

KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES) REGULATION OF ISSUE OF COMMUNITY CERTIFICATES ACT, 1996

113 THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES) REGULATION OF ISSUE OF COMMUNITY CERTIFICATES ACT, 1996 (Act 11 of 1996) CONTENTS Preamble Sections: 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29

30. Short title, extent and commencement Definitions. Proof of the Scheduled Caste or the Scheduled Tribe Status. Application for Community Certificate. Community Certificate to be Issued only by the competent authority. Constitution of Screening Committee for verification of Community Certificate Further verification of Community Certificate. Constitution of Scrutiny Committee for verification of Community Certificates. Enquiry by Expert Agency. Burden of proof Cancellation of false Community Certificate. Appeal and review. Power of stay and revision by the Government. Competent Authority, the Expert Agency and Scrutiny Committee to exercise powers of the Civil Court Penalties Benefits secured on the basis of false community certificates to be withdrawn. Penalty for Securing an appointment or election to local bodies etc on the basis of false Community Certificates Penalty for Issuing false community certificates Penalty for preparation and submission of false reports by the expert agency. Penalty for abettors. Establishment of special courts Special Public Prosecutor. Offence under the Act cognizable and non-bailable. Bar of Jurisdiction of CIVIL courts. Protection of acts done in good faith Act to override other laws. Power to make rules Departmental proceedings not barred by prosecution. Cancellation of Community Certificate issued to a person to be proof against the relatives of the same blood. Transitional Provision. 115 ACT 11 OF 1996* THE KERALA (SCHEDULED CASTES AND SCHEDULED TRIBES) REGULATION OF ISSUE OF COMMUNITY CERTIFICATES ACT, 1996 An Act to provide for and to regulate the issue of community certificates to members of the Scheduled Castes and the Scheduled Tribes in the State of Kerala. Preamble.—WHEREAS it is considered necessary to devise and provide for a strict procedure for and to regulate the issue of community certificates to members of the Scheduled Castes and the Scheduled Tribes in the State of Kerala; AND WHEREAS in order to curb effectively the evil practices of securing such certificates by persons other than those belonging to the Scheduled Castes and Scheduled Tribes for claiming the benefits of reservation and such other benefits meant for the Scheduled Castes and the Scheduled Tribes and to make provision for prescribing punishment therefor and to provide for matters connected therewith or incidental thereto; BE it enacted in the Forty-seventh year of the Republic of India as follows :— I . Short title, extent and commencement.— (1) This Act may be called the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996. (2) it extends to the whole of the State of Kerala. (3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint

2. Definition.—In this Act, unless the context otherwise requires,— (a) 'appointment in public service' means appointment to a service for post under the State or Central Government and includes appointment to any post of the State or Central Government undertakings; *Received the assent of the on the 24th day of September, 1996 and published in the Kerala Gazette Extraordinary No. 1 151 dated 1st October, 1996.

(b) 'appointing authority' in relation to a service or post means the authority empowered to make appointment to such service or post, and includes appointing authorities in respect of the services and posts in connection with the affairs of the Central Government and of the State and Central Government undertakings; (c) 'Community Certificate' means the certificate issued by the competent authority in the prescribed



