

SIKKIM



GOVERNMENT

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No. 4/LD/18

Date: 22.03.2018

NOTIFICATION

The following Act passed by the Sikkim Legislative Assembly and having received the assent of the Governor on 14th day of March, 2018 is hereby published for general information:-

THE SIKKIM WATER SUPPLY AND WATER CHARGES (AMENDMENT) ACT, 2018
(ACT NO. 4 OF 2018)

AN

ACT

to amend the Sikkim Water Supply and Water Tax Act, 1986.

Be it enacted by the Legislature of Sikkim in the Sixty-ninth Year of Republic of India as follows:-

*Short title, extent
and
Commencement*

1. (1) This Act may be called the Sikkim Water Supply and Water Charges (Amendment) Act, 2018.
- (2) It shall extend to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

*Substitution of reference
to certain expression by
Certain other Expression*

2. In the Sikkim Water Supply and Water Tax Act, 1986 (hereinafter referred to as the Principal Act), through out the Principal Act, unless otherwise expressly provided for the words "The Sikkim Water Supply and Water Tax Act", the words "The Sikkim Water Supply and Water Charges Act" shall be substituted.

*Amendment
of
Section 2*

3. In the principal Act,

(1) in section 2,-

(a) for clause (i), the following shall be substituted, namely:-

"(i) 'area' means the urban area in the State and includes such other areas adjacent thereto as the Government may declare by notification from time to time, specify to be an area for the purposes of this Act";

(b) for clause (xiii), the following shall be substituted, namely:-

"(xiii) 'service pipe' or 'service line' means the portion of consumer main starting from the point where consumer main joins the 'Government main' up to the point in the 'consumer main':-

(a) where water meter is installed, if installed; or

(b) where the pipe terminates and the water supplied is emptied into a sump tank; or

(c) where water is tapped or drawn for use by the consumer."

(c) after clause (xiii) and the entries relating thereto, the following shall be inserted, namely:-

"(xiv) 'Department' means the Water Security and Public Health Engineering Department for the time being or the 'Department' as maybe renamed by the State Government by notification;

(xv) 'rules' means the rules made under this Act;

(xvi) 'Chief Engineer' means the officer appointed or authorized by the Government to perform the functions of the Chief Engineer under this Act and includes an Officer placed in additional charge of the duties of the Chief Engineer;

(xvii) 'Government' means the State Government of Sikkim;

(xviii) 'Engineer' means a person holding a valid certificate issued by an institution or college of having passed the course of Diploma or Bachelor's Degrees or Masters Degree in Civil Engineering subject;

(xix) 'Plumber' means a person having ITI certificate or certificate issued by a recognized Skill Building Institute of having passed the course of plumber;

(xx) 'Local Authority' means-

- (a) a Municipal Corporation or Municipal Council or Nagar Panchayat constituted under the law in the state;
- (b) a Gram Panchayat constituted under the law in the state;
- (c) a Government Authority for the purpose, as established by Law.

(xxi) "Public Health Engineer" means an Officer appointed by the Government to be the Public Health Engineer to discharge the duties of water supply under the provisions of this Act and includes any officer placed in charge of the duties of the Public Health Engineer.

(xxii) "Employee" means any person who is paid salary or wage directly by the Department and shall not include any person or persons engaged by any contractor or an agent, of the Department;

(xxiii) "State" means the State of Sikkim;

(xxiv) "Trade premises" means any premises used or intended to be used for carrying on any trade or business of any industry or company;

(xxv) "Fittings" shall mean pipes (other than mains), taps, cocks, valves, ferrules, pumps, meters, cisterns, baths, and other similar apparatus used in connection with the supply and use of water.

(xxvi) "Charges" shall mean, water charges, water fees, fines, recoveries for works or any such levy made under this Act or rules made thereunder;

(xxvii) "Premises" shall mean any, land, building, superstructure, apartment, residential building or any non-residential building."

(2) the existing section 2 shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

"(2) Unless the context otherwise requires, the words importing the masculine gender shall include the feminine gender, words importing the singular shall include the plural and words beginning with capital letters shall have the same meaning as may be written in small letters, and vice versa.

Explanation.- 'he' shall have the same meaning as 'she' and vice versa.

'fitting' shall have the same meaning as 'fittings' and vice versa.

'Competent' shall have the same meaning as 'competent' and vice versa."

*Amendment
of
Section 3*

4. In the principal Act, in section 3,-

(1) in sub-section (2),-

(a) in clause (e), after the words "produce", the words "any preparation therefrom" shall be inserted;

(b) in clause (h), before the words "for watering streets", the words "for construction or" shall be inserted.

(2) after sub-section (2), the following sub-sections shall be inserted, namely,-

"(3) The Public Health Engineer in charge of water supply may, on application by the owner or occupier of any building, arrange, in accordance with the rules, to supply water thereto for domestic consumption and use.

(4) The Public Health Engineer in charge of water supply may, if it appears to him that the superstructure are without a proper supply of water for domestic consumption and use and that such supply can be furnished from the main not more than 35 (thirty five) meters distance from any part of any such superstructure, by notice, require the owner of the land to obtain such supply.

(5) Where on any land there are two or more superstructures or apartments, and the owner of the land is not the owner of all the superstructures or apartments, the Public Health Engineer in charge of water supply may, if it appears to him that the superstructure or apartment is without a proper supply of water for domestic consumption and use and that such supply can be furnished from the main not more than 35 (thirty five) meters distance from any part of any such superstructure or apartment, by notice, require the owner of the superstructure or apartment to obtain such supply."

*Amendment
of
Section 5.*

5. In the principal Act, in section 5, after sub-section (4), the following sub-section shall be inserted, namely,-

"(5) The competent authority may by agreement, supply water in bulk to the Government including the Central Government, the Department or any other local authority or any other public or private undertaking or individual or organization on such terms as to payment and as to the period and the conditions of supply as may be agreed upon between the competent authority and such authority."

