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PART I- Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury etc.

GOVERNMENT OF WEST BENGAL

Department of Environment

NOTIFICATION

No. EN/136/T-II-7/005/2004

Dated, Kolkata the 27th January, 2006.

In exercise of the power conferred by section 63 of the Biological Diversity Act, 2002(18 of 2003), the Governor is pleased hereby to make the following rules namely :-

Rules

1. **Short title.** - These rules may be called the West Bengal Biological Diversity Rules, 2005.
2. **Definitions.** - (1) In these rules, unless the context otherwise requires,-
 - (a) "Act" means the Biological Diversity Act, 2002 (18 of 2003);
 - (b) "Biodiversity Management Committee" means the Biodiversity Management Committee constituted by a local body under sub-section (1) of section 41;
 - (c) "bio-survey and bio-utilisation" shall have the same meaning as in clause (d) of section 2;
 - (d) "Board" means the West Bengal Biodiversity Board established under sub-section (1) of section 22;
 - (e) "Chairperson" means the Chairperson of the Board;
 - (f) "Form" means a form annexed to these rules;
 - (g) "member" means a member of the Board and includes the Chairperson;
 - (h) "rule" means a rule of these rules;
 - (i) "Secretary" means the Secretary to the Board appointed under rule 11;
 - (j) "section" means a section of the Act;
 - (k) "State Government" means the Government of West Bengal in the Department of Environment;
 - (l) "sub-rule" means a sub-rule of the rule in which the word occurs.

(2) Words and expressions used but not defined in these rules and defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Manner of selection and appointment of Chairperson.—

(a) The State Government may appoint the Chairperson on deputation from amongst the officers not below the rank of a Secretary to the Government of West Bengal or by selection (direct recruitment):

Provided that the State Government may, if it considers necessary, appoint the Chairperson on part – time basis by selection (direct recruitment).

(b) (i) The selection of the Chairperson, either for part-time basis or full time basis, shall be done by a selection committee, to be constituted by the State Government for this purpose.

(ii) The Committee referred in (i) above shall comprise of the following members:-

Chief Secretary – Chairman

Secretary, Department of Environment – Member

Secretary, Department of Finance – Member

One expert on conservation of Biodiversity / Natural resources - Member

One person to be nominated by the State Government – Member

(iii) The Committee referred in (i) above shall select the Chairperson from a panel of eminent persons having adequate knowledge and experience in conservation and sustainable use of biodiversity as well as equitable sharing of benefits, to be prepared by the State Government.

4. Term of office of Chairperson. – The Chairperson shall hold office for a term of three years from the date he assumes office or until he attains the age of sixty-five years, whichever is earlier, and shall be eligible for re-appointment:

Provided that a government officer holding the post of the Chairperson may on attaining the age of superannuation be re-appointed to the post till he attains the age of 65 years.

5. Pay and allowances of Chairperson. – (1) The Chairperson shall be entitled to such remuneration as may be fixed by the State Government.

Provided when an officer of the State Government is appointed to the post of Chairperson, he shall be entitled to the grade pay for the post, till he attains the age of superannuation.

(2) The Chairperson shall be entitled to such benefits as leave, house rent, provident fund and pension and such other benefits, if any, as may be determined by the State Government.

(3) Notwithstanding anything contained in sub-rules (1) and (2), the Chairperson appointed on part-time basis shall be entitled to travelling allowance, daily allowance and

such other allowances, if any, as a Secretary to the Government of West Bengal is entitled to for performing any official duty.

6. Term of office of members. – Every member, other than the Chairperson and an *ex officio* member, shall hold office for a term of three years from the date he assumes office and shall be eligible for re-appointment, till he attains the age of sixty five years.

7. Pay and allowances of member. – Every member, other than the Chairperson and *ex officio* member, shall be entitled to such travelling allowance, daily allowance and such other allowances, to which a State Government officer drawing a pay of Rs. 16,400/- p.m. or above is entitled, for attending a meeting of the Board

8. Filling up of casual vacancy. – If the office of any member becomes vacant, the vacancy shall be filled up by nomination by the State Government and the person so nominated shall hold office as a member for the remaining term of the member in whose place he is so nominated.

9. Resignation of member. – A member may, by a letter under his hand addressed to the State Government, resign from the Board and such resignation shall take effect from the date on which it is accepted by the State Government or on expiry of thirty days from the date of tendering the resignation, whichever is earlier.

