THE HIMACHAL PRADESH WATER CESS ON HYDROPO GENERATION ACT, 2023

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THE HIMACHAL PRADESH WATER CESS ON HYDROPOWER GENERATION ACT, 2023

(Act No. 7 of 2023)[1]

(Received the assent of the Governor on the 3rd April, 2023 and was published both in Hindi and English in the Rajpatra (e-Gazette), Himachal Pradesh dated 6th April, 2023, pp. 98-122).

An Act to levy water cess on hydropower generation in the State of Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventy-fourth Year of the Republic of India as follows:—

CHAPTER-1

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Himachal Pradesh Water Cess on Hydropower Generation Act, 2023.

(2) It shall be deemed to have come into force on the 10th day of March, 2023.

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

(a)"Commission" means the Himachal Pradesh State Commission for Water Cess on Hydropower Generation established under section 18 of this Act;

(b)"Government" or "State Government" means the Government of Himachal Pradesh;

(c)"hydropower" means a renewable source of energy that generates power by using water drawn from any water source flowing within the territory of the State;

(d)"notification" means a notification published in the Rajpatra (e-Gazette), Himachal Pradesh, and the term "notify" shall be construed accordingly;

(e)"prescribed" means prescribed by rules made under this Act;

(f)"section" means section of this Act;

(g)"user" means any person, group of persons, local body, government department, company, corporation, society or anybody, by whicl

1. Passed in Hindi and English by the Himachal Pradesh Vidhan Sabha. For St see the Rajpatra (e-Gazette), Himachal Pradesh, dated 14th March, 2023, p

11065.

name called drawing water from any source for generation of hydropower;

(h)"water" means natural resource flowing in any river, stream, tributary, canal, nallah or any other natural course of water or stipulated upon the surface of any land like, pond, lagoon, swamp or spring;

(i)"water cess" means the rate levied or charged for water drawn for generation of hydropower and fixed under this Act; and

(j)"water source" means a river and its tributaries, stream, nallah, canal, spring, pond, lake, water course or any other source from which water is drawn to generate hydropower.

CHAPTER-II

USAGE OF WATER BY INSTALLATION OF HYDROPOWER GENERATING UNIT

3. Installation of scheme for usage of water.— (1) No user shall draw water from any source for hydropower generation except in accordance with this Act.

(2) No user shall install a scheme requiring usage of water (non- consumptive use) of any water source for generating hydropower except without being registered by the Commission in accordance with the provisions of this Chapter.

4. Submission of sanctioned scheme for usage of water by the user.—Any user intending to install a scheme requiring usage of water (non- consumptive use) for the purpose of generation of hydropower shall submit detailed project report of the scheme, duly sanctioned by the Director of Energy or Central Electricity Authority or any other authority as the case may be accompanied with application fee for registration under the Act in the manner as may be prescribed.

5. Acceptance of application.—After receipt of the application from a user, the Commission shall consider the acceptance of the application under this Act.

6. Information to the user.—After the application is accepted by the Commission under section 5, the Commission shall register the scheme and inform the user to,-

(a)execute an agreement in such a form and manner with the Commission as may be prescribed; and

(b)pay water cess as fixed under Chapter-IV of this Act.

7. Registration for usage of water.—No person shall install a scheme, requiring usage of water or in any other way use the water, unless he is authorised to do so by a registration certificate, issued under section 8.

8. Grant of registration certificate.—An user intending to use water (non consumptive use) for generation of hydropower shall be issued a registration certificate after the execution of an agreement between the user and the Commission under this Act.

9. Registered user not to do certain things.— No registered user shall without prior approval of the Commission,-

(a)undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other user; or

(b)merge his utility with the utility of any other user; or

(c)at any time assign his registration or transfer his utility or any part thereof by sale, lease, exchange or otherwise.

10. Duties, obligations and responsibilities of the registered user.—(1) The registered user shall be liable to pay water cess for the water drawn for hydropower generation as per the provisions of this Act.

(2) Where any user has constructed a hydropower scheme, for the purpose of generation of hydropower, prior to the commencement of this Act, such user shall, within a period of one month from the date of commencement of this Act, apply for registration and the Commission shall pass an order to register the user within a period of one month from the date of receipt of application in accordance with the provisions of this Act.

(3) If the user as mentioned in sub-section (2) fails to apply for registration within time stipulated therein, the Commission shall forthwith impose water cess without registration on the basis of data of water usage provided by the Directorate of Energy, Himachal Pradesh from the date of commencement of this Act alongwith suitable penalty which may extend to rupees ten lakh and in case of prolonged default with additional fine which may extend to rupees five thousand for every day.

(4) Every registered user shall be under an obligation to ensure the safety of the life and property of inhabitants of the area by the operation of the scheme.