*Amendment
of
Section 6.*

6. In the principal Act, in section 6,-

(1) for the marginal heading "Prohibition of wastage of water", the following shall be substituted, namely:-

"Prohibition of pollution, wastage, misuse or disturbance in equitable distribution of water";

(2) for sub-section (1), the following shall be substituted, namely:-

"(1) No owner or occupier of any premises to which water is supplied by the Government shall cause or suffer any water to be polluted, wasted, misused or cause disturbance in equitable distribution of water or cause or suffer the service pipe, tap, other fitting or work connected therewith to remain out of repair so as to cause pollution, wastage, misuse or disturbance in equitable distribution of water";

(3) in sub-section (3):-

(a) after the words "repairs to be made" and before the words "and recover", the words "or removed" shall be inserted; and

(b) after the words "from the consumer" appearing at the end, the words "as an arrear of Water charge payable under this Act" shall be inserted.

*Amendment
of
Section 7.*

7. In the principal Act, in section 7, -

(1) in sub-section (1):-

(i) for clause (c) and the entries relating thereto, the following shall be substituted, namely:-

"(c) if the consumer or occupier damages or causes to be damaged the water meter or any connection pipe or ferrules or water works; or

(ii) after clause (g), the following clauses shall be inserted, namely:-

"(h) if the owner or the consumer causes or allows to be caused the insertion of any fitting or pump for sucking water directly from the service pipe for drawing water from the Government's main; or

(i) if the owner or occupier neglects to comply with any lawful order or requisition regarding water supply issued by the Department within the period specified therein; or

(j) if the owner or consumer fails to provide proper disposal or treatment of the used water from his premises, in accordance with the provisions of the Sikkim Sewerage and Sewage Disposal Act, 1987 or the Water (Prevention and Control of Pollution) Act, 1974 (Central Act 6 of 1974)."

(2) for the existing sub-section (2) and (3), the following sub-sections shall be substituted, namely:-

"(2) Action taken under this section against any person shall be without prejudice to any penalties to which he may otherwise be liable under any other provision of this Act or the rules made thereunder or under any other Law.

(3) The competent authority may order reconnection of supply of water disconnected under sub-section (1) on payment of such charges and on such terms and conditions as may be prescribed in the rules made thereunder.

(3) after sub-section (3), the following sub-section shall be inserted, namely:-

"(4) The owner and the occupier of the premises shall be jointly and severally liable for penalty and also liable to pay the expenses of cutting off the supply."

*Amendment
of
Section 8*

8. In the principal Act, in section 8, after the words "necessary so to do", the words "subject to conditions and requirement laid down in the rules made in this behalf" shall be inserted.

*Amendment
of
Section 900*

9. In the principal Act,-

(1) section 9 shall be re-numbered as sub-section (1) thereof, and in sub-section (1) as renumbered, after the words "an application within", the words "such specified time and communicate the same in writing to the applicant" shall be inserted;

(2) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

"(2) The submission of the duly filled up and signed Application Form along with the specified documents under the Rules made thereunder, to the office of the Divisional Engineer, Water Supply Division, shall, deem to mean the acceptance of, all the conditions and undertaking laid therein."

*Amendment
of
Section 10*

10. In the principal Act, in section 10, -

(1) for sub-section (2), the following shall be substituted, namely:-

"(2) The charges for giving initial connection shall be as notified and prescribed in the rules made thereunder."

*Insertion
of
new Section 10 A*

11. In the principal Act, after section 10, the following new section shall be inserted, namely:-

"10 A. Modalities for Connections

(1) Water Supply connection by the Department for any purpose including that of domestic use shall ordinarily be given only at the ground level of the premises. It

shall not be lawful for any owner or occupier to demand a water supply connection from the service pipe at any other elevation or level.

- (2) It shall not be lawful for any owner or occupier to use any pumps or devices to suck water directly or indirectly from the government mains or service pipes.
- (3) The owner of every premises having more than one storey and connected with water supply from the service pipe at the ground level shall, provide a sum of money and set up electrical pump or other contrivances of adequate capacity and such other arrangements as may be prescribed, to pump the water to the required height of such premises with the prior approval of the competent authority.
- (4) On every service pipe laid after the date of coming into force of this section, the owner or occupier shall, fit a stopcock on every service pipe laid before or after such date.
- (5) Every stopcock fitted on a service pipe after the date of coming into force of this section shall be placed in such position as the Department deems most convenient:

Provided that—

- (a) a stopcock in private premises shall be placed as near as is reasonably practicable to the street from which the service pipe enters that premises and
 - (b) a stopcock in a street shall be placed as near to the boundary thereof as is reasonably practicable.
- (6) No water pipe shall be laid in a drain or on the surface of an open channel or house gully or a cesspool or in any position where the pipe is likely to be damaged or the water therein polluted; and except with the approval of the Department, no latrine pit or soak pit or cesspool shall be constructed or made within six meters of any water pipe or water work or in any position where the water pipe or water work is likely to be damaged or the water therein polluted.
 - (7) No person other than an Engineer or a plumber or an Officer or employee authorised by the Competent Authority in this behalf shall execute the work of consumer main, service line or internal water supply connections of premises.
 - (8) No water supply connection shall be given to the owner or occupier of a premise unless the internal water

supply connections of such premises have been duly executed in accordance with the standard specifications prescribed under this Act.

- (9) The State Government may by notification in the Official Gazette, make regulations for compliance by the Engineers or plumbers.
- (10) Any person who willfully violates the provisions of this section shall be liable to have the water supply disconnected to the premises and no new connection shall be sanctioned unless the owner or the occupier complies with the provisions of this section".

