

Amendments

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PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL DEPARTMENT OF ENVIRONMENT

NOTIFICATION

No. EN/626/T-II-7/003-i/2003

Kolkata, the 3rd March, 2009.

In exercise of the power conferred by section 63 of the Biological Diversity Act, 2002 (18 of 2003), the Governor is pleased hereby to make the following amendments in the West Bengal Biological Diversity Rules, 2005 (hereinafter referred to as the said rules), published vide No. EN/136/T-II-7/005/2004 Dated Kolkata, the 27th January, 2006 in the *Kolkata Gazette, Extraordinary*, dated 2nd May, 2006 :—

Amendments

In the said rules, —

(1) for rule 3, *substitute* the following rule :—

“3. Manner of selection and appointment of Chairperson. — (1) The Chairperson shall be nominated by the Government either for whole time or for part time from the outside or on deputation from the Government.

(2) (a) The selection of the Chairperson on deputation basis shall be made by a Selection Committee comprising of the following members :—

(i) Chief Secretary — Chairman

(ii) Secretary, Department of Environment — Member Convener;

(iii) Three persons to be nominated by the State Government, of whom at least one shall be an expert on conservation of biodiversity or natural resources — Members

(b) The Committee referred to in clause (a) shall select the Chairperson from a panel of officers and eminent persons having adequate knowledge and experience in conservation and sustainable use of biodiversity as well as equitable sharing of benefits, to be prepared by the State Government.”;

- (2) in rule 5, –
- (a) in sub-rule (2), for the words “such other benefits”, *substitute* the words “such other benefits and allowances”;
- (b) *omit* sub rule (3);
- (3) in rule 6, for the words “an *ex officio* member”, *substitute* the words “*ex officio* members”;
- (4) in rule 7, for the words “*ex officio* member”, *substitute* the words “*ex officio* members”;
- (5) in rule 11, –
- (a) for sub-rule (1), *substitute* the following sub-rule :–

“(1) The Board shall appoint the Secretary on deputation from amongst the officers, not below the rank of Joint Secretary to the Government of West Bengal, having experience in the day to day office administration including the accounting matters and preferably in jobs relating to natural resources.”;

- (b) in sub-rule (3), for clause (b), *substitute* the following clause :–

“(b) coordinating and convening the meeting of the Board as per advice of the Chairperson.”;

- (6) in rule 12, for sub-rule (2), *substitute* the following sub-rule :–

“(2) The Chairperson shall, upon a written request from not less than one third of the members of the Board or upon a direction of the State Government, call a special meeting within a reasonable time.”;

- (7) for rule 13, *substitute* the following rule :–

“13 General functions of Board. – The Board shall perform the following functions namely:–

- (a) to advise the State Government on all matters relating to the conservation of biological diversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources;
- (b) to lay down the procedure governing the activities specified in section 23;
- (c) to regulate by granting of approvals or otherwise, requests for commercial utilization of bio-survey and bio-utilization of any biological resources of the State by Indians;
- (d) to coordinate the activities of the Biodiversity Management Committees;
- (e) to provide technical assistance and guidance to the Biodiversity Management Committees;
- (f) to give directions to the Biodiversity Management Committees for effective Implementation of the Act;
- (g) to commission studies and sponsor investigations and research concerning conservation and sustainable use of biological diversity, bio-survey and bio-utilization and other relevant subjects;
- (h) to engage consultants, each for a specific period not exceeding three years, for providing technical assistance to the Board in effective discharge of its functions, provided that if it is necessary to engage a consultant beyond the period of three years, the Board shall seek prior approval of the State Government for engaging the consultant beyond such period;
- (i) to collect, compile and publish technical and statistical data, manuals, codes and guidelines relating to conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and knowledge;
- (j) to organize through mass media programmes regarding conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and associated knowledge and practices;

