

The Jammu and Kashmir Municipal Ombudsman Act, 2010

JAMMU & KASHMIR

India

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Act 20 of 2010

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The Jammu and Kashmir Municipal Ombudsman Act, 2010 Act No. 20 of 2010 [Received the assent of Governor on 23rd October, 2010 and published in the Government Gazette dated 25th October, 2010.] An Act to establish Municipal Ombudsman for the purpose of investigating charges of corruption or maladministration in Urban Local Government Institutions in the State. Be it enacted by the Jammu and Kashmir State Legislature in the sixty- first Year of the Republic of India as follows : -

1. Short title and commencement.

(1) This Act may be called the Jammu and Kashmir Municipal Ombudsman Act, 2010. (2) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions.

(1) In this Act, unless the context otherwise requires - (a) 'Act' means the Jammu and Kashmir Municipal Ombudsman Act, 2010 ; (b) 'action' means administrative action taken by way of decision, recommendation, resolution or finding or in execution thereof or in exercise of administrative or legal functions or in any other manner and includes willful failure in taking action or omission to act and all other expressions relating to such action shall be construed accordingly ; (c) 'allegation', - (1) in relation to public servant means, any affirmation that such public servant, - (i) has abused his position for any gain or favour to himself or to any other person or to cause undue harm or hardship to any person ; or (ii) was actuated in the discharge of his functions as such public servant by personal interest, or improper or corrupt motives ; or (iii) is guilty of corruption, favouritism, nepotism or lack of integrity ; or (iv) is guilty of an action as public servant which facilitates or causes to make any loss, waste or misapplication of money or other property of the municipality. (2) in

relation to a municipality means any affirmation that such municipality has defaulted or acted in excess of its powers in the discharge of the functions imposed on it by law or in implementing the lawful orders and directions of the Government;(d)'complaint' means a statement of allegation that a public servant or a municipality is guilty of corruption or maladministration and includes any reference to an allegation in respect of which suo moto enquiry has been proposed or recommendation for enquiry has been made by Government;(e)'corruption' includes anything made punishable as punishable as such under Chapter IX of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989, or under the Jammu and Kashmir Prevention of Corruption Act, Samvat 2006 or any other law in force ;(f)'Government' means the Government of Jammu and Kashmir;(g)'grievance' includes a claim by a person that he sustained injustice or undue hardship in consequence of maladministration ; provided it shall not include any claim of an employee with respect to his service matter;(h)'investigating officer' means an officer authorized by the Ombudsman to conduct investigation in respect of an allegation or complaint;(i)'maladministration' means action taken or purporting to have been taken in the exercise of administrative function in any case where, -(i)such action, administrative procedure or practice or practice governing such action is unreasonable, unjust, oppressive, discriminatory or nepotistic and will make illegitimate gain or loss to any person or will deny any person the deserving benefits ; or(ii)there is willful negligence or delay in taking such action, or the administrative procedure or method regulating such action will cause undue delay and includes the action leading to loss or waste or misuse of fund by malfeasance or misfeasance ;(j)'municipality' means a Municipal Corporation, a Municipal Committee or a Municipal Council constituted under the Jammu and Kashmir Municipal Corporation Act, 2000 or the Jammu and Kashmir Municipal Act, 2000, as the case may be ;(k)'Ombudsman' means the Ombudsman appointed under section 3 ;(l)'prescribed' means prescribed by rules made under this Act;(m)'public servant' means a member of the municipality including a Mayor or President, Councilor, Ward Member, officer or employee of the municipality, or an officer or employee of any office or institution transferred to the municipality ;(n)'Secretary' means the Secretary of the Ombudsman referred to in section 6 ;(o)'Special Tribunal' means Special Tribunal constituted under the Jammu and Kashmir Special Tribunal Act,1988 ;(p)'State Accountability Commission' means the State Accountability Commission constituted under the Jammu and Kashmir Accountability Commission Act, 2002.