*Amendment
of
Section 11*

- 12. In the principal Act, in the proviso to section 11, after the words "on payment of fee", for the word "or rupees twenty five", the words "as prescribed under the rules" shall be substituted.

*Amendment
of
Section 13*

- 13. (1) In the principal Act, in section 13, for the marginal heading "power to lay or carry pipes", the marginal heading "power to lay or carry pipes or to construct water works and payment of compensation etc", shall be substituted.
- (2) section 13 shall be re-numbered as sub-section(1) thereof and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:-
 - "(2) All reservoirs, tanks, cisterns, fountains, wells, and bore wells, pumps, pipes, taps, conduits and other works connected with the supply of water to the notified area, including the headwork's, reservoirs and the Government mains, and all bridges, building, machinery, works materials and other things connected therewith and all land (not being private property) adjacent and appertaining to the same, shall vest in the Department and be subject to its control.
 - (3) The Department may construct, lay, or erect filtration plants, reservoirs, machinery, conduits, pipes, or other works in any place in the state for supplying the notified area with water, and may provide, tanks, reservoirs, machinery, mains, fountains and other conveniences within or outside the notified area for the use of the inhabitants.
 - (4) The Department may cause existing water works to be maintained and supplied with water or it may close any such works and substitute other such work and may cause them to be maintained and supplied with water.
 - (5) Notwithstanding anything contained in any other law for the time being in force, the Department may lay a main within or without the local limits of the notified area,—

- (a) in any street or any land vested in the Government, the Department or any other local authority or any Government Company or Department owned or controlled by the Government;
- (b) with the consent of every owner or occupier of any land not forming part of a street, in over or on that land, and may, from time to time inspect, repair, alter or renew or may, at any time, remove any main, whether laid under this Act or otherwise:

Provided that where consent required for the purpose of this sub-section is withheld, the Department may, after giving the owner or occupier of the land a 15 (fifteen) days of written notice of its intention to lay the main in, over or on that land even without such consent.

- (6) Where the Department, under the provision of this section, lays a main in, over or on any land not forming part of a street or land referred to in clause (a) of sub-section (5) or inspects, repairs, alters, renews or removes a main so laid in, over or on any such land, it shall pay a compensation to every person interested in that land for any damage done to or injurious affection of, that land by reason of such laying, inspection, repairs, alteration, renewal or removal of the main.
- (7) The Department may, in any street or any land referred to in clause (a) of sub-section (5) whether within or without the local limits of the notified area, lay such service pipes with such stopcocks and other water fittings as it may deem necessary for supply of water to premises and may, from time to time, inspect, repair, alter or renew and may, at any time, remove any service pipe laid in such street or land whether under this Act or otherwise.
- (8) Where a service pipe has been lawfully laid in, over or on the land not forming part of a street or land referred to in sub-section (7), such officers as the Department may authorize, from time to time, enter upon that land and inspect, repair, alter, renew or remove the pipe or lay a new pipe in substitution thereof but shall pay compensation for any damage done in the course of such action.
- (9) The Department may place and maintain conduits and lines of mains or pipes, over, under, along or across any immovable property whether within or without the local limits of the notified area without acquiring the

9

same and may at any time for the purpose of examining, repairing, altering or removing any conduits or lines of mains or pipes, enter on any property over, under, along or across which the conduits or lines of mains or pipes have been placed:

Provided that the Department shall not acquire any right other than a right of user in the property over, under, along or across which any conduit or line of mains or pipes is placed.

- (10) If it appears to the Department that the only technically feasible alternative means of water supply to any premises is by placing or carrying any pipe over, under, along or across the immovable property of another person it may, by order in writing, authorize the owner of the premises to place carry such pipe, over, under, along or across such immovable property:

Provided that before making any such order the Department shall give to the owner of the immovable property a reasonable opportunity of showing cause within such time as may be prescribed by regulations so as to why the order should not be made:

Provided further that the owner of the premises shall not acquire any right other than a right of user in the property over, under, along or across which any such pipe is placed or carried.

- (11) Upon making of an order under sub-section (10), the owner of the premises may, after giving reasonable notice of his intention so to do, enter upon the immovable property with the assistants and the workmen at any time between sunrise and sunset for the purpose of placing a pipe over, under, along or across such immovable property or for the purpose of repairing the same.
- (12) In placing or carrying a pipe under sub-section (11), as little damage as possible shall be done to the immovable property and the owner of the premises shall-
- (a) cause the pipe to be placed or carried with the least practicable delay;
 - (b) fill in, reinstate and make good at his own cost and with the least practicable delay, any land opened, broken up or removed for the purpose of placing or carrying of such pipe; and
 - (c) pay compensation to the owner of the immovable property and to any other person who sustains damage by reason of the placing or carrying of such pipe.

- (13) If the owner of the immovable property over, under, along or across, which a pipe has been placed or carried under this section while such immovable property was not built upon, desires to erect any building on such property, the Department shall by notice in writing, require the owner of the premises as indicated in sub-section (10), to close, remove or divert the pipe in such manner as shall be approved by him and to fill in, reinstate and make good the immovable property as if the pipe has not been placed or carried over, under, along or across the same.

Provided that no such requisition shall be made unless in the opinion of the Department it is necessary or expedient for the construction of the proposed building or the safe enjoyment thereof that the pipe should be closed, removed or diverted.

- (14) No person shall obstruct or hinder any person authorized or empowered by or under this Act in the execution of his duty or of anything which he is authorized or empowered or required to do by virtue of or in consequence of any of the provisions of this Act or any rules or made thereunder.

- (15) No person shall, except with the permission duly obtained from the Department or the Public Health Engineer in charge of water supply, enter on land or premises or water works of the Department.

