



The Nagaland Shops And Establishments Act, 1982



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THE NAGALAND SHOP AND ESTABLISHMENT

ACT. 1982

(NAGALAND ACT NO. 5 OF 1985)

*(Received assent of the Governor of Nagaland on
the 1st December, 1985)*

An

Act

to provide for and the regulations of conditions of work and employment in shops and commercial establishments and establishments for public entertainment or amusement in the State of Nagaland. It is hereby enacted in the thirty-third year of the Republic of India as follows : –

Short Title, extent and commencement

1. (1) This Act may be called the Nagaland shops and Establishments Act. 1982.
- (2) It extends to the State of Nagaland.
- (3) It shall come into force on such date as the State Government may, by notification in the official Gazette appoint.
- (4) (i) It shall apply, in the first instance to the Town Committees as declared or constituted under the provision of the Naga Hills District (constitution of Town Committee) Rules, 1954.
- (ii) It shall apply to such other areas or to such shops, commercial establishments or amusement in such other areas on such date or dates as the State Government may, by notification specify.

Chapter I

PRELIMINARY

Definition

2. In this Act unless there is anything repugnant in the subject of context:
 - (1) “apprentice” means a person aged not less than twelve years whom an employer employs in his service for training by himself or by any other person for any trade or calling;
 - (2) “child” means a person who completed his fourteenth year.
 - (3) “closed” means a not open for the service of any customer or to any business connected with the establishment;
 - (4) “commercial establishment” means an establishment in which there is conducted the business of advertising, commission, forwarding or commercial agency, a department of a factory in which persons are employed in clerical capacity in any room or place where no manufacturing process is being carried on, a clerical department of any industrial or commercial undertaking including one of public transport, an insurance company, joint stock company, brokers, office or exchange, or such other establishment or class thereof as the State Government may, by notification, declare to be commercial establishment for the purposes of all or any of the provision of this Act., but does not include a Shop or an establishment for public entertainment or amusement;

- (5) “y” means the period of twenty-four hours beginning at midnight Provided that in the case of an employee whose hour of work extend beyond midnight, day means the period of twenty four hours beginning when such employment commences;
- (6) “employee” means a person wholly or principally employed in and in connection with any establishment and includes an apprentice;
- (7) “employer” means a person owing or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management
- (8) “establishment” means a shop or a commercial establishment or an establishment for public entertainment or amusement
- (9) “establishment for public entertainment of amusement” means a restaurant, eating house, cafe, cinema theatre and such other establishment or class thereof as the State Government may by notification, declare to be for the purposes of this Act, an establishment for, public entertainment or amusement, but does not include a shop or a commercial establishment.

Central Act, No. 63 of 1948

- (10) “Factory” means a factory as defined in or declared to be a factory under the factories Act. 1948 :
- (11) “half day” means a period of six consecutive hours between the hours of half past seven O’clock ante-meridian and seven O’clock post meridian
- (12) “Inspector” means an inspector appointed under this Act.
- (13) “Leave” means eave provided for in the Chapter III of this Act.
- (14) “notification” means a notification published in the official Gazette.
- (15) “opened” means opened for the service of any customer or to any business connected with the establishment
- (16) “period of work” means the time during which an employee is at the disposal of the employer.
- (17) “prescribed” means prescribed by rules made under this Act.
- (18) “prescribed authority” means the authority prescribed by rules made under this Act.

Central Act. No. 63 of 1948

- (19) “shop” means any premises where any trade or business is carried on or where services are rendered to customers, and includes office, store rooms, godown of warehouse, whether in the same premises or otherwise used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act 1948 or an establishment for public entertainment for amusement.
- (20) “spread over” means the period between the commencement and the termination of the work of an employee on any day.
- (21) “Wages” means payment whatever intervals paid and includes dearness and such other allowances payable in terms of money and includes the value of loding and such other amenitites whose value is capable of being computed in terms of money.
- (22) “Week” means the period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the prescribed authority.
- (23) “year” means a year commencing on the first day of January.

Exemptions

- 3. (1) nothing contained in this Act. shall apply to : –
 - (a) person employed in any establishment in a position of management