form indicating therein the Scheduled Caste or the Scheduled Tribe, as the case may be, to which a person belongs; (d) 'Competent Authority' means any official authority authorised by the Government by notification to perform the functions of the competent authority under this Act, for such areas or for such purposes as may be specified in the notification; (e) 'Co-operative Institution' means a Co-operative Society of Societies registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969); (f) 'Educational Institution' means any School, College, Polytechnic, Industrial Training Centre, Industrial Training Institute, College of Fine Arts, College of Islamic, Engineering College, Medical College, Ayurveda College, Homoeopathy College, Dental College, College of Nursing, Nurses Training School, Health Visitors Training School, Colleges under the control of the Kerala Agricultural University and various Colleges or institutions under the control of any University established by an Act of the State Legislature and any other institution imparting education as may be specified by the Government by notification in the Gazette, from time to time; (g) 'Expert Agency' means an officer, or team of officers belonging to the Anthropological Wing of the Scheduled Castes and Scheduled Tribes Development Department of the State Government, entrusted with the research, training and developmental studies of the Scheduled Castes and the Scheduled Tribes and also includes the Director of that Department, if he belongs to the Anthropology Wing of the Department or is an Anthropologist or Sociologist; (h) 'Government' means the Government of Kerala; (i) 'Local authority' means a local authority as defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or the Kerala Municipalities Act, 1994 (20 of 1994) as the case may be; (j) 'Notification' means a notification published in the Gazette and the word 'notified' shall be construed accordingly; (k) 'Prescribed' means prescribed by or made under this Act; (l) 'Scheduled Castes' and 'Scheduled Tribes' shall have the meanings respectively assigned to them in clause (24) and clause (25) of Article 366 of the Constitution of India, (no 'Scrutiny Committee' means a committee mentioned in section (n) 'Scrutiny Committee' means the committee constituted by the Government by notification under section 8 to perform the functions of the Scrutiny Committee under this Act for such areas or for such purposes as may be specified in the notification; (o) 'Special Court' means a Court of Session specified as a special court under section 21, (p) 'Special Public Prosecutor' means a Public Prosecutor specified by the Government as a Special Public Prosecutor or an advocate, by notification, under section 22

3. Proof of the Scheduled Castes or the Scheduled Tribe Status.—Notwithstanding anything contained in any other law for the time being in force, any person belonging to any of the Scheduled Castes or the Scheduled Tribes claiming any benefit, concession, protection, exemption or reservation provided to such Castes or Tribes either for any appointment in public services or for admission into educational institutions, exclusively intended for members of the Scheduled Castes or the Scheduled Tribes, or for contesting for the seats reserved for them in any educational institution in the State or outside the State for the students of the State or local authority or co-operative institution, shall prove his claim by a Certificate Issued for the purpose under this Act, by the competent authority, in the prescribed manner.

4. Application for Community Certificate—Any person belonging to any of the Scheduled Castes or the Scheduled Tribes in order to prove his claim that he belongs to the Scheduled Caste or the Scheduled Tribe, as the case may be, for any purpose, shall make an application in such form and in such manner, as may be prescribed, to the competent authority for the Issue of a Community Certificate.

5. Community Certificate to be issued only by the Competent Authority.—(1) The Competent Authority may on an application made to it under section 4, by itself or through the prescribed procedure, satisfy itself about the genuineness of the claim made by the person and then issue a community certificate within such period and in such form as may be prescribed or reject the application for reasons to be recorded in writing.

118 (2) A Community Certificate issued by any person, officer or authority other than the Competent Authority shall be invalid.

(3) The Competent Authority shall not issue a community certificate to a member of the Scheduled Caste or the Scheduled Tribe subject to any condition or contingency.

6. Scrutiny Committee for Issue of Community Certificate.—The application from members of the Scheduled Castes and the Scheduled Tribes for admission to the seats reserved for the Scheduled Castes and the Scheduled Tribes in educational institutions shall be got scrutinised by a scrutiny committee constituted by Government in the prescribed manner, to ensure that the Community Certificate produced in support of the Scheduled Caste or the Scheduled Tribe claim of the applicant is genuine.

(2) The Scrutiny Committee may cause detailed enquiry through the expert agency to ascertain if the applicant

