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KERALA GAZETTE

കേരള ഗസറ്റ്

EXTRAORDINARY

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PUBLISHED BY AUTHORITY

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GOVERNMENT OF KERALA

Law (Legislation D) Department

NOTIFICATION

No. 21030/Leg. D2/2010/Law. Dated, Thiruvananthapuram, 30th April, 2011
10th Vaisakha, 1933.

In pursuance of clause (3) of Article 348 of the Constitution of India, the Governor of Kerala is pleased to authorise the publication in the Gazette of the following translation in English language of the Kerala Cultural Activists' Welfare Fund Act, 2010 (6 of 2011).

By order of the Governor,

K. MADHUSUDANAN NAIR,
Special Secretary (Law).

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ACT 6 OF 2011

THE KERALA CULTURAL ACTIVISTS' WELFARE FUND ACT, 2010

An Act to provide for the constitution of a Fund to grant relief to the cultural activists, to promote their welfare and to pay pension to those who engaged in various forms of arts, literature and cultural activities in the State of Kerala and for matters connected therewith or incidental thereto.

Preamble.—WHEREAS, it is expedient to provide for the constitution of a Fund to grant relief to the cultural activists who had or has been engaged in cultural activities and to promote their welfare and to pay pension to them and for matters connected therewith or incidental thereto;

BE it enacted in the Sixty-first Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Cultural Activists' Welfare Fund Act, 2010.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

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

(a) “Academy” means the Kerala State Chalachithra Academy, the Kerala Sahithya Academy, the Kerala Sangeetha Nadaka Academy, the Kerala Lalithakala Academy, the Folklore Academy and the Kerala Kalamandalam Deemed University established by the Government of Kerala;

(b) “Board” means the Kerala Cultural Activists' Welfare Fund Board constituted under section 8;

(c) “Contribution” means the amount payable to the Fund under section 6;

(d) “Cultural activist” means any person engaged in any of the activities relating to the field of cinema, electronic media, cable and Direct To Home network, drama, music, kathakali, ganamela, mimics, literature, painting, sculpture, folklore, ritual arts, semi classical arts, folk songs, make up, percussion arts, magic, circus, margamkali, chavittu nadakam, cartoon, poetic story presentation, recitation of Holy Books, Bible recitation, Koran recitation,

Mappilakalal, stage decoration, light and sound, costume design, art of advertising, painting, compeering, photography or any person working as librarian in libraries approved by the State Library Council or any person working in connection with any such other form of art, literature, culture, cultural speech or any such other activities for their livelihood or any person who was engaged or is being engaged in such other activities as declared by Government, by notification in the Gazette, for the purposes of this Act;

(e) “cultural activity” means an activity performed by a cultural activist and recognized as such by the respective Academy or Organisations or Trade or such other Body or Association approved by Government for the purposes of this Act, in which the activist is a member;

(f) “Chalachithra Academy” means the Kerala State Chalachithra Academy established by the Government of Kerala;

(g) “family” means wife or husband, minor sons and unmarried daughters of a cultural activist and includes in it his father, mother and mentally retarded or physically handicapped or widowed daughters who are solely dependent upon him;

(h) “Folklore Academy” means the Kerala State Folklore Academy established by the Government of Kerala;

(i) “Fund” means the Kerala Cultural Activists' Welfare Fund constituted under the scheme as provided in section 3 of the Act;

(j) “Government” means the Government of Kerala;

(k) “Kalamandalam” means the Kerala Kalamandalam Deemed University established by the Government of Kerala and approved by the University Grants Commission;

(l) “Lalithakala Academy” means the Kerala Lalithakala Academy established by the Government of Kerala;

(m) “member” means a member of the Fund;

(n) “Nadaka Academy” means the Kerala Sangeetha Nadaka Academy established by the Government of Kerala;

(o) “notification” means a notification published in the Kerala Official Gazette;

(p) “prescribed” means prescribed by rules made under this Act;

(q) “Sahithya Academy” means the Kerala Sahithya Academy established by the Government of Kerala;

(r) "Scheme" means the Kerala Cultural Activists' Welfare Fund Scheme framed under section 3 of this Act;

(s) "Schedule" means the Schedule appended to this Act;

(t) "Secretary" means the Secretary appointed under sub-section (1) of section 13 of this Act;

(u) "State" means the State of Kerala;

(v) "Trade body" means an Association registered under the Societies Registration Act, 1860 (Central Act XXI of 1860) or the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (12 of 1955).

