

Kerala Home Guards Act, 1960

[Act No. 16 of 1960]

[Dated 20.08.1960]

An Act to provide for the constitution of Home Guards in the State of Kerala.

Whereas it is expedient to provide a volunteer organisation for use in emergencies and for other purposes in the State of Kerala;

Be it enacted in the Eleventh Year of the Republic of India as follows:-

1. Short title, extent and commencement. - (1) This Act may be called the Kerala Home Guards Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. Definitions. - In this Act, unless the context otherwise requires,-

(a) "*Home Guards*" means a person who is appointed as a Home Guard under this Act;

(b) "*prescribed*" means prescribed by rules made under this Act.

3. Constitution of Home Guards and appointment of Commandant-General and Commandant. - (1) The Government may constitute a volunteer body called the "Home Guards", the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property, and the public safety (as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

(2) The Government may appoint one or more Commandants for the Home Guards constituted under sub-section (1).

(3) The Government may also appoint a Commandant-General of the Home Guards in whom shall vest the general supervision and control of the Home Guards in the State.

4. Appointment of members. - (1) Subject to the approval of the Commandant-General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from time to time be determined by the Government and may appoint any such member to any office of command in the Home Guards.

(2) Notwithstanding anything contained in sub-section (1) the Commandant-General may appoint any such member to any post under his control.

(3) Every member of the Home Guards shall receive a certificate of appointment which shall be in such form and shall be issued by such authority as may be prescribed.

5. Function, and duties of members. - (1) The Commandant General may at any time call out any member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards under section 3.

(2) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guard~ within his jurisdiction in accordance with the provisions of this Act and the rules made thereunder. -

6. Powers, protection and control. - (1) A member of the Home Guards when called out under section 5, shall have the same powers, privileges and protection, as an officer of police appointed under the Police Act for the time being in force.

(2) No prosecution shall be instituted against a member of the Home Guards in (respect of anything done or purporting to be done by him in the exercise of the powers or the discharge of his functions or duties as such member except with the previous sanction of the Commandant-General.

7. Control by Officers of Police Force. - The members of the Home Guards when called out under section 5 in aid of the police force, shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed.

8. Home Guards not to resign without notice. - A member of the Home Guards may, if he so desires, resign his membership thereof upon giving not less than one month's notice to the Commandant within whose jurisdiction he is serving.

9. Certificate, arms etc., to be delivered up by person ceasing to be member. - (1) Every person who for any reason ceases to be a member of the Home Guards, shall forthwith deliver up to the Commandant or to such person and at such place as the Commandant may direct his certificate of appointment or of office and the arms, accouterments, clothing and other necessaries which have been furnished to him as such member.

(2) Any Magistrate and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Superintendent of Police or Assistant Superintendent of Police, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accouterments, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1838, by a Police Officer or if the Magistrate or the Police Officer issuing the warrant so directs, by any other person.

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant-General has become the property of the person to whom the same was furnished.

10. Punishment of members for neglect of duty, etc. - (1) The Commandant may suspend, reduce or dismiss or fine to an amount not exceeding fifty rupees, any member of the Home Guards under his control, if such member neglects or refuses to discharge his functions and duties as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant-General shall have the like authority in respect of any member of the Home Guards appointed to a post under his control and may also dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.

(2) Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if in the opinion of the Commandant the service of such member are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his control.

(3) When the Commandant-General or the Commandant passes an order suspending, reducing, dismissing, or fining any member of the Home Guards under this section, he shall record such order or cause the same to be recorded together with the reasons therefor and a note of the inquiry made, in writing and no such order shall be passed by the Commandant-General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(4) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant-General and any such member aggrieved by an order of the Commandant-General may appeal against such order to the Government, within thirty days of the date in which he was served with notice of such officer. The Commandant-General or the Government, as the case may be, may pass such order as he or they think fit.

(5) The Commandant-General or the Government may at any time either *suo motu* or on application, call for and examine the record of any order passed by the Commandant or Commandant-General, respectively, under the section, for the purpose of satisfying himself or themselves as to the legality or propriety of such order passed by the Commandant or the Commandant-General. as the case may be, and may pass such order with reference thereto as he or they think fit.

(6) Every order, if no appeal is made therefrom as herein before provided, and every order passed in appeal or revision under this section, shall be final.

(7) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898 for the recovery of fines imposed by a Court, as if such fines were imposed by a Court.

(8) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 11 or any other law for the time being in force.

11. Penalties. - (1) If any member of the Home Guards, on being called out under section 5 without reasonable excuse neglects or refuses to obey such order, or to discharge his functions as a member of the Home Guards or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction, be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both.

(2) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or and other article in accordance with the provisions of subsection (1) of section 9, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or With both.

(3) No proceedings shall be instituted under sub-section (1) or sub-section (2) without the previous sanction of the Commandant

(4) A Police Officer may arrest without warrant any person who commits an offence punishable under this section.

12. Disciplinary action against Commandant or the Commandant-General. - The Government may, at any time, subject to such rules as may be prescribed, dismiss, remove, suspend or reduce to a lower post or rank, any Commandant or the Commandant-General whom they think remiss or negligent in the discharge of his duty or otherwise unfit for the same, and may order the recovery from the pay or allowances of any such officer of the whole or part of any pecuniary loss caused to the Government by his negligence or breach of orders.

13. Power of Government to make rules. - (1) The Government may by notification in the Gazette, make rules consistent with this Act for giving effect to the purposes thereof.

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

(a) the exercise by any officer of the Home Guards of the powers conferred by section 5 on the Commandant and the Commandant-General;

(b) the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;

(c) the organisation, appointment, conditions of service, functions, discipline, arms, accouterments and clothing of members of the Home Guards and the manner in which they may be called out for service;

(d) the exercise by members of the Home Guards of any of the powers exercisable under section 6 of this Act;

(e) the procedure to be followed in taking disciplinary action by the Government against the Commandants or the Commandants-General under section 12; and

(f) generally for giving effect to the provisions of this Act.

(3) All the rules made under this section shall be laid for not less than fourteen days before the Legislative Assembly as soon as possible after they are made, and shall be subject to such modification as the Legislative Assembly may make during the session in which they are so laid or the session immediately following. ,

14. Officers and members of Home Guards to be public servants. - The officers and the members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

15. Officers and members of Home Guards not disqualified from elections to the Legislative Assembly or Local Authorities. - (1) A person shall not be disqualified for being chosen as and for being a member of the Legislative Assembly merely by reason of the fact that he is an officer or a member of the Home Guards.

(2) Notwithstanding anything contained to the contrary in any other law for the time being in force, an officer or a member of the Home Guards shall not be disqualified for being chosen as, and for being a member of any Local Authority, merely by reason of the fact that he is an officer or a member of the Home Guards.

16. Repeal. - The Madras Home Guards Act, 1948 (Act 1 of 1948) as in force in Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956, is hereby repealed.