The Jammu and Kashmir Aid to Industries Act, 1961

Act 22 of 1961

Keyword(s):
Borrower, Company, Industry, Village Industry, Machinery

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THE JAMMU AND KASHMIR STATE AID TO INDUSTRIES
ACT, 1961.


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1. XVIII of 1962
THE JAMMU AND KASHMIR STATE AID TO INDUSTRIES ACT, 1961.


[Received the assent of the Sadar-i-Riyasat on 29th March, 1961 and published in Government Gazette dated 1st April, 1961.]

An Act to encourage the development of Industries in the State of Jammu and Kashmir by the grant of State Aid.

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

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Jammu and Kashmir State Aid to Industries Act, 1961.

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

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) "Board" means the Board of Industries constituted under section 3 of this Act;

(2) "borrower" means an individual, Company or association or body of individuals, whether incorporated or not, to whom or to which State aid has been granted under this Act;

(3) "Company" means a company as defined in the law relating to companies in force in the State for the time being;

(4) "Director" means the Director of Industries and includes any officer authorised by the Government to perform all or any of the functions of the Director under this Act;

(5) "industry" means any industrial business or enterprise conducted or undertaken either by an individual or by a Company association or body of individuals whether incorporated or not; and includes village and cottage Industry;
(6) "village Industry" means an industry which forms the normal occupation, whether wholetime or part-time, of any class of the rural population of the State;

(7) "machinery" includes plant, apparatus, tools and other appliances required for the purpose of carrying on any industrial operation or process;

(8) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

3. Establishment of a Board of Industries.—(1) For carrying out the purposes of this Act, the Government shall, as soon as possible, after the commencement of this Act, establish a Board to be called the "Board of Industries" consisting of the following members, namely:

(a) Minister-in-Charge of Industries;

(b) the Director of Industries;

(c) three members to be appointed by the Government one of whom shall be a banking expert;

(d) two members to be elected by the Jammu and Kashmir Legislative Assembly and one member to be elected by the members of the Jammu and Kashmir Legislative Council from among their members, election being in accordance with the principle of single transferable vote;

(e) one member to be elected by the Chamber of Commerce, Srinagar; and

(f) one member to be elected by the Chamber of Commerce, Jammu:

Provided that the Board shall have power to invite for consultation on any particular question before it not more than three persons specially qualified in its opinion to advise on the matter in question or
having special knowledge of local conditions in the area where the industry in question is situate:

Provided further that at any meeting of the Board the Minister shall have power to invite any person for consultation on any particular question.

Any person so invited whether by the Board or by the Minister shall not have the right to vote.

(2) The Minister-in-Charge of Industries shall be ex officio Chairman and the Director shall be ex officio Secretary of the Board.

(3) Five members of the Board shall form a quorum.

4. Procedure in default of election of members.—If by such date as may be fixed by the Government, any of the bodies referred to in clauses (d), (e) and (f) of sub-section (1) of section 3 does not elect a member to be elected by it under the provisions of that section, the Government shall appoint a suitable person from among those bodies to be such member and any person so appointed shall be deemed to be a member as if he had been duly elected by the body failing to elect a member under the said provisions.

5. Vice-Chairman.—The Board may, from time to time, elect, for such period as it thinks fit, one of its members to be Vice-Chairman.

6. Elections and appointments to be notified in Government Gazette.—The names of the Vice-Chairman and of the appointed and elected members of the Board shall be published by the Government in the Government Gazette.

7. Term of office.—(1) The Vice-Chairman or any other appointed or elected member may resign his office by giving notice in writing to the Chairman.

(2) (a) Subject to the provisions of this Act, an appointed member shall hold office for three years. Unless the Government otherwise directs; and an elected member shall hold office for three years or until such time as he ceases to be a member of the body electing him whichever is shorter:

Provided that in the case of members elected under the provisions of section 3 by bodies other than the Jammu and Kashmir Legislative Assembly, the term of membership shall in any case, terminate automatically on the dissolution of the Legislative Assembly.
(b) An outgoing member may, if otherwise qualified be re-elected or re-appointed.