3. *The Kerala Cultural Activists' Welfare Fund Scheme.*—(1) The Government shall, by notification in the Gazette, frame a Scheme to be called the Kerala Cultural Activists' Welfare Fund Scheme for the welfare of the cultural activists coming under this Act and thereafter, as soon as, constitute a Fund in accordance with the provisions of this Act.

(2) The following shall be credited to the Fund under the Scheme or Schemes, namely:—

(i) the contributions specified under section 6;

(ii) grants, loans, advances or donations made by the Government of India or the State Government or the Local Authorities or any other Non-Governmental institutions or Organisations or individuals;

(iii) fund raised through lottery conducted in association with the State Lottery Department;

(iv) the amount borrowed by the Board under section 14;

(v) the profit, interest, dividend on any investment or share made by the Board;

(vi) any fee collected by the Board under the Act or Rules or the Scheme;

(vii) any amount raised by the Board from any other source for augmenting the amount in the Fund;

(viii) amount collected by the Board from cinema tickets of fare exceeding Rupees Twenty five;

(ix) arrear amount realised under section 18;

(x) the amount collected by conducting art and cultural programmes for raising the Fund;

(xi) amount collected from the subscribers of the D.T.H. Cable network at the rate of one rupee.

(xii) any other amount to be credited to the Fund under the provisions of the Scheme.

(3) The Fund shall vest in the Board and be administered by the Board in accordance with the provisions of the Act or the Rules or the Scheme.

(4) The Fund shall be utilized for the implementation of the Welfare Schemes framed under sub-section (2) of section 4, particularly for all or any of the following purposes, namely:—

(a) for the payment of pension to any person who has completed sixty years of age and obtained membership under the provisions of section 7;

(b) for the payment of all benefits including pension to the members who have completed sixty years of age and contributed to the Fund for a period not less than five years continuously or as one time payment;

(c) for the payment of family pension on the death of a member who had remitted contribution for a period of not less than two years;

(d) for providing financial assistance to meet the expenses towards medical treatment of the members suffering from chronic diseases;

(e) for payment of financial assistance and pension to a member who suffers from permanent physical disability or physical infirmity which incapacitated him to do any work for his livelihood;

(f) for payment of financial assistance to women members, for maternity benefits, miscarriage, medical termination of pregnancy and sterilization, who had remitted contribution to the Fund continuously for more than three months;

(g) for payment of financial assistance for the marriage of women members and their daughters who had remitted contribution to the Fund continuously for at least one year;

(h) for payment of financial assistance to the family on the death of a member;

(i) for the payment of loans or advances and scholarship for educational purposes to the children of members, who had remitted contribution to the Fund for a period of five years;

(j) for providing loans or advances or maintenance fund to members for the promotion of cultural activity;

(k) for implementing any other purposes as may be specified in the Scheme.

(5) The terms and conditions for the payment to be made under clauses (a) to (k) of sub-section (4) shall be such as may be specified in the Schemes.

(6) Subject to the provisions of this Act, the Scheme or Schemes framed under sub-section (1) may provide for all or any of the matters specified in sub-section (4) and in the Schedule.

(7) Each Scheme framed under sub-section (1) shall be laid as soon as may be, after it is framed, before the Legislative assembly while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the next session immediately following, the Legislative Assembly makes any modification in the schemes or decides that the Schemes should not be made, the Schemes shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the schemes.

4. *Constitution of separate Schemes.*—(1) The Government may, in consultation with the Board and after previous publication, frame separate welfare Scheme or Schemes for any class or classes of cultural activists and the said Scheme or Schemes shall be implemented in accordance with the provisions of this Act.

(2) Each such Scheme under sub-section (1) shall vest in the Board constituted under section 8 of this Act and the Board shall make provision for the constitution of separate Welfare Funds for its administration.

(3) Save as otherwise provided and subject to other provisions of this Act, the provisions including the matters which are specified in the Schedule to this Act, applicable to the Scheme constituted under section 3, shall *mutatis mutandis* be applicable to the Scheme framed under sub-section (1).

5. *Modification of Scheme or Schemes.*—(1) The Government may, by notification in the Gazette, modify or add to or omit or vary any Scheme framed under section 3 of this Act.