- (b) person whose work mainly involves travelling and persons employed as canvassers **and** caretakers and whose names do not appear in the master rolls;
- (c) establishment under the Central or any State Government local authorities, the Reserve Bank of India or any other Bank any Railway administration and Cantonment authorities;
- (d) any water transport service, **or motor** service or any system of public conservancy or sanitation, any industrybusiness or undertakingwhich supply power, / light or water to the public and such other publicutility companies or associations or classes thereof as the State Government may, by notification, exempt from the operation of this Act.
- (e) clubs ; residential hotels and boarding houses;
- (f) stalls and refreshment rooms at railway stations, docks, wharves and airports;
- (g) establishment for the treatment or care of the sick, infirm, destitute or mental unfit
- (h) shops or classes of shops dealing mainlyin vegetables, meat, fish, dairy products, bread, pastries, sweetmeat and flowers so far as the retail sales of these articles are concerned;
- (i) pharmacies or shops dealing mainly in medicines surgical appliances, bandages, or other medical requisites so far as sale of these articles are concerned;
- (j) shops dealing in articles required for funerals, burials or cremations so far as the sales of those articles are concerned;
- (k) shops dealing in tobacco, cigrates, cherrots, cigarettes, biris, pan, liquid, refreshment sold in retail for consumption on the premises, ice, newspaper, or periodicals so far as the sales of these articles are concerned;
- (l) shops dealing in supplies, stores, or other articles necessary for shops so far as sales of these articles are concerned;
- (m) shops or stalls in any public exhibition or show so far as such shops or stalls deal in retail trade which is solely subsidiary or ancillary to the main purposes of such exhibition or show;
- (n) shops or stall in any public fair or bazar held for charitable purposes;
- (o) barbers, and hair-dresser's shops
- (p) shops dealing in petroleum products 'or spare pans for motors, vehicles or cycles
- (q) excise shops
- (r) establishments in mine and oil-field;
- (s) any person employed in a confidential capacity, messenger, watchman or exclusively in connection with the collection, dispath, delivery and conveyance or custom formalities of goods or such other persons or classes of persons as the State Government may, by notification exempt from the operation of all or any of the provisions of this Act.
- (t) such seasonal commercial establishment engaged in the purchase of jute or cotton ginning or cotton or jute pressing and the clerical department of such seasonal factories and 11(2) such other establishments as the State Government may by notilication exempt from the operation of all or any of the provisions of this Act

Power of Government to apply the Act to exempted persons or establishment

4. Notwithstanding anything contained in section 3 the State Government may, by notification in the official Gazette apply all or any of the provisions of this Act to any class of persons or establishments mentioned in that section other than those mentioned in clause (c) of sub-section (1) and modify or cancel any such notification.

Exemptions

5. The State Government may, if they are satisfied that public interest so requires or that the circumstances of the case are such that it would be just and proper to do so, having regard to the nature and capacity of

the establishment, by notification in the official Gazette exempt either permanently or for any specified period, any establishment or clauses of establishments in any area or persons to which or to whom this Act applies, from all or any of its provisions subject to such restrictions and conditions as the State Government may deem fit.

Chapter II

HOURS OF WORK

Daily and weekly hours

6. No employee in any establishment shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week;

Provided that the total number of hours of works including overtime, shall not exceed ten hours in any day except on days of stock taking and preparation of accounts and the total number of hours of overtime shall **not exceed** fifty for any quarter,

Extra wages for overtime

7. Where an employee works in any establishment for more than eight hours in any day or for more than forty-eight hours in any week, he shall in respect of such overtime work be entitled to wages at the rate of twice the ordinary rate of wages.

EXPLANATION

For the purpose of this Section “ordinary rate of wages” means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the supply of meals and the concessional sale to employees of food grains and other articles as the employees is for the time being entitled to, but does not include bonus.

Interval for rest

8. The period of work of an employee in an establishment each day & shall be so fixed that no period shall exceed four hours and that no such person shall work for more than four hours before he has had an interval for rest of at least one hour.

Spread over

9. The period of work of an employee in an establishment shall be so fixed that, inclusive of his interval for rest, they shall not spread over more than ten and half hours in any day.

Opening and Closing hours

10. (1) No establishment shall on any day be opened earlier than and closed later than such hours as may be fixed by a general or special order of the State Government made under sub-section (2).

Provided that any customer who was being served or was waiting to be served in any establishment at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

- (2) The State Government may by general or special order, fix the time at which any establishment or class of establishment shall be opened or closed in any local area.

Closing of shops and grants of weekly holidays for religious purposes

11. (1) Every shop shall remain entirely closed for one day in each week.
- (2) The State Government may, by notification require that in addition to one day referred to in sub-section (1), every shop or any specified class or shops shall remain closed between such hours in the afternoon of such days in each week, as may be specified in the notification.

Provided that when there are conducted in a shop two or more trades or business, any of which is of such character that, if it was the sole trade or business therein conducted, the provisions of this **Act would not apply** to that Shop, such shop shall so far as the conduct of the trade or business is concerned be exempt **from the operation of sub-section (1)**

Provided further that, when in any establishment for which the provision of this Act, applies two or more trades or business are conducted, one or more of which are usually conducted in a shop while the others are usually conducted in a commercial establishment, the provision of this Section shall not apply to the establishments so far as the conduct of the trades or business usually conducted in a commercial establishment are concerned.

- (3) No deduction on account of any closure of a shop under the provision of sub-section (1) or sub-section (2) shall be made from the wages of any employee of such Shop,
- (4) The day on which shop shall be closed in each week under the provisions of sub-section (1) shall be such day as may be specified by the employer in a notice, which shall be displayed in a conspicuous place in the shop.

