer or person as may be,appointed by the State Government in that behalf.(4)On receipt of any such appeal, the appellate authority shall. after giving the appellant a reasonable opportunity of being heard and after making such inquiry as it deems proper. dispose of the appeal for reasons to be recorded in writing.(5)The proceedings before the appellate authority shall be completed within a period of four months of its institution.'.]]

Chapter IV Offences and Penalties

10. [Penalty for false statement.

Any person, who makes a false statement or suppresses a material fact under this Act shall be liable to punishment with imprisonment which may extend to two years.] [[Section 10 substituted by section 13, ibid (w.e.f. 10.9.2010). which read as under :10. Penalty for false statement. - Any person. required to make a statement under this Act. wilfully makes a false statement or suppresses a material fact with an intention to mislead the prescribed authority, shall be liable to punishment with imprisonment which shall not be less than three years but may extend to seven years.]]

11. Penalty for malpractice

. Any person, who commits malpractice or contravenes any of the provisions of this Act, for which no specific penalty has been provided, shall be liable to punishment with imprisonment [which may extend to two years] [Substituted by section 14. ibid (w.e.f. 10.9.2010) for the words which shall not be less than three years but may extend to seven years.].

12. Certificate not to be assigned

. Any person, who lends, transfers or assigns the certificate of registration issued under this Act, shall be liable to punishment with imprisonment [which may extend to two years] [Substituted by section 15, ibid (w.e.f. 10.9.2010) for the words which shall not be less than three years but may extend to seven years.].

13. Certificate and document to be shown on demand.

(1)Any person, registered under this Act, shall, at all times, on demand, produce and show his certificate of registration or any other document required under this Act to (a)the prescribed authority or any officer duly authorized by him in this behalf; and(b)any Engineer of the State Government.Explanation.- For the purposes of this section, the expression "Engineer" means the Engineer belonging to the cadre of the West Bengal Senior Service of Engineers, the West Bengal Senior Service of Engineers (Electrical/Mechanical), the West Bengal Service of Engineers, the West Bengal Service of Engineers (Electrical/Mechanical), the West Bengal Subordinate Engineering Service (Electrical/Mechanical) of the State Government.(2)Any person, registered under this Act, who refuses, on demand, to show his certificate or documents or disallows it to be read by any of the persons authorized to demand it, shall be liable to punishment with fine not exceeding rupees five hundred.

14. Obstructing the lawful authorities.

Any person, who [* * * *] [The word wilfully omitted by section 16(1) of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010 (w.e.f. 10.9.2010).] obstructs or offers any resistance to, or otherwise interferes in the discharge of, the functions of the prescribed authority or any Engineer, referred to in sub-section (1) of section 13, exercising any power or performing any duty conferred or imposed upon him in pursuance of this Act or the rules made thereunder, shall be liable to punishment with imprisonment [which may extend to two years] [Substituted by section 16(2), ibid (w.e.f. 10.9.2010) for the words which shall not be less than three years but may extend to seven years.].

15. Institution of proceedings.

No prosecution shall be instituted against any person for any offence under this Act except on a complaint made by the prescribed authority or [an Engineer as specified in section 13] [Substituted

by section 17, *ibid* (w.e.f. 10.9.2010), for the words a police officer not below the rank of Sub-Inspector.].

16.

[***] [Section 16 omitted by section 18, *ibid* (w.e.f. 10.9.2010)]

Section 16 omitted by section 18, *ibid* (w.e.f. 10.9.2010), Omitted section read as under 16. Powers of the prescribed authority to summon and enforce attendance of witnesses and other persons.- The prescribed authority shall have all the powers as of Civil Court constituted under the Code of Civil Procedure, 1908. while trying a suit, in respect of the following matters, namely : (1) summoning and enforcing the attendance of the complainant or the person against whom complaint is made under this Act and the witnesses required in connection therewith; (2) compelling the production of any document; and (3) examining witnesses on oath; and may summon and examine suo moto any person whose evidence appears to be material. Explanation. For the purposes of enforcing the attendance of witnesses and other persons mentioned in this section, the local limits of the jurisdiction of the prescribed authority extend to the whole of the State of West Bengal.