(5) Every registered user shall be bound to allow the Commission or any other officer authorised by the Commission to have an access at any time to the scheme for their satisfaction with regard to compliance of the provisions of this Act.

11. Control and safety provisions.—The Commission may, by notice in writing given to the user require him to cause periodic inspection carried out by an expert, to the satisfaction of the Commission and in accordance with the procedure and at such intervals, as the Commission may specify, for the scheme.

CHAPTER-III
ASSESSMENT OF WATER DRAWN BY USER

12. Assessment of water drawn by user.—(1) The Commission shall install or cause to be installed flow measuring device as per the specifications approved by the Commission within the premises of scheme or at such other place where the Commission deems fit for measuring the water drawn for hydropower generation or may adopt any indirect method for assessment of water drawn by the user.

(2) The expenditure incurred on such installation shall be payable by the user.

13. Damaging the flow measuring device or any fitting.—No person shall wilfully damage or cause to be damaged, any water measuring device or any of the fittings of the device. The user shall be responsible to replace the damaged device forthwith at his own cost failing which penalty of rupees fifty thousand shall be imposed on such user.

14. Fraud in respect of flow measuring devices.—No person shall fraudulently or dishonestly,-

(a) alter the index of any flow measuring device or prevent any device from recording the actual quantity of water supplied; or

(b) extract or draw water before it has been recorded by the measuring device set up for the purpose of recording the same; or

(c) tamper the measuring device, install or use a tampered device; or

(d) use any other device or method which interferes with accurate or proper registration, calibration or metering of water supplied.

CHAPTER-IV

WATER CESS

15. Fixation of water cess.—(1) The user shall be liable to pay the water cess at such rates as the Government may, by notification fix in this behalf.

(2) The State Government may review, increase, decrease or vary the rates of the water cess fixed under this section from time to time in the manner it deems fit.

16. Recovery of water cess.—The Commission shall recover water cess as per the rates fixed by the State Government from every user whenever water is drawn by a user for generation of hydropower.

17. Procedure for assessment.—(1) The assessment of water drawn by the user for hydropower generation and computation of water cess thereof, shall be carried out by the Commission.

(2) The user shall pay the water cess as assessed under sub-section (1) within such time as may be specified by the Commission.

(3) If any user fails to pay water cess due on him, penalty shall be imposed on the user as determined by the Commission. The user has to pay water cess along with penalty within extended time as may be prescribed.

CHAPTER-V

STATE COMMISSION

18. Establishment of the Commission.—(1) The Government may, by notification, establish Commission to be known as the State Commission for water cess on hydropower generation to exercise the powers and to discharge the functions under this Act:

Provided that till the Commission is established under this section, the Secretary (Jal Shakti Vibhag) to the Government of Himachal Pradesh may exercise the powers and discharge the functions of the Commission.

(2) The Commission established under sub-section (1) shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and may, by the said name, sue or be sued.

(3) The head office of the Commission shall be at Shimla.

(4) The Commission shall consist of a Chairperson and not more than four members.

(5) The Chairperson and members of the Commission shall be appointed by the State Government on the recommendations of a Search Committee referred to in sub-section (1) of Section 20.

19. Qualifications for appointment of Chairperson and members of the Commission.—(1) The Chairperson shall be appointed from amongst persons who are either holding or have held a post not below the rank of the Secretary to the State Government or eminent person in public life.

(2) The members of the Commission shall be persons of ability, integrity and standing who have relevant experience of fifteen years and above in the field of engineering, finance, commerce, economics, law or management:

Provided that at least one member shall be from amongst the persons who are either holding or have held a post not below the rank of Chief Engineer or equivalent and having qualification and experience in the field of Hydropower Engineering.

(3) The Chairperson or any member of the Commission shall not hold any other office of the profit.

(4) The Chairperson shall be the Chief Executive Officer of the Commission.

(5) The Commission shall have appropriate structure underneath for support as may be prescribed by the Government.

20. Constitution of Search Committee.—(1) The Government shall, for the purposes of selecting the Chairperson and members of the Commission, constitute a Search Committee consisting of,-

(a)Chief Secretary — Chairperson;

(b)Secretary (Finance) to the Government of Himachal Pradesh — Member;

(c)Secretary (MPP and Power) to the Government of Himachal Pradesh — Member;

(d)Secretary (Jal Shakti) to the Government of Himachal Pradesh — Member; an

(e)Secretary (Law) to the Government of Himachal Pradesh — Member.

(2) The Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or member and six month before the superannuation or end of the tenure of the Chairperson or a member, make a reference to the Search Committee for filling up of the vacancy.

(3) The Search Committee shall finalize the selection of Chairperson or the members within two

months from the date on which the reference is made to it.