Provided that no employer shall, more often than once in every three months, alter the day so specified.

- (5) Every person employed in a commercial establishment shall be allowed as holidays at least one and a half day in each week

Provided that, when there are conducted in a commercial establishment two or more trades or business any of which is of such character that, if it was the sole trade or business therein conducted, the provisions of this Act

would not apply to that commercial establishment, such commercial establishment shall, so far as the conduct of the trade or business is concerned be exempted from the operation of this sub-section.

- (6) No deduction on account of any holiday allowed under the provisions of sub-section (5) shall be made from the wages of any person employed in such commercial establishment.

Act III of 1942

- (7) Notwithstanding anything contained in the Weekly Holidays Act, 1942, every person employed in an establishment for public entertainment or amusement shall be allowed as holidays at least one and a half day in each week. Provided that, when there are conducted in an establishment for public entertainment or amusement two or more trade or business, any of which is of such a character that, if it was the sole trade or business therein conducted, the provisions of this Act would not apply to that establishment, such establishment shall so far as the conduct of that trade or business is concerned be exempt from the operation of this sub-section.
- (8) No deduction on account of any holiday allowed under the provisions of sub-section (7) shall be made from the wages of any person employed in such establishment for public entertainment or amusement.
- (9) Every person employed in a shop commercial establishment for public entertainment or amusement shall be entitled to leave of absence for any days, he may select, not exceeding three in number in any one year for the purpose of attending ceremonies or performing functions or duties connected with or enjoined by his religion.

Chapter III

LEAVE

Application of Chapter

12. The provisions of this chapter shall not operate to the prejudice of any right to which an employee be entitled under any other law or under the term of any award, agreement or contract of service.

Provided that where such award, agreement or contract or service provides for a longer leave with wages or weekly holidays than provided in this chapter, the employee shall be entitled to such longer leave or weekly holidays as the case may be.

Explanation

For the purpose of this chapter, leave shall not except as provided in Section 12, include weekly holidays or holidays for festivals or other similar occasions.

Annual Leave with wages

13. (1) Every employee in an establishment shall be entitled after twelve months continuous service in that establishment to privilege leave with wages for a period of 16 days in the subsequent period of twelve months, provided that such privilege leave with wages may be accumulated upto maximum period of 30 days.
- (2) Every employee in an establishment shall also be entitled during every twelve months of continuous service to medical leave with wages for a period not exceeding twelve days on the ground of any sickness incurred or accident sustained by him and to casual leave with wages, for a period not exceeding twelve days on any reasonable ground.
- (3) If an employee entitled to any leave under sub-section (1) is discharged by his employer before he has been allowed the leave, or if having applied for and been refused the leave, he quits his employment before he has been allowed the leave, the employer shall pay him the amount payable under this Act in respect of the leave.
- (4) If an employee entitled to any leave under sub-section (2) is discharged by his employer when he is sick or suffering from the result of an accident, the employer shall pay him the amount payable under this Act, in respect of the period of the leave to which he is entitled at the time of his discharge, in addition to the amount, if any, payable to him under sub-section (3).
- (5) An employee shall be deemed to have completed a period of twelve months, continuous service within the meaning of this section, notwithstanding any interruption in service, securing those twelve months brought about (a) by sickness, accident, or authorised leave (including authorised holidays and weekly holiday), not exceeding ninety days in the aggregate for all three, or (b) by a lock out, or (c) by a strike, which is not an illegal strike; or (d) by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate, and authorised leave shall be deemed not to include any weekly holidays allowed under this Act which occurs at the beginning or and of an interruption brought about by the leave.

Wages during leave period

14. For the leave allowed to him under section 13, an employee shall **be paid at the rate equal to the** daily average of his total full time earning exclusive of any overtime earning and bonus, but inclusive of dearness allowance **and** the cash equivalent **of** any advantage accruing by the **supply of** meals and by the sale by the employer of food grains and other articles at concessional **rates for** the days **on which he worked** during the month immediately preceding his leave.

Power of Inspector to act for employees

15. Any Inspector may institution proceedings **on behalf of** any employee to recover any sum required to be paid an employee under this chapter which the employer has **not paid**.

Power to exempt establishment

16. Where the Government are satisfied that the leave rules applicable to employees in an establishment provide benefits which in its opinion are **not** less favourable than those for **which chapter makes** provisions it **may, by** written order, **exempt the** establishment from all **or any of the provisions** of this chapter, subject to such conditions as may be specified in the order.

Chapter IV

WAGES

Application and amendments of the payments of Wages Act

17. (i) Notwithstanding anything contained in **the** payment of wages Act, 1936, referred to as the said **Act**, the State Government may by notification in the official Gazette, direct that, subject to the provision of sub-section, (2) the said Act or any of the provisions thereof or the rules made thereunder shall apply to all or any class of employees in establishment to which this Act applies.

