

Fifteenth Kerala Legislative Assembly

Bill No. 133

**THE KERALA LOK AYUKTA
(AMENDMENT) BILL, 2022**

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BILL

further to amend the Kerala Lok Ayukta Act, 1999.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Lok Ayukta Act, 1999 (8 of 1999) for the purposes hereinafter appearing;

BE it enacted in the Seventy-third Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Lok Ayukta (Amendment) Act, 2022.

(2) It shall be deemed to have come into force on the 7th day of February, 2022.

2. *Amendment of section 3.*—In the Kerala Lok Ayukta Act, 1999 (8 of 1999) (hereinafter referred to as the principal Act), in section 3,—

(i) in sub-section (2), after the words “ or that of the Chief Justice of a High Court”, the words “ or that of a Judge of the High Court” shall be inserted;

(ii) in sub-section (3), the words “ holds or ” shall be omitted.

3. *Amendment of section 5.*—In sub-section (1) of section 5 of the principal Act.—

(a) after the words “ a term of five years” the words and symbols “ or till he completes the age of seventy years, whichever is earlier,” shall be inserted;

(b) before the existing proviso, the following proviso shall be inserted, namely:—

“Provided that, the Lok Ayukta and the Upa-Lok Ayukta appointed before the commencement of the Kerala Lok Ayukta (Amendment) Act, 2022(..... of 2022) shall continue to be governed by the provisions of this Act and rules made thereunder as if the Kerala Lok Ayukta (Amendment) Act, 2022 (..... of 2022) had not come into force :”;

(c) in the existing proviso, for the words “Provided that” the words “Provided further that” shall be substituted.

4. *Amendment of section 7.*— In section 7 of the principal Act, after sub-section (5), the following sub-sections shall be inserted, namely:—

“(5A) In the event of occurrence of any vacancy in the office of the Lok Ayukta by reason of his death, resignation or otherwise, the Governor may, by notification, authorise the senior most Upa-Lok Ayukta to act as the Lok Ayukta until the appointment of a new Lok Ayukta to fill such vacancy.

(5B) When the Lok Ayukta is unable to discharge his functions owing to absence on leave or otherwise, the Governor may, by notification, authorise in this behalf, the senior most Upa-Lok Ayukta available to discharge the functions of the Lok Ayukta until the date on which the Lok Ayukta resumes his duties.”.

5. *Amendment of section 14.*— In section 14 of the principal Act,—

i) in sub-section (1), for the second and third sentences, the following sentences shall be substituted, namely:—

“Where the competent authority is the Governor, or the Chief Minister or the Government of Kerala, he or it may either accept or reject the declaration, after giving an opportunity of being heard. In other cases, the competent authority shall send a copy of such report to the Government which may either accept or

reject the declaration after giving an opportunity of being heard. If it is not rejected within a period of three months from the date of receipt of the report or the copy of the report, as the case may be, it shall be deemed to have been accepted on the date of expiry of the said period of three months. ”;

(ii) in sub-section (2), for the words and symbol “When the declaration so made is accepted, the fact of such acceptance ” the words and symbol “ If the declaration so made is accepted or is deemed to have been accepted, the fact of such acceptance or the deemed acceptance” shall be substituted.

6. *Amendment of section 15.*—In section 15 of the principal Act, the words, figures and symbol “ Notwithstanding anything contained in section 14,” shall be omitted.

7. *Validation.*—Notwithstanding the cesser of operation of the Kerala Lok Ayukta (Amendment) Ordinance, 2022 (8 of 2022) (hereinafter referred to as the said Ordinance),—

a) anything done or deemed to have been done or any action taken or deemed to have been taken under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under the provisions of the principal Act as amended by this Act;

b) anything done or any action taken after the cesser of operation of the said Ordinance and before the date of publication of this Act in the Gazette, which could have been done or taken under the principal Act as amended by the said Ordinance if the said Ordinance had not ceased to operate, shall be deemed to have been done or taken under the principal Act as amended by this Act.

STATEMENT OF OBJECTS AND REASONS

The Kerala Lok Ayukta Act, 1999 (8 of 1999) provides for the appointment and functions of certain authorities for making enquiries into any action relatable to matters specified in List II or List III of the 7th Schedule to the Constitution of India taken by or on behalf of the Government of Kerala or certain public authorities in the State of Kerala in certain cases and for matters connected therewith.

Section 3 of the said Act provides for matters relating to the appointment of Lok Ayukta and Upa-Lok Ayuktas. Under sub-section (2) of the said section, a person to be appointed as Lok Ayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court. Now the Government intends to consider a retired Judge of the High Court also to the post of Lok Ayukta by amending sub-section(2). Sub-section (3) of the said section provides that a person to be appointed as Upa-Lok Ayukta shall be a person who holds or has held the office of a Judge of a High Court. It has been decided to omit the existing provision regarding appointment of a sitting Judge of the High Court as Upa-Lok Ayukta by amending the said sub-section (3).

Under section 5 of the said Act, the term of office of the Lok Ayukta and Upa-Lok Ayukta shall be five years from the date on which they assume office. Now it has been decided to fix seventy years as the maximum age limit for holding the office of Lok Ayukta and Upa-Lok Ayukta by amending section 5 of the said Act. Further decided to insert a provision regarding the term of office of the present Lok Ayukta and Upa-Lok Ayuktas.

