

**THE KARNATAKA DEPARTMENTAL INQUIRIES (ENFORCEMENT OF ATTENDANCE OF WITNESSES, PRODUCTION OF DOCUMENTS AND MISCELLANEOUS PROVISIONS) ACT, 1981.**

**ARRANGEMENT OF SECTIONS**

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**STATEMENT OF OBJECTS AND REASONS**

I

**Act 29 of 1981.-** The State Vigilance Commission, and other inquiring authorities conducting departmental inquiries have no powers to compel the attendance of witness and production of documents for the purpose of such inquiries. It is considered necessary to provide for the enforcement of attendance of witnesses and production of documents in certain departmental inquiries conducted by the State Vigilance Commission and other authorities and for matters connected therewith or incidental thereto.

In view of the urgency, an Ordinance was promulgated. This Bill seeks to replace the said Ordinance.

(Obtained from L.A. Bill No. 27 of 1981)

II

**Amending Act 43 of 1981.-** The Karnataka Departmental Enquires (Enforcement of Attendance of witnesses and production of Documents) Act, 1981 was enacted to provide for enforcement of attendance of witness and production of documents etc., in departmental enquiries. The Act however, did not provide for issue of warrant to search premises and seize documents, properties, etc., In order to enable the Karnataka State Vigilance Commission to function effectively, it is considered necessary to empower the Commissioner to issue warrants to search premises and seize documents properties, articles etc., under certain situations in departmental inquiry cases.

2. It is accordingly proposed to introduce necessary provisions in this behalf by amending the Act referred to above, In the proposed amendment it is intended to confer power on the Vigilance Commissioner to authorise by a search warrant any officer of the Commission not below the rank of Inspector of Investigation (General) and Inspector of police to search premises, seize documents, properties etc., The additional power proposed to be conferred on the Vigilance

Commissioner would strengthen his hand in effectively pursuing the departmental inquiry cases and bring about the needed results.

Hence the Bill.

(Obtained from L.A. Bill No. 53 of 1981)

### III

**Amending Act 28 of 1986.-** After the coming into force the Karnataka Lokayukta Act, 1984 (Karnataka Act 4 of 1985) with effect from 6th January, 1986, the former Vigilance Commission has ceased to exist. It has, therefore, become necessary to confer the powers which were available to the Vigilance Commissioner and Officers of the Vigilance Commission under the Karnataka Departmental Enquires (Enforcement of Attendance of Witnesses and Production of Documents and Miscellaneous Provisions) Act, 1981 on the Lokayukta, Upalokayukta and officers on the Staff of the Lokayukta.

Accordingly, the Karnataka Departmental Enquires Enforcement of Attendance of Witnesses, Production of Documents and Miscellaneous Provisions (Amendment) Ordinance, 1986 (Karnataka Ordinance No. 3 of 1986) was promulgated.

This Bill seeks to replace the said ordinance.

(Obtained from L.A. Bill No. 38 of 1986.)

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KARNATAKA ACT NO. 29 of 1981.

*(First published in the Karnataka Gazette Extraordinary on the Fifteenth day of April, 1981)*

**THE KARNATAKA DEPARTMENTAL INQUIRIES (ENFORCEMENT OF ATTENDANCE OF WITNESSES, PRODUCTION OF DOCUMENTS AND MISCELLANEOUS PROVISIONS) ACT, 1981**

*(Received the assent of the Governor on the Tenth day of April, 1981)*

*(As amended by Acts 43 of 1981 and 28 of 1986)*

**An Act to provide for the enforcement of attendance of witnesses and production of documents in certain departmental inquiries and for matters connected therewith or incidental thereto.**

WHEREAS it is expedient to provide for the enforcement of attendance of witnesses and production of documents in certain departmental inquiries and for matters connected therewith or incidental thereto in the State of Karnataka;

BE it enacted by the Karnataka State Legislature in the Thirty-second Year of the Republic of India as follows:-

**1. Short title and commencement.-** (1) This Act may be called the Karnataka Departmental Inquiries (Enforcement of Attendance of Witnesses <sup>1</sup>[Production of Documents and Miscellaneous Provisions]<sup>1</sup>) Act, 1981.