(4) Before recommending any person for appointment as Chairperson or member, the Search Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially

his function as such Chairperson or member.

21. Term of office and conditions of service.— (1) The Chairperson and other members shall hold office for a term of three years from the date on which they enters upon their office:

Provided that no Chairperson or member shall hold office after attaining the age of sixty five years.

(2) The salary, allowances and other terms and conditions of service of the Chairperson and the members shall be such as may be prescribed:

Provided that the salary, allowances and other terms and conditions of service of the Chairperson and the members shall not be varied to their disadvantage after their appointment.

(3) The Chairperson and members shall, before entering upon their office, make and subscribe to an oath of office and secrecy in such form and manner and before such authority as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1), the Chairperson or a member may relinquish his office by giving in writing to the Government a notice of not less than three months.

(5) The Chairperson or any member ceasing to hold office as such

shall,-

(a) not be eligible for further appointment under the Gove for a period of two years from the date he ceases to hold such office; and

(b) not accept any commercial employment in the projects or scheme etc. relating to generation of hydropower.

22. Removal of Chairperson or member.—(1) The Chairperson or the

member shall cease to hold his office as such if he,-

(a) has been adjudged as insolvent by the competent Court; or

(b) has been convicted of an offence by the competent Court; or

(c) has become physically or mentally incapable of acting as suc

(d) has acquired such financial or other interest as is likely to aff

prejudicially his function in the Commission.

(2) Where a question arises as to if the Chairperson or the member has become physically or mentally incapable of acting as such or has acquired such financial or other interest as is likely to affect prejudicially his function in the Commission, the decision in this regard shall be taken by the Government and shall be final.

(3) The Government may suspend the Chairperson or any member of the Commission if in the opinion of the Government there are just and sufficient reasons to suspend the Chairperson and member and the proceedings for his removal have been initiated:

Provided that no such order shall be passed without offering an opportunity of being heard against whom such order is proposed to be passed.

23. Officers and other employees of the Commission.— (1) The Commission shall have a Secretary to exercise such powers and perform such duties under the control of the Chairperson, as may be prescribed.

(2) The Secretary shall be appointed by the Government.

(3) The number, nature and categories of other officers and employees required to assist the Commission, to discharge its functions, shall be such as may be prescribed.

(4) The salaries and allowances payable to, and other terms and conditions of the service of the Secretary, officers and other employees shall be such as may be prescribed.

(5) The Commission may engage the engineers and other staff of State Government to assess the water drawn by users and other technical activities to assist the Commission to discharge its functions on such terms and conditions as may be prescribed.

CHAPTER-VI

POWERS, FUNCTIONS AND ACCOUNTS OF THE COMMISSION

24. Functions of the Commission.—The Commission shall discharge the following functions, namely:—

(a) enforce the decisions and orders issued under the Act;

(b) adjudicate upon the disputes regarding water cess;

(c) ensure transparency while exercising the powers and discharging its functions;

(d) establish a system of enforcement, monitoring measurement of water drawn for hydropower genera

(e) such other functions as may be prescribed.

25. Powers of the Commission.—(1) The Commissio of making an inquiry or initiating any proceedings under this Act, shall have the same powers as are vested in a Civil Court, under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

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

(b) discovery and production of any document or other material object capable of being produced as evidence;

(c) receiving of evidence on affidavits;

(d) requisition of any public record;

(e) issuing commission for examination of witnesses;

(f) reviewing its decisions, directions and orders; and

(g) any other matter which may be prescribed.

(2) The Commission shall have the powers to pass such interim any proceeding, hearing or matter before it, as it may consider appropriate.

(3) The Commission may authorize any person, as it may deem fit, to represent the interest of the registered users in the proceedings before it.

26.Proceedings before the Commission.—All proceedings before the Commission shall deemed to be judicial proceedings within the meaning of Sections 193, 214 and 228 of the Indian Penal Code, 1860 (45 of 1860) and the Commission shall deem to be a Civil

Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

27. Power of entry and seizure.—The Commission or any Gazetted Officer, specially authorized in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts of copies therefrom subject to the provisions of the Indian Penal Code, 1860 (45 of 1860).

28. Delegation of powers.—The Commission may, by general or special order in writing, delegate to the Chairperson, any member, Secretary, Officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act, except the powers to adjudicate disputes under section 24 and the powers to make regulations under section 43 as it may deem necessary.

29. Penalty for non-compliance of directions of Commission.—The Commission, on receiving a complaint or otherwise, is satisfied that any user has contravened any of the provisions of this Act or the rules or regulations or any direction issued by the Commission it may after giving such user an

opportunity of being heard, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under the Act, such user shall pay, by way of penalty, such amount which may extend to rupees ten lakh and in case of continuous default with additional fine which may extend to rupees five thousand for each day from the date of such order.

