



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**MEDIATION (SPECIAL CATEGORIES OF
DISPUTES) ACT, No. 21 OF 2003**

[Certified on 30th July, 2003]

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*Mediation (Special Categories of Disputes)
Act, No. 21 of 2003*

[Certified on 30th July, 2003]

L.D.—O. 30/2002.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF MEDIATION
BOARDS FOR SETTLEMENT THROUGH MEDIATION OF SPECIAL
CATEGORIES OF DISPUTES; AND FOR MATTERS CONNECTED
THEREWITH AND INCIDENTAL THERETO.

Be it enacted by the Parliament of the Democratic Socialist
Republic of Sri Lanka as follows :—

1. This Act may be cited as the Mediation (Special
Categories of Disputes) Act, No. 21 of 2003.

Short title.

2. (1) The provisions of this Act shall apply in regard
to the settlement through mediation of such categories of
disputes as shall be determined by the Minister by Order
published in the Gazette.

Subject and
matters in respect
of which the Act
shall apply.

(2) In specifying such categories the Minister shall
take into consideration the need to provide for the meaningful
resolution of disputes relating to social and economic issues.

3. The Minister shall, from time to time by Order
published in the *Gazette*, specify the area (hereinafter referred
to as the “Special Mediation Board Area”) within which the
settlement of disputes shall be carried out under the provisions
of this Act, in respect of any one or more of the categories of
disputes determined under section 2.

Special
Mediation Board
Areas.

4. (1) Upon the publication of an Order under section
3, the Mediation Boards Commission shall, subject to the
provisions of subsection (2), take all necessary steps to appoint
a Panel of Mediators (hereinafter referred to as the “Panel”) in
respect of each Special Mediation Board Area. The
provisions contained in the Schedule to this Act shall apply
in respect of the selection and appointment of members of
the Panel.

Appointment of
Panel of
Mediators.

(2) A person to be eligible to be appointed under subsection (1) as a member of a Panel shall be required to have such qualifications as shall be prescribed for that purpose by the Minister, who shall in prescribing such qualifications have regard to the expertise required of members to be appointed to such Panel, taking into consideration the nature of the categories of disputes determined by the Minister under section 2. Different qualifications may be prescribed in respect of the different categories of disputes determined under that section.

(3) The Mediation Boards Commission shall appoint one of the members of the Panel appointed in respect of each Special Mediation Board Area, to be the Chairman of such Panel.

Term of office
and remuneration
payable to
members of a
Panel.

5. (1) A member of a Panel shall hold office for a period of three years from the date of appointment and shall thereafter be eligible for a re-appointment.

(2) A member of a Panel shall be paid such remuneration as shall be determined by the Minister in consultation with the Minister in charge of the subject of Finance.

Filling of
vacancies in a
Panel.

6. The Mediation Boards Commission may make appointments to fill any vacancies occurring in the membership of a Panel, and every person so appointed shall hold office for the unexpired period of the term of office of the member whom he succeeds.

Jurisdiction of the
Special Mediation
Boards.

7. (1) Subject to the provisions of subsection (2), a person may make an application to the Chairman of the Panel appointed for any Special Mediation Board Area, for the settlement by mediation of any dispute arising in respect of any one or more of the categories of disputes determined under section 2 of this Act, and arising wholly or partly within such Special Mediation Board Area :

Provided that where any dispute referred to such Chairman—

- (a) involves any movable or immovable property, the application shall be made to the Chairman of the Panel appointed for the Special Mediation Board Area within which such movable property is kept or immovable property is situated ;
- (b) involves a contract, the application shall be made to the Chairman of the Panel appointed for the Special Mediation Board Area within which such contract was made ; and
- (c) involves a matter which constitutes a cause of action in a court of law, the application shall be made to the Chairman of the Panel appointed for the Special Mediation Board Area within the territorial limits of the court having jurisdiction in respect of such action.

(2) Every application shall be accompanied by a document evidencing the fact that the prescribed fee has been paid in the prescribed manner.

8. (1) Where a Panel has been appointed under this Act in respect of a Special Mediation Board Area, no proceedings in regard to a dispute arising wholly or partly within such area in respect of any one or more of the categories of disputes determined under section 2, where the monetary value of the subject matter of such dispute is less than such sum as shall be specified by the Minister by Order published in the Gazette, shall be instituted in or entertained by a court of first instance, unless it is accompanied by a certificate of non-settlement issued under paragraph (a) of section 14 or subsection (2) of section 17.

No action to be
instituted without
a certificate of
non-settlement.

