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NOTIFICATION

NO. MAL. 54/90/48, the 17th July, 1990. As required under rule 76 of the Rules of Procedure and Conduct of Business in Mizoram Legislative Assembly, the following Bill which was introduced in the Mizoram Legislative Assembly on 17th July, 1990 is published below with statement of objects and Reasons—

ASSEMBLY BILL NO. 14 OF 1990

THE MIZORAM ESSENTIAL SERVICES MAINTENANCE BILL, 1990

A

BILL

to provide for the maintenance of certain essential services and normal life of the community;

Be it enacted by the Legislature of the State of Mizoram in the Forty-First year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Mizoram Essential Services Maintenance Act, 1990.
- (2) It shall extend to the whole of the State of Mizoram.
- (3) It shall come into force at once.

Definitions.

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

(a) “Essential Service” means -

- (i) a service in the Police force, Homeguards or such other group of persons as are to assist in the maintenance of law and order or in prevention of offences by virtue of an obligation under a statute, regulation or Order;

- (ii) any service assigned for administration or protection of prisons, reformatories, borstals and Institutions of like nature;
 - (iii) any service connected with Public Health, Sanitation, Hospitals, Dispensaries;
 - (iv) any service in relation to education;
 - (v) any service for movement or transportation of public servants, passengers, goods or commodities;
 - (vi) any service connected with supply of water, electricity or any other essential commodities;
 - (vii) any service engaged in production, supply, distribution and storage of goods or essential commodities;
 - (viii) any public service in connection with the affairs of the State in the Secretariat, departments and districts or local administration;
 - (ix) any service in connection with the affairs of the State not being a service specified in any of the foregoing sub-clauses.
- (b) "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 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;
 - (iii) showing token strikes and taking of leave or absence from the place of duty owing to refusal of work to which he is ordinarily employed in any of such Essential Service.

Power to prohibit strike in certain employments:

3. (1) If the State Government is satisfied that in public interest, it is necessary or expedient so to do, it may, by general or special Order, prohibit strikes in any Essential Service specified in the Order.
- (2) An Order made under sub-section (1) shall be published in such manner as the State Government considers best calculated to bring it to the notice of the persons affected by the Order.

- (3) An Order made under sub-section (1) shall be in force for a period of six months only, but the State Government may, by a like Order published in like manner extend it for any period, not exceeding six months, if it is satisfied that in the public interest it is necessary or expedient to do so.
- (4) Upon the issue of an Order under sub-section (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.
- (5) Any Order made under this section may, at any time be rescinded by the State Government by a like Order, but such rescission shall not affect the previous operation of any thing done or suffered thereunder, and shall not affect any obligation or liability accrued or incurred, or any penalty or punishment incurred in respect of any offence committed under this Act before such rescission.

Penalty for illegal strikes instigation and for giving financial aid.

4. Any person who commences strike which is illegal under this Act, or goes or remains on, or otherwise takes part in, any such strike, or instigates or incites other persons, to take part in, or otherwise acts in furtherance of a strike, or knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act shall be punished with imprisonment for a term which may extend upto seven years or with fine which may extent to two thousand rupies or or with both.

Cognizable and non-bailable offence.

5. The offence under this Act shall be cognizable and non-bailable and any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence under this Act.

Dismissal of employee participating in illegal strikes.

6. (1) 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, or instigates or incites other persons to take part or knowingly expends or supplies any money in furtherance or support of a strike which is illegal under this Act, shall in addition to any action under section 4 be liable to disciplinary action including dismissal in accordance with the same provision as are applicable for the purpose of taking such disciplinary action on any other ground under the terms and condition of service applicable to him in relation to his employment.

- (2) Notwithstanding anything contained in any other law, rule, regulation or order the disciplinary authority may use the material or finding of a court trying an offence under this Act and on the basis of the said findings and judgement of the said court, may award any punishment including dismissal on the person under the terms and conditions of service applicable to him in relation to his employment.

Bar of legal proceedings.

7. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Repeal and saving

8. (1) The Mizoram Essential Service Maintenance Ordinance, 1990 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

Notifications, bye-laws and rules applicable to the then Union Territory of Mizoram continued to be applicable in the State of Mizoram as per the provisions of Section 43 of the State of Mizoram Act, 1986. Based on the Notification No. S. O. II (E) dt 7. 1. 82 issued by the Ministry of Home Affairs, Govt. of India, the then Union Territory Govt. of Mizoram notified the Essential Services Maintenance Act, 1981 (Central Act 40 of 1981) to be applicable to the employees of Govt. of Mizoram also which subsequently was again notified by the State Govt. of Mizoram vide Notification No. A. 12031/2/90—HMP dt. 16. 4. 90. The interpretation as to whether the Essential Services Maintenance Act, 1981 (Central Act 40 of 1981) as notified by the State Government is applicable to the employees of the State of Mizoram by virtue of its earlier being a Union Territory was examined by Law Department who opined that it is subject to judicial scrutiny and may not stand the rigid test of law. Since there was possible threat from certain section of the employees of this Government to resort to strike, it was felt imperative to have immediately a law covering all the services which are considered essential for smooth functioning of essential public utility services in the State.

Since the Assembly was not in session and there was immediate necessity to have a law to meet the threat, the Essential Services Maintenance Ordinance, 1990 was promulgated and published in the Mizoram Gazette (Extra Ordinary) on 9. 6. 1990.

As provided in the Constitution of India, the Ordinance has to be place in the first session of the State Assembly after its promulgation failing which the Ordinance will be valid for only 6 (six) weeks after the said session. In view of that a Bill to replace the said Ordinance (i.e. the Mizoram Essential Services Maintenance Ordinance 1990) has now been presented for consideration of the House for Legislation.

Hence the Bill.

C. L. Ruala,
Minister,
Home.

H. L. Chunga,
Secretary,
Mizoram Legislative Assembly.