(3) Notwithstanding the expiration of the term mentioned in sub-section (2), an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled, provided that no vacancy shall be allowed to remain unfilled for more than six months.

8. Removal of members.—(1) The Government may, by notification, remove the Vice-Chairman or any member of the Board if he—

(a) refuses to act or becomes incapable of acting as a member of the Board;

(b) is declared insolvent;

(c) is convicted of any such offence or is subjected by a Criminal Court to any such order as in the opinion of the Government implies a defect of character which unfit him to continue to be a Vice-Chairman or member of the Board, provided that before the Government notifies the removal of a member under this sub-section, the reason for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing;

(d) without excuse, sufficient in the opinion of the Government, is absent, without the consent of the Board, from more than four consecutive meetings of the Board.

(2) The Government may fix a period during which any person so removed under clause (b) or (c) of sub-section (1) of this section shall not be eligible for re-appointment or re-election.

9. Casual vacancies.—When the place of any appointed or elected member of a Board becomes vacant by his removal, resignation or death, a new member shall be appointed or elected in the manner provided in section 3:

Provided that if the place of any member elected by the Jammu and Kashmir Legislative Assembly or the Jammu and Kashmir Legislative Council becomes vacant, the Government may nominate in his place
another member of the Jammu and Kashmir Legislative Assembly or the Jammu and Kashmir Legislative Council, as the case may be:

Provided further that any person so appointed, elected or nominated under this section shall be subject to retirement at the same time as if he had become a member of the Board on the day on which the member of the Board in whose place he is appointed, elected or nominated was last appointed, elected or nominated a member of the Board:

Provided also that no act of the Board or of its officers shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided by section 3.

10 Allowances and fees.—The members of the Board and the members of committees, which may be appointed by the Board when necessary, shall be paid travelling allowances of the prescribed amount and on the prescribed conditions for attending meetings of the Board or for performing any duty assigned to them by the Board for the purpose of this Act.

11. President at meetings.—(1) The Chairman or in his absence the Vice-Chairman shall preside at every meeting of the Board and shall have a second or casting vote in all cases of equality of votes.

(2) In the absence of both the Chairman and the Vice-Chairman the members present at any meeting may elect one of their member to preside, who shall have second or casting vote in all cases of equality of votes.

12. Interested members not to vote.—No member of the Board shall vote on any question coming before the Board for consideration in which otherwise than in its general application to all persons and properties within the State he has a pecuniary interest.

Explanation.—In case of any question arising whether a member has or has not a pecuniary interest, the decision of the Chairman shall be final.

13. Power of Board to make regulations.—(1) The Board may make regulations consistent with this Act and the rules thereunder for the carrying out of all or any of its purposes.
(2) In particular and without prejudice to the generality of the foregoing power, the Board may make regulations regulating or determining all or any of the following matters, namely:—

(i) the time and place of its meeting;

(ii) the manner in which notice of meetings shall be given;

(iii) the conduct of proceedings at meetings;

(iv) the division of duties among the members of the Board; and

(v) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of other persons.

14. Supersession of Board.—(1) If at any time it appears to the Government that the Board is not properly performing the duties imposed upon it by or under this Act, the Government may, after considering any explanation offered by the Board, by an order in writing specifying the reasons for so doing, dissolve the Board and direct that the vacancies shall thereupon be filled by election in respect of elected members and by appointment in respect of appointed members in the manner indicated above.

(2) From the date of an order under sub-section (1) until the vacancies are filled, all powers and duties of the Board shall be exercised and performed by such person in such manner as the Government may direct.

15. Duty of Board.—It shall be the duty of the Board—

(a) to report to the Government after such enquiry, if any, as it deems necessary or as may be required by this Act, on applications for State aid that may be referred to it for advice by the Government or any other officer authorised in this behalf by it;

(b) to advise the Government on any matters that may be referred to it:

Provided that the Government shall not sanction State aid without reference to the Board except in the case of a loan the amount of which does not exceed Rs. 3,000.
16. Documents and reports to be furnished to the Government.—If the Government so directs, the Secretary shall forward to the Government any document and prepare and submit any report relating to the work of the Board.