As there was no provision in the said Act for the arrangement to be made in case of occurrence of any vacancy in the office of the Lok Ayukta, it has been decided to insert new provisions *viz*, sub-sections 5 (A) and 5 (B) to section 7 of the said Act.

Sub-section (1) of section 14 of the said Act empowers the competent authority to accept the declaration under sub-section (3) of section 12 of the said Act. Now the Government have decided to empower the competent authority to reject the declaration as well by making amendments to sections 14 and 15.

As the Legislative Assembly of the State of Kerala was not in session and the above proposals had to be given effect to immediately, the Kerala Lok Ayukta (Amendment) Ordinance, 2022 was promulgated by the Governor of Kerala on the 7th day of February, 2022 and the same was published as Ordinance No.3 of 2022 in the Kerala Gazette Extraordinary No.429 dated 7th February, 2022.

A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Fifteenth Kerala Legislative Assembly during its session which commenced on the 18th day of February, 2022 and ended on the 18th day of March, 2022.

In order to keep alive the provisions of the said Ordinance, the Kerala Lok Ayukta (Amendment) Ordinance, 2022 was promulgated by the Governor of Kerala on the 31st day of March, 2022 and the same was published as Ordinance No.8 of 2022 in the Kerala Gazette Extraordinary No.1093 dated 31st March, 2022.

Though a Bill to replace the said Ordinance by an Act of the State Legislature was published as Bill No.112 of the Fifteenth Kerala Legislative Assembly, the same could not be introduced in, and passed by, the Kerala Legislative Assembly during its session which commenced on 27th day of June, 2022 and ended on the 21st day of July, 2022.

As per sub-clause (a) of clause (2) of article 213 of the Constitution of India, an Ordinance promulgated by the Governor under the said article shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature. Accordingly, the Kerala Lok Ayukta (Amendment) Ordinance, 2022, (8 of 2022) ceased to operate on the 8th day of August, 2022. Now the Government have decided to enact the Kerala Lok Ayukta (Amendment) Bill, 2022 by incorporating validation clause to validate actions if any, taken during the period from the cesser of the said Ordinance to the date of publication of this Act.

The Bill seeks to bring into force the provisions of the said Ordinance.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

PINARAYI VIJAYAN.

EXTRACT FROM THE KERALA LOK AYUKTA ACT 1999

(8 OF 1999)

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3. *Appointment of Lok Ayukta and Upa- Lok Ayuktas .—* (1)*** **

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(2) A person to be appointed as Lok Ayukta shall be a person who has held the office of a Judge of the Supreme Court or that of the Chief Justice of a High Court and shall be appointed on the advice tendered by the Chief Minister, in consultation with the Speaker of the Legislative Assembly of the State and the Leader of Opposition in the Legislative Assembly of the State.

(3) A person to be appointed as an Upa-Lok Ayukta shall be a person who holds or has held the office of a Judge of a High Court and shall be appointed on the advice tendered by the Chief Minister in consultation with the Speaker of the Legislative Assembly of the State and the Leader of Opposition in the Legislative Assembly of the State:

Provided that the Chief Justice of the High Court concerned shall be consulted, if a sitting Judge is appointed as an Upa-Lok Ayukta.

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5. *Term of office and other conditions of service of Lok Ayukta and Upa-Lok Ayukta .—* (1) A person appointed as Lok Ayukta or Upa-Lok Ayukta shall hold office for a term of five years from the date on which he enters upon his office :

Provided that:—

a) the Lok Ayukta or an Upa-Lok Ayukta may, by writing under his hand and seal addressed to the Governor, resign his office;

b) the Lok Ayukta or an Upa-Lok Ayukta may be removed from his office in the manner provided in section 6.

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7. *Matters which may be investigated by the Lok Ayukta and the Upa-Lok Ayuktas .—* (1)*** **

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(5) Notwithstanding anything contained in sub-sections (1) to (4), when an Upa-Lok Ayukta is unable to discharge his functions owing to absence, illness or any other cause, his functions may be discharged by the other Upa-Lok Ayukta, and in the absence of both, by the Lok Ayukta.

14. *Public Servant to vacate office if directed by Lok Ayukta etc.*— (1) Where, after investigation into a complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the complaint involving an allegation against the public servant is substantiated and that the public servant concerned should not continue to hold the post held by him, the Lok Ayukta or the Upa-Lok Ayukta as the case may be, shall make a declaration to that effect in his report under sub-section (3) of section 12. Where the competent authority is the Governor, the Government of Kerala or the Chief Minister, he or it shall accept the declaration. In other cases, the competent authority concerned shall send a copy of such report to the Government, which shall accept the declaration.

(2) When the declaration so made is accepted the fact of such acceptance shall immediately be intimated by registered post, by the Governor, the Government or the Chief Minister, if any of them is the competent authority and the Government, in other cases and then, notwithstanding anything contained in any law, order, notification, rule or contract of appointment, the public servant concerned shall, with effect from the date of intimation of such acceptance or deemed acceptance of the declaration -

15. *Initiation of Prosecution.*—Notwithstanding anything contained in section 14, if after investigation into any complaint, the Lok Ayukta or an Upa-Lok Ayukta is satisfied that the public servant has committed any criminal offence and that he should be prosecuted in a court of law for such offence, then, he may pass an order to that effect and initiate prosecution of the public servant concerned, if there is no necessity for prior sanction; and, if prior sanction of any authority is required, with the sanction of the appropriate authority.
