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(NO.PATNA 704) PATNA, TUESDAY, 30TH JULY 2024

Labour Resources Department

Notification
25th July 2024

No. 1@B-01/2024] JCE 68394—The following draft rules which the State Government Proposes to make in exercise of the powers conferred by section 29 of the Boilers Act, 1923 (5 of 1923) as amended by the Jan Vishwas (Amendment of Provisions) Act, 2023 (18 of 2023) are published as required by section (2) of section 31 of the Boilers Act, 1923 for information of all persons likely to be affected thereby and notice is hereby given that the said draft rules will be taken into consideration after the expiry of forty five days from the date of their publication in the Official Gazette of Bihar.

Any objections or suggestions which may be received from any person with respect to the said draft rules before expiry of the period as specified above will be considered by the State Government. Such objections or suggestions may be addressed to the Commissioner of Labour, Bihar, Niyojan Bhawan, 3rd Floor, B-Block, Bailey road, Patna- 800001 or Email:-lcbihar@bihar.gov.in.

DRAFT RULES

I. PRELIMINARY.

1. **Short title and commencement.**-(1) These rules may be called the Bihar Boiler Penalty Adjudication and Appeal Rules, 2024.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.-** (1) In these rules, unless the context otherwise requires,-
- (a) “Act” means the Boilers Act, 1923 (5 of 1923);
 - (b) “Section” means a Section of the Act;
 - (c) “Adjudicating Officer” means a person to be the Labour Commissioner having jurisdiction, authorized under sub-section (1) of section 26A of the Act;
 - (d) “Appellate Authority” means a person to be the Secretary to the Government, Labour Resources Department, authorized under sub-section (1) of section 26B of the Act;
 - (e) “Chief Inspector” and “Inspector” mean, respectively a person appointed to be a Chief Inspector and an Inspector under the Act;
 - (f) “Government” means the State Government of Bihar;
 - (g) “Inquiry” means the inquiry mentioned in section 26A of the Act;
 - (h) “Form” means a form appended to these rules;
 - (i) “application” means an application to Adjudicating Officer under section 26A;
 - (j) “Owner” shall have a meaning to it under clause (d) of section 2 of the Act;
- (2) Words and expressions used in these rules but not defined shall have the meanings respectively assigned to them in the Act.

II. GENERAL.

3. **Applicability of rules:** These rules shall be applicable in the State of Bihar.

III. REPORT OF CONTRAVENTION AND FILING APPLICATION.

4. **Report of alleged contravention.-** If the Inspector observes that the owner or any person has contravened such provisions of the Act which are liable to penalty under sections 22,23, sub-section(1) of section 25 and section 30, he shall report the same to the Chief Inspector.

5. **Examination of report and order for filing application.-** On receipt of the report from the Inspector, the Chief Inspector shall examine it and if satisfied, he shall countersign the report and return it with an order in writing to the Inspector to file an application before the Adjudicating Officer for adjudication under section 26A.

6. **Filing of application.-**The Inspector shall file the application as per order under rule 5 enclosed therewith the copy of the report duly countersigned by the Chief Inspector and thereafter shall inform the Chief Inspector with a copy of receipt of the application filed before the Adjudicating Officer.

IV. ADJUDICATION UNDER SECTION 26A.

7. **Adjudication proceedings.-**

- (1) On receipt of the application under rule 6, the Adjudicating Officer shall commence the inquiry and issue a notice to owner or person named in the application filed giving him or them an opportunity to make a representation in the subject matter within a period of thirty days from the date of receipt thereof. A copy of such notice shall also be sent to Inspector for information.