CHAPTER III

GENERAL PROVISIONS REGARDING THE GIVING OF STATE AID

17. Forms of State Aid.—The forms of the State aid which may be given may include the following, namely:

(a) the grant of a loan;

(b) the grant, sale or lease of land, raw material, firewood, timber, water or any other article the ownership of which is vested in Government;

(c) the payment of a subsidy, in the case of a cottage industry or village industry for any purpose; and in the case of any other industry for the conduct of research or the purchase of machinery;

(d) the supply of machinery on the hire-purchase system;

(e) the guarantee of a minimum return on the whole or part of the capital of a Joint Stock Company invested in an industry.

18. Industries to which several forms of State Aid may be given.—State aid may be given to

(a) a new or nascent industry;

(b) an industry to be newly established in an area where such industries are undeveloped;

(c) a cottage industry or village industry; or

(d) an industry which needs revival or development by modern methods.

19. Application for State Aid.—Applications for State Aid shall be made to the Director in such form and shall contain such information as may be prescribed
20. **Power to grant loans.**—Loans granted under this chapter shall be subject to the sanction of the Government given after consultation with the Finance Department; provided that in regard to loans not exceeding a prescribed amount, the Government may make rules delegating their powers to such authority or officer as they deem fit.

21. **Security for repayment.**—(1) (a) On the acceptance of an application for a loan, the applicant shall execute a deed in the prescribed form undertaking to apply the loan to the purpose for which and to fulfil the conditions on which the loan is granted rendering himself and such property as may have been specified in the deed as security including machinery purchased or any building constructed with the aid of loan and in the event of such property being found insufficient rendering the whole of his property, liable for repayment of the loan with interest and costs, if any, incurred by the Government in making recovery of the loan.

(b) No transfer, assignment or charge made or created after the execution of the deed in relation to the property specified therein or machinery purchased or building constructed with the aid of the loan shall be valid against the Government unless it has been made or created with the previous consent in writing of the authority sanctioning the loan.

(2) When the application has been made by a firm or company, the deed shall be executed by a duly authorised representative thereof, and the deed shall thereupon be deemed binding on the said firm or company and the property of the said firm or company shall be liable for the repayment of the loan in the same manner as if the loan had been granted to an individual.

22. **Loan how repayable.**—The loan, together with all interest due thereon, if any, shall be repayable either in a lump sum or by instalments as may be provided for in the deed executed by the borrower under section 21.

23. **Notice to pay.**—(1) When any loan or instalment or interest thereon falls due and is not paid on or before the due date or when a loan has been declared immediately repayable under section 27, the
officer empowered by the Government in this behalf may cause to be served on the borrower a notice in the prescribed manner calling upon him to pay the sums due within such time as may be fixed therein.

(2) Such notice shall contain an intimation that in case of default the said officer will issue a declaration in the prescribed form showing the amount of the debt due and the property mentioned in the deed as liable to satisfy the same.

24. Effect of declaration.—(1) If within the time so fixed the sums due are not paid, the officer empowered under section 23 may issue the declaration as prescribed in sub-section (2) of the same section, and such declaration shall be published in the Government Gazette.

(2) Such declaration shall be conclusive evidence of its contents, and shall not be called into question in any Court by the borrower, his heirs, legal representatives or assigns, or by any member of his family if he belongs to a joint Hindu family nor shall any right, principle or rule arising from or under the personal or customary law applicable to the said persons or any of them, nor anything contained in the Jammu and Kashmir Alienation of Land Act, Samvat 1995, affect the validity or effectiveness of a mortgage executed or of a declaration published under this Act, or the procedure therein provided for enforcement thereof.

