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PART - IV

GOVERNMENT OF MEGHALAYA DISTRICT COUNCIL AFFAIRS DEPARTMENT ORDERS BY THE GOVERNOR

NOTIFICATION

The 12th March, 2012.

No.DCA.13/95/63.—In pursuance of Paragraph 11 of the Sixth Schedule to the Constitution of India, the following Act of the District Council of Jaintia Hills Autonomous District is hereby published for general information.

THE JAINTIA HILLS AUTONOMOUS DISTRICT (TRADING BY NON-TRIBAL) REGULATION (ACT) 2011.

(Passed by the Jaintia Hills Autonomous District Council in the Winter Session held during December, 2011).

(Received the assent of the Governor on 9th March, 2012).

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THE JAINTIA HILLS AUTONOMOUS DISTRICT (TRADING BY NON-TRIBAL) REGULATION (ACT) 2011.

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ACT

PREAMBLE :- Whereas it is expedient to make a Regulation under Section 10 of the Sixth Schedule to the Constitution of India to regulate and control trading within the area of the Jaintia Hills Autonomous District by the persons other than Schedule Tribes resident in the District.

It is hereby enacted in the Sixty Second Year of the Republic of India as follows :-

1. Short Title, Extent and Commencement :-

- (i) This Regulation may be called the Jaintia Hills Autonomous District (Trading by Non-Tribal) Regulation, 2011.
- (ii) It shall extent to the whole of Jaintia Hills Autonomous District.
- (iii) It shall come into force at once.

2. Definition:-

In this Regulation, unless there is anything repugnant in the subject or the context otherwise requires:-

- (i) "District" means the Jaintia Hills Autonomous District.
- (ii) "District Council" means the District Council Jaintia Hills Autonomous District.
- (iii) "Executive Committee" means the Executive Committee of the Jaintia Hills Autonomous District Council and the term "Chief Executive Member" and "Member of the Executive Committee" shall be construed accordingly.
- (iv) "Licensing Officer" means such Officer of the District Council as the Executive Committee may appoint for the purpose of exercising the functions and powers of the Licensing Officer and carrying out the purpose of this Regulation and the rules made there under.
- (v) "Non-Tribal" means a person who is not a Tribal.
- (vi) "Person" includes any company, firm, society or association of whatever description in which a person other than a Tribal resident in the district is a partner, co-sharer and has financial interest, or body or group of individuals whether incorporated or not.
- (vii) "Prescribed" means prescribed by this Regulation and the Rules made there under.
- (viii) "Trade" means any trade involving buying and selling or business for profit and includes exchange of goods or commodities or business or import, export and transport of goods/commodities or entry of goods into market for sale or trade and business such as construction works or other work rendered by the contractor or his agent and it also includes person and persons engaged by such contractor or agent or any other profession or vocation such as barber, cobbler, tailoring, cattle rearing (which include piggery, goatary, poultry) milk and diary products, automobiles making or repairing, electrician, furniture makers, pharmacist, physician, transport and any other similar vocation or profession and the term "trade" and "trading" shall be construed accordingly.
- (ix) "Trading in Benami" or "Benami transaction" means the carrying of any trade or business or any business transaction by a non-tribal in the name or on behalf of a tribal.
- (x) "Tribal" means a person belonging to any of the Schedule Tribe pertaining to Meghalaya and as specified in the Constitution (Scheduled Tribe) order, 1950 as amended from time to time.

Control of trading by Non-Tribal:-

- (1) No person other than a tribal resident in the District shall carry on trade or business either wholesale or retail within the District except under a license issued in that behalf by the Licensing Officer.

Provided that such a license shall not be refused to a trader who has been carrying on such business within the District since before the commencement of this Regulation.

Provided further that if such a license is refused the grounds of refusal shall be recorded in writing after giving the applicant an opportunity of showing cause thereof.

- (2) Notwithstanding anything contained in sub-section (i) above, trading in benami by non-tribal or a person in the District is unlawful and illegal and such non-tribal or person shall be deemed to have committed an offence under this Regulation.

Provided that a tribal who employ a non-tribal in any trade or business owned by him is required to obtain a permission or clearance from the Licensing Officer to the effect that he is employing/engaging a non-tribal (whose name and all bio-datum must be furnished) as an agent or employee or labourer in a particular trade or business. Cancellation and issuance of such permission or clearance is mandatory in the event of any change of such non-tribal employee.

