

PLA 277/92
(Pof-A)

THE ESSENTIAL SERVICES MAINTENANCE (ASSAM) ACT, 1980

(No. 41 of 1980)

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[Received the assent of the President on 19th July, 1980]

An Act to provide for the maintenance of essential services and the normal life of the community in Assam

Be it enacted by Parliament in the Thirty-first year of the Republic of India as follows:

1. Short title and extent. (1) This Act may be called the Essential Services Maintenance (Assam) Act, 1980.

(2) It extends to the whole of the State of Assam.

NOTES

Objects and Reasons. By this Act certain Essential Services, as defined, have been covered within its purview, whereby not only strikes by the employees in such services have been declared illegal but also there are provisions for penalty for those instigating or giving financial aid to such employees to resort to strike. The Industrial Disputes Act contains the provisions relating to strikes etc. Section 2 (q) of the Industrial Disputes Act defines 'strike', which means cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons, who are or have been so employed to continue to work or to accept employment. It was decided in *All India Bank Employees' Association v. National I. T.* [1962 (3) SCR 269] referred with approval in *Maneka Gandhi v. Union of India* [1978 (2) SCR 621 (701)], that the right to strike could not by implication be treated as part of the right to form association guaranteed by Art. 19 (1) (c) of the Constitution. Sections 22 and 23 when read together prohibits strikes in a Public Utility Service. The intention of the legislature was that there should be enough safeguard in matters of public utility service as otherwise it would result in great inconvenience to the society and the general public. The

prohibition of strike in the circumstances mentioned in Ss. 22 and 23 of the Act is based on public policy. But the present Act totally prohibits strike in essential services as defined and declares it illegal. Prohibition of financial aid to illegal strikes is also provided under S. 25 of the Industrial Disputes Act.

2. Definitions. (1) In this Act, unless the context otherwise requires,—

(a) "appropriate Government" means—

- (i) in relation to any service connected with matters relatable to any of the entries enumerated in List I in the Seventh Schedule to the Constitution—the Central Government ;
- (ii) in relation to any service connected with matters relatable to any of the entries enumerated in List II in the Seventh Schedule to the Constitution—the State Government of Assam ; and
- (iii) in relation to any service connected with matters relatable to any of the entries enumerated in List III in the Seventh Schedule to the Constitution—the Central Government and the State Government of Assam ;

(b) "essential services" means—

- (i) any postal, telegraph or telephone service ;
- (ii) any railway service or any other transport service for the carriage of passengers or goods by land, water or air ;
- (iii) any service connected with the loading and unloading of goods ;
- (iv) any service connected with the operation or maintenance of aerodromes or with the operation, repair or maintenance of aircraft ;
- (v) any service connected with the clearance of goods or passengers through the customs or with the prevention of smuggling ;
- (vi) any service in any establishment of, or connected with the armed forces of the Union or in any other establishments or installations connected with defence ;
- (vii) any service in any section of any industrial establishment or undertaking on the working of which the safety of such establishment or undertaking or the employees employed therein depends ;
- (viii) any service in, or in connection with, the working of any undertaking owned or controlled by the Government being an undertaking engaged in the purchase, procurement, storage, supply or distribution of foodgrains ;
- (ix) any service in any system of public conservancy or sanitation ;
- (x) any service in connection with or in relation to banking ;

- (xi) any service in any establishment or undertaking dealing with the production, supply and distribution of coal ;
- (xii) any service in any oilfield or refinery or in any establishment or undertaking dealing with the production, supply or distribution of petroleum and petroleum products ;
- (xiii) any service in connection with the affairs of the Union or the State of Assam not being a service specified in any of the foregoing sub-clauses ;
- (xiv) any other service connected with matters with respect to which Parliament or the Legislative Assembly of the State of Assam has power to make laws and which the Central Government or the Government of Assam, as the case may be, being of opinion that strikes therein would prejudicially affected the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the official Gazette, declare to be an essential service for the purposes of this Act ;
- (c) "Strike" means the cessation of work by a body of persons employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or who have been so employed to continue to work or to accept employment, and includes—
- (i) refusal to work overtime where such work is necessary for the maintenance of any essential service ;
- (ii) any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service.

(2) Every notification issued under sub-Cl. (xiv) of Cl. (b) of sub-S. (1) shall be laid before each House of Parliament immediately after it is made if it is in session and on the first day of the commencement of the next session of the House if it is not in session, and shall cease to operate at the expiration of forty days from the date of its being so laid or from the re-assembly of Parliament, as the case may be, unless before the expiration of that period a resolution approving the issue of the notification is passed by both Houses of Parliament.

Explanation. Where the Houses of Parliament are summoned to re-assemble on different dates, the period of forty days shall be reckoned from the later of those dates.

(3) Any reference in this Act to any law which is not in force in any area of the State of Assam and to any authority under such law shall, in relation to that area, be construed as a reference to the corresponding law in force in that area and to the corresponding law.

3. Power to prohibit strikes in certain employments. (1) If the appropriate Government is satisfied that in the public interest it is necessary or expedient so to do, it may, by general or special order, prohibit strikes in the State of Assam in any essential service specified in the order.

(2) An order made under sub-S. (1) shall be published in such manner as the appropriate Government considers best calculated to bring it to the notice of the persons affected by the order.

(3) An order made under sub-S. (1) shall be in force for six months only, but the appropriate Government may, by a like order extend it for any period not exceeding six months if it is satisfied that in the public interest it is necessary or expedient so to do.

(4) Upon the issue of an order under sub-S. (1),—

(a) no person employed in any essential service to which the order relates shall go or remain on strike ;

(b) any strike declared or commenced whether before or after the issue of the order, by persons employed in any such service shall be illegal.

4. Dismissal of employee participating in illegal strikes. Any person who commences a strike which is illegal under this Act or goes or remains on, or otherwise takes part in any such strike shall be liable to disciplinary action (including dismissal) in accordance with the same provisions as are applicable for the purpose of taking such disciplinary action (including dismissal) on any other ground under the terms and conditions of service applicable to him in relation to his employment.

5. Penalty for illegal strikes. Any person who commences a strike which is illegal under this Act, or goes or remains on, or otherwise takes part in, any such strike shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

6. Penalty for instigation etc. Any person who instigates or incites other persons to take part in, or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to two thousand rupees, or with both.

7. Penalty for giving financial aid to illegal strikes. Any person who knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.

8. Power to arrest without warrant. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

9. Offences to be tried summarily. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act shall be tried in a summary way by a Judicial Magistrate of the first class specially empowered in this behalf by the appropriate Government and the provisions of Ss. 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

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Provided that in the case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for any term for which such offence is punishable under this Act.

10. **Act to override other Laws.** The provisions of this Act and of any order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force.

11. **Repeal and saving.** (1) The Essential Services Maintenance (Assam) Ordinance, 1980 (2 of 1980) 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, as if this Act had come into force on the 6th day of April, 1980.