- (k) to plan and organize training of personnel engaged or to be engaged in programmes for conservation of biodiversity and sustainable use of its components;
 - (l) to prepare the annual budget of the Board ;
 - (m) to create the posts of officers and other employees of the Board, with prior approval of the State Government, for effective discharge of its functions ;
 - (n) to build up data base and to create information and documentation system for biological resources and associated traditional resources and associated traditional knowledge through biological diversity registers and electronic media ;
 - (o) to report to the State Government about the functioning of the Board and the implementation of the Act ;
 - (p) to sanction grants for specific purposes to the Biodiversity Management Committees ;
 - (q) to undertake physical inspection of any area in connection with the implementation of the Act ;
 - (r) to assist the National Biodiversity Authority in opposing grant, outside India, of any intellectual property right on any biological resources or associated knowledge obtained from the State in an unlawful manner ;
 - (s) to do such other functions as may be assigned or directed by the State Government or the National Biodiversity Authority.”;
- (8) in rule 15, -
- (a) for sub-rule (1) *substitute* the following sub-rule :-

“(1) Every person, who is a citizen of India, or body corporate, or association or organization, which is registered in India, intending to undertake any activity referred to in section 7 shall give an intimation by way of an application to the Board in the form appended to these rules before sixty days of undertaking such activity:

Provided that the Board shall have power to call upon any such person, body corporate, association or organization to furnish such information or documents for examination, which, in opinion of the Board, is necessary for undertaking such activity.

(1a) Every application made under sub-rule (1) shall be accompanied by a fee of five thousand rupees in the form of a demand draft, drawn in favour of the Board.”;
 - (b) for sub-rule (2), *substitute* the following sub-rule:-

“(2) On receipt of the application under sub-rule (1), the Board shall, after consultation with the concerned local bodies and after making such enquiries as it may deem necessary, issue order of approval within a period of forty-five days subject to such conditions as mentioned in sub-rule 5.”;
 - (c) in sub-rule (3), for the words “The Board may,” *substitute* the words “While issuing the order of approval as mentioned in sub-rule (2), the Board may,”;
 - (d) *omit* sub-rule (4);
 - (e) for sub-rule (5) *substitute* the following sub-rule :-

“(5) The order conveying approval of the Board referred to in sub-rule (2) shall *inter alia* include any or all of the following conditions:-

 - (a) restriction to transfer the accessed biological resources and associated traditional knowledge to any third party without prior approval of Board;
 - (b) obligation of the applicant to adhere to a limit set by the Board on the quality, of biological resources for which the applicant is seeking access;

- (c) guarantee to deposit with the repositories designated under section 39 a reference sample of the biological resources sought to be accessed to;
 - (d) submission of regular status report of research and other development to the Board;
 - (e) commitment to abide by the provisions of the Act, and the rules, regulations and orders made thereunder;
 - (f) commitment to take measures for conservation and sustainable use of biological resources sought to be accessed to;
 - (g) commitment to minimize environmental impacts on account of the collection activities;
 - (h) the measures to be taken by the applicant for conservation and protection of biological resources to which such access is being approved;
 - (i) such other conditions or restrictions as the Board may deem fit and proper to impose having regard to the nature and description of the biological resources.”;
- (f) *omit* sub-rule (6);
- (g) in sub-rule (7) *omit* the words “through print and electronic media”;
- (9) in rule 16 (1),-
- (a) in sub-rule, -
 - (i) in clause (b), for the words “terms and conditions of the agreement”, *substitute* the words “terms and conditions of the order of approval”,
 - (ii) *omit* the words “and rescind the written agreement”,
 - (b) in sub-rule (2), for the words “recovering the damage”, *substitute* the words “recovering the damages”,
- (10) in rule 17,-
- (a) for the words “after an enquiry is held and the person to be affected thereby is given an opportunity of being heard, by order, restrict or prohibit the access to biological resources.”, *substitute* the words “after making such enquiry, as it may deem necessary, restrict or prohibit the access to biological resources:”, and
 - (b) *add* the following proviso:-

“Provided that no order for prohibiting or restricting any such activity shall be made without giving an opportunity of being heard, to the person to be affected thereby.”;
- (11) in rule 18, -
- (a) for sub-rule (1), *substitute* the following sub-rule :-

“(1) The State Biodiversity Fund shall be operated jointly by such officers of the Board as authorized in this behalf by the State Government.”;
 - (b) in sub-rule (2), for clause (a), *substitute* the following clause :-

“(a) receipts from the Central Government or National Biodiversity Authority;”;
- (12) in rule 20,-
- (a) for sub-rule (2), *substitute* the following sub-rule :-

