



THE
JAMMU AND KASHMIR GOVERNMENT GAZETTE

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separate compilation.

PART III

Laws, Regulations and Rules passed thereunder.

GOVERNMENT OF JAMMU AND KASHMIR
CIVIL SECRETARIAT—LAW DEPARTMENT

Srinagar, the 11th September, 2007

The following Act as passed by the Jammu and Kashmir State
Legislature received the assent of the Governor on 8th September, 2007
and is hereby published for general information :—

THE JAMMU AND KASHMIR NON-BIODEGRADABLE
MATERIAL (MANAGEMENT, HANDLING AND DISPOSAL)
ACT, 2007.

Act No. XII of 2007

[8th September, 2007.]

An Act to prohibit and regulate handling and disposal of non-
biodegradable material in the State and the matters connected therewith
and incidental thereto.

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

CHAPTER-I

1. *Short title, extent and commencement.*—(1) This Act may be called the Jammu and Kashmir Non-Biodegradable Material (Management, Handling and Disposal) Act, 2007.

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

(3) It shall come in force on such date as the Government may, by notification in the Government Gazette, appoint and different dates may be appointed for different areas of the State.

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

(a) “Act” means the Jammu and Kashmir Non-Biodegradable Material (Management, Handling and Disposal) Act, 2007 ;

(b) “Biodegradable Material” means the material capable of being destroyed by the action of living beings or natural decay and includes biodegradable waste and garbage ;

(c) “Government” means the Government of Jammu and Kashmir ;

(d) “Non-biodegradable material” means the materials which cannot be decomposed or degraded by action of micro-organisms, sunlight or other natural actions and includes goods made or manufactured from polythene, nylon or other plastic substances specified in the schedule of this Act and also includes non-biodegradable waste and garbage ;

(e) “Occupier” includes—

I. any person who for the time being is paying or is liable to pay the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable ;

II. an owner in occupation of or otherwise using his land or building ;

III. a rent free tenant of any land or building ; and

IV. any person who is liable to pay to the owner damages for the use and occupation of any land or building ;

- (f) "Owner" includes a person who for the time being is receiving or is entitled to receive the rent of any land or building whether on his own account or on account of himself and for others as an agent, trustee, guardian or receiver for any other or who should so receive the rent for being entitled to receive it if the land or building or part thereof were let to a tenant ;
- (g) "Place" means any land, or building or part thereof and includes the garden, the ground and out-houses, if any, appurtenant to a building or part of a building ;
- (h) "Prescribed" means prescribed by rules made under the Act ;
- (i) "Prescribed Authority" means Authority constituted or declared as such under section 3 of the Act ;
- (j) "Schedule" means schedule appended to the Act ; and
- (k) "State" means the State of Jammu and Kashmir.

CHAPTER-II

3. *Constitution of Prescribed Authority.*—(1) The Government shall, with effect from such date, as it may, by notification in the Government Gazette, appoint, constitute a Prescribed Authority to exercise the powers conferred on it and perform the functions that may be assigned to it under the Act :

Provided that the Government may, by notification in the Government Gazette, confer such powers and functions on any existing agency working in the field of pollution abatement, and such agency shall, thereafter, be the Prescribed Authority under the Act.

(2) The Prescribed Authority shall consist of such number of members and having such experience in the relevant field, as the Government may, by notification in the Government Gazette, specify.

4. *Powers and functions of Prescribed Authority.*—(1) Subject to the provisions of the Act, the Prescribed Authority shall perform the following functions, namely :—

- (a) plan a comprehensive programme for prevention, control, safe handling and disposal of non-biodegradable material and wastes and seek execution thereof ;
- (b) advise the Government on any matter concerning the prevention, control, handling and disposal of non-biodegradable material and wastes ;
- (c) collaborate with the Technical Agencies working in the field in organizing the training of persons engaged, to be engaged in programmes relating to prevention, control, handling and disposal of non-biodegradable material and wastes ;
- (d) undertake studies to determine the composition of biodegradable or non-biodegradable material, wastes and garbage ;
- (e) take measures to conduct or support research or programmes to encourage, source reduction, reuse and recycling of wastes ;
- (f) conduct or support to determination of social and economic feasibility of household wastes and other solid waste separation schemes including studies of the type and quantity of recyclable materials in solid waste ;
- (g) regulate and impose restriction on manufacturers, distributors and other persons who produce or handle commodities with respect to the type, size, packaging, labelling and composition of packing ;
- (h) undertake studies for finding out alternatives to polythene and other non-biodegradable materials ;
- (i) develop model mechanisms by incorporating best practices in the field and carry out public awareness ;
- (j) issue binding instructions for carrying into effect the spirit and purposes of the Act ;

(k) perform such other functions as may be prescribed, from time to time or be entrusted to it by the Government ; and

(l) do such other things and perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

5. *Power to give directions.*—(1) In performance of its functions under the Act, the Prescribed Authority shall be bound by such directions as the Government may, from time to time, give it in writing.

