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THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃত্বৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT :: LEGISLATIVE BRANCH

NOTIFICATION

The 7th January, 2013

No. LGL.15/2009/67.-The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

ASSAM ACT NO. I OF 2013

(Received the assent of the President on 21st December, 2012)

THE ASSAM STATE VIGILANCE COMMISSION ACT, 2010

AN
ACT

to provide for the constitution of the Assam State Vigilance Commission to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the State Government, corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by the State Government and for matters connected therewith or incidental thereto;

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

CHAPTER - I

Preliminary

Short title,
extent and
commencement.

1. (1) This Act may be called the Assam State Vigilance Commission Act, 2010
- (2) It extends to the whole of Assam.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Definitions

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

- (a) "State Chief Vigilance Commissioner" means the Assam State Vigilance Commissioner appointed under sub-section (1) of section 4;
- (b) "Commission" means the Assam State Vigilance Commission constituted under sub-section (1) of section 3;
- (c) "Vigilance and Police Establishment" means the Vigilance Department or the Police charged with the inquiry and investigation of an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;
- (d) "Government company" means a Government company within the meaning of the Companies Act, 1956

Central Act 49
of 1988, Central
Act 2 of 1974.

Central Act 1
of 1956

- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "State Government" means the Government of Assam;
- (g) "Vigilance Commissioner" means a Vigilance Commissioner appointed under sub section (1) of section 4

CHAPTER II

THE ASSAM STATE VIGILANCE COMMISSION

Constitution
of the Assam
State
Vigilance
Commission

3. (1) There shall be constituted a body to be known as the Assam State Vigilance Commission to exercise the powers conferred upon, and to perform the functions assigned to it under this Act.
- (2) The Commission shall consist of -
- (a) State Chief Vigilance Commissioner - Chairperson
 - (b) not more than two Vigilance Commissioners - Members
- (3) the State Chief Vigilance Commissioner and the Vigilance Commissioner shall be appointed from amongst persons-
- (a) who have been or are in an All India Service having knowledge and experience in matters relating to policy making and administration
 - (b) who have been or are in an All-India Service or in any civil service of the State or in a civil post under the State Government and who have expertise and experience in finance including insurance and banking, law, vigilance and investigations:
- Provided that, from amongst the State Chief Vigilance Commissioner and the Vigilance Commissioners, not more than two persons shall belong to the category of persons referred to either in clause (a) or clause (b):*
- Provided further that such person shall be eligible for appointment of the State Chief Vigilance Commissioner if he has been or is in All India Service held or holding the post not below the rank of Additional Chief Secretary to the Government of a State:*
- Provided also that such persons shall be eligible for appointment of Vigilance Commissioner if he has been or is in All India Service held or holding the post not below the rank of Commissioner and Secretary to the State Government.*
- (4) The State Government shall appoint a Secretary to the Commission on such terms and conditions as it deems fit to exercise such powers and discharge such duties as the Commission may by regulations specify in this behalf.

- (5) The headquarters of the Commission shall be at Guwahati
- Appointment of State Chief Vigilance Commissioner and Vigilance Commissioners 4. (1) The State Chief Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the Governor by warrant under his hand and seal:
- Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of—*
- (a) the Chief Minister, Chairperson.
- (b) the Leader of the Opposition in the State Assembly Member.
- (c) a Cabinet Minister to be nominated by the Chief Minister. Member.
- Explanation :-* For the purposes of this sub-section, “the Leader of the Opposition in the State Assembly” shall, when no such Leader has been so recognized, include the Leader of the single largest group in the opposition of the Government in the Legislative Assembly.
- (2) No appointment of the State Chief Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.
- Terms and other conditions of service of State Chief Vigilance Commissioner and State Vigilance Commissioners 5. (1) Subject to the provisions of sub-sections (3) and (4), the State Chief Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier. The State Chief Vigilance Commissioner, on ceasing to hold the office, shall be ineligible for reappointment in the Commission.
- (2) Subject to the provisions of sub-sections (3) and (4) of section 3, every Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.
- Provided that every Vigilance Commissioner, on ceasing to hold the office, shall be eligible for appointment as the State Chief Vigilance Commissioner in the manner specified in sub-section (1) of section 4:*
- Provided further that the term of the Vigilance Commissioner, if appointed as the State Chief Vigilance Commissioner, shall not be more than four years in aggregate as the Vigilance Commissioner and the State Chief Vigilance Commissioner.*