- (16) Save as provided for in any other section of this Act, any compensation to be paid under this section or the other provisions in this Act, shall be as determined by the local authority as established by Law."

*Amendment
of
Section 14*

14. In the principal Act, for section 14, the following shall be substituted, namely:-

"14. Charges for Water Supply

- (1) The Government may, from time to time by notification in the Official Gazette, fix the times (frequency of payment), conditions and the rate or rates of charges, on metered basis or on the basis of number of taps installed or on the dimension of the service pipe payable or any formula approved by the competent authority, by the consumer for supply of water under this Act and different rate or rates, frequency or condition may be fixed for different areas and for different consumers and for different quantities.
- (2) The competent authority may provide free of charges gratuitous supply of wholesome water to the public within the notified area and may, for that purpose, erect public stand posts or other conveniences.

- (3) The Government may, from time to time by notification, levy water charge on the bill of the consumer,
- (4) The Government may, from time to time by notification, levy and include the service charge for sewerage services in a single water supply cum sewerage bill where such service is provided by the Department."

*Amendment
of
Section 15*

15. In the principal Act, in section 15, after sub-section (3), the following sub-sections shall be inserted, namely:-

- "(4) The installation, use, maintenance and testing of meters and disconnection of water supply shall be regulated by rules made on this behalf."

*Amendment
of
Section 16*

16. In the principal Act, section 16 shall be renumbered as sub-section (1) of that section and in sub-section (1) as so renumbered,-

- (i) after the words "altered" and before the words "as may be necessary", the words "and kept in proper order" shall be inserted;
- (ii) after sub-section (1), the following new sub-sections shall be inserted, namely:-

"(2) when under the provisions of this Act any person may be required or is liable to execute any work including repairs, the Department may in accordance with the provisions of this Act and any rules made in this behalf, cause such work to be executed after giving such person an opportunity of executing the same within such time as may be specified by it for this purpose.

(3) The expenses incurred or likely to be incurred by the Department in the execution of any such work shall be payable by the said person and the expenses incurred by the Department in connection with the maintenance of such work shall be payable by the person or persons enjoying the amenities and conveniences rendered possible by such work.

(4) The expenses under sub-section (3) shall be as determined by the competent authority, whose written certificate shall be final and binding and recoverable from the person or persons liable thereof as an arrear of water charge payable under this Act."

*Amendment
of
Section 18.*

17. In the principal Act, in section 18,-

- (i) in the marginal heading, after the word "main" and before the words "not to be made", the words "or water works" shall be inserted; and
- (ii) after the words "Government main" appearing at the end, the words "or water works" shall be inserted.

*Amendment
of
Section 19.*

18. In the principal Act, for section 19, the following shall be substituted, namely:-

"19. Indemnity

Notwithstanding anything contained in any other law for the time being in force or any deed executed under this Act or rules made thereunder, the Government or its officers and employees shall not be liable for any damage to, or penalty for, discontinuing the supply of water or reducing the supply of water or failure to supply water to any person or to any area if the cause of such failure to supply water to any person or to any area, is due to source depletion, drought, damage, accident, re-laying or repairing pipes or any other circumstance that is beyond the control of the Government, its officers and employees."

*Amendment
of
Section 21.*

19. In the principal Act, section 21 shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

"(2) If any building, wall or any other structure be so erected or any street be so laid, the Public Health Engineer in charge of water supply or any other officer authorized by the Department in this behalf may cause the same to be removed or otherwise dealt with as he deems fit and the expenses thereby incurred shall be paid by the persons contravening the provisions of sub-section (1).

(3) The expenses under sub-section (2) shall be as determined by the competent authority, whose written certificate shall be final and binding."

*Amendment
of
Section 22.*

20. In the principal Act, for section 22 and the entries relating thereto, the following shall be substituted, namely:-

"22. Notified water sheds, water source and water main routes",

"(1) All water bodies, shall be identified as watersheds or water sources or both or water main routes.

(2) Such 'watersheds or water sources' or 'water main routes' shall be under the administrative control of the Department.

(3) Any use of water from such 'watersheds or water sources' or 'water main routes' by the public, local authority or any other agency shall require prior approval of the Competent Authority.

(4) The Government may impose fee for use of water from, the 'watersheds or water sources' or water main routes by the public, local authority or any other agency and the charges shall, as may be prescribed by the rules.

Explanation.-

For the purpose of this section,-

- (a) 'watershed' means an area surrounding any spring, stream or pond (whether formed naturally or otherwise) which conserves and sustains a source of water the quantity whereof is likely to be varied by erosion of soil, felling of trees or disturbances by cattle grazing or human settlement and includes the gathering ground of a river system;
- (b) 'water-route' means the strip of land along with the pipe line for supply of water is laid and includes the land adjoining such pipe line which, if disturbed by quarrying, digging, felling of trees, cattle grazing or human settlement, is likely to disturb the stability of the pipe line.
- (c) 'water source' means 'water bodies' and includes any lakes, rivers, aquifers, ground water, streams, spring or ponds (whether formed naturally or otherwise) from where water is tapped for domestic or any other purposes.