10. Removal of member. – A member may be removed from his office only after a due and proper enquiry is held by an officer, not below the rank of Secretary to the Government of West Bengal, appointed by the State Government for the purpose and after giving the member a reasonable opportunity of being heard.

11. Secretary to Board. – (1) The Board shall appoint the Secretary on deputation from amongst the officers, not below the rank of an Assistant Secretary to the Government of West Bengal, having experience in the day-to-day office administration including the accounting matters.

(2) The terms and conditions of service of the Secretary shall be such as may be specified by the Board by regulations made under sub-section (2) of section 14 *read* with section 25.

(3) The Secretary shall be responsible for--

- (a) the day-to-day administration of the Board;
- (b) coordinating and convening the meeting of the Board;
- (c) maintaining the records of the proceedings and the accounts of the Board;
- (d) such other matters as may be assigned or delegated to him, from time to time, by the Board.

12. Meetings of Board. – (1) The Board shall meet at least four times a year at its headquarters or at such places as may be decided by the Chairperson.

(2) The Chairperson shall, upon a written request from not less than five members of the Board, call a special meeting.

(3) The members shall be given at least seven days' notice, specifying the purpose, time and place, for an ordinary meeting and at least three days' notice specifying the purpose, time and place, for a special meeting.

(4) The Chairperson may, in consultation with the members, invite in the meeting any person working in conservation of biological diversity or any related field.

(5) In every meeting the Chairperson shall preside over, and in his absence, by a member, to be elected for the purpose by the members present, from amongst themselves.

(6) The decision at a meeting shall be taken by a simple majority of the members present and voting and, in the event of equality of votes, the Chairperson or, in his absence, the member presiding shall have a second or casting vote.

(7) Each member shall have one vote.

(8) The quorum at every meeting shall be five.

(9) No member shall bring forward, for consideration in a meeting, any matter of which he has not given at least seven days' notice, unless the Chairperson in his discretion permits him so to do.

(10) Notice of the meeting may be given to the members by delivering the same by a messenger or sending the same by the registered post to his last known place of residence or business or in such other manner as the Secretary may, in the circumstances of the case, think fit.

13. General functions of Board. – (1) It shall be the duty of the Board to advise the State Government on all matters relating to the conservation of biological diversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilisation of biological resources.

(2) The functions of the Board shall be –

- (a) to lay down the procedure governing the activities specified in section 23;
- (b) to regulate commercial utilisation and bio-survey and bio-utilisation of any biological resources in the State;

- (c) to coordinate the activities of the Biodiversity Management Committees;
- (d) to provide technical assistance and guidance to the Biodiversity Management Committees;
- (e) to give directions to the Biodiversity Management Committees for effective implementation of the Act;
- (f) to commission studies and sponsor investigations and research concerning conservation and sustainable use of biological diversity, bio-survey and bio-utilisation and other relevant subjects;
- (g) to engage consultants, each for a specific period not exceeding three years, for providing technical assistance to the Board in effective discharge of its functions:

Provided that if it is necessary to engage a consultant beyond the period of three years, the Board shall seek prior approval of the State Government for engaging the consultant beyond such period;

- (h) to collect, compile and publish technical and statistical data, manuals, codes and guidelines relating to conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and knowledge;
- (i) to organise through mass media programmes regarding conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources and knowledge and to plan and organise training of personnel engaged or to be engaged in such programmes;
- (j) to prepare the annual budget of the Board;
- (k) to create the posts of officers and other employees of the Board, with prior approval of the State Government, for effective discharge of its functions;
- (l) to build up data base and to create information and documentation system for biological resources and associated traditional knowledge through biological diversity registers and electronic media, to ensure effective management, promotion and sustainable use thereof;
- (m) to report to the State Government about the functioning of the Board and the implementation of the Act;
- (n) to sanction grants for specific purposes to the Biodiversity Management Committees;

- (o) to undertake physical inspection of any area in connection with the implementation of the Act;
- (p) to assist the National Biodiversity Authority in opposing grant, outside India, of any intellectual property right on any biological resources or associated knowledge, such knowledge being obtained from the State in an unlawful manner; and
- (q) to do such other functions as may be assigned or directed by the State Government.

