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SIND ACT No. XXV OF 1930[1].

[THE SIND LOCAL FUND AUDIT ACT, 1930]

[17th September, 1930]

An Act to provide for and regulate the audit of the local funds under the management or control of certain local authorities in the [2][Province of Sind].

WHEREAS it is expedient to provide for and regulate the audit of the local funds under the management or control of certain local authorities in the [2][Province of Sind] in manner hereinafter appearing; And whereas the previous sanction of the Governor General required by sub-section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act; It is hereby enacted as follows:— 5 and 6 Geo. V, c. 61.

Short title. 1. This Act may be called the [3][Sind] Local Fund Audit Act, 1930.

Extent. 2. This Act extends to the whole of the [2][Province of Sind].

Definitions. 3. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Auditor" means the Examiner or any other person empowered by [4][the Provincial Government] to perform the functions of an auditor under this Act.

(*b*) "Examiner" means the Examiner of Local Fund Accounts and includes the Assistant Examiner of Local Fund Accounts.

(*c*) "Local authority" means a local authority as defined in [5][clause (21) of section 2 of the Sind General Clauses Act, 1947]. Sind XXII of 1947.

(*d*) "Local Fund" means any fund to the control or management of which a local authority is legally entitled and includes

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1 For Statement of Objects and Reasons, *see* B. G. G., 1930, Pt. V, pp. 45-49; for Report of Select Committee, *see ibid* 1930, Pt. V, pp. 116-121; and for Proceedings in Council, *see* Bombay Legislative Council Debates, 1930, Vols. XXVIII and XXIX.

2 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for "Bombay Presidency except the City of Bombay".

3 Subs. *ibid*, s. 3 (i) (*w.e.f.* 30th May 1953), for "Bombay".

4 Subs. by the A. O., 1937, for "Govt.".

5 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for "clause (26) of section 3 of the Sind General Clauses Act 1904, and includes a school board constituted under the Bombay Primary Education Act, 1923".

the proceeds of any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

Liability of local authorities to submit their accounts for audit.

4. The accounts of any local authority whose accounts are declared by [1][the Provincial Government], by a notification in the [2][*Official Gazette*], to be subject to audit under this Act shall, notwithstanding anything contained in any enactment by which such local authority is constituted or in any rules made thereunder, be subject to audit in all respects in the manner provided by or under this Act.

Accounts to be submitted for audit at such period or periods as may be required.

5. The [3][President, Chairman or Administrator], as the case may be, of every local authority, whose accounts are declared under section 4 to be subject to audit under this Act, shall present or cause to be presented for audit all accounts of its local fund in the manner and form prescribed by rules under section 15 to the auditor yearly or at such period or periods as may be required by the [4][Revenue Commissioner].

Power of auditor to require production of documents and attendance of persons concerned, etc.

6. (*1*) For the purpose of any audit under this Act, an auditor may—

(*a*) require in writing the production, at the head office of the local authority, of any document, the perusal or examination of which he believes to be necessary for the elucidation of the accounts ;

(*b*) require in writing any salaried servant of the local authority accountable for, or having the custody or control of such document, or any person having directly or indirectly, by himself or his partner, any share or interest in any contract with or under the local authority, to appear in person before him at the head office of the local authority and answer any question ;

(*c*) in the event of an explanation being required from the president, chairman [5][,Administrator]or other honorary officer or member of a local authority, in writing invite such person to meet him at the head office of the local authority and shall in writing specify the point on which his explanation is required,

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1 Subs. by the A. O., 1937, for "the Govt.".

2 Subs. *ibid*, for "B. G. G.".

3 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for "president or chairman".

4 Subs. *ibid*, s. 13, for "Commissioner".

5 Ins. *ibid*, s. 7, Sch. III.

(*2*) The auditor may, in any requisition or invitation made under sub-section (1), fix a reasonable period, [1]* * * within which the said requisition or invitation shall be complied with.

(*3*) The auditor shall give to the local authority not less than [2][one] weeks' notice in writing of the date on which he proposes to commence the audit.

[3][Provided that where for any special reasons it is not practicable to give one week's notice, the notice may be of such shorter period as the auditor may think fit:

Provided further that no such notice shall be required in the case of a special audit made under the authority of the [4][Revenue Commissioner] or the Examiner.]

Penalty for disobeying requisition under section 6.

7. (*1*) Any person who wilfully neglects or refuses to comply with any requisition lawfully made upon him under clause (*a*) or clause (*b*) of sub-section (*1*) of section 6 shall be liable, on conviction before a Magistrate, to a fine which may extend to one hundred rupees:

Provided that no proceedings under this section shall be instituted except on the written sanction of the [4][Revenue Commissioner];

Provided further that before giving such sanction the [4][Revenue Commissioner] shall call upon the person against whom the proceedings are to be instituted to show cause why the sanction should not be given.

(*2*) No court inferior to that of a Magistrate of the first class shall try any offence against this Act.

Audit report to be sent to certain officers and bodies as Provincial Government may direct.

