

Jammu and Kashmir Brick Kilns (Regulation) Act, 2010

(Act No. 17 of 2010, dated 23.10.2010)

JK004

LEGISLATIVE HISTORY ▼

An Act to regulate and control the establishment of Brick Kilns in the State and to provide for matters connected therewith or incidental thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixty-first Year of the Republic of India as follows :-

1. Short title and commencement. - (1) This Act may be called the Jammu and Kashmir Brick Kilns (Regulation) Act, 2010.

(2) It extends to the whole of the State of Jammu and Kashmir.

(3) It shall come into force on the date[of its publication in the Government Gazette].

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

(a) "*Act*" means the Jammu and Kashmir Brick Kilns (Regulation) Act, 2010;

(b) "*agricultural lands*" mean the land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes land used for or denoted to cultivation of fruit trees;

(c) "*brick*" means any piece of burnt clay having geometrical shape fired in a kiln;

(d) "*consumer*" means a person permitted to acquire bricks under this Act for private or public consumption and not for sale;

(e) "*dealer*" means a person carrying on the business of selling bricks;

(f) "*defunct kiln*" means -

(i) a kiln in existence at the commencement of this Act but in which brick manufacturing operation have not been carried on or are not carried on, for a continuous period of one year prior to such commencement; and

(ii) a kiln whether established before or after such commencement in which brick manufacturing operations are not carried an for a continuous period of one year at any time after the commencement of this Act;

(g) "*existing kiln*" means a kiln carrying on manufacturing operations at the commencement of this Act and includes a kiln in existence at such commencement which is not carrying on brick manufacturing operations but in which bricks manufacturing operations have been carried on at any time within a period of one year prior to such commencement:

Provided that if in such kiln brick manufacturing operations are not carried on within a period of one year after the commencement of this Act, such kiln shall, on the expiry of the said period of one year cease to be an existing kiln and be deemed to be a defunct kiln;

(h) "*Government*" means the Government of the State of Jammu and Kashmir;

(i) "*kiln*" means a structure used for firing bricks;

(j) "*licensing authority*" means an officer appointed as such under section 5;

- (k) "manufacturer" means a person engaged in the production or manufacturing of bricks in a kiln;
- (l) "new brick kiln" means a kiln other than an existing kiln or a defunct kiln; and
- (m) "prescribed" means prescribed by rules made under this Act.

3. Restrictions on establishment of brick kilns. - (1) No person shall, after the commencement of this Act, establish any new brick kiln except under and in accordance with a licence granted under this Act.

(2) No owner of a kiln shall, after the commencement of this Act, continue brick manufacturing operations except under and in accordance with a licence granted under this Act:

Provided that nothing in this sub-section shall apply to an existing kiln for such period as may be specified in this behalf by the Government by a notified order.

(3) No owner of a brick kiln, -

- (a) in respect of which a licence has been granted under section 6, shall carry on brick manufacturing operation in that kiln after the licence has ceased to be valid;
- (b) in respect of which the licence has been revoked or suspended under section 10, shall carry on brick manufacturing operations in that kiln after the revocation or, as the case may be, during the period for which the licence has been suspended;
- (c) shall without the previous permission of the licencing authority, change the location of kiln in respect of which a licence has been granted under section 6;
- (d) shall effect any expansion of the kiln except with the previous permission of the licensing authority where such expansion is not in accordance with terms and conditions of the licence granted under this Act.

Explanation. - For the purpose of clause (a) of this sub-section, the period of validity of a licence shall not be deemed to have expired, if an application for its renewal is pending before the licensing authority.

(4) No person shall establish a brick kiln or apply for renewal unless he/she, -

- (a) produces transfer of land use rights certificate from Revenue Department ;
- (b) produces environment clearance certificate from the Department of Environment and Remote Sensing ;
- (c) has an adequate mud stock as raw material for such brick kiln on an uneven, unproductive land to be certified by the Director, Agriculture.]