(2) Every notification under sub-section (1) shall be laid as soon as may be, after it is issued before the Legislative Assembly while it is in session for a total period of 14 days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the said notification or decides that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however; that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

6. *Contribution to the Fund.*—(1) Every member other than those specified in sub-section (2) of this section shall contribute to the Fund at the rate of rupees fifty per month.

(2) Every producer, director, editor, lyricist, director of Photography, distributor, actor of cinema, actor of serials in television, owners of studios and labs and owners of theatres shall contribute to the Fund at the rate of rupees two hundred per month.

(3) Any member referred under sub-section (1) or (2) may remit their one year's contribution as one time payment.

(4) The Government shall contribute to the fund by way of grant every year an amount equal to two per cent of the total contribution under sub-sections (1) and (2).

(5) The remittance towards the Fund and payments from the Fund shall be in such manner and subject to such terms and conditions as may be prescribed.

(6) The Government may, by notification, revise the rate of contribution specified in sub-sections (1) and (2) once in three years taking into account the amount needed for the implementation of the Scheme.

7. *Membership.*—(1) Every cultural activist who has completed eighteen years of age but not completed sixty years of age shall be eligible for registering as a member of the Fund:

Provided that any cultural activist who has completed sixty years of age shall be eligible for registering as a member of the Fund by remitting five year's contribution as one time payment:

Provided further that such cultural activist shall produce a recommendation certificate from the respective Academy or Trade body or any such other body or association approved by the Government to which he relates to the effect that he is a cultural activist within the meaning of this Act, as a pre-requisite for getting membership in the Fund under this Act:

Provided also that a cultural activist who is engaged in more than one cultural activity as defined in this Act shall have to opt anyone of the Academy or Trade body or such other body or association approved by the Government for membership in the Fund and such option once exercised shall be final.

(2) Every cultural activist eligible to register under sub-section (1) shall, if he wishes to do so, register his name in the Fund in the manner as specified in the Scheme.

(3) Notwithstanding anything contained in sub-section (1), a cultural activist who has completed sixty years of age prior to the commencement of this Act and the Schemes made thereunder shall register his name in the Fund within such period and in such manner as may be specified in the Scheme, for receiving minimum pension.

8. *Constitution of the Board.*—(1) The Government may, by notification, constitute with effect from such date as may be specified therein, a Board to be called "the Kerala State Cultural Activists' Welfare Fund Board" for the administration and management of the Fund and to supervise and carry out the activities financed from the Fund.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall in the said name sue and be sued.

(3) The Head Office of the Board shall be at Thiruvananthapuram.

(4) The Board shall consist of twenty two Directors as hereinafter provided:—

(a) six members to be nominated by the Government representing the field of cinema and drama of whom two shall be women;

(b) two members to be nominated by the Government representing the field of electronic media of whom one shall be a woman;

(c) four members to be nominated by the Government representing the field of art, literature and music of whom two shall be women;

(d) the Secretary to Government, Cultural Affairs Department, *ex-officio*;

(c) one member not below the rank of Joint Secretary representing the Law Department, *ex-officio*;

(f) one member not below the rank of Joint Secretary representing the Finance Department, *ex-officio*;

(g) the Secretary, Chalachithra Academy, *ex-officio*;

(h) the Managing Director, Kerala State Film Development Corporation, *ex-officio*;

(i) the Secretary, Kerala Folklore Academy, *ex-officio*;

(j) the Secretary, Kerala Sahithya Academy, *ex-officio*;

(k) the Secretary, Kerala Sangeetha Nadaka Academy, *ex-officio*;

(l) the Secretary, Kerala Lalithakala Academy, *ex-officio*;

(m) the Registrar, Kerala Kalamandalam, *ex-officio*.

(5) The Government may appoint one of the Directors of the Board as the Chairman.

(6) The Government shall publish in the Gazette the names of the Chairman and the Directors of the Board.

(7) The Board shall administer the Fund vested in it in such manner as may be specified in the Scheme under which the Fund has been constituted.

(8) The Board shall, in exercise of its powers and discharge of its functions, be bound by such directions as may be issued by the Government from time to time.

(9) The Board may, with the previous approval of the Government and subject to such restrictions and conditions, as may be specified by the Board, delegate to the Chairman or to any member or to the Secretary or any other officer of the Board, such of its powers and functions under this Act or the Schemes, as it may consider necessary for the efficient administration of the Fund.