30. Power to adjudicate.—(1) For the purpose of adjudicating disputes under this Act, the Commission shall appoint any of its members to be an adjudicating officer for holding an inquiry in such manner as may be prescribed after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or produce any document which, in the opinion of the adjudicating officer, may be useful for, or relevant to, the subject

matter of the inquiry, and if, on such inquiry, he is satisfied that the person has failed to comply with any provision of this Act, he may impose such penalty as he thinks fit in accordance with the provisions of this Act.

(3) Any person aggrieved by an order under sub-section (2) may, within thirty days of the order, prefer an appeal before the Commission:

Provided that the Commission shall not pass any order against any party without affording an opportunity of being heard:

Provided further that the member so appointed under sub-section (1) above shall not be a part of Bench of Commission before such appeal is filed.

(4) The order passed by the Commission shall be final.

31. Factors to be taken into account by adjudicating officer.—While adjudicating the quantum of penalty under section 29, the adjudicating officer shall have due regard to the following factors, namely:—

(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(b) the repetitive nature of the default.

32. Penalty not to affect other liabilities.—The penalties imposed under this Act shall be in addition to, and not in derogation of, any other liability in respect of payment of compensation.

33. Grants and loans by the Government.— The Government may, after due appropriation made by State Legislature in this behalf, make to the Commission grants and loans of such sums of money as the Government may

consider necessary.

34. Establishment of fund by the Government.—(1) There shall be constituted a fund, to be called the Water Cess on Hydropowers Generation Commission Fund and the following sums shall be credited thereto,-

(a)any grants or loans made to the Commission by the Government;

(b)all fees received by the Commission under this Act; and

(c)all sums received by the Commission from such other sources as may be notified upon by the Government.

(2) The fund shall be applied for meeting,-

(a)the salary, allowances and other remuneration of Chairperson, members, officers and other employees of the Commission;

(b)the expenses incurred to discharge the functions of the Commission under this Act;

(c)the expenses on objects and for the purposes authorised by this Act.

(3) The Government may prescribe the manner of applying the fund for meeting the expenses specified in clause (b) or clause (c) of sub-section (2).

35. Accounts of the Commission.—(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form and manner as may be prescribed.

(2) The annual accounts and balance sheet of the Commission shall be forwarded to the Government and the Government shall cause the same to be laid, as soon as may be after it is received, before the State Legislature.

36. Annual report of the Commission.—(1) The Commission shall prepare, in such form and by such time as may be prescribed, an annual report giving a summary of its activities during the previous year and copies of the report shall be forwarded to the Government.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before the State Legislature.

37. Budget of the Commission.—The Commission shall prepare, in such form and by such time, as may be prescribed, its budget for the next financial year, showing the estimate receipts and expenditure of the Commission and forward the same to the Government.

CHAPTER-VII

MISCELLANEOUS

38. Directions by the Government.—(1) To discharge its funct the Commission shall be guided by such directions in the matters of policy involving public interest as may be given by the State Government.

(2) If any question arises as to whether any such direction relates to a matter of policy involving public interest, the decision of the State Government thereon shall be final.

39. Protection of action taken in good faith.— No suit, prosecution or other proceeding shall lie against any member, officer or other employee of the Commission or any public servant for anything which is in good faith done or intending to be done under this Act or the rules or regulations framed thereunder.

40. Members, officers etc. to be public servants.—The Chairperson, members, officers and other employees of the Commission while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860 (45 of 1860).

41. Provisions of the act to be in addition to and not in derogation of other laws.—The provisions of the Act are in addition to and not in derogation of any other law for the time being in force in the State.

42. Power to make rules.—(1) The Government may, by notification, make rules for carrying out the provisions of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before the Legislative Assembly, while in section for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly make any modification in the rule or decides that the rules should not be made, the rules shall, thereafter, have effect only in such modified form or be of no effect, as the case my be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously

done under that rule.

43. Powers of Commission to make regulations.—(1) Commission may, with the prior approval of the Government, make regulations consistent with the Act and the rules made thereunder generally to carry out the provisions of this Act.

(2) All regulations made by the Commission under the Act shall be subject to the condition of previous publication.

(3) Every regulation made by the Commission shall be laid, as soon as may be after it is made, before the State Legislative Assembly.

44. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Rajpatra (e-Gazette), Himachal Pradesh, make such provisions not inconsistent with the provisions of the Act, as, may appear to be necessary for removing the difficulties:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

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

45. Overriding effect.—The provisions of this Act shall have an effect notwithstanding anything inconsistant contained in any other State law for the time being in force.

46. Repeal and savings.—(1) The Himachal Pradesh Water Cess Hydropower Generation Ordinance, 2023 (H.P. Ordinance No. 2 of 2023) is hereby repealed.

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