3. Appointment of Ombudsman.

(1)The Governor shall, on tin advice of the Chief Minister, appoint a person as Ombudsman :Provided that a person shall not be qualified to be appointed as Ombudsman unless he has been a [Judge of a High Court or is eligible to be appointed as Judge of High Court or who has held the post of Commissioner/ Secretary to the Government or equivalent rank] [Substituted 'Judge of a High Court or is eligible to be appointed as Judge of High Court' by Governor Act No. 39 of 2018, dated 12.12.2018.]:Provided further that the Chief Minister before tendering advice to the Governor shall consult the Chairman of the Legislative Council,tin Speaker of the Legislative Assembly, and the leader of the Opposition in the Legislative Assembly. If there is no such Leader of Opposition in tin Legislative Assembly, the Leader of the single largest group or party in Opposition to Government in the Legislative Assembly shall be consulted.[Provided that during the continuation of Proclamation issued under section 92 of the Constitution of Jammu and Kashmir or Article 356 of the

Constitution of India, as applicable to the State, the Ombudsman shall be appointed by the Governor on the recommendation of the Committee consisting of: (a) Advisors to the Governor (one of whom to be nominated by the Governor shall be Chairperson of the Committee); and (b) Chief Secretary (Member-Secretary). (2) The Ombudsman shall, before entering upon office, make and subscribe before the Governor an oath or affirmation in the prescribed form.

4. Term of office and conditions of service of Ombudsman.

(1) The Ombudsman shall hold office for a term of three years from the date which he enters upon his office: Provided that Ombudsman shall not hold office after he has attained the age of seventy years: Provided further that the Ombudsman may, - (a) by writing under his hand addressed to the Governor, resign his office; and (b) be removed from office in the manner provided in section 5. (2) [The Ombudsman shall be entitled to pay and allowances as admissible to a Judge of the State High Court.] [Substituted by Governor Act No. 39 of 2018, dated 12.12.2018.] (3) On expiry of his term of office as Ombudsman, he shall not be eligible for reappointment as Ombudsman or for further appointment to any office of profit under the Government or in any corporation, company, society or university owned, controlled or financed by the Government.

5. Removal of Ombudsman.

(1) The Ombudsman shall not be moved from his office except by an order made by the Governor on the ground of proved misbehaviour or incapacity after the High Court, on reference being made to it by the Governor has, on inquiry held in accordance with the procedure prescribed in that behalf by the High Court, reported that the Ombudsman ought on any such ground be removed. (2) Notwithstanding anything in sub-section (1), the Governor may by order remove from office the Ombudsman if he - (i) is adjudged as insolvent; or (ii) engages during his term of office in any paid employment outside the duties of his office; or (iii) is unable to continue in office by reason of infirmity of mind or body; or (iv) is of unsound mind and stands so declared by a competent court; or (v) is convicted of an offence involving moral turpitude; or (vi) is without leave of absence, absent from his office for thirty days.

6. Staff of the Ombudsman.

(1) The Ombudsman shall have a Secretary and such other officers and employees as the Government may determine in consultation with the Ombudsman to assist the Ombudsman in the exercise of his powers and discharge of his functions under the Act. (2) The appointment and conditions of service of the Secretary and the employees shall be such as may be prescribed. (3) The officers and other employees referred to in sub-section (1) shall be under the administrative and disciplinary control of the Ombudsman. (4) Without prejudice to the provisions of sub-section (1), the Ombudsman may for the purpose of conducting investigations under the Act utilize the services of any officer or investigating agency of the Government. (5) The Ombudsman may requisition the services of any person having experience and expertise in any particular subject in deciding the question before it.