(2) Notwithstanding the provisions of subsection (1), where a party to a dispute referred to in that subsection prays for relief in the form of any provisional remedy under Part V

of the Civil Procedure Code, or where a party to any dispute in respect of which an application has been made under section 7 subsequently institutes an action in any court in respect of that dispute including a prayer for a provisional remedy under Part V of the Civil Procedure Code, the court may entertain and determine such action in so far as it relates only to the grant of such provisional remedy, and shall after such determination—

- (a) where no application has been made under section 7 in respect of the dispute constituting the cause of action before it, refer such dispute to the Chairman of the appropriate Panel for mediation ; or
- (b) where an application has been made under section 7 in respect of the dispute, direct the Chairman, of the appropriate Panel where a Board has not yet been constituted, or the appropriate Board, as the case may be, to continue mediation in respect of that dispute.

(3) Nothing contained in subsection (1) shall preclude any party to the dispute from making an application to a Mediation Board established under the Mediation Boards Act, No. 72 of 1988, unless the monetary value of the subject matter of such dispute in relation to which the application was made, exceeds twenty-five thousand rupees in value.

Reference by
court or labour
tribunal.

9. Where an action is filed in any civil court having jurisdiction over a Special Mediation Board Area or an application is made to any labour tribunal having jurisdiction over a Special Mediation Board Area, in regard to any dispute arising in respect of any one or more of the categories of disputes determined under section 2 of this Act, such court or tribunal as the case may be, may with the written consent of the parties to that dispute, refer the dispute to the Chairman of the Panel appointed for that Special Mediation Board Area, for the purpose of settlement of such dispute by mediation.

10. (1) Upon receipt of an application under section 7 or upon a reference made to him under section 9, the Chairman shall ascertain from the parties to the dispute, their preferences as to the manner of constituting a Mediation Board and shall in accordance with the preferences expressed, either —

- (a) constitute a Mediation Board under subsection (2) ;
or
- (b) allow the parties to the dispute to select a pre-constituted Mediation Board under subsection (3).

(2) Where all the parties to the dispute express a preference for the constitution of a Mediation Board under subsection (1), the Chairman of the Panel shall, constitute a Mediation Board (hereinafter referred to as the “Board”) of three members, consisting of—

- (a) one member selected by each party to the dispute ;
and
- (b) one member selected by the members selected under paragraph (a),

from the Panel appointed for that Special Mediation Board area :

Provided however, that where the parties to the dispute referred to in paragraph (a) or the members referred to in paragraph (b) are unable to agree as to their respective selections, the Chairman of the Panel shall make the necessary selection :

Provided further, that where any party to a dispute referred to in paragraph (a), expresses in writing, his unwillingness to make a selection under that paragraph, such selection shall be made by lot drawn by the Chairman of the Panel. Where such party for any reason, objects to the member first selected by the drawing of lots, the Chairman shall make a further selection by drawing lots.

(3) Where all the parties to the dispute express a preference for the reference of the dispute in respect of which the application or reference is made, to a pre-constituted Board, the Chairman of the Panel shall allow the parties to select any Board from among the Boards, each consisting of three members, (including a Chief Mediator appointed by the Chairman), previously constituted by the Chairman, from the Panel appointed for that Special Mediation Board Area.

(4) Where all the parties to the dispute express a preference for reference of the dispute to a Mediation Board constituted under subsection (2), the member selected under paragraph (b) of that subsection shall act as the Chief Mediator of the Board (hereinafter referred to as the “Chief Mediator”) :

Provided that where the Chairman of the Panel is selected as a member of the Board, the Chairman shall act as its Chief Mediator.

(5) Upon the constitution or selection as the case may be, of the Board, the Chairman of the Panel shall refer the dispute in respect of which the application or reference has been made to such Board for settlement by mediation.

Duties of a Board.

11. Where any dispute is referred to any Board under subsection (5) of section 10, it shall be the duty of such Board by lawful means to endeavour to bring the parties to the dispute to an amicable settlement and to remove with their consent wherever practicable, the real cause of the grievance between them so as to prevent a recurrence of the dispute, and for this purpose shall—

- (a) notify the parties concerned and such other persons as the Board may consider necessary, to be present at a mediation conference either together or individually at a specified time and place, and shall state in such notification that if any one of the parties fails to be present at such conference, the absence of such party concerned shall be stated in the certificate of non-settlement issued or in the report submitted to court, under section 14 ;

- (b) require any person notified to be present to bring to any such conference any witnesses or documents which may be of assistance in arriving at a settlement ;
- (c) convene as many mediation conferences as may be necessary to arrive at a settlement ;
- (d) comply with the procedure as prescribed which is required to be observed in the conduct of mediation sessions ;
- (e) maintain confidentiality in respect of all evidence given, documents submitted and of any other matters that are revealed or discussed during the conduct of mediation sessions ;
- (f) obtain where necessary advice of any person who has special knowledge or expertise pertaining to the subject matter of the dispute in instances where the Board considers it necessary and helpful in arriving at a settlement ;
- (g) endeavour to reach a settlement which is acceptable to both parties to the dispute ; and
- (h) complete its proceedings within the time limit specified in section 15 and in the event of failure to do so, issue a certificate of non-settlement or submit a report to court, as the case may be, under section 14.

