

The Maharashtra Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1986

MAHARASHTRA

India

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Act 29 of 1986

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The Maharashtra Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1986 Maharashtra Act No. 29 of 1986 For Statement of Objects and Reasons, see Maharashtra Government Gazette, 1986, Part 5 Extraordinary, page 279. (This Act received the assent of the Governor on the 17th July, 1986; assent first published in the Maharashtra Government Gazette on the 21st July, 1986.) An Act to provide for the enforcement of attendance of witnesses and production of documents in departmental inquiries and for matters connected therewith or incidental thereto. Whereas it is expedient to provide for the enforcement of attendance of witnesses and production of documents in departmental inquiries and for matters connected therewith or incidental thereto; It is hereby enacted in the Thirty-seventh Year of the Republic of India as follows:-

1. Short title and extent.

(1) This Act may be called the Maharashtra Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1986. (2) It extends to the whole of the State of Maharashtra.

2. Departmental inquiries to which Act shall apply.

- The provisions of this Act shall apply to every departmental inquiry made in relation to-(a) persons appointed to public services or posts in connection with the affairs of the State of Maharashtra; (b) persons who, having been appointed to any public service or post in connection

with the affairs of the State of Maharashtra, are in service or pay of-(i)any local authority in the State of Maharashtra;(ii)any corporation (other than a local authority) established by or under any law for the time being in force and owned or controlled by the State Government;(iii)any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one per cent, of the paid-up share capital is held by the State Government or any company which is a subsidiary of such Government company;(iv)any society registered under the Societies Registration Act, 1860, in its application to the State of Maharashtra, which is subject to the control of the State Government.

3. Definitions.

- In this Act, unless the context otherwise requires,-(a)"departmental inquiry" means an inquiry held under and in accordance with,-(i)any law made by the State Legislature or any rule made thereunder; or(ii)any law made under the proviso to article 309, or continued under article 313 of the Constitution of India, into any allegation of lack of integrity against any person to whom this Act applies;(b)"Inquiring Authority" means an officer or authority appointed by the State Government or by any officer or authority subordinate to that Government to hold a departmental inquiry and includes any officer or authority who is empowered by or under any law or rule for the time being in force to hold such inquiry;(c)"Lack of integrity" includes bribery or corruption, and mala fide act of omission or commission;(d)"prescribed" means prescribed by rules made under this Act.

4. Authorisation of Inquiring Authority to exercise power specified in section 5.

- Where in any departmental inquiry, it is necessary to summon as witness, or call for any document from, any person or a class or category of persons, the Inquiring Authority may exercise the power specified in section 5 in relation to any such person or a person within such class or category, at any stage of the departmental inquiry, if he is authorised, by order in writing in this behalf, by such officer not below the rank of a Secretary to Government as the State Government may, by notification in the Official Gazette, designate; and different such officers may be designated for different class or classes of departmental inquiries or for different local areas of the State.

5. Power of authorise Inquiring Authority to enforce attendance of witnesses and production of documents.

(1)Every Inquiring Authority authorised under section 4 (hereinafter referred to as "the authorised Inquiring Authority") shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-(a)summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of any document or other material which is producible as evidence;(c)receiving evidence of affidavits;(d)requisitioning of any public record or copy thereof from any Court or office;(e)issuing commissions for the examination of witnesses or documents;(f)any other matter which may be prescribed.(2)Notwithstanding anything contained in

sub-section (1), the authorised Inc, Authority shall not be entitled-(i)to compel the Lokayukta or Upa-Lokayukta or any member of their is to appear before him to give any evidence relating to any information obtained by them in the course of, or for the purposes of, any investigation under the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971, or to produce the evidence recorded or collected by them in connection with such information;(ii)to compel the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 or any other corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980,-(a)to produce any books of account or other documents which the Reserve Bank of India, the State Bank of India, the subsidiary bank or the corresponding new bank claims to be of a confidential nature; or(b)to make any such books, or documents a part of the records of the proceedings of the departmental inquiry; or(c)to give inspection of any such books or documents, if produced, to any party before it or to any other person;(iii)to compel such officer or authority as the State Government may, by notification in the Official Gazette, specify, to appear before him to give any evidence relating to any information obtained by it in the course of or for the purposes of any of the duties or functions of such authority under any law for the time being in force, which under such a law is required to be treated as confidential, or to produce the evidence recorded or collected by it in connection with such information.(3)Without prejudice to the relevant provisions of Order V and XVI of the Code of Civil Procedure, 1908, regarding service of summons, every summons to witness to be served by the authorised Inquiring Authority upon any person shall be deemed to be served-(a)where a person to be served is a company, the service is effected in accordance with the provisions of section 51 of the Companies Act, 1956;(b)where the person to be served is a firm, if the summons is addressed to the firm at its principal place of business, identifying it by the name and style under which its business is carried on, and is either-(i)sent under a certificate of posting or by registered post; or(ii)left at the said place of business;and the summons so served shall be deemed to be served on each partner;(c)where the person to be served is a statutory public body or a corporation or a society or other body, if the summons is addressed to the Secretary, Treasurer or other head officer of that body, corporation or society at its principal office, and is either,-(i)sent under a certificate of posting or by registered post; or(ii)left at that office;(d)in any other case, if the summons is addressed to the person to be served and,-(i)is given or tendered to him, or(ii)if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business; or(iii)is sent under a certificate of posting or by registered post to that person.(4)Any process issued.by an authorised Inquiring Authority for the attendance, of any witness or for the production of any documents may, if found necessary, be served and executed in Greater Bombay through the Chief Judge, Court of Small Causes, Bombay and elsewhere, through the District Judge within the local limits of whose jurisdiction the witness or other person on whom the process is to be served or executed, voluntarily resides or carries on business or personally works for gain, and, for the purposes of taking any action for the disobedience of any such process, every such process shall be deemed to be process issued by the Chief Judge, Court of Small Causes, Bombay, or as the case may be, the District Judge.(5)Every authorised Inquiring Authority making any departmental inquiry shall be deemed to be a Civil Court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.(6)Any proceeding before every authorised Inquiring Authority making any departmental inquiry shall be deemed to be a judicial proceeding within the meaning of section 193

6. Territorial limits in which powers specified in section 5 may be exercised.

- For the purpose of exercising the powers specified in section 5, the territorial jurisdiction of every authorised Inquiring Authority shall extend to the whole of the State of Maharashtra.

7. Power to make rules.

(1)The State Government may, by notification in Official Gazette, make rule for the purposes of giving effect to the provisions of this Act. Such rules may provide for the levy of fees for any of the purposes of this Act and for the refund of any such fees or any part thereof.(2)All rules made under this Act shall be subject to the condition of previous publication, except when such rules are made for the first time.(3)Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification 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 or omitted to be done under that rule.Notification G.N.G.A.D. No. V.G.C. 1393/CR-150/XI-A dated 6th October, 1994 (M G. Part 4-B page 994) - In exercise of the powers conferred by section 4 of the Maharashtra Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Act, 1986 (Maharashtra 29 of 1986), the Government of Maharashtra hereby designates the Principal Secretary (Personnel) as the Officer to authorise the Inquiring Authority to exercise the powers specified in section 5 of the said Act, in respect of all the categories of Government Servants against whom a departmental inquiry or a preliminary inquiry may be held.