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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 23rd February, 2023

No.2063—LESI-LL2-FM-0008/2017/LESI.— Whereas the draft of certain rules which the State Government proposed to make in exercise of the powers conferred by section 20 of the Dock Workers (Safety, Health and Welfare) Act, 1986 (54 of 1986) was published as required under section 22 of the said Act in the Extra-ordinary issue of the *Odisha Gazette* No. 2771 dated the 26th September, 2022 under the notification of the Government of Odisha in Labour and ESI Department No. LL2-FM-0008-2017-8036/LESI, dated 26th September 2022, inviting objections and suggestions from all persons likely to be affected thereby before expiry of a period of forty-five days from the date of publication of the said notification in the *Odisha Gazette*;

And whereas, no objection or suggestion has been received from any person within the period so stipulated in respect of the said draft;

Now, therefore, in exercise of the powers conferred by section 20 of the said Act, the State Government do hereby make the following rules, namely:-

1. Short title, application and commencement. — (1) These rules may be called the Odisha Dock Workers (Safety, Health and Welfare) Rules, 2023.

(2) They shall apply to all ports other than the major ports in the State of Odisha defined in the Major Ports Act, 1963 (38 of 1963).

(3) They shall come into force on the date of their publication in the *Odisha Gazette*.

2. Definitions. — (1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Dock Workers (Safety, Health and Welfare) Act, 1986 (54 of 1986);
- (b) "Chief inspector" means Director of Factories and Boilers, Odisha;
- (c) "Government" means the Government of Odisha in Labour and Employees State Insurance Department;
- (d) "Inspector" means Joint Director or Deputy Director or Assistant Director of Factories and Boilers;
- (e) "other ports" mean all ports other than the major ports in the State of Odisha;
- (f) "regulations" means the Odisha Dock Workers (Safety, Health and Welfare) Regulations, 2023; and
- (g) "section" means section of the Act.

(2) All other words used in these rules and not defined but defined in the Act or the regulations shall have the same meaning respectively assigned to them in the Act and regulations.

3. Inspection procedure. — An Inspector shall exercise the powers conferred upon him under the Act and the regulations.

4. Notice to employer. — The Inspector shall, after every inspection visit, as may be deemed necessary, issue an improvement notice or a prohibition notice pointing out the non-compliance of the provisions of the Act or the regulations to the owner or master or officer-in-charge of the ship or their agent or the employer of the dock workers in Form IX appended to the regulations.

5. Compliance of previous inspection reports. — An Inspector shall, at each inspection, ascertain to what extent any shortcomings notified in a previous inspection have been rectified and the notices previously issued have been complied with and his findings and any shortcomings which may come to light during the inspection, together with any order passed by him under the Act or the regulations shall be recorded in an inspection register required to be maintained for the purpose.

6. Notice. — Any notice or order required or intended to be served under the Act or the regulations, may be served, —

- (a) on any person by delivering it to him, or by leaving it at, or sending it by Registered Post or e-mail to the ship, premises or registered office as the case may be;
- (b) on any firm by delivering it to any partner of the firm or by leaving it at, or sending it by Registered Post to the office of the firm; or
- (c) on any company by delivering it to any of the directors or the person in charge of operations in the dock premises or by sending it by Registered post to the office of the company.

7. Show cause notice.— An Inspector may, as deemed necessary, issue show cause notice and prohibition order and prosecute the port authority, firm or company, who by himself or through his agent is responsible for non-compliance of the provisions under the Act and the regulations.

8. Inquiry into causes of accidents.— An Inspector shall conduct inquiry into causes of any accident or dangerous occurrence, which he has reason to believe was caused as a result of collapse or failure of lifting appliance, loose gear, transport equipment etc., or non-compliance with any of the provisions of the Act or the regulations.

9. Advisory Committee.—(1) The Advisory Committee under section 9 shall be constituted to advise upon such matter arising out of the administration of the Act and the regulations. The Advisory Committee shall consist of the following nine members to be appointed by the State Government, namely:-

- (i) The Chief Inspector and other two members representing the State Government;
- (ii) Three members representing organisation of employers of dock workers as the State Government may consider appropriate; and
- (iii) Three members representing organisations of dock workers, as the State Government may consider appropriate :

Provided that any vacancy occurring in the Advisory Committee shall, as soon as possible, be filled by the State Government by appointing new members representing the organization as provided in this sub-rule :

Provided further that the State Government may remove any member from the Advisory Committee, without assigning any reasons.

- (2) The Chief Inspector shall be the Chairman of the Advisory Committee.
- (3) The members of the Committee shall be appointed for a period of three years.
- (4) An officer of the organization of the Chief Inspector shall function as the Secretary to the Advisory Committee and shall be entitled to attend and take part in the meetings of the Committee, but he shall not have a right to vote.
- (5) The Chairman shall convene meetings of the Advisory Committee as often as considered necessary, by giving notice of at least 15 (fifteen) days and the Chairman shall also forward to the members the agenda for the meeting before the meeting is held.
- (6) The decision taken by the Committee shall be forwarded by the Chairman to the State Government, along with comments and recommendations on the actions to be taken thereon.
- (7) A report of the action taken on the decisions of the Advisory Committee shall be presented to the Committee by the Chairman at its next meeting.

10. Inquiry Procedure.— (1) Any competent person appointed by the State Government for the purpose of inquiring into the causes of any accident, diseases connected with dock work under the provisions of section 10 shall make inquiry in the following manner, namely:-

- (a) Date, time and place of holding the inquiry shall be fixed and may be varied, notice of which shall be given not less than thirty days in writing of such date, time and place to every person entitled to appear at the inquiry whose name and address are known to the competent person:

Provided that with the consent of all such persons, the competent person may give such lesser period of notice as shall be agreed to with those persons:

Provided further that where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the competent person shall give such notice of the variation as may appear to it to be reasonable in the circumstances.

