

THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2006

ACT NO. 1 OF 2006

[3rd January, 2006]

An Act to amend the Prevention of Corruption Act, Samvat 2006.

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

1. Short title and commencement.—(1) This Act may be called the Prevention of Corruption (Amendment) Act, 2005.

2. It shall come into force from the date of its publication in the Government Gazette.

2. Amendment of section 2 in Act XIII of Samvat 2006.— The existing section 2 of the Prevention of Corruption Act, Samvat 2006 (hereinafter referred to as ‘the principal Act’) shall be renumbered as sub-section (2) thereof and before the sub-section (2), as so renumbered, the following sub-section (1) shall be inserted namely :—

“(1) In this Act, unless the context otherwise requires :—

(a) “Designated Authority” shall mean such office of the Government not below the rank of Secretary to Government, as may be specified by the Government by notification in the Government Gazette ;

(b) “Property” shall mean property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property of assets and includes bank account and proceeds of such property and assets ;

(c) “Vigilance Organization” shall mean the Vigilance Organization established under sub-section (1) of section 10”.

3. Amendment of section 5, Act XIII of Samvat 2006.— Explanation to clause (e) of sub-section (1) of section 5 of the principal Act shall be omitted.

4. Insertion of sections 8-B, 8-C, 8-D, 8-E and 8-F in Act XIII of Samvat 2006.—After section 8-A of the principal Act, the following sections shall be inserted namely :—

5. Powers of the Investigating Officers :—(1) If an officer (not below the rank of Superintendent of Police) of the Vigilance Organization, investigating an offence committed under this Act, has reason to believe that any property in relation to which an investigation is being conducted has been acquired by resorting to such acts of omission and commission which constitute an offence of ‘criminal misconduct’ as defined under section 5, he shall, with the prior approval in writing of the Commissioner of Vigilance Organization, make an order seizing such property and, where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order or of the Designated Authority before whom the

properties seized or attached are produced and a copy of such order shall be served on the persons concerned :

Provided that the Investigating Officer may, at any stage of investigation after registration of F.I.R in respect of any case under the Act where he has reason to believe that such property is likely to be transferred or otherwise dealt with to defeat the prosecution of the case direct, with the prior approval of the Vigilance Commissioner, that such property shall not be transferred or dealt with for such period, not exceeding ninety days, as may be specified in the order except with the prior approval of the Designated Authority.

(2) The Investigating Officer shall inform the Designated Authority, within forty-eight hours, of the seizure or attachment of such property together with a report of circumstances occasioning the seizure or attachment of such property, as the case may be.

(3) It shall be open to the Designated Authority before whom the seized or attached properties are produced either to confirm or revoke the order to seizure or attachment so issued within seven days :

Provided that an opportunity of being heard is afforded to the Investigating Officer and the person whose property is being attached or seized before making any order under this sub-section.

Provided further that till disposal of the case the Designated Authority shall ensure the safety and protection of such property.

(4) In the case of immovable property attached by the Investigating Officer, it shall be deemed to have been produced before the Designated Authority, when the Investigating Officer notifies his report and places it at the disposal of the Designated Authority.

(5) Any person aggrieved by an order under the provision to sub-section (1) may apply to the Designated Authority for grant of permission to transfer or otherwise deal with such property.

(6) The Designated Authority may either grant, or refuse to grant, the permission to the applicant.

(7) The Designated Authority, acting under the provisions of this Act, shall have all the powers of a civil court required for making a full and fair enquiry into the matter before it.

6. Appeal against the order of Designated Authority.—(1) Any person aggrieved by an order made by the Designated Authority under sub-section (3) or sub-section (5) or section 8-B may prefer an appeal to the Special Judge (Anti-Corruption) (hereinafter referred to as Special Court) and Special Court may either confirm the order of attachment of property of seizure so made or revoke such order and release the property or pass such order as it may deem just and proper within a period of sixty days.

(2) Where any property is seized or attached under section 8-B and the Special Court is satisfied about such seizure or attachment, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached is prosecuted in the Special Court for an offence under this Act.

(3) It shall be competent for the Special Court to make an order in respect of property seized or attached :—

- (a) directing it to be sold if it is a perishable property and the provisions of section 525 of the Code of Criminal Procedure, Samvat 1989 shall, as nearly as may be practicable, apply to the net proceeds of such sale ;
- (b) nominating any officer of the Government in case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the Special Court.

7. Issue of show cause notice before forfeiture of the property.—No order under sub-section (2) of section 8-C shall be made by the Special Court ;

- (a) Unless the person holding or in possession of such property is given a notice in writing informing him of the grounds on which it is proposed to forfeit such property and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.
- (b) If the person holding or in possession of such property establishes that he is a bona fide transferee of such property of value without knowing that such property has been so acquired.

8. Appeal.—(1) Any person aggrieved by order of forfeiture under section 8-C may within one month from the date of the receipt of such order, appeal to the High Court.

(2) Where any order under section 8-C is modified or annulled by the High Court or where in a prosecution instituted for the contravention of the provisions of this Act, the person against whom an order of forfeiture has been made is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price as per prevailing market rate therefore as if the property had been sold to the Government with reasonable interest calculated from the date of seizure of the property and such price shall be determined in the manner prescribed.

9. Order of forfeiture not to interfere with other punishments.— The order of forfeiture made under this Act by the Special Court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under this Act.”

(Sd.) G. H. TANTRAY,

Special Secretary to Government,

Law Department