4. Grant of License:-

- (1) License under this Regulation may be granted and issued by the Licensing Officer with the approval of the Executive Committee after proper and careful examination and consideration of the following aspects, antecedent and integrity of the applicant.
- (a) Permanent Residential Certificate issued by the Deputy Commissioner or Collector of the place of residence furnished by the applicant as citizen of India.
 - (b) Election Commission of India Identity Card.
 - (c) Police Verification Report furnished by the applicant issued by Superintendent of Police or authorized Police Officer under whose area of jurisdiction the license applied for proposed to be operated.
 - (d) Affidavit sworn by the applicant as to his previous occupation, place of residence, family members, antecedents and the reason for proposed carrying of trade in Jaintia Hills.
 - (e) Recommendation of the Village Headmen duly approved by the Local Durbar.
 - (f) License if any previously issued to applicant.

- (g) Any offence committed under the provision of this regulation.
 - (h) Similarity of trade or business, which may jeopardize or endanger the trade or business of the local traders.
 - (i) The grant of a license would promote the interest of the tribal residents economically or otherwise.
- (2) Grant or renewal of a license shall be refused under the following reasons:-
- (a) Un-fulfillment of the conditions under sub-section (1) above.
 - (b) Violation of any of the provision of Acts, Rules, Regulation made by the District Council.
 - (c) Default in payment of any tax, fee and fine, and revenue imposed by the District Council.
 - (d) Convicted of an offence involving moral turpitude.
 - (e) That the number of the licenses to be issued for a particular vocation or trade has exceeded the need of a particular Area/Locality as determined by the Executive Committee from time to time.

Note – The term “headman” and “Durbar” will carry the same meaning as understood in different Elakas in respect of villages and localities of a particular Elaka.

5. Application for license:-

Application for trading license and its renewal shall be made to the Licensing Officer, in such form and on payment of such fees as prescribed by Rules made under this Regulation.

6. Obligation to Supply Information and Documents:-

The Licensing Officer, or any Officer duly authorized by the Executive Committee shall have the power to make inspection in connection with the License issued and it shall be obligatory and binding on the part of the License Holder to supply the information and the documents called for. Such Officer may:-

- (i) Inspect and verify the goods or commodities or materials deal with by Licensed Trader;
- (ii) Call for, and inspect the license and any accounts or books kept by the licensed trader in connection with his trade;
- (iii) Call for any other information he deems necessary.

License Fee, Validity, Conditions of a License and its Renewal:-

Every License granted under this Regulation shall be chargeable with license fee with validity for the period of one year subject to renewal and the terms and conditions as laid down under Rules made under this Regulation.

8. Penalty:-

- (1) If any person contravened any of the provision of the Regulation, he shall be liable to a fine, which shall not be less than Rupees One Thousand and not exceeding Rupees One Lakh based on the nature of business and offences.
- (2) The Executive Committee shall have the power to make Rules for specifying the quantum of the penalty for different types of business within the limit prescribed under this Regulation.

9. Power to seize goods or Commodities illegally traded:-

When any person is found to be carrying on trade or business without valid license in contravention of the provisions of this Regulation, the Licensing Officer, or any Officer or Officers duly authorized by the Executive Committee in this behalf may, with such assistance as deemed necessary, seize the goods or commodities traded including the tools or equipments used for the purpose of such trade or business and may close down and seal his shop or trading premises or order in writing such person to refrain from carrying on his trade and every such seizure with detail list shall be reported to the Executive Committee.

10. Custody, Disposal and Forfeiture of Seized Property:-

- (i) Goods or commodities including tools and equipments seized under the provisions of this Regulation shall be kept under the custody or Zima of either the Trader concerned or the Officer himself who shall be responsible for their production before the authority concerned as and when requires.
- (ii) The Officer causing the seizure shall make out a list of every goods and commodities including tools and equipments seized and a copy of which shall be furnished both to the Executive Committee and the defaulting trader concerned.
- (iii) The Licensing Officer or any Officer or Officers having the power to seize the goods or commodities as duly authorized by the Executive Committee, shall have the power to compound the offence by realizing a fine prescribed under the Rules after due consideration and valuation of the commodities illegally traded and proper receipt given for the amount so realized. The fine thus collected shall forthwith be deposited to the District Council Fund.