Central Act 4 of 1936

- (ii) **On** the application of the provisions **of the** said **Act to** any establishment under sub-section (2) the Inspector appointed under this Act shall **be deemed to be the** Inspector for the purpose of the enforcement of the provisions **of the** said Act within the local limits of his jurisdictions.

Notice of dismissal

18. (1) No employer shall dispense with the service **of an** employee employed continuously for a period of **not** less than six months, except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice, provided however that such notice shall not be necessary where the services of such employee are dispensed **with on a charge of mis-**conduct supported by 'satisfactory evidence recorded at an inquiry held for the purpose.
- (ii) Any employee whose services are dispensed with, may **appeal to such authority** and within such time as may **be prescribed either on the ground that there** was no reasonable cause **for dispensing with** his services or on the ground that he has not been guilty of misconduct as held by the employer.
- (iii) The appellate authority may, after giving notice in the prescribed manner **to** the employer and the employee, dismise the appeal or direct the rein-statement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without rein-statement or grant such other relief as it may fit in the circumstances of the case.
- (iv) In directing the rein Statement of an employee the appellate authority shall also direct the payment of such amount of compensation as may be specified by him in case the employer fails to reinstate the employee in accordance with the directions.
- (v) The decisions of the appellate authority shall be final and binding **on both the parties**, not be liable to be questioned in any court of law, and be given effect to within such time as may be specified in the order of the appellate authority.
- (vi) Any compensation required **to be paid by the employer** under sub-sections (3) and (4) **but not paid him, shall** be recoverable as arrears of land revenue under the

provisions of the Revenue Recovery Act.. 1990 (Act 1of 1890) **for the time being in enforce.**

Chapter V
EMPLOYMENT OF CHILDREN AND WOMEN

Prohibition of employment of children

19. No child shall be required or allowed to work in any establishment except as an apprentice in such employment as may be specified by the State Government.

Prohibition of employment of women and persons below seventeen years during night

20. No women or any person who has not attained the age of seventeen, shall be required or allowed to work whether as an employee or otherwise in any establishment before 6 A.M. or after 7 P.M.

Chapter VI
HEALTH AND SAFETY

Cleanliness, ventilation and lighting

21. (i) **The premises of every establishment shall be kept clean and free from a filth arising from** any drain or privy or other nuisance and shall be cleaned at such times and by methods as may be prescribed and these methods may include lime washing, colour, washing, painting, varnishing, disinfection and deodorising.
- (ii) The premises of every establishment shall be ventilated and sufficiently lighted during all working hours, with such standards and by such methods as may be prescribed.
- (iii) If it appears to an Inspector that the premises of any establishment within his jurisdiction are not sufficiently kept clean or lighted or ventilated, he may serve on the employer, an order in writing specifying the measures which in his opinion, should be adopted and requiring him to be carried out before a specified date.

Precaution against fire

20. Every employer shall take proper precaution against fire in such manner as may be prescribed.

Appeals

23. Against any order of the Inspector under this chapter, an **appeal shall lie to such authority** and within such time as may be prescribed.

Apportionment of expenses under preceding section

24. If any person, being either the owner or the occupier of an establishment who has incurred or is about to incur any expenses for the purpose of securing that the requirements of section 21 or section 22 are complied with respect to the establishment, alleges that the whole or any part of the expenses ought **to be borne by any other person** having an interest in the premises, he may apply to the assistant to the **Deputy Commissioner having jurisdiction over the area** in which the establishment is situated and the court shall make **such order** concerning the expenses or their apportionment as **it appears to the court, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be just and equitable, and any order made under this section may direct that any such contract as aforesaid shall cease to have effect in so far it is inconsistent with the terms of the order.**

Chapter VII ENFORCEMENT AND INSPECTION

Appointment of Inspector

25. (i) The State Government may, by notification in made under this section may direct that any such the official **Gazette, appoint such officer or such persons or class of persons** as they think fit to be Inspectors for the purposes of this Act within such local limits as they may assign to them respectively.
- (ii) The State Government may, by notification in the official Gazette, appoint the **Labour Commissioner, or Deputy Labour Commissioner Assistant Labour Commissioner of Nagaland as Chief Inspector for the purposes of this Act.**

Powers and duties of Inspectors

26. Subject to any rules made by the State Government in this behalf, an Inspector may within the local limits for which he is appointed:
- (a) enter at all reasonable times and with such assistants, if any being persons in the service of the Government of any local authority as he thinks *fit*, any place which is or which he has reasons **to believe** is an establishment.
- (b) **make such inspection of the premises and of** any prescribed registers/records and notice and take on the spot or otherwise evidence of any person as he may deem necessary, for carrying out the purposes of this Act., and
- (c) exercise such other powers as may be necessary for carrying **out the purpose of this Act.** Provided that no one shall he required under this section to answer any question or give any evidence tending to incriminate himself.