(3) Such declaration may be produced by the said officer, or by such other person as he may either generally or specially appoint in this behalf before the principal Civil Court of original jurisdiction, within the local limits of whose jurisdiction any of the property liable for the debt due is situate in the same manner as a decree of which execution is sought.

25. Execution of declaration.—When declaration has been received by a Civil Court under section 24, the Court shall immediately attach the property mentioned in the declaration and shall pass an order directing that, unless the amount mentioned in the declaration is paid within such time, not exceeding two months, as the Court may consider reasonable, it may be recovered by sale of the property mentioned in the declaration as if it were a decree for the payment of money passed by the said Court in the exercise of its ordinary civil jurisdiction.

26. Inspection and returns.—In any case in which an application for a loan has been made under this chapter, the applicant, and at any
time during the currency of a loan that has been granted the borrower shall be bound—

(a) to comply with any general or special order of the Director relating to the inspection of the premises, building, machinery and stock-in-hand of the industry;

(b) to permit the inspection of all accounts relative to the industry;

(c) to furnish full returns of all products manufactured or sold, both as regards description and quantity;

(d) to maintain such special accounts and to furnish such statements as the Director may from time to time require; and

(e) to submit the accounts of the industry to such audit as the Director may prescribe.

27. **Penalty for default in applying the loan.**—If the Director, after any inspection provided for in section 26, is not satisfied that the money lent is being applied to the purpose or purposes for which the loan was granted or that the conditions on which the loan was granted are being duly fulfilled, he may declare, notwithstanding anything contained in the deed executed under section 21, that the loan is immediately repayable and shall give notice of such declaration to the borrower.

28. **Power to adjust security during currency of loan.**—If at any time during the currency of the loan, the value of the security falls below the outstanding balance of the loan, the Director may either proceed to recover in the manner laid down in sections 23, 24 and 25 so much of such balance as is not adequately covered by the then existing value of the security or accept such additional or collateral security as he may deem sufficient.

29. **Power to recover loans.**—If the borrower fails to comply with any any order under clause (a) of section 26 or does not permit or obstructs the inspection of the accounts relative to the industry or makes default in respect of any of the particulars specified in clauses (c), (d) and (e) of the said section, or if the borrower disposes of any profits in contravention of the provisions of section 33, the Director may, after considering any representation the borrower may make within such time as the Government may allow in this behalf, proceed to recover the loan in the manner laid down in sections 23, 24 and 25.
30. Appeal.—Within fifteen days of the receipt of a notice under sections 27, 28 or 29, the borrower may appeal against such order to the Government and the decision of the Government thereon shall be final.

31. **Government guarantee of a minimum return.**—The conditions of a guarantee by the Government of a minimum return on the whole or part of the capital of a Joint Stock Company shall be—

(a) that the industry shall be subject to the conditions of section 26 in respect of inspection, returns and accounts;

(b) that a minimum portion of the authorized capital of the industry to be fixed according to the circumstances of each case has been subscribed and paid in cash;

(c) that no such guarantee shall in any case extend beyond a period of five years;

(d) that during the period to which the guarantee extends, the Government may impose on such persons as it considers to be directly concerned in the promotion of the company, a condition that if they transfer any of their shares without the consent of the Government, they shall be liable jointly and severally to refund to the Government any sums paid to the company in fulfilment of the guarantee:

Provided that the sum recoverable by the Government in any one year shall not exceed a sum equal to half the net profits made by the company in the preceding year in excess of the sum required for the payment of interest or dividend at the rate fixed in the agreement.

32. **Subsidies.**—A subsidy to a cottage industry or a village industry for any purpose and a subsidy to any other industry for the conduct of research or for purchase of machinery may be granted by the Government on such conditions as may be prescribed in this behalf.

33. **Disposal on profits when conditions of which State Aid is given are not fulfilled.**—No borrower shall pay any dividend or distribute or take any profits in excess of such percentage rate upon the amount of the capital of the industry as the Government may from time to time fix, until the conditions on which the State Aid has been granted are fulfilled.
34. **Government control of aided industry.**—Notwithstanding anything contained elsewhere in this chapter, the Government may, by the appointment of its own directors or otherwise exercise such control over the conduct of the industry to which the State Aid has been given as shall suffice in its opinion to safeguard its interest; provided that such right has been expressly reserved by agreement at the time the aid was granted.