(10) Four separate sub-committees consisting of a Chairman and two members shall be constituted for the smooth functioning of the Fund in the following fields and the sub-committees so constituted shall submit recommendations for the Schemes in the respective fields,—

- (a) literature, culture, etc.
- (b) music, drama, drawing, folklore, etc.
- (c) cinema;
- (d) electronic media and art.

9. *Term of office of the Directors.*—(1) The Directors nominated under section 8 shall hold office for a period of four years:

Provided that there shall be no disqualification for a Director who has completed his term of office to hold office for a further term.

10. *Resignation, removal and filling up of casual vacancies of nominated Directors of the Board.*—(1) The Chairman or any Director of the Board may resign his office by giving one month notice in writing to the Government and his resignation shall come into force on the date of receipt of the letter of resignation by the Government.

(2) The Government may, at any time for reasons to be recorded in writing, remove from office the Chairman or any Director of the Board and such removal shall be made after giving him a reasonable opportunity of showing cause against the proposed removal:

Provided that it shall not be necessary to record in writing the reasons for removal or to give an opportunity of showing cause against the proposed removal where the Government are of the opinion that it is not expedient in the public interest to record the reasons in writing or to give such opportunity.

(3) Any casual vacancy in the office of the Director referred under sub-section (1) shall be filled up within a period of three months and the Director so nominated to fill such vacancy shall hold office only for the remaining period of the term of his predecessor.

(4) The Chairman or Director resigned under sub-section (1) shall not be eligible for reappointment to the Board unless otherwise ordered by the Government.

(5) The salary and other conditions of service including the travelling allowances for journeys performed in official duties by the Chairman and other Directors shall be such as may be prescribed.

11. *Meetings of the Board.*—(1) The Board shall meet at such place and time as may be specified by the Chairman at least once in two months or more, if found necessary, and transact its business in such manner as may be prescribed.

(2) The quorum for the meeting of the Board shall be one third of the Directors of the Board.

12. *Functions of the Board.*—The Board shall perform the following functions, namely:—

(a) to administer the affairs of the Fund vested in it as laid down in the Scheme or Schemes under which the Fund is constituted;

(b) to provide necessary inspiration, support and encouragement to those engaged in the fields of art, literature and culture as may be specified in the Scheme;

(c) to formulate Schemes for the relief and welfare of the cultural activists engaged in different activities in the field of art, literature and culture for livelihood;

(d) to maintain properly the accounts and registers in such manner as may be prescribed;

(e) to prepare the general guideline, necessary for the welfare of the activists engaged in the field of art, literature and culture, etc.;

(f) to recommend the Government for taking decision on such matters arising out of the administration of this Act;

(g) to submit the audited annual financial statement and report of the Board to Government in such manner and within such time as may be prescribed;

(h) to undertake such other functions which are assigned to it by the Government from time to time.

13. *Appointment of Officers and Staff.*—(1) The Government may, appoint a Secretary and such number of other officers and staff as it deems necessary to assist the Board in the performance of its functions and discharge of its powers under this Act, Rules and the Schemes framed thereunder.

(2) The Secretary shall be the Chief Executive Authority of the Board and have the powers and duties as may be prescribed.

(3) The method of appointment, salary, allowances and other conditions of service of the Secretary and other officers and staff appointed under sub-section (1) shall be such as may be prescribed.

14. *Power of the Board to borrow.*—The Board may, from time to time, with the previous approval of the Government and subject to such terms and conditions as may be specified by the Government, borrow money for the purposes of the Scheme.

15. *Directors of the Board, etc. to be public servants.*—Every Director of the Board appointed under sub-section (4) of section 8 and the officers and staff appointed under sub-section (1) of section 13 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

16. *Penalty.*—(1) Any person who for the purpose of avoiding any payment to be made by him under this Act or the Schemes or for enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(2) Whoever contravenes or makes default in complying with any of the provisions of this Act or the Schemes shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with fine which may extend to four thousand rupees.

(3) No court shall take cognizance of any offence punishable under this Act except on a report of the Secretary in writing of the facts constituting such offence.

(4) No court inferior to that of a Judicial Magistrate Court of the First Class shall try any offence punishable under this Act.

17. *Offences by company.*—(1) Where an offence under this Act has been committed by a company, every person, who at the time when the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that

the offence has been committed with the consent or connivance of, or is attributable to any willful negligence on the part of any officer of the company such officer of the company shall be deemed to be guilty of that offence and shall be liable to be punished accordingly.