- (2) Every notice under sub-rule (1) shall indicate the section(s) and the provisions thereof alleged to have been contravened by the owner or any person and enforce the attendance of such person or his authorized representative on the date and time fixed for hearing of the subject-matter of the inquiry. A copy of the report of the Inspector shall also be annexed to such notice.
- (3) On the date of hearing of the case, the Adjudicating Officer shall explain to the owner or person proceeded against or to his authorized representative regarding contravention of the provisions of the Act and rules or regulations made thereunder that are alleged to have been committed by such owner or person and due to which the contravention is alleged to have occurred.
- (4) The Adjudicating Officer shall then give an opportunity of hearing to the owner or person proceeded against and to the Inspector filing application under rule 6 and may require the owner or person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date.

Provided that the Adjudicating Officer shall pass the final order within 180 days from the date of first hearing mentioned in sub-rule (3).

- (5) The Government may appoint any officer, prosecutor or an advocate to represent the department in the inquiry.
- (6) If the owner or person concerned fails, neglects or refuses to appear or produce documentary evidence as required by sub-rule (2) or sub-rule(4) as the case may be, before the Adjudicating Officer, The Adjudicating Officer may proceed with the inquiry after recording the reasons for doing so.
- (7) If the Adjudicating Officer, on consideration of the documentary evidence produced before him, is satisfied that the owner or person, against whom the inquiry has been conducted, is liable to penalty under sections 22, 23. sub-section (1) of section 25 and section 30, he may, by order in writing impose such penalty under the Act as he considers reasonable or if the contravention is not proved, he may reject the application. Every such order shall be signed with date by the Adjudicating Officer.

The order imposing penalty shall have mention of section (s) and its provisions found contravened, reasons in brief for the decision and the sum of the penalty imposed for online payment to the Government within thirty days from the date of order by the Adjudicating Officer.

- (8) The Adjudicating Officer shall send a copy of the order made under sub-section (7) to the owner(s) or person(s) against whom the inquiry was conducted and to the Inspector who has filed the application.

8. Serving on notice and order.-The notice and the order under these rules shall be sent to the concerned owner(s) or person(s) and to the Inspector by registered post or by speed post at such address as entered in the application.

V. APPEAL UNDER SECTION 26B

9. **Filing of Appeal.**- Whoever aggrieved by the order, passed by the Adjudicating Officer under section 26A, may prefer an appeal to the Appellate Authority within sixty days from the date of receipt of the order.

10. **Presentation of Appeal.**- Every appeal shall be either in Hindi or English fairly and legibly type written and presented either personally or by registered post or speed post to the Appellate Authority.

11. **Form of Appeal.**- The appeal shall be in Form 'A' as Petition of Appeal in triplicate and shall be accompanied by a copy of the order of Adjudicating Officer issued under sub-rule(7) of rule 7 and a clear statement of facts appealed against, the grounds for appeal and the relevant section(s) of the Act.

12. **Scrutiny of Appeal.**- If on scrutiny, the appeal is found in order, it shall be registered and given a serial number and if the appeal is found to be defective, the same with notice shall be returned to the appellant for rectification of defects therein within twenty days of receipt of such notice. If the defects are not rectified within the said period, the Appellate Authority may for the reasons to be recorded in writing, decline to register admission of the appeal.

13. **Admission of late filed Appeal.**- Notwithstanding anything contained in rule 9, the appeal may be admitted by the Appellate Authority after the expiry of the period of sixty days, if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within that period.

14. **Procedure of hearing Appeal.**-

- (1) As soon as the appeal completed in all respect is admitted and registered by the Appellate Authority, he shall serve a copy of the appeal on the respondent by hand delivery or by registered or speed post.
- (2) Respondent shall file reply on the appeal to the Appellate Authority within thirty days of serving notice of appeal.
- (3) The Appellate Authority may call for the records relating to the proceeding from the respective Adjudicating Officer.
- (4) On receipt of reply under sub-rule (2) and records under sub-rule (3), the Appellate Authority shall fix a date for hearing of the appeal within thirty days from the date of receipt thereof.
- (5) When the date of hearing has been fixed, the Appellate Authority shall issue notice to the appellant and the respondent stating the date of hearing and informing them to remain present during hearing either in person or by authorized representative with evidence of identity on the date fixed.
- (6) The notice shall be sent by registered post or speed post at such address as entered in the petition of Appeal (Form 'A') and if due to genuine reasons the appellant or the respondent is unable to be present either in person or by representative for hearing on the date fixed and seeks postponement of hearing, shall intimate the same in writing to the Appellate Authority and the Appellate Authority, if satisfied with the reasons for postponement may fix another date of hearing.
- (7) The appellate Authority after giving the appellant and the respondent an opportunity of being heard to the appeal on the date of hearing fixed, take decision and pass order as he may think fit either