Inspector to be public servant

27. Every Inspector appointed under sub-section (1) of section 25 shall be deemed to be a public servant within the meaning of section 12 of the Indian Penal Code, Act XLV of 1960.

Employer to produce records etc. for Inspectors

28. Every employer shall, on demand produce for inspection of an Inspector all registers, records and notice required to be kept under and for the purposes of this **Act.**

Chapter VIII

OFFENCES, PENALTIES AND PROCEDURE

Penalties

29. (1) Whoever contravenes any of the provisions of Sections 6, 8, 9, 10, 11, 13, 14, 18, 21, and 22 shall on conviction be punishable with fine which for a first offence may extend to two hundred and fifty rupees and for a second or any subsequent offence may extend to five hundred rupees.
- (2) Whoever contravenes any of the provisions of Sections 7, 19, 20, 28 and 30 shall, on conviction **be** punishable with fine which may exceed to fifty rupees.
- (3) No court shall take cognizance of any offence punishable under this Act or any rule or order made there under unless the complaint is made
- (a) **by the employee of an establishment either by himself or through the union of which he is a member within three months from the date on which the offence is alleged to have been committed; or**

- (b) **by the** inspection within six **months from the date** on which **the** alleged offence comes to his knowledge.
- (4) No court inferior to that of Judicial Magistrate of the first class shall try any offence punishable under this Act **or** any rUles or orders made thereunder.

Chapter IX

MISCELLANEOUS

Maintenance of registers and records and display of notices

30. **Subject to the general or special orders of the State Government**, an employer shall maintain **such registers and records** and displad **on the** premises of his establishment such notices as may be prescribed. All such registers and records shall be kept in the premises of the establishment to which they **relate**.

Saving of certain rights and priviliges

31. Nothing in this Act shall effect any right or privilege which an employee in any establishment is entitled to on the date this **Act comes into force, under any other law, contract**, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment if such rights or privileges are more favourable to him than those to which he would **be entitled under** this Act.

Indemnity

32. No suit prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Delegation of powers

33. (1) The State Government may by notification **in the official** Gazette authorise any officer or authority subordinate to them to exercise all or any of the powers vested in them by or under this Act, except the power mentioned in section 34, subject to such restrictions and conditions, if any, as may be specified in the notification.
- (2) The exercise of the powers delegated under sub-section (1) shall be subject to control and revision by the State Government or by such persons, as may be empowered by them in that behalf. The State Government shall also have power to control and revise the Acts or proceedings of any persons so empowered.

Powers to make Rules

34. (1) The State Government may subject to the condition of previous publication by notification in the official Gazette, make rules for carrying out the purpose 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, namely:
- (a) Health, Safety, Welfare of employees, holiday for occasions;
 - (b) the from and date for appliéation of registration or renewal of certificate and fees payable for such a registration of renewal.
 - (c) the particulars with respect of certificate of registration of renewal thereof;
 - (d) the manner of taking precaution against fire;
 - (e) the setting up an appellate authority, the limitation for filing appeal and manner of giving notice;
 - (f) any other matter which has to be or may be prescribed.
- (3) The State Government may provide in the rules that a contravention of any of the rules shall be

punishable with fine which may extend to fifty rupees and where the breach is a continuing one with a further fine which may extend to ten rupees for every day, after the first during which the breach continues.

- (4) All rules made under this section shall be laid as soon as may be, after they are made, before the Nagaland Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of that session in which it is so laid or the session immediately following, the Nagaland Legislative Assembly agree in making any modification in the rules or the Nagaland Legislative Assembly agree that no rules should be made, the rules shall thereafter 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 under the rules.

Powers of Government to suspend provision of the Act during fairs and festivals

35. The State Government may, by notification on account of such holiday or other occasions as may be prescribed, suspend the operation of all or any of the provisions of this Act in respect of any shop or commercial establishment or establishment for public entertainment or amusement or for any class of shops or establishments as aforesaid for such period and subject to such conditions as it may think fit.

Registration of establishment

36. (1) Every employer shall have his establishment registered under this Act. The registration shall be renewed every twelve months.
- (2) The application for registration or for renewal of registration shall be made to the Chief Inspector or to such other officer as the Chief Inspector may authorise in this behalf in such forms and within such date and containing such particulars as may be prescribed.
- (3) The fees payable for registration or for renewal of registration shall be such as may be prescribed by the State Government.
- (4) Where an establishment is registered under this Act or when the registration of any establishment is renewed there shall be issued to the employer a certificate of registration, or a renewal certificate of registration as the case may be by containing such particulars as may be prescribed.
- (5) The certificate or the renewal certificate as the case may be, shall be kept prominently displayed at some conspicuous place of the establishment.
- (6) If any employer carries on business without a valid registration certificate after the expiry of the last date for submission of application for registration or for renewal, he shall be liable to pay a penalty equal to the fee prescribed for registration or renewal of registration, as the case may be, plus an additional penalty at rupees two per day for each day of continued default after the **expiry of the last day for submission** of an application for registration or renewal, as the case may be, and the said penalty shall be realised by the Collector as a public demand under the Bengal Public Demands Recovery Act, 1913 on certificate being issued to that effect by the Chief Inspector appointed under this Act.