- (3) The State Chief Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the Governor, or some other person appointed in that behalf by him, and oath or affirmation according to the form set out for the purpose in Schedule to this Act.
- (4) The State Chief Vigilance Commissioner or a Vigilance Commissioner may, by writing under his hand addressed to the Governor, resign his office.
- (5) The State Chief Vigilance Commissioner or a Vigilance Commissioner may be removed from his office in the manner provided in section 6.
- (6) On ceasing to hold office, the State Chief Vigilance Commissioner and every other vigilance Commissioner shall be ineligible for –
- (a) any assignment or appointment which is required by law to be made by the Governor or President by warrant under his hand and seal.
 - (b) further employment to any office of profit under the Government of the State.
- (7) The Salary and allowances payable to and the other conditions of service of –
- (a) the State Chief Vigilance Commissioner shall be the same as those of the Chairman of the Assam Public Service Commission.
 - (b) the Vigilance Commissioner shall be the same as those of a Member of the Assam Public Service Commission;

Provided that if the State Chief Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State his salary in respect of the service as the State Chief Vigilance Commissioner or any Vigilance Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the State Chief Vigilance Commissioner or any Vigilance Commissioner is, at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a corporation established by or under any State Act or a Government company owned or controlled by the State Government, his salary in respect of the service as the State Chief Vigilance Commissioner or, as the case may be, the Vigilance Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salary, allowances and pension payable to and the other conditions of service of the State Chief Vigilance Commissioner or any Vigilance Commissioner shall not be varied to his disadvantage after his appointment.

Explanation:- The Salary and allowances of in-service officers as appointed shall be guided by their existing provisions.

Removal of
State Chief
Vigilance
Commissioner
and Vigilance
Commissioners-

6. (1) Subject to the provisions of sub-section (3) the State Chief Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehavior or incapacity after the High Court, on a reference made to it by the Governor, has, on inquiry, reported that the State Chief Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.
- (2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Vigilance Commissioner or any Vigilance Commissioner in respect of whom a reference has been made to the High Court under sub-section (1) until the Governor has passed orders on receipt of the report of the High Court on such reference.
- (3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Vigilance Commissioner or any Vigilance Commissioner if the State Chief Vigilance Commissioner or such Vigilance Commissioner, as the case may be -
- (a) is adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the State Government involves moral turpitude; or
 - (c) engages during his term of office in any paid employment outside the duties of his office; or
 - (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
 - (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a State Chief Vigilance Commissioner or a Vigilance Commissioner.
- (4) If the State Chief Vigilance Commissioner or any Vigilance Commissioner is or becomes in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or State Government or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty or misbehavior.

Power to make
rules by the
State
Government for
staff.

7. The State Government may, in consultation with the Commission, make rules with respect to the number of members of the staff of the Commission and their conditions of service.

CHAPTER III

★ FUNCTIONS AND POWERS OF THE STATE VIGILANCE COMMISSION

Functions and powers of the State Vigilance Commission

8. (I) The functions and powers of the Commission shall be to-
- (a) exercise superintendence over the functioning of the Vigilance and Police Establishment in so far as it relates to the investigation of the Prevention of Corruption Act, 1988 or offences with which a public servant specified in sub-section (2) may under the Code of Criminal Procedure, 1973, be charged at the same trial; Central Act 49 of 1988 Central Act 2 of 1974
 - (b) give directions to the Vigilance and Police Establishment for the purpose of discharging the responsibilities entrusted to it with reference to offences alleged to have been committed under the Prevention of Corruption Act, 1988 or offences with which a public servant may under the Code of Criminal Procedure, 1973, be charged at the same trial; Central Act 2 of 1974.
 - (c) inquire or cause an inquiry or investigation to be made on a reference made by the State Government where in it is alleged that a public servant being an employee of the State Government or a corporation established by or under any State Act Government company society and any local authority owned or controlled by that Government has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may under the Code of Criminal Procedure, 1973, be charged at the same trial; Central Act 49 of 1988 Central Act 2 of 1974
 - (d) Subject to the provisions of section 25 of this Act, inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in Sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act 1988 or an offence with which a public servant specified in sub-section (2) may under the Code of Criminal Procedure, 1973, be charged at the same trial; Central Act 2 of 1974
 - (e) review the progress of investigations conducted by the Vigilance and Police Establishment into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or offences with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial; Central Act 49 of 1988
 - (f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988; Central Act 49 of 1988.
 - (g) tender advice to the State Government corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by the State Government on Vigilance cases related to the officers under its purview and on such other matters as may be referred to it by that Government, said Government companies, societies and local authorities owned or controlled by the State Government or otherwise;

- (h) exercise superintendence over the vigilance administration of the various Departments of the State Government or corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by that Government;

Provided that while exercising its powers to exercise superintendence over the Vigilance Administration, the Commission shall give due consideration to the instructions issued by the Central Vigilance Commission established under the Central Vigilance Commission Act, 2003, with regard to the Central Government.