14. Powers and duties of Chairperson.— (1) Save as otherwise provided in these rules, the Chairperson shall have the overall control over the day-to-day activities of the Board.

(2) The Chairperson shall have the power of general superintendence over the officers and other employees of the Board and to issue directions for the conduct and management of the affairs of the Board.

(3) The Chairperson shall be in charge of all the confidential documents of the Board and responsible for their safe custody.

(4) All orders and instructions of the Board shall be issued under the signature of the Chairperson or such officer of the Board as may be authorised in this behalf by the Chairperson.

(5) The Chairperson, either by himself, or through such officer of the Board, as may be authorised in this behalf, by the Chairperson, may sanction and disburse all payments against the approved budget.

(6) The Chairperson shall have power to grant administrative and technical sanction to all estimates.

(7) The Chairperson shall convene the meetings of the Board, either by himself or through an officer of the Board, and shall preside over the meetings and shall ensure that all decisions taken in the meetings are implemented in proper manner.

(8) The Chairperson shall exercise such other powers and perform such other functions as may be delegated to him by the Board or the State Government.

15. Procedure for access to biological resources. — (1) Any person, who is a citizen of India, or any body corporate which is created by law in India, or any association or organisation which is registered in India, if intends to undertake any activity referred to in section 7, shall give an intimation, by an application in Form , to the Board.

(2) On receipt of the application, the Board shall, after consultation with the concerned local bodies and collection of such other information from the applicant, or otherwise, as it may deem necessary, dispose of the application within a period of one month from the date of its receipt.

(3) The Board may, if it is satisfied with the merit of the application, grant approval to such activity or, if it is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biological diversity or equitable sharing of benefits arising out of such activity, prohibit and restrict any such activity:

Provided that no order for prohibiting or restricting any such activity shall be made without giving an opportunity of being heard, to the person to be affected thereby.

(4) If the Board grants approval to such activity, it may enter into a written agreement, being not inconsistent with the provisions of the Act, with the applicant allowing access to biological resources and associated knowledge and such agreement shall be duly signed by an officer authorised by the Board and the applicant.

(5) The form of the agreement, referred to in sub-rule (4) shall be laid down by the Board, which shall include, *inter alia*, the following matters, namely:—

- (a) general objectives and purpose for seeking approval;
- (b) description of the biological resources and the traditional knowledge including accompanying information;
- (c) intended uses (research, breeding, commercial utilisation, etc.) of the biological resources;
- (d) quantum of monetary and other incidental benefits (including a commitment to enter into a fresh written agreement in case any of the biological resources is taken up for research and is to be used, later on, for commercial purpose or in case there is a change in the use of the biological resources)
- (e) restriction to transfer the accessed biological resources and associated traditional knowledge to any third party without prior approval of Board;
- (f) obligation of the applicant to adhere to a limit set by the Board on the quantity, and specification of the quality, of biological resources for which the applicant is seeking access;
- (g) guarantee to deposit with the repositories designated under section 39 a reference sample of the biological resources sought to be accessed to;
- (h) submission of regular status report of research and other development to the Board;

- (i) commitment to abide by the provisions of the Act, and the rules, regulations and orders made thereunder;
- (j) commitment to take measures for conservation and sustainable use of biological resources sought to be accessed to;
- (k) commitment to minimise environmental impacts on account of the collection activities; and
- (l) other matter such as duration of the agreement, notice in case of rescission of the agreement, independent enforceability of individual clauses of the agreement, survival of the benefit sharing clause in the agreement in case of rescission of the agreement, liability in case of natural calamities, arbitration of disputes and confidentiality clause in the agreement.

(6) The agreement referred to in sub-rule (4) may include conditions relating to the measures to be taken by the applicant for conservation and protection of biological resources to which such access is being approved and such other restrictions as the Board may deem fit and proper to impose having regard to the nature and description of the biological resources.

(7) The Board shall widely publicise, through print and electronic media, the approvals granted by it and shall regularly monitor compliance of the conditions on which the access to biological resources has been approved by it.