(b) The notice given under clause (a) of this sub-rule shall state the name of the competent person and the names of assessors, if any, appointed to assist the competent person in the inquiry.

(2) Without prejudice to the provisions of sub-rule (1), the competent person shall also for the purpose of notifying to the persons who may in any way be concerned with the subject matter of the inquiry, take one or more of the following steps, namely:-

(a) publish notice of the inquiry in one or more newspapers, including where appropriate, newspapers circulating in the locality or area in which the subject matter of the inquiry arose; and

(b) give such other notice of the inquiry as appears to the competent person to be appropriate and the requirements as to the period of notice contained in clause (a) of sub-rule (1) shall not apply to any such notices.

11. Persons to appear at inquiry.— (1) The persons entitled to appear at the inquiry shall be,-

(a) any competent person under sub-rule (1) of rule 10;

(b) any enforcing authority concerned;

(c) any employers' association or trade union of employees;

(d) any person who was injured or suffered damage as a result of the accident of occurrence, situation, disease or other matter which is the subject of the inquiry, or his representative;

(e) the owner of any premises in which the accident, occurrence, situation or other matter occurred or arose;

(f) any person carrying on dock work giving rise to the accident, occurrence, situation or other matter which is the subject of the inquiry; and

(g) any other person at the discretion of the appointed competent person.

- (2) The following shall represent at the inquiry, –
- (a) a corporate body may be represented by its secretary or by any other officer appointed for the purpose, or by a counsel or solicitor; or
 - (b) a Government Department, an employers' association or a trade union may be represented by a counsel or solicitor; or
 - (c) where there are two or more persons having a similar interest in the matter under inquiry, the competent person may allow one or more persons to appear for the benefit of some or all persons so interested.
- (3) The competent person appointed by the State Government under section 10, may, either of his own motion or on the application of any person entitled or permitted to appear, cause to be served on any person appearing to him to be likely to be able to give material evidence or to produce any document likely to be material evidence, a notice requiring that person to attend at the inquiry at the time and place specified in the notice to give evidence or produce the document.
- (4) A person on whom a notice is served under sub-rule (3) may apply to the competent person either at or before the inquiry to vary or set aside the requirement, and where he does so before the inquiry he shall give notice of his application to the person, if any, who applied for the notice under sub-rule (3) to be served.
- (5) Except as otherwise provided in these rules, the procedure at and in connection with an inquiry shall be at the discretion of the competent person who shall state at the commencement of the hearing the procedure which, subject to consideration of any submission by the persons appearing at the inquiry, he proposed to adopt and shall inform those persons what he proposes as regards any site inspection arising out of the hearing.
- (6) Except as provided in the sub-rule (1) of rule 12, the inquiry shall be held in public.

12. Inquiry in public.— (1) The competent person appointed by the State Government under section 10 shall conduct the inquiry under rule 10 in public, unless:-

(a) the State Government is of the opinion that the matters of the inquiry or any part of it are of such nature that it would be against the interests of national security to hold the inquiry in public and directs the competent person to hold the inquiry in camera; or

(b) on an application made to him by any party to the inquiry, decides to hold the inquiry or such part of it in camera, if he is of the opinion that the holding of public inquiry will lead to disclosure of information relating to a trade secret:

Provided that information disclosed to any person by hearing of evidence in the circumstances mentioned in clause (a) or clause (b) shall not be disclosed by him except for the purpose of the inquiry.

(2) Persons entitled or permitted to appear shall be heard in such order as the competent person appointed by the State Government under section 10, may determine.

(3) Persons entitled to appear shall be entitled to make an opening statement, to call evidence and to cross-examine persons giving evidence, but any other person appearing at the inquiry may do so only to the extent permitted by the competent person appointed by the State Government under section 10.

(4) Where the competent person appointed by the State Government under section 10 so requires, witnesses shall give evidence on oath, and for that purpose he may administer an oath in due form.

(5) Any evidence may be admitted at the discretion of the competent person appointed by the State Government under section 10, who may direct that documents to be tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded to him to take or obtain copies thereof.

(6) The competent person appointed by the State Government under section 10, shall be entitled, subject to disclosure thereof at the inquiry and making available copies thereof to the persons appearing at the inquiry, to take into account any written representation or statement received by him before the inquiry from any person.

(7) The competent person appointed by the State Government under section 10 may from time to time adjourn the inquiry and where he does so shall give

reasonable notice to every person entitled or permitted to appear at the inquiry of the date, time and place of the adjourned inquiry:-

Provided that where the date, time and place of the adjourned inquiry are announced at the inquiry, no further notice shall be required.

(8) The competent person appointed by the State Government under section 10 and any person appointed to assist him in the inquiry may, where necessary for the purpose of the inquiry, at any reasonable time enter and make an inspection of any ship or premises to which the inquiry relates and any thing in them.

(9) The competent person appointed by the State Government under section 10 shall after the close of inquiry make a report in writing to the State Government, which shall conclude the findings of the facts and his recommendations, if any, or his reasons for making any recommendation.

(10) Except where the said report is to be published, in whole or in part, the State Government shall send to any person, who appeared at the inquiry, a copy of the report or so much of it as the competent person appointed by the State Government under section 10 thinks fit.

By Order of the Governor

R.S. GOPALAN

Commissioner-*cum*-Secretary to Government