4. Establishment of brick kiln. - No brick kilns shall be established on any land which -

- (a) is agricultural land;
- (b) is fit for cultivation of any agricultural produce;
- (c) has not been declared as Banjri-Kadim in the Revenue records; or
- (d) is within the demarcated forest area of the State under the Jammu and Kashmir Forest Act, 190.

5. Appointment of Licensing Authority. - The Government may, by notification in the Government Gazette,-

- (a) appoint such officers of the Government as it thinks fit to be the licensing authorities for the purposes of this Act; and
- (b) define the limits within which such a licensing authority shall exercise the powers conferred on a licensing authority by or under this Act.

6. Grant of licence. - (1) Any person desiring to establish a brick kiln in an area of the State conforming to the conditions laid in section 4, shall make an application to the licensing authority of the area for grant of licence for the establishment of a new brick kiln and for commencing brick manufacturing operations thereon.

(2) Any owner of a defunct kiln desiring to recommence the brick manufacturing operations shall make a like application to the licensing authority of the area for grant of a licence for recommencing the brick manufacturing operations in such kiln.

(3) An owner of an existing kiln shall within thirty days from the commencement of the Act make an application to the licensing authority of the area for the grant of a licence for continuing brick manufacturing operations in that kiln.

(4) Every application under sub-section (1) and sub-section (2) shall be made in the prescribed form and shall contain the particulars regarding the location of brick kiln, the size and type thereof and such other particulars as may be prescribed . It shall invariably be accompanied by the following documents:-

I. site plan and Revenue extract duly attested by concerned Tehsildar indicating the title, location, status and type of land;

II no-objection certificates from -

(i) Deputy Commissioner concerned;

(ii) State Pollution Control Board;

(iii) Divisional Forest Officer concerned;

(iv) Wildlife Warden concerned;

(v) Director, Geology and Mining;

(vi) District Agriculture Officer concerned;

(vii) Block Medical Officer concerned;

(viii) Tehsil Education Officer concerned;

(ix) The Executive Engineer (PWD/R&B) concerned; and

(x) Tehsildar concerned.

(5) If, on receipt of an application for grant of licence, the licensing authority is of the opinion that it is necessary so to do for ensuring adequate supply of bricks, it may, subject to the provisions of sub-section (6),-

(a) grant the licence specifying therein the period within which the kiln is to be established or, as the case may be, the kiln is to recommence brick manufacturing operations;

(b) in the case of the existing kiln grant of licence for continuous brick manufacturing operations in that kiln, on such conditions (including such conditions as to the improvements to existing machinery, replacement of existing machinery and use of such improved methods of brick manufacturing as may be necessary to eliminate air and water pollution) as may be prescribed.

(6) Before granting licence under sub-section (5), the licencing authority shall make or shall cause to be made a full and complete investigation in the prescribed manner in respect of the application having due regard to the following, namely:-

(a) the suitability of the locality wherein the proposed kiln is to be established;

(b) the number of kilns operating in the area;

(c) whether such kiln is not detrimental to the health of general public, habitations, water resources, fauna and flora in close proximity;

(d) whether such kiln is proposed to be set up on land which is or was put to agricultural use, save as that the existing brick kilns, if set up on such land, though categorized as "Banjar Kadim", should be relocated within a period of [seven years] and punitive action shall be taken for non-compliance as per the rules to be framed under this Act;

(e) the setting up of brick kilns should be allowed on the areas considered suitable for the purpose without any detrimental effect to the agricultural/productive land; and

(f) such other particulars conditions as may be prescribed.

(7) A licence granted under this section shall be valid for a period of two years from the date of its issue and may be renewed for a period of two years at a time subject to obtaining of Royalty Clearance Certificate from the Geology and Mining Department.

(8) In granting licence under this section the licensing authority shall give preference to a defunct kiln over a new brick kiln provided it fulfills the criteria laid down under the Act and the rules made thereunder.