12. It shall be the duty of every party to a dispute brought before a Board for settlement by mediation to —

Duties of parties to a dispute.

- (a) disclose fully and honestly all matters which are relevant and necessary for reaching a settlement ;
- (b) refrain from revealing any information of a confidential nature disclosed or discussed at a mediation session.

Where settlement
is reached.

13. (1) Where the parties to a dispute agree to a settlement, the terms of the settlement shall be reduced to writing and be signed by the Chief Mediator and such parties, and the Board shall—

- (a) where the settlement is in respect of any dispute brought before the Board by an application made under section 7, issue immediately, a copy thereof to each of the parties to the dispute ; and
- (b) where the settlement is in respect of any dispute referred by a court or a labour tribunal under section 9, forward to such court or labour tribunal as the case may be, a copy thereof and also issue a copy to each of the parties to the dispute.

(2) Where a copy of the settlement is forwarded to any court or labour tribunal under paragraph (b) of subsection (1), such court or labour tribunal as the case may be, shall, after issuing notice to the parties to the dispute –

- (a) in the case of a reference by a court, enter a decree ;
or
- (b) in the case of a reference by a labour tribunal make an Order,

in accordance with such settlement.

Where no
settlement is
possible.

14. Where the parties to a dispute do not agree to a settlement, the Board shall—

- (a) in the case of a dispute referred to the Board upon an application made under section 7, issue a certificate of non-settlement in the prescribed form signed by the Chief Mediator, stating that such dispute has been referred to such Board and that it has not been possible to settle the dispute by mediation and stating therein the reasons for non-settlement ;

- (b) in the case of a dispute referred by any court or labour tribunal for settlement under section 9, report to such court or labour tribunal as the case may be, in the prescribed form signed by the Chief Mediator, that it has not been possible to settle the dispute by mediation and stating therein the reasons for non-settlement.

15. (1) The Board shall, in respect of every dispute brought before it for settlement by mediation, endeavour to complete its deliberation and bring about a settlement or issue a certificate of non-settlement as the case may be, within sixty days of the constitution of such Board in accordance with the provisions of section 10.

Time limit within which Board must act.

(2) The procedure to be observed in the conduct of a mediation session by a Board shall be as prescribed.

16. The members of a Board shall in the conduct of a mediation session, be bound by a Code of Conduct as shall be prescribed.

Members to be bound by a Code of conduct.

17. (1) Where in any dispute referred to a Board in pursuance of any application made under section 7 is settled, and one of the parties to the settlement thereafter fails to comply with, or violates the terms of such settlement at any time, the other party shall forthwith report such failure or violation as the case may be, to the Board.

Failure to comply with or violation of settlement.

(2) The Board shall upon receipt of a report under subsection (1), notify the parties to the settlement and such other persons as it may consider necessary, to be present at a specified time and place and shall endeavour to resolve any differences that may have arisen between them and shall assist them to enter into a fresh settlement. Where the resolution of such differences is not possible, the Board shall issue a certificate of non-settlement in the prescribed form, signed by the Chief Mediator, stating that it has not been possible to settle such dispute and also stating the reasons for such non-settlement.

Certificates of non-settlement receivable in evidence.

18. (1) A certificate of non-settlement purporting to be issued under paragraph (a) of section 14 or subsection (2) of section 17, and signed by the Chief Mediator, may be produced in evidence in any action or proceeding instituted in any court, although such person is not called as a witness.

(2) The court may presume that the signature on any certificate of non-settlement is genuine and that the person signing it held the office he professed to hold at the time he signed it :

Provided that, if in any case the court is of opinion on the application of any party or otherwise, and for reasons to be recorded, that it is necessary that the Chief Mediator should be present to give evidence at any proceedings before such court, such Chief Mediator shall be summoned as a witness for the purpose only of giving evidence relating to the signing of such certificate .

Representation.

19. No attorney-at-law, agent or any other person shall be entitled or permitted to appear on behalf of any party to a dispute in any matter before a Board :

Provided however that representation before a Board—

(a) of one spouse by another spouse ; or

(b) of a minor or other person under any disability, by his parent, guardian or curator,

shall be permitted.