Central
Act 45
of
2003

- (2) Subject to the provisions of section 25 of this Act, the persons referred to in clause (d) of sub-section (1) are as follows:-
- (a) members of All-India Services serving in connection with the affairs of the State and Class I officers of the State Government;
- (b) such other level of officers holding civil posts under the State as that Government may by notification in the official Gazette specify in this behalf;
- (c) such level of officers of the corporations established by or under any State Act, Government companies, societies and other local authorities, owned or controlled by the State Government as that Government may, by notification in the Official Gazette, specify in this behalf;

Provided that till such time a notification is issued under sub-clauses (b) and (c) all officers of the State, and the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1)

Report of any inquiry made on reference by Commission to be forwarded to the Commission.

9. (1) The report of any inquiry undertaken by any agency on a reference made by the Commission shall be forwarded to the Commission,
- (2) The Commission shall on receipt of such report and after taking into consideration any other factors relevant thereto, advise the State Government and corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by the Government, as the case may be, as to the further course of action.
- (3) The State Government and the corporations established by or under any State Act, Government companies, societies and other local authorities owned or controlled by that Government, as the case may be, shall consider the advice of the Commission and take appropriate action:

Provided that where the State Government any corporation established by or under any State Act, Government company, society or local authority owned or controlled by the State Government, as the case may be, does not agree with the advice of the Commission, it shall, for reasons to be recorded in writing, communicate the same to the Commission.

- Proceedings of Commission
10. (1) The proceedings of the Commission shall be conducted at its headquarters.
- (2) The Commission may by unanimous decision, regulate the procedure for transaction of its business as also allocation of its business amongst the State Chief Vigilance Commissioner and other Vigilance Commissioners.
- (3) Save as provided in sub-section (2) all business of the Commission shall, as far as possible, be transacted unanimously.
- (4) Subject to the provisions of sub-section (3), if the State Chief Vigilance Commissioner and other Vigilance Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority.
- (5) The State Chief Vigilance Commissioner, or if for any reason he is unable to attend any meeting of the Commission, the senior-most Vigilance Commissioner present at the meeting shall preside at the meeting.
- (6) No act or proceeding of the Commission shall be invalid merely by reason of -
- (a) any vacancy in, or any defect in the constitution of the Commission; or
- (b) any defect in the appointment of a person acting as the State Chief Vigilance Commissioner or as a Vigilance Commissioner; or
- (c) any irregularity in the procedure² of the Commission not affecting the merits of the case.
- Vigilance Commissioner to act as a State Chief Vigilance Commissioner in certain circumstances
11. (1) In the event of the occurrence of any vacancy in the office of the State Chief Vigilance Commissioner by reason of his death, resignation or otherwise, the Governor may by notification, authorize one of the Vigilance Commissioners to act as the State Chief Vigilance Commissioner until the appointment of a new State Chief Vigilance Commissioner to fill such vacancy.
- (2) When the State Chief Vigilance Commissioner is unable to discharge his functions owing to absence on leave or otherwise, such one of the Vigilance Commissioners as the Governor may, by notification, authorize in this behalf, shall discharge the functions of the State Vigilance Commissioner until the date on which the State Chief Vigilance Commissioner resumes his duties.
- Power relating to inquiries
12. The Commission shall, while conducting any inquiry referred to in clauses (b) and (c) of sub section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely-
- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document
- (c) receiving evidence on affidavits;

- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or other documents; and
- (f) any other matter which may be prescribed.

Proceedings before Commission to be judicial proceedings

13. The Commission shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding within the meaning of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code.

Central Act 2 of 1974
Central Act 45 of 1860.

CHAPTER IV

EXPENSES AND ANNUAL REPORT

Expenses of Commission to be charged on the Consolidated Fund of the State.

14. The expenses of the Commission, including any salaries, allowances and pensions payable to or in respect of the State Chief Vigilance Commissioner, the Vigilance Commissioners, Secretary and the staff of the Commission, shall be charged on the Consolidated Fund of the State.

Annual Report.

15. (1) It shall be the duty of the Commission to present annually to the Governor a report as to the work done by the Commission within six months of the close of the year under report.
- (2) The report referred to in sub-section (1) shall contain a separate part on the functioning of the Vigilance and Police Establishment in so far as it relates to action with reference to the alleged offences under the Prevention of Corruption Act, 1988, or offences with which a public servant may, under the Code of Criminal Procedure, 1973
- (3) On receipt of such report, the Governor shall cause the same to be laid before the Assam Legislative Assembly.
- (4) A copy of the report submitted to the Governor shall be submitted to the Central Vigilance Commission.

Central Act 49 of 1988

Central Act 2 of 1974

CHAPTER V

MISCELLANEOUS

Protection of action taken in good faith.

16. No suit, prosecution or other legal proceeding shall lie against the Commission, the State Chief Vigilance Commissioner, any Vigilance Commissioner, the Secretary or against any staff of the Commission in respect of anything which is in good faith done or intended to be done under this Act.