7. Registration. - Every person in whose favour a licence for brick kiln has been issued shall seek registration of his brick kiln from the Industries and Commerce Department before he sets up the brick kiln.

8. Fee for licence. - (1) The fee for grant of licence shall be rupees thirty thousand. The renewal fee for such licence shall be rupees ten thousand per annum:

Provided that the Government may, by a notification in the Government Gazette, revise the licence fee and the renewal fee from time to time.

(2) After the licence has been granted, the licensing authority shall forward a copy of licence to the following departments:-

(a) Industries and Commerce Department;

(b) Consumer Affairs and Public Distribution Department;

(c) Commercial Taxes Department;

(d) Geology and Mining Department;

(e) District Development Commissioner; and

(f) Pollution Control Board.

9. Protection of environment. - Every holder of Brick Kiln licence shall abide by the pollution control laws in force and shall take all precautions, adopt such measures and install such devices as prescribed for protection of environment and control of pollution as may be directed by the concerned authority. Air pollution due to dust, exhaust emissions or fumes shall be controlled and kept within permissible limits specified under the relevant laws in vogue from time to time.

10. Revocation or suspension of licence. - (1) If the licensing authority is satisfied, either on a reference made to him in this behalf or otherwise that,-

(a) a licence granted under section 6 has been obtained by misrepresentation as to an essential fact; or

(b) the holder of a licence has without reasonable cause, failed to comply with the conditions subject to which the licence has been granted; or

(c) the holder of the licence has suspended the manufacture and production of bricks without any reasonable cause in order to create artificial scarcity;

(d) the holder of a licence has contravened any of the provisions of this Act or the rules made thereunder;

(e) the holder of a licence has been prosecuted and convicted under section 21 of this Act,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing authority may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted and may also black list the owner of a brick kiln debaring him from issuance of a licence for a period up to ten years.

11. Payment of royalty. - Every kiln owner who is holding a valid licence shall extract and consume the clay for manufacture of bricks after obtaining a proper permit on payment of such royalty as may be prescribed to the Geology and Mining Department subject to revision after every two years. Non-payment of royalty shall make the licensee liable for recovery of royalty, fine, penalty and even cancellation of licence by the competent authority.

12. Power of inspection. - The licensing authority or, any other person authorized by the Government in this behalf shall have the right,-

(i) to enter and inspect any brick kiln;

(ii) to seize or order the production of any document, books, register or records in the possession of owner or any person having control of or employed in connection with any brick kiln if he has reason to believe that contravention of the provisions of this Act or the rules made thereunder has been or is being or is about to be committed;

(iii) to stop and inspect any vehicle or cart in which bricks are being carried for sale, supply or storage or for any other purpose; and

(iv) to seize bricks found in the premises of any person or any vehicle or cart in respect of which he has reasons to believe that contravention of the provisions of this Act or the rules made thereunder has been or is being or is about to be, committed.

Explanation. - The provisions of sections 102 and 103 of the Code of Criminal Procedure, Samvat 1989 relating to search and seizure shall apply to search and seizure under this section.

13. Fixation of price. - The Government may, from time to time, by notification in the Govt. Gazette, fix the maximum prize of bricks for the whole State or for different areas thereof and different prizes may be fixed for different kinds of bricks having regard to the weight, size and compressive strength of bricks and also the ratio of half (broken) bricks per thousand.

14. Quality of bricks. - The bricks manufactured by the licenced kiln owner shall conform to the standards set for such product by the Indian Bureau of Standards or any other agency authorized in this behalf and any variations shall constitute an offence punishable under section 21 of this Act.

15. Restrictions on sale by manufacturer and dealers. - (1) No manufacturer or dealer shall sell or offer for sale or otherwise dispose off, to any person bricks for a price or at a rate exceeding the maximum fixed under section 13.