actually belongs to the Scheduled Caste or the Scheduled Tribe, as the case may be, and shall ICJCCt the appli- the applicant does not belong to the Scheduled Caste or the Scheduled Tribe as claimed by him. • PJ ov Ided that the rejection of the application shall be without prejudice to the actions that may be taken under sections 11, 15 and 16. 7 Further unfication of Comuntt_p Certzificatft.—Production of a community certificate issued by the Competent Authority shall not include the appointing authority, or head of the educational Institution or any official or authority superior to the appointing authority. 10 The head of the educational institution including the State Government, verifying the claim to be verified the claim of an Individual that he belongs to the Scheduled Caste or the Scheduled Tribe, as the case may be at the time of Initial appointment, selection or admission or at any stage thereafter. 8. Constitution of a scrutiny committee for verification of community certificates.— The Government shall constitute a scrutiny committee for verification of community certificates. Any person belonging to Scheduled Castes or Scheduled Tribes or any appointing authority or local body or heads of educational institutions may make an application in such form and such manner as may be prescribed to the scrutiny committee for verification of community certificates. 11 9 Enquiry by Expert Agency.— The expert agency may conduct such enquiries as it may deem fit into the claim of an individual or group of individuals that he or they belong or belongs to the Scheduled Caste or the Scheduled Tribe in the following circumstances, (1) (ii) (iii) (2) Suo motu enquiries on the basis of field studies on castes, communities or tribes or as a part of or auxiliary to Anthropological or Sociological Studies or Investigations. On petitions and complaints being received by it, from any source relating to the Scheduled Caste or the Scheduled Tribe, claims of non-Scheduled Castes or non-Scheduled Tribes, as the case may be. On references, enquiries, directions or proposals being received from the State and Central Governments, the competent authorities of the screening committee or the scrutiny committee. "The report of the Expert Agency shall be conclusive proof for or against the Scheduled Caste or the Scheduled Tribe claim, as the case may be, of the person reported upon (3) The person reported upon shall be entitled for a copy of the report of the Expert Agency, if he desires so, free of cost from the authority authorising the enquiry. 10. Burden of proof.—When an application made to the competent authority under section 4 for the issue of a community certificate in respect of a Scheduled Caste or Scheduled Tribe or in any enquiry conducted by the Competent Authority, the Expert Agency, or the Scrutiny Committee or in any trial or offence under this Act, the burden of proving that he belongs to such Caste or Tribe shall be on the claimant. 11. Cancellation of false community Certificate, before or after the commencement of this Act, a person not belonging to any of the Scheduled Castes or the Scheduled Tribes has obtained a false community certificate to the effect that either himself or children belongs or belong to such Caste or the Tribe, the Scrutiny Committee may either suo motu or on a written complaint or report by any person or authority, call for the records and enquire into the correctness of such certificate and if it is of the opinion that the certificate was obtained fraudulently, it shall, by order, cancel the certificate after giving the person concerned an opportunity of making a representation, if any. 12 (2) The powers of the nature referred to in sub-section (1) may also be exercised by the Government. (3) The Scrutiny Committee while performing its functions for verification and cancellation of community certificates shall follow such procedure as may be prescribed

12. Appeal and Any person aggrieved by an order passed under sub-section (1) of section 5 by the Competent Authority rejecting an application made to it under section 4 may, within thirty days from the date of receipt of such order, appeal to the next higher Competent Authority and that authority may after giving the appellant an opportunity of being heard, either confirm the order appealed against or set aside the said order by following the prescribed procedure. (2) When the Competent Authority rejecting an application for community certificate is the District Collector, the person aggrieved by the said decision of the District Collector, may within fifteen days from the date of receipt of the order of the District Collector, appeal to the Government and the Government may after giving the appellant an opportunity of being heard, confirm the order of the District Collector or arrange for an enquiry through the Expert Agency and issue appropriate orders or directions on the basis of the expert report. (3) Any person aggrieved by an order passed under section 11 by the Scrutiny Committee may within thirty days from the date of receipt of such order appeal to the High Court and the High Court would dispose of the case as expeditiously as possible within a period of three months. If the writ petition/nuncellancous petition/matter is disposed of by Single Judge, no further appeal would lie against that order to the Division Bench, but subject to special leave under Article 136. (4) The Government

may, on an application received from any person aggrieved by an order passed by them under sub-section (2) of section 11 within fifteen days of the date of receipt of the said order, review any such order. If they are satisfied that the order was passed by them under any mistake, whether of fact or law or in ignorance of any material fact or unaware of any relevant evidence. (5) Pending disposal of an appeal under sub-section (2) or review under sub-section (4), it shall be competent for the Government to stay the operation of the order against which the appeal or review, as the case may be, is filed.