Provided that no employer shall be liable for any penalty under this section if he has submitted a valid application for a certificate of registration or renewal thereof within the period prescribed to the proper Authority.

THE NAGALAND CATTLE TRESPASS ACT 1985
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THE NAGALAND CATTLE TRESSPASS ACT 1985

An

Act

Relating to trespass by cattle in the State of Nagaland.

It is hereby enacted in the thirty six year of the Republic of India as follows:

Chapter I

1. Short Title, extent and commencement

(1) This Act may be called the Nagaland cattle Tresspass Act. 1985.

(2) (a) It extend to the whole of the State of Nagaland.

(b) The Government may by notification in Gazette, exclude any area from the operation of this Act from such date as may be specified therein.

(3) It shall come into force on such date as the Government may, by notification in she Gazette appoint.

2. Definitions

In this Act, unless the context otherwise requires

(1) "cattle" means cows, oxen, and bulls, and includes elephants, camels, buffaloes, horses, mares, gelding, popies, colts, fillies, mules, assess, pigs, rams, ewes, sheep, lambs, goats, kids, and fowls and such other kinds of animals as the Government may, by notification in the Gazette specify.

(2) "Director" means Director of Agriculture, Nagaland.

(3) "Local Authority" means any Town Committees, Village Council in any area where there is no Town Committee or such authority as the Government may appoint in this behalf.

Chapter II

Pounds and pound-keepers

3. establishment of pounds

(1) Pounds may be established at such places in each district as the Director may from time to time direct.

(2) The area by which every pound is to be used shall be determined by the Director.

4. Control of pounds and rates of charge for feeding impounded cattle

The pounds shall be under the control of the Local authority and that authority shall fix, and may, from time to time, alter the rates of charges for feeding and watering impounded cattle.

5. Appointment of pond-keepers

(1) Every pound shall be in the charge of a pound-keeper appointed by the local authority concerned.

(2) Every pound-keeper shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) The pay and allowances, discipline and conduct and other conditions of service of a pound-keeper appointed by a local authority under sub-section (1) shall

(a) where such local authority is a Town Committee or a Village Council be the same as those applicable to officers or servants of such organisation, as the case may be of the same rank as that the pound-keeper.

- (b) in other cases, be such may be prescribed by rule made by the Government under this Act..
- (4) If any question arises as to whether any officer or servant of a Town Committee and Village Council is of the same rank as that of the pound-keeper, such question shall be referred to the Government, whose decision thereon shall be final.

DUTIES OF POUND-KEEPERS

6. To keep registers and furnish returns

Every pound- keeper shall keep such registers and furnish such returns as the Government may, from time to time, direct.

7. To register seizures

When cattle are brought to a pound, the pound-keeper shall enter in his register : –

- (a) The number and description of the cattle.
- (b) The day and hour on and at which they were so brought,
- (c) The name and residence of the seizure and
- (d) The name of the residence of the owner, if known. The seizures shall affix his signature in the register, The pound-keeper shall give the seizure or his agent a copy of The entries aforesaid.

8. To take charge of and feed cattle

The pound-keeper shall take charge of feed and water the cattle, until they are disposed of as hereinafter directed.

Chapter III IMPOUNDING CATTLE

9. Cattle damaging land may be seized and police to aid such seizures.

- (1) The cultivator or occupier of any land or any person has acquired a right for the cultivation of the crop or produce on any land.

Or the vandeer or mortgagee of such crop of produce or any part

thereof, may be seized, or cause to be seized, any cattle trespassing on such land and doing damage thereto or to any crop or produce thereon, and send them or cause them to be sent within twenty-four hours to the pound established for the area in which the land is situated.

- (2) All officers of police shall, when acquired, aid in' preventing.
- (a) Resistance to such seizure, and
 - (b) Rescue from persons making such seizures.

10. Cattle damaging public road, canal and embankments

Persons in charge of public roads, pleasure grounds, plantations wherein common grazing grounds are available, canals, drainage, works tanks embankments, and the like and officers of police, officers employed by local authorities within their respective jurisdictions and such other officers as the Director may empower in this behalf, may seize, or cause to be seized, any cattle doing damage to such roads, ground, plantations, canals, drainage works, tanks, embankments and the like or the sides or slopes of such roads, canals, drainage works, tanks or embankments or found straying thereon and shall send them or cause them to be sent within twenty-four hours, to the nearest pound.