(2) The Prescribed Authority may give directions to any person, officer or authority, not being in derogation of the directions of the Government and such person, officer or authority shall be bound by such directions.

Explanation.—For avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power of Prescribed Authority to direct—

- (a) to place or provide or place in proper and convenient situation, public receptacles, depots or places for temporary deposit or collection of non-biodegradable garbage ;
- (b) to provide separate dustbins for temporary deposit of non-biodegradable garbage other than those kept and maintained for deposit of biodegradable garbage ;
- (c) to provide for removal of contents of receptacles, deposits and of the garbage accumulated at all places provided or appointed by it under clause (a) ; and
- (d) to arrange for recycling of the non-biodegradable garbage so collected.

6. *Power of entry and inspection.*—(1) Subject to the provisions of this section, any officer empowered by the Prescribed Authority, shall have right to enter, at all reasonable times, with such assistance as is considered necessary, any place, for the purposes of—

- (i) performing any of the functions entrusted to him by the Prescribed Authority ; or

- (ii) determining whether any provision of this Act or the rules made thereunder, or any notice, order or direction served, made or given under this Act, is being, or has been, complied with ; or
- (iii) examining any record, register, document or any other material object, or for conducting a search of any building in which he has reasons to believe that an offence under this Act or the rules made thereunder has been, or is being, or is about to be committed, and for seizing such record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder.

(2) Every person handling non-biodegradable material shall be bound to render all assistance to the person empowered under sub-section (1) for carrying out the function under that sub-section, and if he fails to do so without any reasonable cause or excuse, he shall be liable to be punished under this Act.

(3) If any person wilfully delays or obstructs any person empowered under sub-section (1) in the performance of his functions, he shall be liable to be punished under this Act.

(4) The provisions of Code of Criminal Procedure, Samvat 1989, shall, so far as may be, apply to any such search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

(5) Any non-biodegradable material seized under this section, shall be disposed of in the prescribed manner.

CHAPTER-III

7. *Power to declare non-biodegradable material control area.*— (1) The Government may, after consultation with Prescribed Authority, by notification in the official Gazette, declare in such manner as may be prescribed any area to be non-biodegradable material control area for the purposes of the Act.

(2) The Government may, after consultation with the Prescribed Authority,—

- (a) alter any non-biodegradable material control area whether by way of extension or reduction ; or

(b) declare new non-biodegradable material control area in which may be merged one or more existing non-biodegradable material control areas of any part or parts thereof.

(3) If the Government, after consultation with the Prescribed Authority, is of the opinion that the use of any kind of non-biodegradable material in any non-biodegradable material control area or part thereof may cause or is likely to cause environmental, health or other problems, it may, by notification in the Government Gazette, ban, prohibit or restrict the use of such non-biodegradable material in non-biodegradable area or part thereof with effect from such date being not less than one month from the date of publication of notification as may be specified in the notification.

(4) With the prior approval of the Government, the Prescribed Authority may, by general or special order, impose restrictions on manufacturers, distributors and other persons who produce or handle commodities made of non-biodegradable material, with respect to the type, size, thickness, labelling and composition of the packaging, use and disposal including standards or norms for material degradability and recyclability in any non-biodegradable material control area or part thereof.

8. *Handling and disposal of waste.*—(1) Subject to the provisions of the Act, any non-biodegradable material used by the people shall be handled and disposed of in the manner as may be prescribed.

(2) The Prescribed Authority may, by notice in writing, require the owner or occupier or part owner or person claiming to be the owner or partner of any land or building which in the opinion of the Prescribed Authority has become a place of unauthorized stocking or deposit of non-biodegradable material or garbage and is likely to cause nuisance, remove or cause to be removed the said non-biodegradable material or garbage so stocked or collected and if such stocking or collection of non-biodegradable material or garbage is likely to damage the drainage and sewerage system or is likely to be dangerous to life and health, the Prescribed Authority shall forthwith take such steps at the cost of such persons as it may think necessary and any balance outstanding shall be recoverable from the person or persons concerned as arrears of land revenue.