17. Composition of offences.

(1) The prescribed authority may accept from any person accused of an offence under this Act, a sum of money by way of composition of such offence and may, out of the money so received, compensate the person, against whom such offence has been committed, to such extent as the prescribed authority deems reasonable. (2) On the composition of offence under sub-section (1), no further proceeding in respect thereof shall be taken against the accused and if any proceeding has already been instituted against him in any court, the composition shall have the effect of acquittal.

Chapter V

Miscellaneous

18. Notice of changes.

(1) Whenever a business, for which a certificate of registration is held by a person under this Act, devolves by inheritance or otherwise upon any other person or undergoes a change in respect of any particular entry in the register under this Act, such person shall, within sixty days of the date of such devolution or change, give notice in writing in respect of the facts to the prescribed authority. (2) The prescribed authority shall, on being satisfied after inquiry, and on payment of such fees as may be prescribed, make necessary changes in the register maintained for the purpose and in the certificate of registration. (3) Notwithstanding anything contained in sub-section (2), the prescribed authority may remove from the register the name of the person in whose favour the certificate of registration was issued and cancel such certificate if the successor is not qualified to be registered under this Act.

19. Return of certificate of registration.

If a certificate of registration is cancelled under this Act, the person holding such certificate shall, within seven days from the date of publication of the order of cancellation in the Official Gazette, return it to the prescribed authority.

20. Duplicate certificate.

If a certificate of registration issued under this Act is lost, damaged or destroyed, as the case may be, the prescribed authority shall, on an application made in this behalf by the person holding such certificate, [and on payment of the prescribed fees and on being satisfied after inquiry] [Inserted by section 19 of the West Bengal Public Works Contractors (Regulation and control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010)], issue a duplicate certificate.

21. Certificate of registration to be kept prohibited.

The certificate of registration shall be certified by the person holding it in a conspicuous place at the principal place of his business and if he has no place of business, he shall keep it on his person.

22. Publication of list of persons removed from the register.

The prescribed authority shall publish in the Official Gazette, the names and addresses of the persons whose names have been removed from the register and who have been refused certificate of registration under this Act.

23. Indemnity.

No suit, prosecution or other legal proceedings shall lie against the State Government or any [officer of the State Government] [Substituted by section 20 of the West Bengal Public Works Contractors (Regulation and Control) (Amendment) Act, 2010 (West Bengal Act No. 21 of 2010) (w.e.f. 10.9.2010) for the word person.] in respect of anything which is in good faith done or intended to be done under this Act.

24. Reservation of power of local authority

. Nothing contained in this Act shall take away or diminish any of the powers vested in any local authority by, or under any law for the time being in force.

25. Power to make rules

. (1) The State Government may, [* * *] [The words "after previous publication," omitted by section 21, ibid (w.e.f. 10.9.2010).] by notification, make rules for carrying out the purposes 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 : (a) the maintenance of register, books and Forms by the person for conduct of business; (b) the Form for application of registration and for certificate of registration; (c) the fees for registration; (d) the matter of giving notice; (e) qualifications for registration; (f) manner of publication of the names and addresses of the person removed from the register or to whom registration has been referred to be given; (g) the place where the prescribed authority shall hold inquiry; and (h) all matters expressly required to be prescribed under this Act. (3) Every rules made under this section shall be laid, as soon as may be after it is made, before the State Legislature. .

26. Powers to remove difficulties

. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty : Provided that no such order shall be made under this section after the expiry of two years from the date of commencement of this Act. (2) Every order made under this section shall be laid, as soon as may be after it is made, before the State Legislature. By order of the Governor, Sd/- Shyamal Kanti Chakraborty, Secy. to the Govt. of West Bengal, Law and Judicial Departments.