- (iv) The seized property if perishable shall be disposed of immediately by public auction and the sale proceeds accrued there from shall be deposited to the District Council Fund and kept as deposit account till the matter is finally disposed of.
- (v) The Licensing Officer or any Officer or Officers as may be empowered by the Executive Committee to try the offence under this Regulation is competent to order for the forfeiture and disposal of the seized commodities including tools and equipments by open sale or auction. The penalty imposed and the cost of expenses incurred shall be adjusted from the sale proceed. The balance, if any, be made over to the accused/defaulters.
- (vi) When the owner of the commodities seized is not known and no person prefer a claim over such properties, even after proper notice was issued, the authority competent to try offence, shall by an order in writing forfeit the properties to the District Council.

11. Power of the Licensing Office to enter a Shop:-

The Licensing Officer or any Officer duly authorized by the Executive Committee under this Regulation shall have the power to enter a shop or a shop-cum-residence for the purpose of checking the trade or for the purpose of seizing the goods or commodities illegally traded under this Regulation.

12. Cancellation of License:-

The Licensing Officer may cancel the License of a person for contravention of any of the terms and conditions of the License or any of the provisions of this Regulation and the Rules made there under.

13. Realization of arrear fees:-

Default in payment of any arrear fee and fine payable under this Regulation shall liable to be realized by seizure of the commodities and put the same to public auction for recovery of the arrear fee, fine including the cost involved in the process, and the balance thereof, if any, be handed over to the defaulter.

14. Appeals:-

- (i) Appeal against any order passed by Licensing Officer or any Officer duly authorized by the Executive Committee shall lie to the Executive Committee whose decision shall be final.
- (ii) Such appeal shall be filed within 30 days from the date the order is communicated to the party or parties concerned accompanied by:-
 - (a) a certified copy of the order appealed against; and
 - (b) a petition fee as prescribed under the Rules.

15. **Appointment of Officer and conferment of powers:-** The Executive Committee may appoint or assign or empower any of its Officer to perform the duties and functions in carrying out the purpose of this Regulation.

16. **Protection of Action done in good faith:-**

No, suit, prosecution or other legal proceedings shall lie against the Executive Committee, Executive Member incharge, Licensing Officer or any Officer or authorized person for anything, which is done in good faith or intend to be done under this Regulation.

17. **Power to make Rule:-**

(i) The Executive Committee with the approval of the District Council may make Rules for carrying out the purpose of this Regulation.

(ii) In particular and without prejudice to the generality of the foregoing provisions such Rules may provide for all or any of the following matters, viz.:-

(a) The form and manner in which the application for License may be made and disposed of;

(b) Terms and conditions of the License.

(c) Fees payable for the License, its renewal, late fee, fee for appeal and such other fees specified in this Regulation.

(d) Period of validity of the License.

(e) Loss or damage of License and issuing of Duplicate thereof;

(f) Imposing of fine and penalties under this Regulation.

(g) Number and limit of Licenses to be granted in an area.

(h) Any other matter ancillary to the provisions of this Regulation.

18. **Repeal and Saving:-** On and from the date on which this Regulation come into force, the enactments mentioned below in so far as may apply to or are in force in this District shall stand repealed;

(i) The United Khasi-Jaintia Hills District (Trading by Non-Tribal) Regulation, 1954.

(ii) The United Khasi-Jaintia Hills District (Trading by Non-Tribal) (Amendment) Regulation, 1955.

(iii) The United Khasi-Jaintia Hills Autonomous District (Trading by Non-Tribal) Rules, 1959.

Provided that

(a) This repeal shall not affect anything done or any offence committed, or any fine or penalty imposed or any proceeding commenced before this Regulation comes into force.

AND

(b) All rules prescribed, appointments made, license issued, powers conferred and notification published under the repealed enactments, and the rules in force on the date on which this Regulation comes into force relating to any of the matter hereinafter dealt with, shall be deemed to have been given, made, done, taken, or commenced under the corresponding provisions of this Regulation.

STATEMENT OF OBJECT AND REASON

As lacunae and inconsistency have been found in the actual working of the existing Regulation and Rules so far adopted and enacted, it has become necessary to make a comprehensive Regulation and also repeal the adopted Regulations and Rules.

The Act was passed by the District Council in the Session held on the 14th December 2011 and in authentication whereof I give my signature.

Chairman,
District Council,
Jaintia Hills Autonomous District Council,
Jowai.

I assent to the Act.

Dated Shillong,
The 9th March, 2012.

R. S. MOOSHAHARY,
GOVERNOR OF MEGHALAYA

FINANCIAL MEMORANDUM

The Act when enacted will not incur any additional expenditure as the Officers and staff who will be carrying out the purpose of this Regulation are already in service of the Council.