**Amendment
of
Section 23**

- 21. (1) In the principal Act, section 23 shall be renumbered as sub-section (1) thereof, and in sub-section (1) as so renumbered,-
 - (i) for clause (a), the following shall be substituted, namely:-
 - “(a) remove, alter, injure, damage or in any way interfere, break, injure, turn on, open, close, shut off or otherwise interfere with any lock, cock, valve, pipe, meter or other works or apparatus, with the demarcated water works”;
 - (ii) for clause (g), the following clause shall be substituted, namely:-
 - “(g) willfully or negligently obstruct any person in the discharge of his duties under this Act or rules made thereunder in setting out the lines of any works or pull, or remove any pillar, post or stake fixed in the ground for the purpose of setting out the lines of such work or deface or destroy any works made for the same purpose”;
 - (iii) after clause (g) the following clauses shall be inserted, namely:-
 - “(h) obstruct any officer or employee of the Department in the discharge of his duties under this Act or rules made thereunder, or refuse or willfully neglect to furnish him with the means necessary for the making of any entry, inspection, examination or inquiry thereunder in relation to any water work; or

- (i) obstruct the flow off, flush, draw off or divert, or take, water from any water works belonging to the Department or any water course by which any such water is supplied; or
- (j) do any other act which the Government may, by notification, prohibit."
- (2) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-
- "(2) nothing in clause (a) of sub-section (1) shall apply to a consumer closing the stop-cock fixed on the service pipe supplying water to his premises so long as he has obtained the consent of any other consumer or occupier whose supply will be affected thereby."

*Amendment
of
Section 24*

22. In the principal Act, in section 24, after sub-section (2), the following sub-sections shall be inserted, namely:-

- "(3) When water is supplied in accordance with the provisions of this Act through a meter, it shall be presumed that the quantity indicated by the meter has been consumed until the contrary is proved.
- (4) The competent authority may authorise any person to test any water fitting used in connection with water supplied by him."

*Amendment
of
Section 25*

23. In the principal Act, in section 25,-

- (i) for the marginal heading "Obligation of owner to give notice of waste of water" the marginal heading "Obligation of owners, citizens, policeman and employees", shall be substituted;
- (ii) for sub-section (1), the following shall be substituted, namely:-
- "(1) The owner or occupier of any premises to which water is made under the provision of this Act and has within his knowledge that such water is being misused or wasted whether within or outside his own land or premise, shall forthwith give notice in writing to competent authority of such misuse or wastage."
- (iii) after sub-section (1), the following sub-sections shall be inserted, namely:-
- "(2) The owner or occupier of any premises to which water is made under the provision of this Act shall have primary obligation for watch and ward of the water meter and shall not tamper with the water meter and prevent any person from tampering and shall forthwith give notice in writing to competent authority of such tampering by another person.

- (i) obstruct the flow off, flush, draw off or divert, or take, water from any water works belonging to the Department or any water course by which any such water is supplied; or
- (j) do any other act which the Government may, by notification, prohibit."
- (2) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-
- "(2) nothing in clause (a) of sub-section (1) shall apply to a consumer closing the stop-cock fixed on the service pipe supplying water to his premises so long as he has obtained the consent of any other consumer or occupier whose supply will be affected thereby."

*Amendment
of
Section 24*

22. In the principal Act, in section 24, after sub-section (2), the following sub-sections shall be inserted, namely:-

- "(3) When water is supplied in accordance with the provisions of this Act through a meter, it shall be presumed that the quantity indicated by the meter has been consumed until the contrary is proved.
- (4) The competent authority may authorise any person to test any water fitting used in connection with water supplied by him."

*Amendment
of
Section 25*

23. In the principal Act, in section 25,-

- (i) for the marginal heading "Obligation of owner to give notice of waste of water" the marginal heading "Obligation of owners, citizens, policeman and employees", shall be substituted;
- (ii) for sub-section (1), the following shall be substituted, namely:-
- "(1) The owner or occupier of any premises to which water is made under the provision of this Act and has within his knowledge that such water is being misused or wasted whether within or outside his own land or premise, shall forthwith give notice in writing to competent authority of such misuse or wastage."
- (iii) after sub-section (1), the following sub-sections shall be inserted, namely:-
- "(2) The owner or occupier of any premises to which water is made under the provision of this Act shall have primary obligation for watch and ward of the water meter and shall not tamper with the water meter and prevent any person from tampering and shall forthwith give notice in writing to competent authority of such tampering by another person.

- (6) If the Chief Engineer, the Public Health Engineer, or any employee authorised in this behalf by the competent authority is, at any such time, refused admittance into such land or premises for the purpose of administration of any provision of this Act or rules made thereunder, the competent authority may, after giving the consumer an opportunity of being heard, cut off the supply of water to that premises.
- (7) If the nature of work requiring entry is of such urgency that it cannot be delayed, it shall be lawful for the Chief Engineer, the Public Health Engineer, or any employee authorised in this behalf by the competent authority, for purpose of administration of any provision of this Act or rule made thereunder, to make any entry in to any place and to open or cause to be opened any door, gate or other barrier including breaking in-
 - (a) if he considers the opening thereof necessary for the purpose of such entry; and
 - (b) if the owner or occupier is absent or being present refuses to open such door, gate, or barrier.
- (8) Before making any entry or break in into any such place or opening or causing to be opened any such door, gate or other barrier, the Chief Engineer, the Public Health Engineer or the employee authorised or empowered in this behalf, shall call upon two or more respectable inhabitants of the locality in which the place to be entered into is situated, to witness the entry or opening and may issue an order in writing to them or any of them so to do.
- (9) A report shall be made to the Department as soon as may be after any entry has been made into any place or any door, gate or other barrier has been opened under this section.
- (10) Save as otherwise provided in this Act or any rule made thereunder, no entry authorised by or under this Act, shall be made except between the hours of sunrise and sunset.
- (11) Save as otherwise provided for in sub-section (7) and any other provision of this Act or any rule made there under, no entry upon or into any land or premise shall be made without the consent of the occupier, or if there is no occupier, or the owner thereof and no such entry shall be made without giving the said owner or occupier, as the case may be, not less than twenty-hours written notice of the intention to make such entry.
- (12) When any place used as a human dwelling is entered under this Act, due regard shall be paid to the social

and religious customs and usages of the occupants of the place entered, no apartment in the actual occupancy of a female shall be entered or break open until she has been informed that she is at liberty to withdraw and every reasonable facility has been afforded to her for withdrawing."