13. Power of stay and review by the Government in the cases of decisions of the Scrutiny Committee.—The Government may at any time, either suo motu or on application made to them within the prescribed period, call for and examine the record, relating to any decision made or order passed by any person, officer or authority subordinate to them for the purpose of satisfying themselves as to the legality, regularity or propriety of such decision or order, and if, in any case it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, or subjected to enquiry by the Expert Agency or Scrutiny Committee they may do so accordingly. Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation, except in the case of referring the case for enquiry by the Expert Agency, or Scrutiny Committee where the matter may be referred to the Expert Agency or Scrutiny Committee by their own motion. (2) With the exceptions of (i) orders passed by Government in pursuance of and on the basis of a report submitted by the Expert Agency, (11) the decision of Screening Committee constituted under section 6, and (in) the decision of the Scrutiny Committee constituted under section 8, the Government may stay the execution of any such decision or order pending the exercise of their powers under sub-section (1) in respect thereof.

14. Competent Authority, the Expert Agency and Scrutiny Committee to exercise powers of the Civil Court.—The Competent Authority, the Expert Agency and the Scrutiny Committee shall, while holding an enquiry under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely : (1) Summoning and enforcing the attendance of any person from any part of the State and examining him on oath; (2) Requiring the discovery and production of any document, (3) Receiving evidence on affidavits, (4) Requisitioning any public record or copy thereof from any court or office ; (5) Issuing commissions for the examination of witnesses or documents; and (6) Any other matter which may be specified by Government by notification in the Gazette. 15, Whoever obtains a community certificate by,— (a) furnishing false information; or (b) filing a false statement; or 345203197 IMC. 122 (c) by suppressing material facts and relevant evidence pertaining to his caste or tribal status; or (d) any other fraudulent means, shall, on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees: Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or fine. (2) Whoever furnishes false information regarding his personal details of caste or tribal status, to the Expert Agency in an enquiry under section 9 or to the scrutiny committee in an enquiry under section 11 or causes any obstruction in such an enquiry proceeding, by preventing the Expert Agency or the Scrutiny Committee from collecting the facts or evidence regarding his personal and caste or tribal status, or tries to frustrate, prevent or interfere in any way with the process of enquiry, shall on conviction be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend up to six months and with fine which shall not be less than five hundred rupees but which may extend up to one thousand rupees.

16. Benefits secured on the basis of false community certificates to be withdrawn.—(1) Whoever not being a person belonging to any of the Scheduled Castes or the Scheduled Tribes secures admission in any educational institution against a seat reserved for such Castes or Tribes or secures any appointment in the Government, Government Undertakings, Local Authority or in any other Company or Corporation owned or controlled by the Government or in any aided institution against a post reserved for such Castes or Tribes or enjoys any other benefit intended exclusively for such Castes or the Tribes by producing a false community certificate shall, on cancellation of the false community certificate, be removed by cancelling the irregular admission in the concerned educational institution or, as the case may be, removed from the said service for the time being and any other benefit enjoyed by him as aforesaid shall be withdrawn.

forthwith. (2) Any amount paid to such person by the Government or any other agency by way of scholarship, grant, allowance, stipend or any other financial benefit shall be recovered as if it is an arrear of public revenue due on 'land. o 123 (3) Any degree, diploma or any other educational qualification acquired by such person after securing admission any educational institution on the basis of a false community certificate shall also stand cancelled on cancellation of the community certificate obtained by him. (4) The Competent Authority or the State Government may also order appropriate measures to prevent such person from further enjoying the benefits of Scheduled Castes or the Scheduled Tribes, including substitution of the real caste name of such person in the public records, for the false Scheduled Caste or Scheduled Tribe name. (5) Whoever not being a person belonging to any of the Scheduled Castes or the Scheduled Tribes secures and benefit reserved for Scheduled Castes or the Scheduled Tribes other than those mentioned in section 17 by producing a false community certificate shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and With fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees: Provided that the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a shorter term or fine

17. Penalty for securing an appointment or election to local bodies etc , on the basis of false community certificate.—Whoever not being a person belonging to any of the Scheduled Castes or the Scheduled Tribes secures an appointment in Government or other Institutions referred to in section 16 against the posts reserved for the Scheduled Castes or the Scheduled Tribes or is elected to any of the elective offices of any local authority or co-operative society against the office reserved for such Castes or the Tribes on the basis of a false community certificate, shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than SIX months but which may extend up to two years and With fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees . Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or fine Any person or 18. Penalty for issuing false community certificate authority performing the functions of Competent Authority under this Act, who intentionally issues a false community certificate, shall on conviction, be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend up to two years and also With fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees : 124 Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or fine (2) No court shall take cognizance of an offence punishable under this section except With the previous sanction of the Government