“(2) The State Government may, on recommendation of the Board and in consultation with local bodies, notify in the *Official Gazette* areas of biodiversity importance as biodiversity heritage sites under the Act.”;

(b) after sub-rule (2), *insert* the following sub-rules :-

“(3) The conservation and management of biodiversity heritage site shall be guided by the following principles:-

- (a) every Biodiversity Management Committee shall, in addition to its duties defined in the Act, undertake the responsibility for management of each biodiversity heritage site located within its jurisdiction;
- (b) the State Biodiversity Board shall constitute a Technical Support Group to facilitate the documentation, conservation and management of biodiversity heritage sites;
- (c) it shall be the responsibility of the Biodiversity Management Committee to prepare a five year management plan for the biodiversity heritage site in consultation with the State Biodiversity Board and with the support of the Technical Support Group and others (if required), and submit the same to State Biodiversity Board for approval;
- (d) the State Biodiversity Board will then examine the management plan, and approve the plan with such amendment and conditions, as it may deem necessary ;
- (e) the approved management plan shall be implemented by the concerned Biodiversity Management Committee under the guidance of Technical Support Group and the State Biodiversity Board ;
- (f) the approved management plan shall be reviewed and modified periodically in a manner to be decided by the State Biodiversity Board.

(4) The Board may constitute a Monitoring Committee, for a period of three years, comprising of members (not exceeding nine) to be selected from the Technical Support Group and such other experts/knowledgeable individuals, as the State Biodiversity Board may consider necessary, for monitoring the implementation of the approved management plan periodically and submit report to the State Biodiversity Board:

Provided that the Board may re-constitute Monitoring Committee on expiry of the said period of three years.”;

(13) in rule 21,-

(a) in sub-rule (1), for the proviso, *substitute* the following proviso :-

“Provided that in *Panchayat* area, a Biodiversity Management Committee may be constituted at the District or *Zilla Parishad* level.”;

(b) for sub-rule (6), *substitute* the following sub-rule :-

“(6) The local members of the Parliament and Legislative Assembly shall be special invitee to the meeting of a Biodiversity Management Committee.”;

(c) in sub-rule (8), *omit* the words “concerning grant of approval”;

(d) for sub-rule (12), *substitute* the following sub-rule :-

“(12) The Biodiversity Management Committee shall assist the Board to determine and periodically update the status of regeneration of all important species and the quantum available within its area.”;

(e) for sub-rule (13), *substitute* the following sub-rule :-

“(13) The Biodiversity Management Committee shall promote conservation of cultivators, folk varieties and landraces under the technical guidance of the Board.”;

(14) in rule 22, for sub-rule (2), *substitute* the following sub-rule :-

“(2) The Local Biodiversity Fund shall be operated jointly by-

- (a) the Chairperson, or in his absence any other member duly authorised in this behalf, and
- (b) such other officer of the Biodiversity Management Committee as may be authorized in this behalf by such Committee.”;

(15) after rule 22, *insert* the following rules :-

“23. Annual report of the Biodiversity Management Committee. - The Chairperson, or the member who has been delegated to jointly operate the Local Biodiversity Fund in place of the Chairperson, shall prepare the annual report of the Biodiversity Management Committee giving full account of its activities during the previous financial year and submit a copy thereof to the concerned local body by 30th September of each year.

24. Audit and accounts of Local Biodiversity Fund. - The accounts of the Local Biodiversity Fund shall be maintained and audited in the manner as the Chairperson, or the member to whom the power as such has been delegated, may determine in consultation with the Accountant General, West Bengal and on completion of the audit, it shall furnish its audited copy of accounts together with auditor's report thereon, to the concerned local body before 30th September of each year.

25. Submission of annual report etc. of the Biodiversity Management Committee. - Every local body constituting a Biodiversity Management Committee under sub-rule (1) of rule 21, shall submit the annual report and the audited copy of accounts together with auditor's report relating to any Biodiversity Management Committee to the District Magistrate having jurisdiction over the area of the local body.”.

By order of the Governor,

D. K. AGASTY,
Jt. Secy. to the Govt. of West Bengal.