

KERALA CASHEW WORKERS RELIEF AND WELFARE FUND ACT, 1979 (ACT 19 OF 1984)

THE Preamble Sections KERALA CASHEW WORKERS RELIEF AND WELFARE FUND ACT, 1979 (ACT 19 OF 1984) CONTENTS 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. Short title, extent, commencement and application. Definitions. Kerala Cashew Workers Relief and Welfare Fund. Purposes for which Fund may be expended. Contribution and matters which may be provided for in the scheme. Modification of scheme. Constitution of Board. Appointment of officers. Duty of employer to file return. Determination of amounts due from employers. Provisional assessment where return is not filed. Mode of recovery of money due from employers. Penalties. Enhanced punishment for default in payment of employees' contributions already 'deducted. Enhanced punishment for second or subsequent offence. Offences by companies. Cognisance of offences. Power to order inquiry. Power to supersede the Board. Power to recover damages. Bar of benefit's under Industrial Disputes Act, 1947. Bar of Jurisdiction of Civil courts Directors of Board etc., to be public servants. Protection of actions taken in good faith. Power to remove difficulties. 118 THE KERALA CASHEW WORKERS RELIEF AND WELFARE FUND ACT, 1979 • (Act 19 of 1984) An Act to provide for the constitution of a fund to grant relief to, end to promote the welfare of, employees on cashew factories on the State of Kerala. Preamble — WHEREAS It IS expedient to provide for the constitution of a fund to grant relief to, and to promote the welfare of, employees cashew factories in the State of Kerala; BF', it enacted in the Thirtieth Year of the Republic of India as follows :— L Short title, extent, commencement and application.— (1) This Act may be called the Kerala Cashew Wmkers Relief and Welfare Fund Act, 1979. (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. (4) It shall apply to all cashew factories registered and licensed in the State of Kerala under the Factories Act, 1948 (Central Act 63 of 1948)

2. Definitions —In this Act, unless the context otherwise requires,— (a) "Board" means the Kerala Cashew Workers Relief and Welfare Fund Board constituted under section ; (b) "contribution" means the contribution payable by an employer or employee under the scheme; (c) "cashew factory" means a factory wherein processing of cashewnuts is being carried on and which is registered and licensed under the Factories Act, 1948 (Central Act 63 of 1948) ; (d) "employer" means any person who employs, whether directly or through another person or whether on behalf of himself or any other person, one or more employee or employees and includes *Received the assent of the President on the 30th day of July, 1984 and published in the Kerala Gazette Extraordinary No. 742 dated the 22nd August, 1984. 1 19 any person who has a licence for the construction of extension of a cashew factory under the Factories Act, 1948 {Central Act 63 of 1948) and the rules made thereunder ; (e) "employee" means any person who is employed any cashew, factory for wages for processing cashewnuts and who gets his wages directly or indirectly from the employer and Includes— (1) any person employed by or through a contractor or through an agent in or in connection With the processing of cashewnuts; and (ii) clerical and other staff employed In connection with the processing of cashewnuts; (f) "Fund" means the Kerala Cashew Workers Relief and Welfare Fund established under the scheme ; (g) "member" means any employee who contributes to the Fund , (h) "processing", with reference to cashewnuts, means loading, unloading, transporting, stacking, unstacking, soaking, roasting, shelling, frying, peeling, grading, filling, packing or other- wise treating or adapting cashewnuts, with a view to their use, delivery, sale or other disposal, and Includes work connected with the maintenance of processed cashewnuts, (1) "scheme" means the scheme framed under this Act; (J) "State" means the State of Kerala, (k) "wages" means all remuneration paid or payable to an employee for work done or services rendered by him and Includes leave and holiday wages paid or payable to him under any law or agreement for the time being in force, but does not Include overtime allowance, bonus and commission

3. Kerala Cashew Workers Relief and Welfare Fund —(1) The Government may, by notification in the Gazette, frame a scheme to be called the Kerala Cashew Workers Relief and Welfare Fund Scheme for the establishment of a Fund under this Act and there shall be established, as soon as may be after the framing of the scheme, a Fund to be called the Kerala Cashew Workers Relief and Welfare Fund, in accordance