9. *Prohibition to throw biodegradable and non-biodegradable garbage in public drains, natural or man made lakes, wetlands.*—(1) No person, by himself or through another, shall knowingly or otherwise, throw or cause to be thrown, in any drain,

ventilation, shaft, pipe and fittings, connected with the private or public drainage works, natural or man made lakes, wetlands any non-biodegradable garbage or construction debris or any biodegradable garbage by placing in a non-biodegradable bag or container likely to—

- (i) injure the drainage and sewage system ;
- (ii) interfere with the free flow or affect the treatment and disposal of drainage and sewage contents ;
- (iii) be dangerous or cause a nuisance or be prejudicial to the public health ; and
- (iv) damage the lakes, rivers or wetland.

(2) No person shall, knowingly or otherwise, place or permit to be placed, except in accordance with such procedure and after complying with such safeguards as may be prescribed, any biodegradable or non-biodegradable garbage in any public place open to public view, unless—

- (a) the garbage is placed in any receptacle ; or
- (b) the garbage is deposited in a location designated by a local authority having jurisdiction in the area for the disposal of such garbage.

CHAPTER-IV

10. *Penalties.*— (1) Whoever is guilty of any act of commission or omission in contravention of any of the provisions of the Act, or of any rules, notification or order made, issued or given under this Act, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to Rs. 5000/- or with both.

(2) If a person having been convicted of an offence punishable under this Act is again convicted under the Act, he shall be punishable for the second or subsequent offence for a term of imprisonment which may extend up to two months and shall also be liable to fine which may extend up to Rs.10,000/-.

(3) Whoever in any manner aids, abets or assists in the commission of an offence under the Act shall, on conviction, be punished with imprisonment prescribed for the offence.

11. *Offences by companies.*—(1) Where an offence punishable under the Act is committed by a company, any person who at the time of commission of the offence was in charge of, and responsible for, the conduct of the business of the company as well as the company shall be liable for punishment as prescribed under section 10 of the Act :

Provided that nothing contained in this sub-section shall render any such person liable for punishment, if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under the Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any gross negligence on the part of any Director, Manager, Secretary or other Officer, such Director, Manager, Secretary or other Officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished under the Act.

Explanation :—For the purpose of this section—

- a. Company means any body corporate and includes firm or other association of individuals; and
- b. Director in relation to a firm includes the partner in the firm.

12. *Offences to be tried summarily.*—All offences under this Act, shall be tried in a summary way by Judicial Magistrate of First Class and the provisions of sections 260 to 265 (both inclusive) of the Code of Criminal Procedure, Samvat 1989 shall, as far as may be, apply to such trials.

13. *Compounding of offences.*—(1) Any offence punishable under the Act, may before the institution of the prosecution, be compounded by such officer as may be authorized by the Government in this behalf, on payment, of such sum as such Officer may order which shall not exceed the amount of fine prescribed for such offence.

(2) Where any offence has been compounded under sub-section (1) no proceedings shall be taken against the offender, in respect of the offence as compounded and the offender, if in custody, shall be discharged.

14. *Power of delegation.*—The Government may, by order published in the Government Gazette, direct that any power exercisable by it or by the Prescribed Authority under the Act (not including the power to make rules under section 17), may also be exercised in such cases as may be specified in the order, by such officer of the Prescribed Authority, as may be specified therein.

15. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government or the Prescribed Authority or any Officer or other employee of the Government or of the Prescribed Authority or any other person authorized by the Government for any thing which is, in good faith done or intended to be done under the Act or the rules made thereunder.

16. *Effect of other laws.*—The provisions of the Act are in addition to and not in derogation of the provisions of any other law for time being in force on the subject.

17. *Power to make rules.*—(1) The Government may, with the constitution or declaration of the Prescribed Authority, make rules to carry out the purposes of the Act :

Provided that after constitution or declaration of the Prescribed Authority, as the case may be, no rule shall be made, varied, amended or repealed without consulting the Prescribed Authority.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the functions of the Prescribed Authority and/or terms and conditions and powers and functions of the officers of such Prescribed Authority.

SCHEDULE I

[See section 2 (i)]

Non-Biodegradable Material

- I. Acetyl.
- II. Acrylic.
- III. Cellulose Acetate.
- IV. Cellulose Acetate Butyrate.
- V. Construction debris.
- VI. Electronic waste
- VII. HIPS.
- VIII. Nylon.
- IX. Plastic strips used for packaging.
- X. Polycarbonate.
- XI. Polyethylene.
- XII. Polyethylene Terephthalate (PET).
- XIII. Polypropylene.
- XIV. Polystyrene.
- XV. Polyvinyl Chloride (PVC).
- XVI. Thermocol.

(Sd.) G. H. TANTRAY,

Special Secretary to Government,