35. **Method of recovery of money due.**—Notwithstanding anything contained in sections 23, 24 and 25, any amount payable to the Government under this Act or by virtue of a contract entered into under this Act including interest and costs, if any, may, with the previous sanction of the Government, be recoverable as arrears of land revenue.

**CHAPTER V**

**SUPPLY OF MACHINERY ON HIRE-PURCHASE SYSTEM**

36. **Percentages of cost to be deposited by hirer.**—No machinery shall be supplied by the Government on the hire-purchase system unless the applicant therefor deposits with the Director such percentage of the cost thereof as may be prescribed and furnishes security for the unpaid portion of such cost in the same manner as for a loan granted under the provisions of Chapter IV.

37. **Particulars to be specified in order when application is allowed.**—When an application is allowed, the Director shall, subject to and in accordance with any rules that may be made under this Act, make an order specifying the following particulars, namely:

(a) the amount of each instalment of rent to be paid for the hire of the machinery and the number of such instalments to be paid before the machinery shall become the property of the hirer;

(b) the amount of interest, if any, to be paid with each instalment of rent on the remaining unpaid instalments;

(c) the dates on which and the manner in which the aforesaid payments shall be made; and

(d) such other particulars as may be prescribed.
38. Conditions of supply of machinery on hire purchase system.— Until the hiring is terminated in the manner hereinafter provided, the following provisions shall apply, namely:—

(a) The hirer shall pay punctually and without demand the instalments of rent and amount of interest specified in the order referred to in section 37.

(b) The hirer shall retain the machinery in his own possession in good and serviceable order and condition and shall not, without the previous written consent of the Director, make any addition thereto or alteration therein, nor remove the machinery or any part thereof from the premises specified in the application for the supply thereof.

(c) The machinery shall remain the sole and absolute property of the Government and any transfer thereof or assignment of any right, title or interest therein or the creation of any mortgage, encumbrance or any other charge thereon by the hirer shall be void as against the Government unless it has been made with the previous written consent of the Director.

(d) The machinery shall not be liable to distraint, attachment or sale by any process under any law for the time being in force otherwise than under this Act.

(e) The machinery shall bear a metal plate in the prescribed form, and any person who wilfully removes or defaces such plate shall be liable to a fine not exceeding five hundred rupees. It shall be presumed until the contrary is proved that the machinery bearing such metal plate is the property of the Government hired out under this Chapter.

(f) The hirer shall permit the Director or any person authorised by the Director in this behalf to inspect the machinery at all reasonable times, and the Director or such other person shall have all such powers of entry as may be necessary for the purpose of making an inspection.

(g) In addition to the foregoing conditions the hirer shall be bound by such other conditions consistent therewith as may be prescribed by rules made under this Act, or may be imposed by the Director in any particular case
39. **Consequences of default by hirer.**—If the hirer makes default in paying the rent of the machinery or any sum payable as interest or any other charges due from him under this chapter or fails to comply with any of the conditions which are contained in, or may be imposed under section 38, the Director may, after giving him sixteen days notice, terminate the hiring and he or any other officer authorized by him in this behalf may thereupon enter the premises in which the machinery is for the time being kept, whether such premises belong to the hirer or not and seize and take away the same.

40. **Option of hirer to purchase machinery seized for default.**—
(1) If the machinery is seized and taken away under section 39, the hirer shall have the option, to be exercised within one month after such a seizure or such longer period as may be allowed by the Director in this behalf, of purchasing the same by payment to the Director of the unpaid balance of the cost thereof, together with such other amounts as may be due, and the cost of and expenses incidental to such seizure and removal.

(2) If within the period specified in sub-section (1), the hirer does not exercise the option of purchase, the Director shall proceed to dispose of the machinery.