*Amendment
of
Section 27.*

25. In the principal Act, in section 27,-

(i) for the marginal heading "Injuring meter fittings", the marginal heading "Injuring meter, fittings, water works" shall be substituted;

(ii) for sub-section (1), the following shall be substituted, namely:-

"(1) No person shall wilfully or negligently injure or suffer to be injured any meter or any of the fittings of any meter, any other fitting of water works and shall be deemed to be an offence under this Act."

(iii) after sub-section (1), the following sub-sections shall be inserted, namely:-

"(2) Such person shall be prosecuted in the Magistrates Court and the offence under sub-section (1) shall be punishable by a fine equal to two times the actual cost of repair, renewal or restoration or imprisonment up to two years or with both.

(3) The actual cost of repair, renewal or restoration under sub-section (2) shall be as determined by the competent authority, whose written certificate shall be final and binding."

*Amendment
of
Section 29*

26. In the principal Act, in section 29, after sub-section (1), the following sub-sections shall be inserted, namely:-

"(2) Subject to techno-economic feasibility, the Public Health Engineer in charge of water supply may fix hydrants or static tanks, at such places as may be most convenient for affording a supply of water for extinguishing any fire.

(3) The Competent Authority may require the owner or occupier of any factory, workshop, trade premises or place of business or residential house or non residential house, to provide for and maintain in working condition and in a suitable location and of prescribed dimensions, static tanks and one or more fire hydrants, to be used only for extinguishing fires."

*Amendment
of
Section 30*

27. In the principal Act, in section 30,-

(i) throughout sub-section (1), for the words "Chief Engineer-cum-Secretary, Buildings, PHE and Housing

Department", wherever they occur, the words "Principal Chief Engineer-cum-Secretary" shall be substituted;

- (ii) In sub-section (2), after the words "under appeal" appearing at the end, the words "and the orders of the appellate authority on such appeal shall be final" shall be inserted.

*Amendment
of
Section 31*

28. In the principal Act, in section 31, the words "water supply" appearing before the word "Department" and after the words "the Minister-in-charge of", shall be omitted.

*Amendment
of
Section 32*

29. In the principal Act, section 32 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

"(2) Joint and several liability of owners and occupiers shall exist for sub-section (1)."

*Amendment
of
Section 33*

30. In the principal Act, for section 33, the following shall be substituted, namely:-

"33. Levy of Water Fee

- (1) For the purposes of this Act, the Government shall levy, on any establishment, industry where water not supplied by the competent authority is used for non domestic purpose, a fee at such rate the Government may, from time to time, by notification, specify and different rates of fee may be specified for different areas or different usage.

Provided that:-

- (a) no such fee shall be levied and collected in any area where such fee is already being collected by any local authority, or any other authority under the provisions of Sikkim Laws;
- (b) no such fee shall be levied and collected in any area where water charge is already being collected by the competent authority;
- (c) no such fee shall be levied and collected from any establishment, industry where the daily usage is up to one kilolitre;
- (d) no such fee shall be levied and collected when water is used for agricultural purposes.

*Amendment
of
Section 34*

31. In the principal Act, in section 34,-

- (1) in the marginal heading, for the words "Annual Value", the words "water fee" shall be substituted;

- (2) for section 34 and the entries relating thereto, the following shall be substituted, namely:-
- "(1) For the purpose of section 33, Water Fee shall be assessed as per the usage data of the establishment or industry and the annual bill for each financial year shall be payable by the establishment or industry.
- (2) The Competent Authority may by notice demand, the user of water under section 33 of the Act to submit evidence or records of the annual usage of the volume of water in the establishment or industry, refusal to submit the record shall invite penalty in terms of the Act.
- (3) The average daily consumption shall be based on the annual usage record of the preceding year, or may be evaluated by the Divisional Engineer, considering the available information, which the user shall be bound to accept, provided that reasons for such evaluation shall have to be recorded.
- (4) Any person aggrieved by an order of evaluation of the annual usage made by an authority under sub-section (3) may, within 30 (thirty) days from the date of the order, prefer an appeal to such authority as may be prescribed (hereinafter referred to as the prescribed authority) in such manner as may be prescribed."

*Amendment
of
Section 35*

32. In the principal Act, for section 35, the following shall be substituted, namely:-

"35. Fees and Charges

- (1) The competent authority may levy such fees or charges for issue of no objection certificate, water quality certificate, water availability certificate or any other certificate regarding water supply and for connection, disconnection, re-connection of water supply or testing or supervision or for any other service rendered or work executed, repaired, maintained or supervised as may be prescribed.
- (2) The fees or charges referred to in sub-section (1) shall be such as may be prescribed."

*Amendment
of
Section 36*

33. In the principal Act, section 36 shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

- "(2) The Competent Authority may provide free of charges gratuitous supply of wholesome water to the public within the notified area and may, for that purpose, erect public stand posts or other conveniences."

*Amendment
of
Section 37*

34. In the principal Act, for section 37, the following shall be substituted, namely:-

"37. Manner of realization of water charges, fees or fines

- (1) The competent authority may by notice require the owner or occupier of the premises to pay within 15 (fifteen) days from the date of receipt of notice the charges, fees or fines on account due and recoverable from such owner or occupier.
- (2) If any notice, order or requisition has been issued to any person in respect of property of which he is the owner, the authority or officer at whose instance such notice, order or requisitions has been issued, may require the occupier, receiver, trustee or agent of such property or of any part thereof pay to him, instead of the owner, any rent payable by him in respect of such property, as it falls due up to the amount recoverable from the owner;

Provided that if the occupier refuses to disclose the correct amount of the rent payable by him or the name or address of the person to whom it is payable, the authority or officer may recover from the occupier the whole amount recoverable, as an arrear of charges payable under this Act.