19. Penalty for preparation and submission of false reports by the expert agency —(1) Any officer or group of officers performing the functions of the Expert Agency under this Act, who intentionally prepares any report and submits the same to any authority or to the Government, where by any person who is not a member of any Scheduled Caste or the Scheduled Tribe happens to secure community certificate from the Competent Authority or secure any benefits exclusively for a Scheduled Caste or the Scheduled Tribes, as the case may be, or intentionally prepares and submit a report to any authority or to the Government to deprive a member of any Scheduled Caste or the Scheduled Tribe of the benefits due, as such member of any Scheduled Caste or the Scheduled Tribe, as the case may be, shall on conviction be punishable With rigorous imprisonment for a term which shall not be less than SIX months but which may extend up to two years and also with fine which shall not be less than one thousand rupees but which may extend up to five thousand rupees. Provided that the Court may for adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a lesser term or fine. (2) No court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government

20. Penalty for abettors —Whoever abets any offence punishable under this Act shall be punished With the punishment provided for in this Act for such offence. 21 Establishment of Special Courts.—For the purpose of providing for speedy trial, the State Government shall, With the concurrence of the Chief Justice of the High Court, by notification in the Gazette, specify for each district a Court of Session to be a Special court to try the offences under this Act. 22 Special Public Prosecutor —For every Special Court the State Government shall, by notification in the Gazette, specify a Public Prosecutor, or appoint an advocate who was in practice as an advocate for not less than seven years, as Special Public Prosecutor for the purpose of conducting the cases under this Act In that Court 0 o 4 125 23. Offence under the Act

cognizable and non-bailable —Notwithstanding anything in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) all offences under this Act shall be cognizable and non-bailable

24. Bar of jurisdiction of Civil Courts.—No Civil Court shall have jurisdiction in respect of any order passed by any Officer or authority under this Act and no stay or Injunction shall be granted in respect of any action taken or to be taken by such Officer or authority under this Act in pursuance of any power conferred by or under this Act.

25. Protection of acts done in good faith.—No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority of Government or any other person for anything which is done in good faith and intended to be done in pursuance of this Act or rules made thereunder.

26. Application to other laws.—(1) Notwithstanding anything contained in any other law for the time being in force or any Act or instrument having effect by virtue of any such law, the Government may, by notification in the Gazette, make rules either prospectively or retrospectively for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules provide for the following matters, namely:—

(a) manner of certificate to be issued by the Competent Authority under section 3, manner of application for community certificate under section 4; procedure and manner of issue of community certificate under sub-section (1) of section 5; manner of constitution of Screening Committee for verification of community certificate under sub-section (1) of section 6, manner of constitution of the Scrutiny Committee for verification of community certificates under section 8 and the detailed procedure for its functioning as specified in sub-section (3) of section 11; procedure for appeal under sub-section (1) of section 12, any other matter required or allowed by this Act to be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislature.

27. Session for laying of rules.—The Legislature shall, in each session, for a total period of fourteen days, which may be composed of 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 Legislature makes any modification in the rule or decides that the rule shall 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 of anything previously done under that rule.

28. Departmental proceedings not barred by Prosecution.—(1) Prosecution of any person for any offence under this Act shall not be a bar on proceedings being initiated against that person under the relevant service conditions or disciplinary rules for the time being in force applicable to that person.

(2) Cancellation of community certificate issued to a person to be proof against the relatives of the same blood.—Cancellation of a community certificate issued to any person by any competent authority shall be proof against the Scheduled Caste or the Scheduled Tribe claims, as the case may be, of the consanguineal relations of that individual and shall be a ground for taking action under sub-section (1) of section 11 against members of such family by the scrutiny committee or under sub-section (2) thereof by the Government.

29. Transitional Provision.—A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act, shall unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.