41. **Liability of hirer on termination of hiring under sections 24 and 25.**—If the Director terminates the hiring under section 39 and the hirer does not purchase the machinery under section 40, the hirer shall not be entitled to the refund of the sum deposited by him under section 36 or to the refund or remission of any payment made by or due from him during the hiring, and shall be liable to pay such amount, if any, as the Director may determine in respect of any loss caused by the disposal of the machinery under sub-section (2) of section 40.

42. **Termination of hiring on payment of cost of machinery.**—When, after credit has been given for the amount deposited under section 36, the hirer has paid in full all the instalments of rent mentioned in clause (a) of section 37 and the amount of interest, costs and other charges payable by him under this Chapter, he shall become the owner of the machinery and shall thereupon remove from the same the metal plate mentioned in clause (e) of section 38:

Provided that if at any time during the hiring the hirer pays in advance the remaining instalments of rent, the interest payable in respect thereof shall be remitted.
43. Penalty for non-removal of metal plate from machinery.—If the hirer wilfully omits, after receiving due notice, to remove the metal plate from any machinery which has become his property under section 42, he shall be liable to a fine not exceeding fifty rupees.

44. Sums due under this Chapter recoverable as loans under Chapter IV.—All sums payable under this Chapter shall be recoverable in the same way as loans under Chapter IV.

CHAPTER VI
SUPPLEMENTAL

45. Finality of decisions of Government and bar of suits and proceedings in Civil and Criminal Courts.—(1) The decision of the Government as to whether the conditions laid down in or under any of the provisions of this Act have been satisfied shall be final, and no suit shall be brought in any Civil Court to set aside or modify any order made thereunder.

(2) No prosecution, suit or other proceeding shall lie against any Government officer or other authority vested with powers under this Act for anything in good faith done or intended to be done thereunder.

46. Power to make rules.—(1) The Government may, after previous publication, make rules consistent with this Act for the carrying out of all or any of its purposes.

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules regulating or determining all or any of the following matters, namely:—

(a) election of members of the Board under clauses (e) and (f) of sub-section (1) of section 3;

(b) regulating the travelling allowance under section 10;

(c) the manner of making applications for State Aid under section 19;

(d) the delegation of power to give loans under section 20;

(e) the form of deed to be executed under section 21;
(f) the nature and amount of the security to be taken under sections 21 and 36 for the due application and repayment of the State aid or rents together with all interest due thereon, if any, and the rate of interest at which and the conditions under which State aid may be granted:

Provided that where the security consists wholly or in part of the premises, machinery, stock, stores or other property, present or future, moveable or immoveable, of the industry concerned then the whole of such property, present and future, moveable and immoveable, may be made liable for the recovery of the loan and all interest due thereon, if any;

(g) the inspection under section 26 of the premises buildings, machinery and stock in-hand and the mode of keeping and auditing the accounts and of furnishing returns of any industry in respect of which State Aid has been given;

(h) the manner in and the place at which notices or orders may be served on any borrower;

(i) the form of the declaration to be used under section 24;

(j) the fixing of the period for the repayment of loans;

(k) the application under section 33 of profits in the case in which the conditions on which the State Aid has been given have not been fulfilled;

(l) the appointment and functions of directors appointed by the Government under section 34 and the prescribing of other methods of control of industries to which State aid has been given;

(m) the percentage of the cost of machinery to be deposited under section 36;

(n) the additional particulars to be specified in the order referred to in section 37 and the conditions on which machinery may be supplied on the hire-purchase system;

(o) the form of the metal plate referred to in clause (e) of section 38;

(p) the form of notice under section 39;
(q) the recovery of any sums payable under this Act; and

(r) all other matters pertaining to the working of this Act.


1[2] Notwithstanding such repeal, all acts done, aid or loan given, agreements made, orders passed and rules issued under the said Act shall remain in force unless expressly cancelled by the competent authority and shall be deemed to have been respectively done, given, made passed and issued under this Act.]