11. Fines for cattle impounded

- (1) For every head of the cattle, impounded as aforesaid the pound-keeper shall levy a fine in accordance with the scale

for the time being prescribed by the Director in this behalf

by notification in the Gazette. "Different" scales **may be** prescribed for different local areas or **for** different localities within the same local areas and **for** different kinds of cattle.

- (2) Notwithstanding anything contained in sub-section (1) when it appears to the Director that in any local areas cattle are habitually allowed to trespass **on land and** damage **crops or** other produce thereon, he may by notification in the Gazette, direct that for every head of cattle of any kind specified therein, which may be seized within such local area and impounded as aforesaid such amount of fine as may be specified by him in the said notification, **not** exceeding double the fine prescribed under sub-section (1) shall **be levied.**
- (3) All fines levied under this section or "section 12" shall be credited to the fund of the local authority or where there is no Town Committee, Village Council, in such manner as the Government may from time to time direct.
- (4) A list of the fines and rates of charge for feeding and watering **cattle shall be** exhibited in a conspicuous place **on or near to every pound.**

12. Special provisions for cattle straying in aerodromes.

Notwithstanding anything contained in sub-section (1) of section

II when it appears to the Director that in any aerodrome cattle are habitually allowed to trespass and cause nuisance in **such** aerodrome he may, by notification in the Gazette, direct **that for** every head of cattle of any kind specified therein which may be seized within **such aerodrome** and impounded as aforesaid such **amount of fine as may be specified by him in the said notification not exceeding four times the fine prescribed in the sub-section (1) of section (II)** shall be levied.

Explanation

For the purpose of this section, "aerodromes shall have the same meaning assigned to it under the Aircraft Act 1934 (**Central Act 22 of 1934**).

Chapter IV

DELIVERY OR SALE OF CATTLE

13. Procedure when owner claims the cattle and pays fines and

- (a) If the owner of the impounded cattle or his agent appears and claims the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.
- (b) The owner or his agent, on taking back the cattle shall sign receipt for them in the register kept by the pound-keeper.

14. Procedure if cattle be not claimed within a week

- (1) If the cattle be not claimed within seven days from the date of their being impounded the pound-keeper shall report the fact to the local authority concern or to such officer as the Director specified in this behalf.
- (2) The local authority or the officer shall thereupon affix in a conspicuous part of its or his office a notice stating

- (a) the number and description of the cattle,
 - (b) the place where they were seized,
 - (c) the place where they are impounded and shall cause proclamation of the same to be made by beat of drum in the village and in the market place nearest to the place of seizure.
- (3) If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the local authority or the said officer or any other officer subordinate to him, deputed for that purpose at such place and time and subject to such conditions as the Director by general or special order, from time to time, directs.

Provided that if any such cattle are in the opinion of the Director, not likely to fetch a faire price if sold as aforesaid, they may be disposed of in such other manner as he thinks fit.

15. Delivery to owner disputing legality of seizure, but making deposit.

If the owner or his agent appears and refuses to pay the fines and expenses on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. Procedure when owner refuses or omits to pay the fines and expenses

- (1) If the owner or his agent appears and refuses or omits to pay or in the case mentioned in section 15 to deposit them said fines and expenses, the cattle or as many of them as may be necessary, shall be sold by public auction by the local authority or by such officer as the case may be, at such place and time and subject to such conditions as are referred to in section 14.
- (2) The fines leviable and expenses of feeding and watering together with the expenses of sale, if any, shall be deducted from the proceeds of sale.
- (3) The remaining cattle and the balance of the proceeds of sale if any, shall be delivered to the owner or his agent, together with an account showing : –
 - (a) the number of cattle seized,
 - (b) the time during which they have been impounded
 - (c) the amount of fines and charges incurred,
 - (d) the number of cattle sold,
 - (e) the proceeds of sale, and
 - (f) the manner in which these proceeds have been disposed of
- (4) The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the proceeds of sale, if any, paid to him according to such account.
- (5) If the owner or his agent refuses to received the remaining cattle and the surplus proceeds of sale delivered to him, the cattle and the proceeds of sale shall be deemed to be unclaimed and disposed of according to the provisions of this Act.

17. Disposal of fines, expenses and surplus proceeds of sale

- (1) The officer by whom the sale was made shall send to the local authority the fines so deducted.
- (2) The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under Section 13.
- (3) The surplus unclaimed proceeds of the sale of cattle, shall be sent to the local authority who shall hold them in deposit and if no claim thereto be preferred within three months and

established, shall dispose of them as hereinafter provided.