(2) Where bricks are sold, offered for sale or otherwise disposed off in contravention of sub-section (1), by a manufacturer or dealer or through any person employed by him or acting on his behalf, such person and also unless they prove that they exercised due diligence to prevent such contravention, the manufacturer or dealer, as the case may be, and any person having the charge on behalf of the manufacturer or dealer of the place where such contravention occurred, shall be liable to punishment provided by section 21, whether or not they were present when the contravention occurred.

16. Sale bill. - Every consignment of bricks whether carried by vehicles, carts or any other mode or stored/delivered shall invariably be accompanied by a valid sale bill as prescribed under law in force on the subject indicating the quality, price and tax charged and the consignment not accompanied by such document shall be liable to seizure and the kiln owner shall be subject to prosecution under law.

17. Maintenance of accounts. - Every licensee shall maintain an accurate account of all the purchases of raw material, quantity, sale of bricks and other expenses incurred and such records shall be open to inspection to the licencing authority or any other officer authorized in this behalf by the Government or the Licencing Authority.

18. Refusal to sell. - No manufacturer or dealer shall refuse to sell bricks to any person if he is holding stock for such sale. Such refusal by the manufacturer or dealer shall constitute an offence under the Hoarding and Profiteering Prevention Ordinance, Samvat 2000 and any other law in force on the subject.

19. Delegation of powers. - The Government may, by notification in the Government Gazette, direct that the powers exercisable by it under section 13 shall, subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to it, as may be notified.

20. Appeals. - (1) Any person aggrieved by a decision of the licensing authority may, within a period of thirty days from the date on which the decision is communicated to him, prefer an appeal to Appellate Authority as may be appointed by the Government in this behalf; provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days but not later than sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of any appeal under sub-section (1), the Appellate Authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

21. Penalties. - (1) If any person contravenes or abets contravention of any of the provisions of this Act or the rules made thereunder, he shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees, or with both.

(2) If the person punishable under sub-section (1) is a company or other body corporate, every Director, Manager, Secretary, other Officer or Agent, thereof shall, unless he proves that the contravention took place without his knowledge and that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

22. Cognizance of offence. - No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by licensing authority or any person duly authorized by the Government in this behalf.

23. Licensing authority to be public servant. - The licensing authority and every person duly authorized to discharge any duties imposed on him by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the State Ranbir Penal Code.

24. Power to exempt. - The Government may, by general or special order, exempt any area from the operation of any or all provisions of this Act and may, modify or vary rescind any such order.

25. Protection of action taken under the Act. - No suit, prosecution of other legal proceeding shall lie against any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder. No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything, which is in good faith done or intended to be done in pursuance of this Act, or any rule or order made thereunder.

26. Power to make rules. - (1) The Government may, by notification in the Government Gazette, make rules for carrying out the purposes of this Act.

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

- (a) the form of application for grant of licence under section 6 and the particulars it may contain;
- (b) the manner in which an investigation is to be made in respect of an application for a licence and matters to be taken into account in granting or refusing a licence;
- (c) the form of application for renewal of licence and the particulars it may contain;
- (d) the form of licence which may be granted;
- (e) the conditions subject to which the licence may be granted or renewed;
- (f) the royalty to be paid by a Brick Kiln owner under section 11;
- (g) the form and manner in which appeals may be filed under section 20 and the procedure to be followed by Appellate Authority in disposing of appeals; and
- (h) any other matter which has to be prescribed under this Act.

27. Power to give directions. - The Government may, from time to time, give directions to the licensing authority for carrying out the purposes of this Act and the rules made thereunder.

28. Repeal and saving. - (1) If immediately before the commencement of this Act, there is in force in the State any law, rule or order relating to the matter regulated under this Act that law, rule or order as the case may be, shall stand repealed.

(2) Notwithstanding such repeal, nothing in this Act shall affect validity, effect or consequence of anything done or suffered to be done under the said law, rule or order before the date on which the provisions of this Act come into force.