with the provisions of this Act and the scheme. (2) There shall be credited to the Fund— (a) the contributions to be paid by employers and employees under section 5; 120 (b) any voluntary donations; (c) grants or advances made by the Central Government or the Government of Kerala or any local authority, and (d) any other amount which, under the provisions of the scheme, shall be credited to the Fund. (3) The Fund shall vest in, and be administered by, the ' Board. (4) Subject to the provisions of this Act, the scheme may provide for all or any of the matters specified in the Schedule. (5) The scheme shall be laid, as soon as may be, after it is framed, before the 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 the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the scheme, the scheme shall thereafter have effect only in such modified form. Notwithstanding that any such modification shall be without prejudice to the validity of anything previously done under the Act for the purposes for which the Fund may be expended—Subject to the provisions of this Act and the scheme, the Fund shall be expended for the following purposes, namely:— (a) payment of relief wages to employees in cashew factories When there is no work in those factories, and (b) payment of such other amount as may be specified in the scheme

5. Contribution and matters which may be provided for in the scheme.—(1) The contribution which shall be paid by an employer to the Fund shall be at the rate of twenty rupees for every twenty-five kilograms of cashew kernels processed within the State, (2) The contribution which shall be paid by an employee shall be at the rate of one rupee for every day of work done by him in the cashew factory. (3) The employees' contribution shall be deducted by the employer from the wages payable and remitted to the Fund along with the employer's share before the date specified in section 9. (4) Where the amount of contribution payable under this Act involves a fraction of a rupee, the scheme may provide for rounding off of the fraction to the nearest rupee, half-a-rupee or quarter of a rupee

6. Modification of scheme.—(1) The Government may, by notification in the Gazette, add to, amend or vary the scheme either prospectively or retrospectively. (2) Every notification under sub-section (1) shall be laid, as soon as may be, after it is issued, before the 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 the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the notification or decides that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; but so that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification

7. Constitution of Board.—(1) The Government may, by notification in the Gazette, constitute, with effect from such date as may be specified therein, a Board to be called the Kerala Cashew Workers Relief and Welfare Fund Board for the administration of the Fund and to superintend or carry out the activities financed from the Fund. (2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal and shall by the said name sue and be sued. (3) The Board shall consist of such number of Directors as may be appointed by the Government and they shall be chosen in such manner as may be provided for in the scheme: Provided that the Board shall include an equal number of Directors representing the Government, the employers and the employees. (4) One of the Directors of the Board shall be appointed by the Government as its Chairman. (5) The Chairman shall exercise such powers and perform such functions as may be specified in the scheme. (6) The Board shall elect from among its members a Vice-Chairman who shall exercise such powers and perform such functions: of the Chairman as may be specified in the scheme. 34132581851MC.i 122 (7) The Government shall publish in the Gazette the names of the Chairman, the Vice-Chairman and the other Directors of the Board. (8) The Board shall administer the Fund vested in it in such manner as may be specified in the scheme. 8. Appointment of The Government may appoint a Chief Executive Officer and as many Inspectors as they consider necessary to assist the Chief Executive Officer in the exercise of his powers and the discharge of his duties. (2) The Board may, with the previous approval of the Government, appoint such officers and other employees as it may consider necessary for assisting it in the administration of the Fund. (3) The method of recruitment, salary and allowances, discipline and other conditions of service of the Chief Executive Officer and the Inspectors shall be such as may be specified by the Government, and the method of recruitment, salary and allowances, discipline and other conditions of service of the

officers and other employees appointed by the Board shall be such as may be specified by the Board With the previous approval of the Government. (4) In making appointments to the posts of officers and other employees to be appointed by the Board, the provisions of clauses (a), (b) and (c) or rule 14 and the provisions of rules 15, 16 and 17 of the Kerala State and Subordinate Services Rules, 1958, as amended from time to time, shall, mutatis mutandis, be observed

9. Duty of employer to file return.—Every employer shall, before the 10th of every month, file a return showing the details of contributions paid into the fund, in such manner as may be specified in the scheme

10. Determination of amounts due from employers.— (1) The Chief Executive Officer or any Inspector authorised by him in this behalf may, by order, determine the amounts due from any employer under the provisions of this Act or of the scheme and for this purpose may conduct such enquiry as he may deem necessary. (2) The officer conducting the enquiry under sub-section (1) shall, for the purposes of such enquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), when trying a suit, in respect of the following matters, namely (a) enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavit; (d) issuing commissions for the examination of witnesses. (3) Any enquiry under this section shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, 1860 (Central Act 45 of 1860). (4) No order determining the amount due from any employer shall be made under sub-section (1) unless the employer has been given a reasonable opportunity of being heard. (5) Any person aggrieved by an order under sub-section (1) may prefer an appeal to the Government or such other authority as may be specified by the Government in this behalf, within sixty days from the date of the receipt of the order, and the decision of the Government or such other authority on such appeal shall be final. 11. Provisional assessment where return is not filed.— If any employer fails to submit the return as required by section 9, the Chief Executive Officer or the Inspector authorised by him in this behalf may provisionally determine the amount due from that employer to the Fund : Provided that no provisional assessment shall be made final till the party is given an opportunity of being heard