7. Functions of the Ombudsman.

(1)The Ombudsman shall perform all or any of the following functions, namely : -(i)investigate into any allegation contained in a complaint or on a reference from Government;(ii)enquire into any complaint in which corruption or maladministration of a public servant or a municipality is alleged ;(iii)pass an order on the allegation in the following manner, namely ; -(a)where the irregularity involves a criminal offence committed by a public servant, the matter shall be referred to the appropriate authority for investigation ;(b)where the irregularity causes loss or inconvenience to a citizen, direct the municipality to give him compensation and to reimburse the loss from the person responsible for the irregularity;(c)where the irregularity involves loss or waste or misuse of the fund of the municipality, realize such loss from those who are responsible for such irregularity ; and(d)where the irregularity is due to omission or inaction, cause to supply the omission and to rectify the mistake.(2)In addition to the functions enumerated in sub-section (1), the Ombudsman may pass interim order restraining the municipality from doing anything detrimental to the interest of the complainant if it is satisfied that much loss or injury will be caused to the complainant due to the alleged act.(3)The Ombudsman may, by order, impose penalty in addition to compensation if it is of opinion that the irregularity involves corrupt practice for personal gain.

8. Powers of the Ombudsman.

(1)The Ombudsman shall, for the purpose of any investigation or enquiry under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, Samvat 1977 in respect of the following matters, namely(a)summoning and enforcing the attendance of any witness and examining him :(b)requiring the discovery and production of any document,(c)receiving evidence on affidavits :(d)requisitioning any public records, or copy there to, from any court or office ;(e)issuing commissions for the examination of witnesses ,(f)such other powers as are prescribed.(2)Where the Ombudsman finds that the allegation contained in a complaint is without any substance or trivial in nature, it may by order direct the complainant to pay to the opposite party an amount specified in the order by way of costs.(3)Where the allegation contained in a complaint is about the loss or waste or misapplication of the fund of municipality or in respect of the loss or inconvenience cause of to a citizen, the Ombudsman may, during enquiry, collect evidence, determine the loss and direct in its order the amount to be realized from the person responsible.(4)If the amount paid as per the order passed by the Ombudsman under sub-section (2) or sub-section (3) is not paid within the period specified by it, the same shall be recovered as arrears of land revenue.

9. Service of Government Departments.

- The Government may, at the request of the Ombudsman, make available the services of officers and employees of the Government including police personnel to assist the Ombudsman in the conduct of investigation and inquiry and in respect of such functions, such officers or employees shall be deemed to be the officers or employees of the Ombudsman.

10. Provisions regarding complaints.

(1) Subject to the provisions of this Act, complaint may be made under this Act, to the Ombudsman; in case of an allegation, by any person, and in case of a grievance, by a person aggrieved : Provided that where the person aggrieved is dead or, is for any reason unable to act for himself, the complaint may be made or continued by his legal representative or by any other person who is authorized by writing in this behalf.

11. Investigation.

(1) The Ombudsman may, according to the provisions of this Act, enquire into any complaint tiled before it under this Act. (2) Notwithstanding anything contained in this Act, the Government may refer any allegation of corruption or maladministration against a municipality or a public servant, which is within its knowledge or brought to its notice, to the Ombudsman and the Ombudsman shall enquire into it as if it was a complaint filed under the Act. (3) The Ombudsman may, on receipt of a complaint, conduct an investigation in the matter and where there is prima facie case it may conduct a detailed enquiry. (4) The Ombudsman shall not enquire into matters relating to, (a) any matter in respect of which a formal and public enquiry has been ordered by Government; (b) any matter in respect of which an enquiry has been ordered under the Jammu and Kashmir Commission of Inquiries Act, 1962 or any matter pending before the court, (c) any complaint filed after the expiry of three years from the date on which the matter complained against has taken place.

12. Enquiry.

(1) After an investigation, if the Ombudsman is satisfied that, - (a) the complaint is frivolous or vexatious or is not made in good faith; or (b) there is no sufficient ground to initiate proceedings ; or (c) other remedies are available to the complainant and it would be more beneficial for the complainant to avail of such remedies in view of the circumstances of the case, it may dispose of the complaint as rejected after recording its findings stating the reason therefor, and communicate the same to the complainant. (2) If the Ombudsman is of opinion that there is a prima facie case against the person or the municipality complained of, it shall record its findings to this effect and send notices of the proposed enquiry to the complainant and to the opposite party. (3) The Ombudsman shall, subject to the provisions of the Act and the rules made thereunder, have power to regulate its procedures and fixing the time and place of sitting.