- (3) Notwithstanding any contract between the owner and the occupier, any amount recovered from an occupier instead of from an owner under sub-section (2), shall be deemed to have been rent paid by the occupier to the owner. The certificate of receipt, indicating such an amount, issued by the competent authority shall be final and conclusive proof of payment in this regard.
- (4) Whenever the owner of any land or building fails to execute any work which he is required to execute under this Act or any rule made there under, the occupier, if any, of such land or building may, with the approval of the Department, execute the said work and he shall, notwithstanding any contract between the owner and the occupier, be entitled to recover from the owner the reasonable expenses incurred by him in the execution of the work and may deduct the amount thereof from the rent payable by him to the owner.
- (5) Where any person, by reason of his receiving rent to immovable property as a receiver, agent to trustee or if his being, as a receiver, agent or trustee, the person who would receive the rent if the property were let to tenant, would under this Act or any rule made there under, be bound to discharge any obligation imposed on the owner of the property for the discharge of which

- money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, funds in his hands belonging to the owner sufficient for the purpose.
- (6) The burden of proving any fact entitling a receiver, agent or trustee to relief under sub-section (5) shall lie upon him.
 - (7) Where any receiver, agent or trustee has claimed and established his right to relief under this section, the Department may by notice in writing require him, to apply to the discharge of his obligation as aforesaid the first money which may come to his hands on behalf or for the use of the owner and on failure to comply with notice, he shall be deemed to be personally liable to discharge the obligation.
 - (8) Any person who has been convicted of an offence against this Act or any rule made there under shall, notwithstanding any punishment to which he may have been sentenced for the said offence, be liable to pay such compensation for any damage to the property of the Department resulting from the said offence as the Department may consider reasonable.
 - (9) Save as the certificate issued under section 16, section 21, and section 27, in the event of a dispute regarding the amount of reasonable compensation, payable under sub-section (8) such amount shall, on application made to him be determined by the Magistrate before whom the said person was convicted of the offence; and on non-payment of the amount of compensation so determined the same shall be recovered under a warrant from the said Magistrate as if it were a fine imposed by him on the person liable therefor and remit it to the competent authority.
 - (10) Where the owner or occupier of the premises fails to pay the amount due from him within the period specified in the notice issued under sub-sections (1), (2) and (7), the competent authority may, without prejudice to any other mode of recovery, prepare a certificate indicating the amount due from such owner or occupier and send the same to the Judicial Magistrate of the First Class of the area in which the premises or land is situated.
 - (11) The Judicial Magistrate to whom the certificate is sent shall realize the amount specified in such certificate as if it were a fine imposed by such Magistrate and remit the same to the competent authority".

*Insertion of
new Section 37 A*

35. In the principal Act, after section 37, the following section shall be inserted, namely:-

"37 A. Notices

- (1) Where any notice, bill, order or requisition issued or made under this Act or any rule made thereunder, requires anything to be done for the doing of which no time is fixed in this Act or the rule made thereunder, the notice, bill, order or requisition shall specify a reasonable time for doing the same.
- (2) All notices, bill, summons and other documents required by this Act or any rule made thereunder to be served upon, or issued to, any person, shall be served or issued by such persons as may be authorized by the Department.
- (3) Every notice, bill, summons, order requisition or other document required or authorised by this Act or any rule made thereunder to be served or issued on any person shall, save as otherwise provided in this Act or such rule, be deemed to be duly served-
 - (a) where the person to be served is a company if the document is addressed to the Secretary of the Company at its registered office or at its principal office or place of business and is either-
 - (i) sent by speed post or registered post; or
 - (ii) deliver at the registered office or at the principal office or place of business of the company;
 - (b) where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name and style under which its business is carried on, and is either-
 - (i) sent by speed post or registered post; or
 - (ii) delivered at the said place of business;
 - (c) where the person to be served is a public body of a Department, organization, society or other body, if the document is addressed to the Secretary, Treasurer or other head of office of that body, Department, organization, or society at its principal office, and is either-
 - (i) sent by speed post or registered post; or
 - (ii) delivered at that office;
 - (d) in any other case, if the document is addressed to the person to be served and-
 - (i) is given or tendered to him;
 - (ii) if such person cannot be found is given or tendered to some adult member of his family; or

- (iii) is sent by speed post or registered post to that person.
- (4) Any document which is required or authorized to be served on the owner or occupier of any land or building may be addressed as, 'the owner' or 'the occupier' as the case may be, of that land or building (identifying that land or building) without further name of description, and shall be deemed to be duly served-
 - (a) if the document so addressed is sent or delivered in accordance with sub-section (5) and its relevant sub clause; or
 - (b) where a document is served on a partnership in accordance with this section, the document shall be deemed to be served on each partner, if the document so addressed is sent or delivered in accordance with sub-section (5) and its relevant sub-clause.
- (5) For the purpose of enabling any document to be served on the owner of any premises the Public Health Engineer or any other officer authorized or empowered to do so may by notice in writing require the occupier of the premises to state the name and address of the owner thereof.
- (6) Where the person on whom a document is to be served is a minor the service upon his guardian or any adult member of his family shall be deemed to be served upon the minor.
- (7) Nothing in the sub-sections (1) to (5) shall apply to any summons issued under this Act by a Court.
- (8) In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act or any rule made there under, requiring such person to execute any work or to do any act, it shall be lawful for the authority or officer at whose instance the notice, order or requisition has been issued, to take such action or such steps as may be necessary for the completion of the act or the work required to be done or executed by such person and all the expenses incurred on such account shall be payable to the Department on demand and if not paid within 15 (fifteen) days after such demand, the expenses shall be recoverable as an arrear of charges payable under this Act, whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment thereof.
- (9) No notice, order, requisitions, permission in writing or any other document issued under this Act or any rule shall be invalid merely by reason of any defect in form or detail."

