

THE SMOKE-NUISANCES ACT, 1905**CONTENTS**

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THE SMOKE-NUISANCES ACT, 1905

ACT NO. III OF 1905

[3rd May, 1905]

An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fireplaces in certain areas in Bangladesh. *

WHEREAS it is expedient to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fireplaces in certain areas in Bangladesh.

It is hereby enacted as follows:—

1. (1) This Act may be called the ¹[* * *] Smoke-nuisances Act, 1905; and

Shot title and extent

(2) [Omitted by the East Pakistan Repealing and amending Ordinance, 1962 (Ordinance No. XIII of 1962), Schedule.]

2. (1) The Government may, by notification published in the official Gazette and in such other manner (if any) as the Government may determine, declare its intention to extend this Act to any specified area in Bangladesh:

Power to extend Act

²[* * *]

(2) Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension submit his objection in writing to the Government within a period of three months from the publication of the said notification in the official Gazette.

* Throughout this Act, except otherwise provided, the words "Bangladesh", "Government" and "Taka" were substituted, for the words "East Pakistan", "Provincial Government" and "rupees" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The proviso was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(3) At any time after the expiration of the said period, and after considering the objections (if any) submitted under sub-section (2), the Government may, by notification in the *official Gazette*, extend this Act to the said area.

Definitions

3. In this Act,—

(1) “furnace” means any furnace or fireplace used—

- (a) for working engines by steam, or
- (b) for any other purpose whatsoever:

Provided that no furnace or fireplace—

- (i) used for the burning of the dead, or
- (ii) used in a private house for bona fide domestic purposes other than the purpose specified in clause (a),

shall be deemed to be a furnace or fireplace within the meaning of this Act;

(2) “Inspector” means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act;

(3) “the Commission” means the Bangladesh Smoke-nuisances Commission constituted under this Act;

(4) the expression “owner,” when used with reference to a furnace, includes any agent or hirer using the furnace, and any foreman or other person superintending the working of the furnace; and

(5) “Magistrate” means Magistrate of the first class or a Bench of Magistrates exercising first class powers under the Code of Criminal Procedure, 1898.

Constitution of Commission

4. (1) The Government shall, by notification in the *official Gazette*, constitute a commission, to be called the Bangladesh Smoke-nuisances Commission, to supervise and control the working of this Act.

(2) The said Commission shall consist of a President and so many other members as the Government may determine.

(3) Not more than one half of the members (including the President) shall be officials nominated by the Government; and the remainder shall be non-officials nominated, in such manner as the Government may direct, by bodies or associations whose interests are likely to be affected by this Act.

(4) Subject to the provisions of sub-section (3), all members of the Commission shall be appointed, and all vacancies in the Commission shall, as occasion requires, be filled up by the Government by notification in the *official Gazette*.

(5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Commission.

5. (1) The Government may, by notification in the *official Gazette*, appoint a Chief Inspector of Smoke-nuisances and so many Assistant Inspectors of Smoke-nuisances as it may think fit.

Appointment
of Inspectors

(2) Every Assistant Inspector appointed under sub-section (1) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the commission.

(3) Every Inspector appointed under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the ¹[Penal Code].

6. (1) The Government may, by notification in the *official Gazette*, prohibit, within any specified area,—

- (a) the erection or use of any specified class of brick tile or lime-kilns, or, clamps for making bricks, or
- (b) the erection or use of furnaces to be used for the calcining or smelting of ores or minerals, or for the casting, puddling or rolling of iron or other metals, or for the conversion of pig-iron into wrought-iron, or

Power to
prohibit the
erection or use
of kilns or
furnaces, or
the
manufacture of
coke, in
specified areas

¹ The words "Penal Code" were substituted, for the words "Pakistan Penal Code" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (c) the manufacture of coke, in ovens, or with special appliances, or
- (d) the making of coke without ovens or special appliances.

(2) If any kiln, clamp or furnace be erected or used in contravention of any notification issued under sub-section (1), clause (a) or clause (b), the owner thereof shall be liable to fine which may extend to two hundred and fifty Taka.

(3) If any person manufactures coke in contravention of any notification issued under sub-section (1), clause c), he shall be liable to fine which may extend, on a first conviction, to two hundred and fifty Taka, and on any subsequent conviction to five hundred Taka.

(4) If any person makes coke in or upon any building or land in contravention of any notification issued under sub-section (1), clause (d),—

- (a) such person, and
- (b) the owner (if he knowingly permits the coke to be made by such person) or the occupier of such building or land,

shall be jointly and severally liable to a fine which may extend, on a first conviction, to twenty-five Taka, and on any subsequent conviction to fifty Taka; and the coke so made may be seized by an Inspector pending the order of the Magistrate.

(5) In any prosecution under sub-section (4), the Magistrate may, besides imposing a fine as aforesaid, record an order directing the confiscation of any coke seized as in that sub-section provided; and, in such a case, it shall be lawful for the Commission to dispose of the same in such manner as the Government may, by rule made under section 10, prescribe.

(6) For the purposes of sub-section (4),—

(i) the expression “occupier” means any person for the time being paying, or liable to pay, to the owner the rent or any portion of the rent of the building or land in respect of which the word is used, and includes an owner living in, or otherwise using, his own building or land; and

- (ii) the expression “owner” includes the person for the time being receiving the rent of any building or land or of any part of any building or land, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose or as a receiver, or who would so receive such rent, if the building, land, or part thereof, were let to a tenant.

