

Chapter - 10

THE BUREAU OF INDIAN STANDARDS ACT, 1986

The Bureau of Indian Standards Act, 1986 (hereinafter referred as the "Act"), is one of the most significant legislations relating to prescription of standards and their enforcement. The Bureau of Indian Standards has been established under the same Act. It is the successor of an earlier institution, namely the Indian Standards Institution, which had come into existence in 1947 as a society under the Societies Registration Act, 1860 for the task of preparing and promoting standards of production in various sectors of the national economy. From the consumer point of view, the Act is a very important legislation for standardization and quality control. It repealed the Indian Standards Institute (Certification Marks) Act, 1952 which had been passed when the economy of the country was in infancy. Since the development in the country has reported substantial progress in various sectors, the new thrust has to be on standardization, quality control and evolving a national strategy to accord appropriate recognition and importance to standards. The present Act has accordingly enabled the setting up of the Bureau as a statutory institution, to establish and promote Indian standards in relation to any article or process and have a harmonious development in standardization, marking and quality certification of goods. It gives an exhaustive account of the functions of the Bureau which are mainly consumer oriented.

The Bureau is vested with the power to make inspection and take samples of any material or substance to check whether their standard mark conforms to the Indian standard or whether the standard mark has been properly/improperly used with or without licence. It is further empowered to undertake research for the formation of Indian standards in the interest of consumers and the improvement of the quality of any article or process. The Bureau can co-ordinate activities of any manufacturer or association of manufacturers or consumers engaged in standardisation and in the improvement of the quality of any article or process or in the implementation of any quality control service.

Improper use of standard mark or name, or registration of the company or firm, trade mark, or grant of patent has been made punishable. Consumers and consumer associations have been authorized to make complaints about contraventions, whenever and wherever they take place.

I. Constitution of the Bureau

The Bureau, constituted by the central government under section 3 of the Act has both *ex-officio* members and other members representing various relevant sectors. The *ex-officio* members include:¹

- (1) the minister in charge of the ministry or department of the central government having administrative control of the Bureau (*ex-officio* president of the Bureau);²
- (2) the minister of state or a deputy minister, if any, in such ministry or department (*ex-officio* vice-president of the Bureau);³
- (3) the secretary to the government of India in charge of such ministry or department;⁴
- (4) the joint secretary in such ministry or department;⁵
- (5) the Director-General of the Bureau;⁶

The appointed members include:⁷

- (1) five members of Parliament of whom three shall be from the House of the People and two from the Council of States;
- (2) twenty-six persons representing the ministries and departments of the central government dealing with important subjects of interest to the Bureau;
- (3) thirty two representatives – one each from the state governments and the union territories who is : (i) the minister in charge of the department having administrative control over quality and standards in the case of states and union territories having council of ministers; and (ii) the administrator or the chief executive councillor, as the case may be, in the case of union territories, not having a council of ministers;
- (4) one representative each from five recognized consumer organisations which in the opinion of the central government are active and effective in their operations;
- (5) five persons, who, in the opinion of central government, are capable of representing consumer interests;
- (6) two persons who are capable of representing farmers interests, to be nominated from amongst farmers or farmers associations.

1. The Bureau of Indian Standards Act, 1986, sec. 3.

2. *Id.*, sec. 3(3)(a).

3. *Id.*, sec. 3(3)(b). Where there is no such minister of state or deputy minister, such person as may be nominated by the central government to be the vice-president of the Bureau.

4. *Id.*, sec. 3(3)(c).

5. Bureau of Indian Standards Rules, 1987, rule 3(1)(cc).

6. *Supra* note 1, sec. 3(3)(d).

7. *Supra* note 4, rule 3(1), clauses (e) to (l).

- (7) thirty persons representing the industry and trade and their associations, public sector enterprises and small scale sector chosen from:
- (a) presidents of ten industrial associations or federations of all-India level including at least two associations or federations of small-scale industries;
 - (b) chief executives of 12 central or state public enterprises related to subjects of importance to the Bureau;
 - (c) chairmen or managing directors of six industrial organisations other than the public sector;
 - (d) chairmen or proprietors of two small scale industrial units operating the Bureau of Indian standards certification scheme;
- (8) ten persons representing the scientific and research institutions related to subjects of importance to the Bureau:
- (9) ten persons representing the technical, educational and professional organisations to be chosen from amongst representatives of professional bodies, educational and technical institutions, related to subjects of importance to the Bureau;

In case of *ex-officio* members, the term of office of a member continues so long as he holds the office by virtue of which he is such a member.⁸ The Bureau may, on the recommendation of the director-general, associate persons, not exceeding fifteen, to assist or advise in the fields of science and technology including environmental control, energy conservation, import substitution, transfer of technology and other areas of emerging technology.⁹ The appointed members hold office for a period of two years and are eligible for re-appointment.¹⁰

A person is not qualified for being appointed as a member if he –¹¹

- (a) has been convicted and sentenced to imprisonment for an offence involving moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the government or a body corporate owned or controlled by the government; or
- (e) has in the opinion of the central government such financial or other interest in the Bureau as is likely to affect prejudicially the discharge by him of his functions as member.