*Amendment
of
Section 38*

*Amendment
of
Section 39*

36. In the principal Act, in section 38, in clause (a) of sub-section (2), after the word "firm" and before the words "or other association", the word "organization" shall be inserted.

37. In the principal Act, for section 39, the following shall be substituted, namely:-

"39. Sanction for prosecution, Arrest

- (1) No prosecution shall be instituted under this Act without the permission in writing of the Government.
- (2) Save as otherwise provided in this Act, no Court shall proceed with the trial of any offence made punishable by or under this Act or any rule, except on the complaint of or upon written information received from, the Public Health Engineer or any officer authorized by the competent authority.
- (3) The Chief Engineer, the Public Health Engineer, or any officer authorised in this behalf by the Competent Authority or any police officer who shall be, of, or equal to or higher than the status of a sub-inspector of police may arrest any person who commits in his view any offence against this Act or against any rule made there under, if,-
 - (a) the name and address of such person be known to him; and
 - (b) such person on demand declines to give his name and address or gives a name and address which such officer has reason to believe to be false.
- (4) No person so arrested shall be detained in custody after his true name and address are ascertained or, without the order of the nearest Magistrate, for a period longer than twenty-four hours from the time of arrest exclusive of the time necessary for the journey from the place of arrest to the Court of such Magistrate.
- (5) If the competent authority has reason to believe that an offence has been committed in violation of any provisions of this Act or rules made thereunder, the owner, the person primarily liable for the payment of the charges for water, and the occupiers of the said premises shall be jointly and severally liable for such offence."

*Amendment
of
Section 40*

38. In the principal Act, in section 40,-

- (i) for the marginal heading "Delegation", the marginal heading "Delegation, Competent Authority and Re-delegation" shall be substituted;

*Amendment
of
Section 41*

- (ii) after sub-section (2), the following sub-sections shall be inserted, namely:-
- “(3) The Principal Chief Engineer-cum-Secretary of the Department shall be competent authority in respect of the administration of this Act and for that purpose may exercise all powers necessary in that behalf or delegate it to a subordinate authority by an order in writing.
- (4) The Chief Engineer or any other officer or officers notified by an order of the competent authority in this behalf may also exercise any power or perform any function entrusted to him by such notification.”

39. In the principal Act,-

- (i) section 41 shall be renumbered as sub-section (1) thereof and in sub-section(1) as so re-numbered, after the word “thereunder” and before the words “shall, on conviction”, the words “or fails to comply with any order or direction lawfully given to him or any requisition lawfully made upon him under any of the said provisions” shall be inserted.
- (ii) after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:-
- “(2) In the case of a continuing contravention or failure after conviction, such continuing of contravention or failure shall be punishable with daily fine which may extend to one hundred rupees for every day during which such contravention or failure continues after conviction.
- (3) Action taken under Act or the rules made thereunder, against any person shall be without prejudice to any penalties to which he may otherwise be liable under any other Law.”

*Amendment
of
Section 42*

40. In the principal Act, for section 42, the following shall be substituted, namely:-

“42. Protection of Action taken under this Act and Public Servant

- (1) No suit or prosecution shall be entertained in any court against the Department or against any officer or employee of the Department or against any person acting under the order or direction of the Competent Authority or any officer or employee of the Department for anything which is in good faith done or intended to be done under this Act or any rule or regulation, made thereunder.

- (2) No suit, prosecution or other legal proceedings shall lie against any officer or employee of the Department for any act done or purporting to be done under this Act or any rule or regulation made there under without the previous sanction of the Government.
- (3) All members, officers and employees of the Department shall be deemed, when acting or purporting to act in pursuance of the provisions of this Act or any rule or regulations made thereunder, to be public servants within the meaning of Law for the time being in force."

Amendment
of
Section 43

41. In the principal Act, in section 43,-

- (i) In the marginal heading, after the word "rules", the words "and supplemental order" shall be inserted;
- (ii) in sub-section (2),-
 - (a) in clause (d), the words "and all meters in connection, with the use of water and turning on and off and preventing waste of water" appearing after the word "meters" shall be omitted;
 - (b) for clause (g), the following shall be substituted, namely:-
 - "(g) charges or fees for connection, disconnection, reconnection and other services rendered to the consumer";
 - (c) for clause (h), the following shall be substituted, namely:-
 - "(h) the equitable distribution of water supplied to the owners, occupiers or users within the notified area";
 - (d) after clause (h), the following clauses shall be inserted, namely:-
 - "(i) altering the position of connections;
 - (j) the prohibition of fraudulent and unauthorized use of water and the prohibition of tampering with meters;
 - (k) the compulsory employment of engineers or plumbers for the work of consumer line or service line or internal and external plumbing of the consumer's premises.
 - (l) the delegation and re-delegation of duties and responsibilities of officers and employees of the Department;

- (m) the power of the Competent Authority to take charge of private connections;
- (n) any other matter arising out of the Department's function under this Act, in which it is necessary or expedient to make such Rules.
- (o) the use of water and preventing misuse, wastage or disturbance in the equitable distribution of water."

JAGAT B. RAI (SSJS)
L.R-cum-SECRETARY
LAW DEPARTMENT

S.G.P.G. - 121/ Com. 2/Gazette /100 Nos / Dt:- 22.03.2018.

FOR SUCCESSFUL AMENDMENTS TO THE SIKIM WATER SUPPLY AND WATER TAX ACT, 1986 (ACT NO. 5 OF 1986) AMENDED AND
ENLARGED (UP TO MARCH, 2018)

(28)