12. Mode of recovery of money due from employer.—Any amount due from an employer in pursuance of the provisions of this Act or the scheme may, if the amount is in arrears, be recovered in the same manner as an arrear of land revenue

33. Penalties.—(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or under the scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. (2) Whoever contravenes or makes default in complying with any of the provisions of this Act or of the scheme shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

14. Enhanced punishment for default in payment of employee's contributions already deducted.—(1) Whoever makes default in the payment of the employees' share of the contribution to the Fund after having deducted it from the wages of the employees in accordance with the provisions of this Act or the scheme, shall be punishable with imprisonment for a term which may extend to one year, but which shall not be less than three months, and with fine which may extend to four thousand rupees. (2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1971), an offence under sub section (1) shall be cognizable

15. Enhanced punishment for second or subsequent offence—Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence again, shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year; but which shall not be less than three months, and with fine which may extend to four thousand rupees

16. Offences by companies.—Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing

contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.—For the purposes of this section,— (a) "company" means any body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm. 125 17. Cognisance of offences.—No court shall take cognisance of offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Government or such other authority as may be specified in this behalf by the Government, by the Chief Executive Officer or any Inspector appointed under this Act. 18. Power to order inquiry.—(1) The Government may, at any time, appoint any person to inquire into the working of the Board and to submit a report to the Government. (2) The Board shall give the person so appointed all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts or information in the possession of the Board as he may require.

19. Power to supersede the Board.—(1) If, on consideration of the report under section 18 or otherwise, the Government are of opinion that the Board has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or the scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification : • Provided that, before issuing a notification under this sub-Section, the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board. (2) Upon the publication of a notification under sub-section (1),— (a) all the Directors of the Board shall, as from the date of such publication, vacate their offices as such Directors; (b) all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such officer or officers as may be specified in the notification; (c) all funds and other properties vested in the Board shall, during the period of supersession, vest in the Government. (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government shall reconstitute the Board in the manner provided in section 7. 126 20. Power to recover damages.—Where an employer makes default in the payment of any contribution due to the Fund under this Act, the Government may recover from the employer damages not exceeding twenty-five per cent of the amount of arrears as they may think fit to impose.

21. Bar of benefits under Industrial Disputes Act, 1947.—Any employee who is paid relief wages under this Act shall not be entitled to claim the compensation, if any, payable under the Industrial Disputes Act, 1947 (Central Act 14 of 1947), for the days on which such relief wages have been paid.

22. Bar of jurisdiction of civil courts.—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Executive Officer or any Inspector.

23. Directors of the Board etc., to be public servants.—Every Director of the Board and every officer or other employee appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

24. Protection of actions taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Government or the Board or any officer or other person in respect of anything which is in good faith done or intended to be done under this Act or the scheme.

25. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act or of the scheme, the Government may, by order, do anything not inconsistent with such provisions which appears to them to be necessary or expedient for the purpose of removing the difficulty. SCHEDULE [See sub-section (4) of section 3] Matters for which provisions may be made, in the Scheme 1. The time and manner in which contributions shall be made to the Fund by the employers.

2. The payment by the employers of sums of money as may be necessary to meet the cost of administering the Fund and 3.4. 5. 6. 7. 8. 9. 10. 127 the rate at which and the manner in which the payment shall be made. The constitution of any committee for assisting the Board. The manner in which accounts shall be kept, the investment of money belonging to the Fund in accordance with any direction issued or condition specified by the Government, the preparation of the budget, the audit of accounts and the submission of reports to the Government. The conditions under which the Fund may be expended for payment of relief wages to the workers during the period of closure of cashew factories. The registers and records to be maintained with respect to employees and the returns to be furnished by employers. The form or design of any identity card, token or disc for the purpose of identifying any employee; and for issue, custody and replacement thereof. The fee to be levied for any of the purposes specified in this Schedule. The further powers, if any, which may be exercised by the Chief Executive Officer and the Inspectors. Any other matter which is to be provided for in the scheme or which may be necessary or proper for the purpose of implementing the scheme.