8. Within [5][three] months after the completion of the audit, the Examiner shall prepare a report on the accounts audited and examined and shall send such report to the local authority concerned and copies thereof to such officers and bodies as [6][the Provincial Government] may direct.

Audit report what to contain.

9. The Examiner shall include in his report a statement of—

(*a*) every payment which appears to him to be contrary to law,

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1 The words "not being less than three days" omitted by Sind 2 of 1944, s. 2 (*a*).

2 Subs. *ibid*, s. 2 (*b*) (*i*), for "two".

3 The provisos ins. *ibid*, s. 2 (*b*) (*ii*).

4 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

5 Subs. by Sind 2 of 1944, s. 3, for "two".

6 Subs. by the A. O., 1937, for "the Govt."

(*b*) the amount of any deficiency or loss which appears to have been caused by the gross negligence or misconduct of any person,

(*c*) the amount of any sum received which ought to have been but is not brought into account by any person, and

(*d*) any material impropriety or irregularity which he may observe in the accounts other than those mentioned in clauses (*a*), (*b*) and (*c*) above.

Local authority to remedy defects : Procedure to be followed after report of the Examiner under section 8.

10. (*1*) On receipt of a report under section 8 the [1][President, Chairman or Administrator], as the case may be, shall either remedy any defects or irregularities which may have been pointed out in the report and send to the Examiner, within three months of the receipt of the report, intimation of his having done so, or, shall, within the said period, supply to the Examiner any further explanation in regard to such defects or irregularities as the [1][President, Chairman or Administrator] may wish to give [2][within such period as may be prescribed by rules under section 15, the [1][President, Chairman or Administrator] shall also place the report before the local authority along with a full explanation in regard to the defects or irregularities pointed out in the report].

(*2*) On receipt of such intimation or explanation the Examiner may, in respect of all or any of the matters discussed in his report,

(*a*) accept the intimation or explanation given by the [1][President, Chairman or Administrator] and withdraw the objection, or

(*b*) direct that the matter be re-investigated at the next audit or at any earlier date, or

(*c*) hold that the defects or irregularities pointed out in the report or any of them have not been removed or remedied.

(*3*) The Examiner shall send a report of his decision to the [3][Revenue Commissioner] within one month of the date of the receipt by him of the intimation or explanation of the [1][President, Chairman or Administrator] referred to in sub-section (*1*) or in the

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1 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for "President or Chairman".

2 Ins. by Sind 2 of 1944, s. 4(*a*).

3 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

event of the [1][President, Chairman or Administrator] failing to give such intimation or explanation, on the expiry of the period of three months mentioned in the said sub-section and shall forward a copy of such report to the [1][President, Chairman or Administrator], as the case may be, of the local authority. If the Examiner holds that any defects or irregularities have not been removed or remedied he shall state in the report whether, in his opinion, the defects or irregularities can be regularised and if so, by what method; and if they do not admit of being regularised, whether they can be condoned and, if so, by what authority. He shall also state whether the amounts to which the defects or irregularities relate should, in his opinion, be surcharged or charged:

Provided that in the case of reports on the accounts [2]* * * * of such local authorities as are specially notified by [3][the Provincial Government] in this behalf the report referred to in this sub-section shall be submitted by the Examiner to such officer, being the head of a department, as [3][the Provincial Government] may direct. Such officer shall take such action as may be necessary regarding any defects or irregularities falling under clause (*c*) of sub-section (*2*) which may have been brought to notice in the report. If he is of the opinion that the amounts to which any such defects or irregularities relate should be surcharged or charged, he shall forward the report of the [4][Revenue Commissioner] together with his recommendation in that behalf.

(*4*) The local authority concerned shall publish in its next administration report, such portions of the report under section 8 as deal with defects and irregularities falling under clause (*c*) of sub-section (*2*), together with the explanation thereof, if any, given under sub-section (*1*) and the final report of the Examiner thereon under sub-section (*3*). Such report of defects and irregularities, explanation and final report shall be open to the inspection of the public at the office of the local authority for a period of one month from the date of their receipt and shall also be published in the vernacular of the district in any newspaper circulating in the district selected by the local authority within one month of the receipt by it of the copy of the report sent to the [4][Revenue Commissioner] under sub-section (*3*).

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1 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for "President and Chairman".

2 The words "of school boards and" rep. *ibid*, s. 6, Sch. II.

3 Subs. by the A.O., 1937, for "Govt.".

4 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

(5) If the [1][President, Chairman or Administrator] of a local authority fails to give the intimation or explanation referred to in sub-section (1) within the period therein mentioned the [2][Revenue Commissioner] may, at the instance of the Examiner, publish in the vernacular of the district the whole of the Examiner's report under section 8, together with any observations which the [2][Revenue Commissioner] may make thereon, in any newspaper circulating in the district which the [2][Revenue Commissioner] may select and the cost of such publication shall be paid by [3][the local authority].

(6) Nothing in this section or in section 9 shall preclude the Examiner at any time from bringing to the notice of the [2][Revenue Commissioner], for such action as the [2][Revenue Commissioner] may consider necessary, any [4][matter] which appears to the Examiner to support a presumption of criminal misappropriation or fraud [5][or which in his opinion requires special attention or immediate investigation].