State chief Vigilance Commissioner, State Vigilance Commissioners and Staff to be public servants.

17. The State Chief Vigilance Commissioner, every Vigilance Commissioner, the Secretary and every staff of the Commission shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Central Act 45 of 1860

- Power to call for information. 18. The Commission may call for reports, returns and statements from the State Government or corporations established by or under any State Act, Government companies, societies and other local authorities owned or controlled by that Government so as to enable it to exercise general supervision over the vigilance and anticorruption work in that Government and in the said corporations, Government companies, societies and local authorities.
- Consultation with Commission in certain matters. 19. The State Government shall in making any rules or regulations governing the vigilance or disciplinary matters relating to persons appointed to public services and posts in connection with the affairs of the State consult the Commission.
- Power to make rules. 20. (i) The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying out the provisions of this Act.
- (ii) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely :
- (a) The number of the staff and their conditions of service under section 7.
- (b) Any other power of the civil court to be prescribed under clause (f) of section 12; and
- (c) Any other matter which is required to be, or may be prescribed.
- Power to make regulations. 21. (1) The Commission may, with the previous approval of the State Government, by notification in the Official Gazette make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is expedient for the purposes of giving effect to the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-
- (a) the duties and powers of the Secretary under sub-section (4) of section 3; and
- (b) the procedure to be followed by the Commission under sub-section (2) of section 10.
- Notification, rule, etc. to be laid before Assembly. 22. Every notification issued under clause (b) of sub-section (2) of section 8 and every rule made by the State Government and every regulation made by the Commission under this Act shall be laid, as soon as may be after it is issued or made, before the Assam Legislative Assembly, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification in the notification or the rule or regulation, or the Legislative Assembly agrees that the notification or the rule or regulation should not be

made, the notification or the rule or regulation 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 notification or rule or regulation.

Power to
remove
difficulties.

23.

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall as soon as may be after it is made, be laid before the Assam Legislative Assembly.

Appointments
etc. of the
officers of
Directorate of
Vigilance.

24.

Notwithstanding anything contained in any other law for the time being in force-

(a)

The State Government may appoint a Director of Vigilance for the State on the recommendation of the Committee consisting of-

(i)

The State Chief Vigilance Commissioner-

Chairperson.

(ii)

Vigilance Commissioner-

Members.

(iii)

Commissioner and Secretary to the Government of Assam, Home & Political Deptt. Member

(b)

while making a recommendation, the Committee shall take into consideration the integrity and experience of officers eligible for appointment;

(c)

no person below the rank of Commissioner and Secretary to the Government of Assam shall be eligible for appointment as a Director of Vigilance;

(d)

a Director of Vigilance shall not be transferred except with the previous consent of the Committee referred to in clause (a);

(e)

the Committee referred to in clause (a) shall, in consultation with the Director of Vigilance, recommend officers for appointment to the posts above the level of the Deputy Director of Vigilance;

(f)

on receipt of the recommendation under clause (b), (d) and (e), the State Government shall pass such orders as it thinks fit:

Provided that State Government may appoint such officers up to the level of Deputy Director of Vigilance on its own:

Provided further that the existing Directorate of Vigilance and Anti Corruption shall deemed to be the Directorate under the provision of this section till replaced or modified by the rules made in this behalf:

Provided also that the State Government may, by notification specify that any investigation under the Prevention of Corruption Act, 1988 being made by any other agency of the State Government shall be deemed to be made under the supervision of Directorate of Vigilance and Anti Corruption under the provisions of this Act.

Central Act 49 of
1988

Approval of the
State
Government to
conduct inquiry
or investigation.

25. (1) Notwithstanding anything contained in any other law for the time being in force-the Vigilance and Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988, or an offence with which a public servant specified in sub-section (2) may under the Code of Criminal Procedure, 1973 be charged at the same trial; except with the previous approval of the State Government where such allegation relates to-

Central Act 49 of
1988

Central Act 2 of
1974

- (a) The employees of the State Government of the level of Deputy Secretary of the Government of Assam and above; and
- (b) Such officers as are appointed by the State Government in corporations established by or under any State Act, Government companies, societies and local authorities owned or controlled by that Government.

- (2) Notwithstanding anything contained in sub-section (1) no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to section 7 of the Prevention of Corruption Act, 1988.

Central Act 49 of
1988

THE SCHEDULE**(See Section 5 (3))**

Form of oath or affirmation to be made by the State Vigilance Commissioner or Vigilance Commissioner –

“I, A.B. having been appointed State Chief Vigilance Commissioner (or Vigilance Commissioner) of the Assam State Vigilance Commission do swear in the name of God that I will bear true faith and solemnly affirm allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

MOHD. ABDUL HAQUE,
Secretary to the Govt. of Assam,
Legislative Department, Dispur.