16. Revocation, etc. of approval for access to biological resources.— (1) If the Board is satisfied, on the basis of any complaint or *suo motu*, that—

- (a) there exists overriding public opinion for protection of environment or conservation of biological diversity which necessitates the revocation of approval granted to any person under rule 15, or
- (b) the person who has been granted the approval has violated any of the provisions of the Act or the rules made thereunder, or has failed to comply with the terms and conditions of the agreement, or has failed to comply with any of the conditions touching the access, or is destroying the biological diversity while accessing the biological resources,

it may, after giving the person an opportunity of being heard, by order in writing, revoke the approval granted by it and rescind the written agreement.

(2) The Board shall send a copy of the order referred to in sub-rule (1) to the concerned Biodiversity Management Committee or, in its absence, to the concerned local body or any other authority for prohibiting the access to the biological resources or assessing and recovering the damage, if any, caused by the person, who has been granted the approval.

17. Restriction or prohibition on access to biological resources. – In case the request for access,—

- (a) is for any endangered taxa, or taxa that are likely to become threatened due to such access;
- (b) is for any endemic and rare species;
- (c) may likely result in adverse effect on the livelihoods of the local people;
- (d) may result in adverse environmental impact difficult to control and mitigate;
- (e) may cause genetic erosion affecting the ecosystem;
- (f) may cause destruction of any biological resources;
- (g) may be for use of resources for purposes contrary to national interest and other related international agreements entered into by India,

the Board may, after consultation with the concerned Biodiversity Management Committee or the local body and after an enquiry is held and the person to be affected thereby is given an opportunity of being heard, by order, restrict or prohibit the access to biological resources.

18. Operation, etc. of State Biodiversity Fund.— (1) The State Biodiversity Fund shall be operated jointly by the Chairperson, or by the member to whom the power has been delegated under sub-rule (8) of rule 14, and such other officer of the Board as may be authorised in this behalf by the Board.

- (2) The State Biodiversity Fund shall have the following heads of accounts, namely,—
- (a) receipts from the Central Government;
 - (b) receipts from the State Government; and
 - (c) other receipts.

(3) The State Biodiversity Fund shall be applied for the purpose specified in sub-section (2) of section 32.

19. Annual report and audit of accounts of Board. – (1) The Board shall prepare its annual report for each financial year, giving a full account of its activities during that financial year and submit the same to the State Government.

(2) The Board may, subject to the provisions of section 33, lay down the procedure for keeping the accounts.

(3) The accounts of the Board shall, subject to the provisions of section 34, be audited annually by a Chartered Accountant appointed for the purpose by the Board.

(4) The Board shall furnish to the State Government the annual report together with the audited statement of accounts to the State Government by the end of September each year.

20. Notification, etc. of biodiversity heritage sites.— (1) The Board shall, in consultation with the concerned Biodiversity Management Committee, local body and other authorities, take necessary steps to facilitate setting up of biodiversity heritage sites comprising areas of biodiversity importance.

(2) The State Government may, on recommendation of the Board, issue notification relating to biodiversity heritage sites comprising areas of biodiversity importance.

21. Constitution, etc. of Biodiversity Management Committee. —

(1) Every local body shall constitute a Biodiversity Management Committee within its area of jurisdiction:

Provided, that in *panchayat* area, a Biodiversity Management Committee may be constituted at the block level and at the district level.

(2) Every local body shall nominate seven persons as members for the Biodiversity Management Committee constituted under sub-rule (1):

Provided that not less than one third of the members of the Biodiversity Management Committee shall be women:

Provided further, that not less than eighteen per cent of the members of the Biodiversity Management Committee shall belong to the Scheduled Castes or the Scheduled Tribes.

(3) The Chairperson of the Biodiversity Management Committee shall be elected from amongst the members in a meeting to be presided over by the Chairperson of the concerned local body.

(4) Biodiversity Management Committees may co-opt persons, having expertise and knowledge in biodiversity conservation, or connected to biodiversity conservation, as its special invitees so as to be assisted in efficient discharge of its functions.

(5) The tenure of office of the members of the Biodiversity Management Committee shall be three years.

(6) The concerned Member of Legislative Assembly and the concerned Member of Parliament shall be special invitees to the meetings of a Biodiversity Management Committee.

(7) The Biodiversity Management Committee shall Prepare and update, in consultation with local people, a People's Biodiversity Register containing comprehensive information on the availability of the local biological resources, their medicinal and other uses and other traditional knowledge associated thereto.