Revenue Commissioner to surcharge or charge illegal payment or loss caused by gross negligence misconduc

11. (1) [6][The Revenue Commissioner] may, after considering the recommendation of the Examiner or of any head of a department under the proviso to sub-section (3) of section 10, as the case may be, and after taking the explanation of the person concerned, or making such further inquiry, as he may consider necessary, disallow any item which appears to him to be contrary to law and surcharge the same on the person making, or authorizing the making of, the illegal payment; and may charge against any person responsible therefor the amount of any defficiency or loss caused by the gross negligence or misconduct of that person, or, any sum received which ought to have been but is not brought into account by that person and shall, in every such case, certify the amount due from such person:

[7]* * * * * * * *.

(2) [6][The Revenue Commissioner] shall state in writing the reasons for his decision in respect of every surcharge or charge and shall send by registered post a copy thereof to the person against whom it is made.

(3) If a person to whom a copy of the [2][Revenue Commissioner's] decision is sent under sub-section (2) refuses to take delivery thereof he shall be deemed to have duly received it on the day on which it was refused by him.

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1 Subs. by Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, for "President or chairman".
2 Subs. *ibid*, s. 13, for "Commissioner".
3 Subs. by Sind 2 of 1944, s. 4(*b*), for "the Provincial Govt.".
4 Subs. *ibid*, s. 4(*c*)(*i*), for "information".
5 Added *ibid*, s. 4 (*c*)(*ii*).
6 Subs. by the Sind Laws (Adaptation, Revision Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "The Commissioner".
7 The proviso rep. by *ibid*, s. 6, Sch. II.

Recovery of surcharges and charges now made.

12. (*1*) Every sum certified by the [1][Revenue Commissioner] to be due from any person under sub-section (*1*) of section 11 shall be paid by such person into the treasury or bank in which the funds of the local authority concerned are lodged, within one month from the receipt by him of the decision of the [1][Revenue Commissioner], unless within that time such person has applied to the Court or to [2][the Provincial Government] as provided in section 13.

(*2*) The said sum, if not duly paid, or, if an application has been made to the Court or to [2][the Provincial Government] against the decision of the [1][Revenue Commissioner] as provided in sub-section (*1*) of section 13, such sum as the Court or [2][the Provincial Government] shall declare to be due, shall be recoverable, on an application made by the Collector to the Court, in the same way as an amount decreed by the Court in favour of the Collector.

Application against order of surcharge or charge.

13. (*1*) Any person aggrieved by any order of surcharge or charge made by the [1][Revenue Commissioner] under sub-section (*1*) of section 11 may, within one month from the receipt by him of the decision of the [1][Revenue Commissioner], either—

(*a*) apply to the District Court to set aside such order; and the Court, after taking such evidence as it thinks necessary may confirm, modify or remit such surcharge or charge and make such orders as to costs as it thinks proper in the circumstances; or

(*b*) in lieu of such application apply to [3][the Provincial Government] which shall pass such orders thereon as it thinks fit.

[3][Provided that the District Court shall not entertain any such application unless a question of law arises out of such order.

(*2*) Pending disposal of the application all proceedings on the certificate shall be stayed if the person aggrieved makes out a *prima facie* case for a stay order.

Expenses in respect of requisitions of auditors to be payable out of local fund.

14. All expenses incurred by a local authority in complying with any requisition of an auditor under sub-section (*1*) of section 6 shall be payable out of its local fund.

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1 Subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 13, for "Commissioner".

2 Subs. by the A. O., 1937, for "the Govt.".

3 The proviso added by Sind Act 2 of 1944, s. 5.

Rules.

15. (*1*) [1][The Provincial Government] may make rules[2], not inconsistent with this Act, for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the manner and form in which the accounts of a local authority, whose accounts are subject to audit under this Act, shall be kept and presented ;

(*b*) the powers and duties of auditors and the procedure to be followed by them for conducting an audit and the times at which such audit may be conducted ; and

(*c*) the manner in which all matters required to be published under this Act shall be published.

(*3*) The making of rules under this section shall be subject to the condition of previous publication. Such rules shall be laid [3][before the Sind Legislative Assembly] for one month previous to the next session thereof and shall be liable to be rescinded or modified [4][by a Resolution of the said Assembly]. If any rule is modified, [5][the Provincial Government] may accept the modification and re-issue the rule accordingly, or, may rescind the rule.

16. [*Amendments made by section 16 have been incorporated in the principal Acts.*]

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1 Subs. by the A. O., 1937, for " the Govt.".

2 For Rules, *see* S. L. R. and O.

3 The original words "on the table of the Bombay Legislative Council" were first subs. by the A. O., 1937, to read as "before each Chamber of the Provincial Legislature" and then by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, to read as above.

4 The words "by a Resolution in which both Chambers of the Legislature concur" which were ins. by the A. O., 1937, have been subs. by the Sind Laws (Adaptation, Revision, Repeal and Declaration) Ordinance, 1955 (Sind 5 of 1955), s. 7, Sch. III, to read as above.

5 Subs. by the A. O., 1937, for "Govt.".