**1. Substituted by Act 43 of 1981 w.e.f. 05.05.1981**

(2) It shall be deemed to have come into force on the First day of March, 1981.

**2. Departmental inquiries to which the Act shall apply.-** The provisions of this Act shall apply to every departmental inquiry made in relation to, -

(a) persons appointed to public services or posts in connection with the affairs of the State of Karnataka;

(b) persons who, having been appointed to any public service or post in connection with the affairs of the State of Karnataka, are in the service or pay of,-

(i) any local authority in the State of Karnataka;

(ii) any corporation established by or under a Central Act and owned or controlled by the Central Government;

(iii) any corporation established by or under a Central Act or Karnataka Act and owned or controlled by the Government of Karnataka;

(iv) any Government company within the meaning of section 617 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty-one percent of the paid up share capital is held by the State Government or any company which is a subsidiary of such Government company;

(v) any society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) which is subject to the control of the State Government.

(vi) any society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959).

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

(a) "departmental inquiry" means an inquiry held under and in accordance with,-

- (i) any law made by the Karnataka State Legislature or any rule made thereunder; or
- (ii) any rule made under the proviso to Article 309 or continued under Article 313 of the Constitution of India,

into any allegation of misconduct against any person to whom this Act applies;

(b) "inquiring authority" means an officer or authority appointed by the State Government or by the High Court of Karnataka or by the Chief Justice of Karnataka or by the <sup>1</sup>[Lokayukta or an Upalokayukta]<sup>1</sup> or by any officer or authority subordinate to the State Government to hold a departmental inquiry and includes any officer or authority who is empowered by or under any law or rule for the time being in force to hold such inquiry;

<sup>1</sup>[(c) 'Lokayukta' and 'Upalokayukta' means the Lokayukta and Upalokayukta appointed under the Karnataka Lokayukta Act, 1984 (Karnataka Act 4 of 1985)]<sup>1</sup>

<sup>2</sup>[(d) xxx]<sup>2</sup>

1. Substituted by Act 28 of 1986 w.e.f. 06.06.1986

2. Omitted by Act 28 of 1986 w.e.f. 06.06.1986

**4. Power of State Government to authorise the exercise of powers specified in section 5.-** (1) Where the State Government is of opinion that for the purposes of any departmental inquiry it is necessary to summon as witness any person belonging to, or call for any document from, any class or category of persons, it may, by order authorise the enquiring authority to exercise the powers specified in section 5 in relation to any person within such class or category and thereupon the inquiring authority may exercise such power at any stage of the departmental inquiry:

<sup>1</sup>[Provided that where an officer on the staff of the Lokayukta is the inquiring authority, he may exercise the powers specified in section 5, without any such authorisation.]<sup>1</sup>

1. Inserted by Act 28 of 1986 w.e.f. 06.06.1986

(2) The power conferred on the State Government by sub-section (1) may also be exercised by,-

<sup>1</sup>[(a) xxx]<sup>1</sup>

1. Omitted by Act 28 of 1986 w.e.f. 06.06.1986

(b) the High Court of Karnataka, if the person against whom the departmental inquiry is being held is subject to the control of the High Court of Karnataka under Article 235 of the Constitution;

(c) the Chief Justice of Karnataka if the person against whom the departmental inquiry is being held is an officer or servant of the High Court of Karnataka;

(d) such authority not being an authority inferior to the appointing authority in relation to the person against whom the departmental inquiry is being held, as the State Government may, by notification in the official Gazette, specify in this behalf.

**5. Power of authorised inquiring authority to enforce attendance of witnesses and production of documents.-** (1) Every inquiring authority authorised under section 4 (hereinafter referred to as the "authorised inquiring authority") shall have the same

powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit in respect of the following matters, namely:-

(a) the summoning and enforcing the attendance of any witness from any part of the State and examining him on oath;

(b) requiring the discovery and production of any document or other material which is producible as evidence;

(c) the requisitioning of any public record from any court or office.

(2) Notwithstanding anything contained in sub-section (1), the authorised inquiring authority shall not compel the Reserve Bank of India, the State Bank of India, any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 (Central Act 5 of 1970) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980),-

(a) to produce any book of account or other documents which the Reserve Bank of India, the State Bank of India, the subsidiary bank or the corresponding new bank claims to be of a confidential nature , or

(b) to make any such book or document a part of the record of the proceedings of the departmental inquiry , or

(c) to give inspection of any such book or document, if produced, to any party before it or to any other person.