(8) The Biodiversity Management Committee shall advice on any matter, concerning grant of approval, referred to it by the State Biodiversity Board or National Biodiversity Authority and maintain data about the local *vaid*s and the local *hakim*s using the biological resources.

(9) The People's Biodiversity Registers shall be prepared, updated and maintained by the Biodiversity Management Committees in such manner, as may be directed by the Board.

(10) The Biodiversity Management Committee shall also maintain, in such manner as may be specified by the Board, a register containing information about details of the access to biological resources and traditional knowledge, details of the collection of fees and details of the benefits derived and the mode of their sharing.

(11) The Biodiversity Management Committee shall take initiative to generate awareness regarding the biological resources available in the locality, their ecological and economic importance and the need to conserve them, and shall prepare action plans for this purpose.

(12) The Biodiversity Management Committee shall determine and periodically update the status of regeneration of all important species and the quantum available within its area, by making inventory, under the technical guidance of the Board.

(13) The Biodiversity Management Committee shall set up and maintain germplasm banks and seed centers or other centers of similar nature for promoting conservation of cultivars, folk varieties and landraces under the technical guidance of the Board.

(14) The Biodiversity Management Committee shall carry out such other function as may be assigned to it by the Board.

22. Local Biodiversity Fund. – (1) Every Biodiversity Management Committee shall have a Local Biodiversity Fund

(2) The Local Biodiversity Fund shall be operated jointly by the Chairperson, or by the member to whom the power as such has been delegated, and such other officer of the Biodiversity Management Committee as may be authorised in this behalf by such Committee.

(3) The Local Biodiversity Fund shall have the following heads of accounts, namely:—

- (a) receipts from the National Biodiversity Authority or the Central Government;
- (b) receipts from the Board or the State Government; and
- (c) other receipts (including collection of fees).

(4) The Local Biodiversity Fund shall be used for the purpose specified in subsection (2) of section 44 of the Act.

FORM

[See rule 15(1)].

Form for application for access to biological resources**Part A**

1. Full particulars of the applicant.
 - (a) Name:
 - (b) Permanent address:
 - (c) Address of the contact person / agent, if any, in India (if the applicant resides outside India):
 - (d) Profile of the organization (personal profile in case the applicant is an individual): (Please attach relevant documents of authentication.)
 - (e) Nature of business:
 - (f) Turnover of the organization:

2. Details and specific information about nature of access sought and biological material and associated knowledge to be accessed.
 - (a) Identification (scientific name) of biological resources and its traditional use:
 - (b) Geographical location of proposed place of collection:
 - (c) Description / nature of traditional knowledge (oral / documented):
 - (d) Any identified individual / community holding the traditional knowledge:
 - (e) Quantity of biological resources to be collected (give the schedule):
 - (f) Time span in which the biological resources is proposed to be collected:

- (g) Name and number of person authorised by the company for making the selection:
 - (h) The purpose for which the access is requested including the type and extent of research and the commercial use being derived and expected to be derived from it:
 - (i) Whether any collection of the resources endangers any component of biological diversity and the risks which may arise from the access:
3. Details of any national institution which will participate in the Research and Development activities:
 4. Primary destination of accessed resource and identity of the location where the Research and Development will be carried out:
 5. Economic and other benefits including those arising out of any IPR, patent obtained out of accessed biological resources and knowledge that are intended or may accrue to the applicant or to the country that he/she belongs:
 6. The biotechnological, scientific, social or any other benefits obtained out of accessed biological resources and knowledge that are intended or may accrue to the applicant or to the country that he/she belongs:
 7. Estimation of benefits that would flow to India / communities arising out of the use of accessed biological resources and traditional knowledge:
 8. Proposed mechanism and arrangements for benefit sharing:
 9. Any other information considered relevant:

Part B

Declaration: I/we hereby declare that the collection of proposed biological resources shall not :-

- (a) adversely affect the sustainability of the resources;
- (b) entail any environmental impact;
- (c) pose any risk to ecosystems;

(d) adversely affect the local communities; and

(e) destroy any other biological resources.

I/we further declare the information provided in this application form is true and correct and I/we shall be responsible for any incorrect/wrong information herein.

Place:

Signature: _____

Date:

Name: _____

Title: _____

By order of the Governor,

A. Barman

*Principal Secy. to the Govt. of West Bengal
and Secretary, Environment Department.*