7. (1) Whenever a Magistrate imposes a fine on any person under section 6, sub-section (2), for erecting or using a kiln, clamp or furnace in contravention of any notification issued under section 6, sub-section (1), clause (a) or clause (b), he may order such person to demolish the kiln, clamp or furnace within a period to be specified on the order.

Power to order demolition of kilns or furnaces erected or used within prohibited areas

(2) If any person fails to demolish any kiln, clamp or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for special reason, allow, he shall be liable to fine which may extend to twenty Taka for every day thereafter during which such failure continues.

8. (1) If smoke be emitted from any furnace in greater density, or at a lower altitude, or for a longer time, than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which may extend, on a first conviction, to fifty Taka, on a second conviction to one hundred Taka, and on any subsequent conviction to two hundred Taka.

Penalty when smoke is emitted to a greater extent than is permitted by rules

(2) [*Repealed by the Bengal Smoke-nuisances (Amendment) Act, 1916 (Act No. 1 of 1916), section 7.*]

¹[8A.(1) ²[* * *]-

- (a) no furnace, flue or chimney shall be erected, and
 (b) no furnace, flue or chimney, erected prior to the commencement of the said Act, shall be re-erected, altered or added to

Submission of plans and penalty

¹ Section 8A was inserted by section 8 of the Bengal Smoke-nuisances (Amendment) Act, 1916 (Act No. I of 1961).

² The words, brackets, comma and figure “After the commencement of the Bengal Smoke-nuisances (Amendment) Act, 1916” were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

otherwise than in accordance with plans approved by the Commission.

(2) In the event of any contravention of the provisions of sub-section (1), the owner of the furnace, flue or chimney, as the case may be, shall be liable to fine which may extend to one hundred Taka and, if any such furnace, flue or chimney is used without the permission of the Commission, to a further penalty, not exceeding twenty Taka, for everyday during which such wrongful use continues.]

Powers of
Inspectors

9. (1) An Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person in charge—

- (a) enter and inspect, during working hours, any building or place which contains a furnace, and inspect such furnace;
- (b) under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from any such furnace; and
- (c) under the written authority of the Commission, direct that any such furnace be worked or stoked experimentally, during his visit to such building or place, in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on the such building or place further than is necessary for the purposes of the experiment.

(2) If any owner of a furnace in respect of which a direction is given under clause (c) fails to secure compliance with such direction, he shall be liable to fine which may extend to one hundred Taka.

(3) Notwithstanding anything contained in sub-section (1), the Commission, and, in any urgent case, the President may, by order in writing, (which shall be produced on demand to the owner, occupier, manager, engineer or person in charge,) authorize any Inspector to enter and inspect without notice and at any time by day or by night any building or place in which the Commission or the President, as the case may be, has reason to believe that a furnace exists or that coke is being made, and to inspect such furnace, building or place:

Provided that if, in any such building, which is a private dwelling-house, there is an apartment in the actual occupancy of a woman who, according to custom, does not appear in public, such Inspector shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing.

(4) Whenever the President makes any order under subsection (3), he shall, as soon thereafter as conveniently may be, report the fact to the Commission.

10. (1) The Government may after previous publication, make rules to carry out the objects of this Act. Rules

(2) In particular, and without prejudice to generality of subsection (1), such rules may,—

- (a) regulate the transaction of business by the Commission;
- (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties;
- (c) prescribe a scale for the purpose of determining the density of smoke;
- (d) prescribe the density of smoke that may be emitted from a furnace;
- (e) prescribe the time during which smoke of such density may be emitted from a furnace;
- (f) regulate, with due regard to the safety of shipping, the emission of smoke from the furnaces of vessels;
- (g) prescribe the altitude below which smoke may not be emitted from a furnace;
- (h) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution;
- (i) authorize the payment of a fee, not exceeding thirty two Taka to each or any member of the Commission attending a meeting of the Commission;

- (j) regulate the disposal of coke confiscated under section 6, sub-section (5),
- (jj) prescribe a scale of fees for the examination and approval of plans, the inspection and testing, and the grant of permission for the working of furnaces, flues and chimneys and generally for the services of Inspectors; and
- (k) prescribe a procedure to give effect to the provisions of section 8A.

(3) ¹[A date to be specified] after which a draft of rules proposed to be made under this section will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(4) Any rule to be made under this Act shall, before it is published for criticism under sub-section (1), be referred to the Commission constituted under section 4, and the rule shall not be so published until the said Commission has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(5) All rules made under this section shall be published in the *official Gazette*.

Cognizance of offences

11. A Magistrate may take cognizance of an offence against this Act only—

- (a) upon a complaint made by, or with the written authority of, the Chief Inspector, and
- (b) within a period of two months from the date of the Commission of the offence.

12. [Omitted by Schedule IV of the Government of India (Adaptation of Indian Laws) Order, 1937.]

13. [Repealed by the Bengal Repealing and Amending Act, 1938 (Act I of 1939).]

¹ The words "A date to be specified" were substituted, for the words, brackets, figures and commas "The date to be specified in accordance with clause (3) of section 24 of the Bengal General Clauses Act, 1899, as that" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).