Explanation.—For the purpose of this section,—

(a) 'Company' means a company defined under section 3 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a firm, a Co-operative Society or other association of individuals;

(b) 'Officer of the Company' means the Managing Director or Treasurer or Manager of the Company and includes the office bearers of a firm or Co-operative Society or other association of individuals;

(c) 'Director' in relation to a firm or establishment means a partner in that firm.

18. *Power to recover damages.*—Where any person makes default in the payment of any contribution to the Fund under this Act or the Rules or the Schemes, the Board may recover from him the arrear amount with interest at such rate as may be fixed by Government from time to time as if it were arrears of revenue due on land.

19. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the Chairman or any Director of the Board or officer of the Board for anything which is in good faith done or intended to be done under this Act or under the Schemes.

20. *Directions given by Government.*—(1) The Government may, give general directions to the Board to be followed by the Board.

(2) The Board, except with the previous permission of the Government, while exercising the powers and performing its duties under this Act, shall not deviate from any general directions given under sub-section (1).

21. *Power to order inquiry.*—(1) The Government may, at any time, appoint an officer not below the rank of Joint Secretary to Government to inquire into the working of the Board and to submit the report to Government.

(2) The Board shall give the officer so appointed all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts and information in the possession of the Board, as he may require.

22. *Power to supersede the Board.*—(1) If, after consideration of the report under sub-section (1) of section 21 or otherwise, the Government are of the opinion that the Board,—

- (a) is unable to perform the functions imposed on it; or
- (b) has persistently made default in the performance of the duties imposed on it by or under the provisions of the Act or Rules or Schemes; or
- (c) has exceeded or abused its powers,

the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification:

Provided that before issuing a notification under this sub-section, the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1),—

- (a) all Directors of the Board shall, as from the date of such publication, be deemed to have vacated their offices as such Directors;
- (b) all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such officer or officers, as may be specified in the notification; and
- (c) all funds and other properties vested in or owned or controlled by the Board shall, during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government shall reconstitute the Board in the manner provided under section 8.

23. *Audit of accounts of the Board, appointment and remuneration of auditors.*—(1) The accounts of the Board shall, with the approval of Government, be audited by an auditor appointed by the Government.

(2) Such auditor shall audit the accounts of the Board once in every year.

(3) The salary of such auditors appointed under sub-section (1) shall be such as may be prescribed by the Government and shall be paid from the Fund of the Board.

24. *Annual report and audited statement of Accounts.*—(1) The annual report of the Board shall be prepared by the Secretary, and submitted to the Board for approval. A copy of the report together with the audited statement of accounts shall be forwarded to the Government before the end of July every year.

(2) The Government shall, as soon as the annual financial statement and annual report is received, be laid before the Legislative Assembly.

25. *Bar of jurisdiction.*—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, any action taken under this Act or order or direction issued by the Government or the Board or any other authority or officer in pursuance of any power conferred on or in relation to its or his function under this Act.

26. *Removal of difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Gazette, make such provision not inconsistent with the provisions of this Act as appears to it be necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid as soon as may be after such order is made before the Legislative Assembly.

27. *Power to make Rules.*—(1) The Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this Act shall be laid as soon as may be, after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall, thereafter have effect only in such modified form or be no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

28. *Repeal and Saving.*—(1) The Kerala Cultural Activists' Welfare Fund Ordinance, 2010 (55 of 2010) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

[See sub-section (6) of section 3]

MATTERS FOR WHICH PROVISIONS MAY BE MADE IN THE SCHEME

1. Registration of cultural activist in the Fund.
2. The time, manner and other terms and conditions of contribution to be made in the Fund by or on behalf of the members.
3. The matters to be included in the Welfare Scheme or Schemes to be framed under sections 3 and 4.
4. The manner in which accounts shall be kept, the investment of moneys belonging to the Fund in accordance with any directions issued or conditions specified by the Government, the preparation of the Budget, the audit of accounts and the submission of reports to Government.
5. The conditions under which withdrawals from the Fund may be permitted and any deduction or forfeiture may be made and the maximum amount of such deduction or forfeiture.
6. The form in which a member of the Fund shall furnish particulars about himself and his family, whenever required.
7. The nomination of a person to receive any family pension of a member on his death and cancellation or verification of such nomination.
8. The manner and the terms and conditions for collecting the amount by the Board on cinema tickets of fare exceeding rupees twenty five.
9. Any other matter which is to be provided for in the Scheme or which may be necessary or proper for the purpose of implementing the Scheme.