18. Application of fines and unclaimed proceeds of sale.
- (1) All sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be credited to the fund⁵ of local authority or where there is not Town Committee or Village Council in such manner as the Government may from time to time, direct.
 - (2) The salaries allowed to pound-keepers and the expenses incurred for the construction and maintenance of pounds or for any other purpose connected with the carrying out of the provisions of this Act shall be paid by the local authority.
19. officers and pound-keepers not to purchase cattle at sale under this Act.
- (1) No police officer, or other officer or pound keeper appointed under the provision herein contained and no member of local authority under whose control the pound is, shall directly or indirectly purchase any cattle at a sale under this Act.
 - (2) No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the provisions of this chapter, unless such release or delivery is ordered by the Director or the local authority or the Magistrate acting under Chapter V of this act or a Civil Court, in writing stating the reasons for such order.

Chapter V

COMPLAINTS OF ILLEGAL SEIZURE AND DENTENTION

20. power to make complaints

Any person whose cattle have been seized under this Act, or having been so seized, have been detained in contravention of this Act, may at any time within ten days the date of seizure, make a complaint to the Deputy Commissioner or any Magistrate authorised to receive and try charges without reference by the Magistrate of the district.

21. Procedure on complaints

- (1) The complaint shall be made by the complainant in person or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal the substance of it shall be taken down in writing by the Magistrate.
- (2) If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded he shall summon the person complained against, and make an enquiry into the case.

22. Compensation for illegal seizure or detention and release of cattle.

- (1) If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant for the loss caused by the seizure **or detention, reasonable compensation not exceeding one hundred rupees**, to be paid by the person who made the seizure **or** detained the cattle, together with Ji fines paid and expenses incurred by the complainant in procuring **the** release of the cattle.
- (2) If the cattle have not been released, the Magistrate shall besides awarding such compensation, order their release and direct that the fines and expenses livable under this Act. shall be paid by the person who made the seizure or detained the cattle.

23. Recovery of compensation

The compensation, fines and expenses mentioned in section 2 may be recovered in the manner provided for recovery of fines under the code of Criminal Procedure 1973 (2 of 1974).

Chapter VI

PENALTIES

24. Penalty for forcibly opposing the seizure of cattle or rescuing the same

Whoever forcibly opposes the seizure of cattle liable to be seized under this Act. and whoever rescues the same after seizure, either from a pound or from any person being near at hand and acting under the powers conferred by this Act., shall on conviction before a Magistrate, be punished with imprisonment for a period.

not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

25. Penalty for damage caused to land or crops or public roads by cattle.

Any owner, or keeper, or attendant of cattle, who causes or suffers cattle to stray about, without a keeper or who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land or any public road, by allowing such cattle to trespass thereon, shall on conviction before a Magistrate, be liable to a fine not less than twenty-five rupees, **but not** exceeding two hundred and fifty rupees or to imprisonment for a term not exceeding three months, or to both.

26. Recovery of penalty for mischief committed by causing cattle to trespass.

Any fine imposed under section 25 or for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of the all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

27. Powers of police to investigate offences under section 24.

Notwithstanding the provision contained in the Code of Criminal Procedure 1973 (2 of 1974) any Police officer may investigate without the order of a Magistrate into an offence under section 25 as if, it were a cognizable case, but he shall not arrest without warrant from a Magistrate any person accused of an offence under section 25.

28. Penalty on pound-keeper failing to perform duties

Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19 or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees, such fines may be recovered by deductions from the pound-keeper's salary.

29. Application of fines recovered under section 25, 26 28.

All fines recovered under section 25,26 and 28 may be appropriated in whole or in part, as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

Chapter VII

SUITS FOR COMPENSATION

30. Saving of right to sue for compensation

Nothing herein contained shall be deemed to prohibit any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent civil court.

31. Set-off

Any compensation paid under this Act, by order of a convicting Magistrate, to a person whose crops or

other produce of land **have been** damaged by trespass, by cattle shall be **set-off** and deducted from any sum due to that person as compensation **in** any civil suit referred to in section 30.

Chapter VIII

MISCELLANEOUS

32. Delegation of powers

The Director may, by notification in the Gazette delegate all **of** any of his powers under this **Act.**, **to** any officer of his department and **may**, by notification, withdraw such powers.

33. Power to make rules

(1) The Government may make rules to carry out the purposes of this Act.

(2) Every rules made under this section shall be laid, as soon as may be after it is made, before the Nagaland Legislative Assembly while it is in session **for a total period of seven** days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Nagaland Legislative Assembly agree that the rule should not be made. The rule shall thereafter 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 or anything previously done under that rule.

34. Repeal and Savings

The Cattle Trespass Act, 1871 (Central Act, 1 of 1871) in its application to the District of Kohima, Mokokchung, Phek, Wokha and Zunheboto is hereby repealed but notwithstanding such repeal all pound established under the aforesaid Act shall be deemed to be pounds established under this Act.

THE NAGALAND AGRICULTURAL PRODUCE

MARKETING (REGULATING) ACT, 1985

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