(3) Every process issued by an authorised inquiring authority for the attendance of any witness or for the production of any document shall be served and executed through the District Judge within the local limits of whose jurisdiction the witness or other person, on whom the process is to be served or executed, voluntarily resides or carries on business or personally works for gain, and, for the purposes of taking any action for the disobedience of any such process, every such process shall be deemed to be a process, issued by the District Judge:

<sup>1</sup>[Provided that where an officer on the staff of the Lokayukta is the inquiring authority, the power conferred by this sub-section may be exercised by such inquiring authority and for the purpose of taking action for the disobedience of any such process, every such process, shall be deemed to be a process issued by a District Judge.]<sup>1</sup>

1. Substituted by Act 28 of 1986 w.e.f. 06.06.1986

(4) Every authorised inquiring authority making any departmental inquiry under this Act, shall be deemed to be a civil court for the purpose of sections 345 and 346 of the Code of Criminal Procedure, 1973(Central Act 2 of 1974).

#### **6. Territorial limits in which powers specified in section 5 may be exercised.-**

For the purpose of exercising the powers specified in section 5, the territorial jurisdiction of every authorised inquiring authority shall extend to the limits of the territory to which this Act extends.

<sup>1</sup>**[6A. Issue of search warrant etc.-** (1) Where, in consequence of information in his possession, the <sup>2</sup>[Lokayukta or Upalokayukta]<sup>2</sup>,-

(A) has reason to believe that any person,-

- (a) to whom a summons or notice under this Act has been or might be issued, will not or would not, produce or cause to be produced any property, document or thing which will be necessary or useful for, or relevant to any inquiry or other proceeding to be conducted <sup>2</sup>[by an inquiring authority appointed by him;]<sup>2</sup>
- (b) is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been disclosed to the authorities for the purpose of any law or rules in force which requires such disclosure to be made; or

1. Inserted by Act 43 of 1981 w.e.f. 05.05.1981

2. Substituted by Act 28 of 1986 w.e.f. 06.06.1986

(B) considers that the purposes of any inquiry or other proceeding to be conducted <sup>1</sup>[by an inquiring authority]<sup>1</sup> will be served by a general search or inspection, he may by a search warrant authorise <sup>2</sup>[any police officer]<sup>2</sup> not below the rank of an <sup>1</sup>[Inspector of Police to conduct a search or to carry out an inspection in accordance therewith and in particular to]<sup>1</sup>,-

1. Substituted by Act 28 of 1986 w.e.f. 06.06.1986

(i) enter and search any building or place where he has reason to suspect that such property, documents, money, bullion, jewellery or other valuable article or thing is kept:

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by sub-clause (i), where the keys thereof are not available:

<sup>1</sup>[(iia) search any person who is reasonably suspected of concealing about his person any article for which search should be made;]<sup>1</sup>

1. Inserted by Act 28 of 1986 w.e.f. 06.06.1986

(iii) seize any such property, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;

(iv) place marks of identification on any property or documents or make or cause to be made extracts or copies therefrom; or

(v) make a note or an inventory of any such property, documents, money, bullion, jewellery or other valuable article or thing .

(2) The provisions of the Code of Criminal Procedure, 1973 relating to search and seizure shall apply, so far as may be, to searches and seizures under sub-section (1).

(3) A warrant issued under sub-section (1) shall, for all purposes, be deemed to be a warrant issued by a court under section 93 of the Code of Criminal Procedure, 1973.]<sup>1</sup>

**7. Power to make rules.-** (1) The State Government may, by notification in the official Gazette, make rules for the purposes of giving effect to the provisions of this Act.

(2) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before each Houses of the State legislature 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, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall from the date on which the modification or annulment is notified by the State Government in the official Gazette have effect only in such modified form or be of no effect, as the case may be : so, however , that the modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**8. Repeal and savings.-** (1) The Karnataka Departmental Inquiries (Enforcement of Attendance of Witnesses and Production of Documents) Ordinance, 1981 (Karnataka Ordinance 4 of 1981) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

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