Privilege of witnesses.

20. (1) Every person who makes a statement before a Board shall, in respect of such statement, be entitled to all the privileges which a witness giving evidence before a court of law is entitled to in respect of such evidence.

(2) No statement made by any person before a Board shall be admissible in evidence in any civil or criminal proceedings.

21. In computing the period of prescription in regard to any cause of action, the period commencing on the date on which an application is made to the Chairman of a Panel in respect of the dispute constituting such cause of action, and ending on the date of the certificate issued under paragraph (a) of section 14 or subsection (2) of section 17 in respect of that dispute, shall be disregarded, notwithstanding anything to the contrary in any other written law.

Prescription.

22. A Board may, in carrying out its duties under paragraph (a) of section 11 and subsection (2) of section 17 require the assistance of any Grama Seva Niladhari appointed for a Grama Seva Niladhari's division within the Special Mediation Board Area, to communicate any notification to any party to a dispute or other person, and such Grama Seva Niladhari shall when so required, render all such assistance as may be necessary in that regard to such Board.

Grama Seva Niladhari to assist the Board.

23. The members of every Board constituted under this Act shall, so long as they are acting as such members, be deemed to be public servants within the meaning of the Penal Code, and every proceeding before such Board shall be deemed to be a judicial proceeding within the meaning of that Code.

Members of Board deemed to be public servants.

24. Every Board constituted under this Act shall be deemed to be a Scheduled Institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

Board deemed to be a Scheduled Institution,

25. No act or proceeding of a Board shall be deemed to be invalid by reason only of a defect in the constitution of the Board.

Defect in the constitution of the Board not to invalidate acts and proceedings of the Board.

26. (1) Where parties have agreed under a mediation agreement to refer any dispute for mediation and such dispute is a dispute coming within any one or more of the categories of disputes determined under section 2 of this Act,

Where there is a mediation agreement, no action to be instituted without sufficient proof of non-settlement.

notwithstanding anything in any other written law to the contrary, no proceedings in regard to such dispute shall be instituted or be entertained by a court, unless sufficient documentary proof is submitted to the effect that such dispute has been referred to mediation and a settlement has not been possible.

(2) The provision of, subsection (1) shall not apply in respect of any action, where a party to a dispute referred to in that subsection prays for relief in the form of any provisional remedy under Part V of the Civil Procedure Code, and a court may entertain and determine such action, only in so far as it relates to the grant of such provisional remedy.

(3) For the purpose of this section, a mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate agreement, by which the parties agree to refer for settlement by mediation all or any dispute which may arise between them, in respect of a defined legal relationship whether contractual or otherwise.

Regulations.

27. (1) The Minister may make regulations in respect of any matter in respect of which regulations are authorized by this Act to be made or required by this Act to be prescribed.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, as soon as convenient after its publication in the Gazette be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation shall be deemed to be so rescinded shall be published in the Gazette.

Sinhala text to
prevail in case of
inconsistency.

28. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

29. In this Act, unless the context otherwise requires “Mediation Board Commission” means the Mediation Board Commission appointed under the Mediation Boards Act, No. 72 of 1988.

Interpretation.

SCHEDULE

[Section 4(1)]

1. The Commission shall select persons possessing such qualifications as prescribed by the Minister under subsection (2) of section 4 and shall prior to appointing them as members of a Panel, send such persons to follow a preliminary training course in mediation skills and techniques.

2. On completion of the preliminary training referred to in item 1, the person or persons conducting the course shall submit to the Commission, a report in respect of each of the persons who followed the training course. Such report shall comment on the aptitude, knowledge and skills of the trainees to function as a mediator.

3. Upon receipt of the reports referred to in item 2, the Commission shall, having considered the contents of each of such reports, appoint for every Special Mediation Board Area—

- (a) a Panel of Mediators consisting of not less than twelve persons ;
- (b) such number of additional members to any such Panel as may be considered necessary from time to time ;
- (c) such number of members as may be required to fill any vacancies in the Panel.

4. (1) Where the Chairman or any member vacating office either on the expiration of his term of office or for any other reasons, is on the date of his vacation of office inquiring into any dispute, his vacation of office shall take effect on the date on which he completes such inquiry.

(2) Where for any reason no person is appointed to succeed a member vacating his office, the outgoing member shall, notwithstanding his vacating office, continue as a member of the Panel until the appointment of his successor or until the Commission determine otherwise.

5. (1) The Chairman or any member may—

- (a) resign his office by letter addressed to the Commission ;
- (b) be removed from office by the Commission without assigning any reason therefor.

(2) The Chairman or any member who has resigned or has been removed from office, shall not be eligible for re-appointment.

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