13. Existing cases to be transferred to Ombudsman.

(1) Notwithstanding anything contained in any law, if any proceedings filed and not disposed of under the said law before the constitution of the Ombudsman as per the provisions of the Act relate to a public servant or a municipality, all cases with regard to such proceedings shall be transferred to the Ombudsman and the Ombudsman shall decide the cases in accordance with the provisions of the Act. (2) All cases, with regard to the loss, wastage and misappropriation of any land of the municipality, pending before the Government or any other authority including the Special Tribunal

before the constitution of the Ombudsman shall stand transferred to the Ombudsman who shall dispose of such cases in accordance with the provisions of the Act.(3)No complaint against a public servant as defined in the Act shall be entertained by State Accountability Commission on or after the date of the constitution of Ombudsman as per the provisions of the Act.

14. Initiation of prosecution.

(1)If, after any investigation or inquiry, the Ombudsman finds that there is a prima facie case against the accused involving a criminal offence, the Ombudsman may refer the complaint and the findings to a competent authority with recommendation to initiate prosecution.(2)The authority responsible, for initiating such prosecution shall conduct a detailed enquiry if necessary and initiate prosecution against the accused.

15. Interim recommendations.

- If during the course of preliminary inquiry or investigation under the Act, the Ombudsman is prima facie satisfied that the allegation or grievance against any action or decision is likely to be substantiated either wholly or partly, it may, by a report in writing recommend to the municipality concerned to stay the implementation of the decision or action complained against or take such mandatory or preventive action on such terms and conditions, as it may specify, in its report.

16. Disposal of complaints.

(1)The Ombudsman may consider and dispose of complaints other than those involving criminal offences, in the following manner, -(i)award of compensation, to a citizen in case of loss or grievance ;(ii)order the recovery of loss caused to the municipality from the person responsible ;(iii)order the supply of omission or rectification of defects due to inaction ;(iv)order the recovery of loss from the accused failing which, direct the recovery of such loss as arrears of land revenue ; and(v)order other necessary remedial measures considering the facts and circumstances of the case.(2)Where the Ombudsman finds that the procedure or practice regarding the administration of municipality gives room for complaint, it may give suggestions to the Government or the municipality relating to the measures for avoiding the recurrence of such complaint.(3)The Ombudsman shall submit an annual report regarding the performance of its functions under the Act to the Government and the Government shall, as soon as may be, lay such report before the State Legislative Assembly with an explanatory memorandum.

17. Penalty for mala fide complaint.

(1)Every person who makes any complaint which he knows or has reason to believe that the same is false, frivolous or vexatious upon finding to that effect recorded by the Ombudsman shall be punishable with imprisonment which may extend to one year or fine which may extend to twenty thousand rupees or both.

18. Power to make rules.

(1)The Government may by notification in the Government Gazette make rules for carrying out the provisions of the Act.(2)In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for all or any of the following, namely: -(i)the conditions of service of the Ombudsman and his staff;(ii)the form and manner of filing complaints before the Ombudsman and the manner of filing cases on reference by the Government;(iii)the manner and procedure of conducting investigation ;(iv)the procedure for moving the appropriate authority for the initiation of prosecution ;(v)procedure to be followed during the inquiry, which as far as the possible, be summary proceedings ;(vi)the manner of implementing the orders of the Ombudsman and further proceedings ;(vii)any other matter which the Government may deem necessary to prescribe.

19. Power to remove difficulties.

- If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty :Provided that no order shall be made under this section after the expiry of two years from the date of commencement of the Act.[Added by Governor Act No. 39 of 2018, dated 12.12.2018.]