confirming order passed by the Adjudicating Officer or setting aside the order appealed against.

- (8) The Appellant Authority shall have powers to pass interim order or injunction, subject to reasons to be recorded in writing, which he considers necessary in the interest of justice.
- (9) The order passed by the Appellate Authority under sub –rules (7) and (8) of rule 14 shall be final and the same shall not be challenged in any court of law.
- (10) The order of the Appellate Authority shall be signed by him with date.
- (11) A certified copy of every order passed by the Appellate Authority shall be communicated to the Adjudicating Officer and to the appellant as well as respondent.
- (12) The appeal shall be disposed of within sixty days from the date of its filing duly corrected in all respect.

FORM ‘A’

(see rule 11)

Petition of Appeal

BEFORE THE APPELLATE AUTHORITY

**In the matter of section 26B of the
Boilers Act, 1923**

AND

In the matter of Appeal against the order dated-----

**Passed by the Labour Commissioner -----as the
Adjudicating Officer**

APPEAL NO.-----OF 20-----

Vs

-Appellant

-Respondent

For use in Appellate Authority’s office: -

Date of presentation of Appeal : -----

Date of receipt of Appeal : -----

Registration No. : -----

Signature

INDEX

Sl. No.	Particulars	Page
1.	Appeal	
2.	Copy of Notice dated-----issued by the Adjudicating Officer	
3.	Copy of Reply dated-----sent by the Appellant to the Notice	
4.	Copy of the order dated-----passed by the Adjudicating Officer under section 26A	

APPEAL

1. <u>Particulars</u>	<u>Appellant</u>	<u>Respondent</u>
(i) Name	: -----	-----
(ii) Address	: -----	-----
(iii) Address for sending all notices	: -----	-----
(iv) Mobile No.	: -----	-----
(v) E-mail	: -----	-----

2. Declaration made by the Appellant:-The Appellant declares that the Appeal made for its admission, hearing and order by the Appellate Authority is in accordance with the provisions of section 26B of the Boilers Act, 1923.

The Appellant further declares the matter regarding which this Appeal has been filed, is not pending before any other court of law or any other authority or any other Tribunal.

3. Facts of the case:-(Here mention a concise statement of facts of the case and grounds of Appeal against the order of the Adjudicating Officer in a chronological order, each paragraph containing as separate issue, fact or otherwise)

4. Relief (s) sought:-In the view of the facts mentioned in paragraph 3 and the grounds on which the order of the Adjudicating Officer is challenged, the Appellant prays for the following relief(s)-

(Here specify the relief (s) sought and the legal provision, if any, relied upon)

5. Interim relief (s) sought:

(If prayed for)

Pending the final decision in the Appeal, the Appellant seeks the following interim relief (s):-

(Here specify the interim relief (s) prayed for and the reasons therefor)

6. Details of Index:-An index containing the details of the documents relied upon is enclosed herewith.

7. List of enclosures:

(-----)

Signature of Appellant

VERIFICATION

I, -----son/wife/daughter of Shri-----being the Appellant do hereby that the contents of paragraph 1 to 7 are true to my own knowledge and belief and that I have not suppressed any material fact.

(-----)

Signature of Appellant

Place:

Date:

[File no.-----]

(-----)

Secretary to the Government

आदेश से,
राजीव रंजन,
सरकार के संयुक्त सचिव।

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