8. *Id.*, rule 3(1A).

9. *Id.*, rule 3(2).

10. *Id.*, rule 4(1).

11. *Id.*, rule 4(4).

A member can be removed on the same grounds. However, if a member is removed on the ground that he has become subject of the disqualification because of any financial or other interest in the Bureau, he has to be given a reasonable opportunity of being heard in the matter.¹² In case of resignation of a member the central government has to fill the vacancy within six months from the date of resignation for the remainder of the term of office of the resigning member.¹³

II. Constitution of Committees by the Bureau

Executive Committee

Under section 4 of the Act, the Bureau is empowered to form an executive committee to perform some of the functions of the Bureau and exercise powers and discharge duties as may be delegated to it by the Bureau.¹⁴ The committee is to have the director-general of the Bureau as its *ex-officio* chairman and sixteen other members. The members are appointed by the Bureau with the prior approval of the central government, which should include:¹⁵

- (i) additional secretary, and financial adviser and joint secretary having administrative control of the Bureau;
- (ii) two persons representing ministries or departments of central government;
- (iii) two persons representing recognized consumer organisations;
- (iv) two persons representing industry, trade and their associations;
- (v) two persons representing public sector enterprises;
- (vi) one person representing small scale sector;
- (vii) two persons representing scientific and research institutions;
- viii) one person representing technical, educational or professional organisations; and
- (ix) two members from the Bureau of Indian Standards.

The appointed members of the executive committee hold office for a period of two years and are eligible for re-appointment. The term of office of the *ex-officio* chairman is on a tenure basis for a period of three years who is also eligible for re-appointment.¹⁶

Advisory and other committees

Section 5 of the Act authorizes the Bureau to constitute, besides the

12. *Ibid.*

13. *Id.*, rule 4(2) & (3).

14. *Id.*, rule 6(1).

15. *Id.*, rule 6(2).

16. *Id.*, rule 4(3).

executive committee, some advisory or other committees for the discharge of its functions in an efficient manner. Such committees may include:¹⁷

- (a) Financial committee;
- (b) Certification advisory committee;
- (c) Standards advisory committee;
- (d) Laboratory advisory committee;
- (e) Planning and development advisory committees;
- (f) such number of other committees as may be determined by regulations.

In addition to these committees, the Bureau can constitute technical committees of experts for the formulation of standards in respect of articles or processes.¹⁸

The director-general of the Bureau is appointed by the central government on prescribed terms and conditions of service, subject to the general superintendence and control of the Bureau.¹⁹ He is its chief executive officer and has to exercise and discharge such of the powers and duties of the Bureau as may be determined by the regulations.²⁰ The Bureau can appoint such other officers and employees as it considers necessary in accordance with the regulations framed in this respect.²¹

III. Functions of the Bureau

The Bureau may exercise such powers and perform such duties as may be necessary to carry out the objectives of the Act. In particular, section 10 of the Act details out the functions of the Bureau which are of a very wide range. The Bureau is empowered to establish, publish and promote an Indian standard, in relation to any article or process.²² It can recognize any standard established by any other institution in India or elsewhere, in relation to any article or process, as an Indian standard.²³ The Bureau can specify a standard mark to be called the Bureau of Indian Standards Certification Mark of a specific design and containing specified particulars.²⁴ It can grant, renew, suspend or cancel a licence for the use of a standard mark.²⁵ Fees can be levied for the grant or renewal of any such licence.²⁶

17. *Supra* note 1, sec. 5(1).

18. *Id.*, sec. 5(3).

19. *Id.*, secs. 7 (1) and (2).

20. *Id.*, sec. 7 (3).

21. *Id.*, sec. 8.

22. *Id.*, sec. 10(1)(a).

23. *Id.*, sec. 10(1)(b).

24. *Id.*, sec. 10(1)(c).

25. *Id.*, sec. 10(1)(d).

26. *Id.*, sec. 10(1)(e).

The Bureau is vested with the powers to make such inspection and take such samples of any material or substance as may be necessary to see whether any article or process in relation to which the standard mark has been used conforms to the Indian standard or it has been improperly used or without a licence.²⁷ Recognition of the Bureau and of the Indian standards may be sought outside India also. In this respect, the terms and conditions would be such as may be mutually agreed upon by the Bureau with the corresponding institution or organization in any other country.²⁸ The Bureau can establish, maintain and recognize laboratories for the purpose of standardization and quality control and for such other related purposes.²⁹ At present, there are 15 such laboratories in different parts of the country. The Bureau is empowered to undertake research for the formulation of Indian standards in the interest of consumers and recognize any institution in India or outside which is engaged in the standardization or improvement of the quality of any article or process.³⁰

The Bureau can provide services to manufacturers and consumers of articles or processes on such terms and conditions as may be mutually agreed upon and appoint agents in India or outside India for the inspection, testing and such other purposes as may be prescribed.³¹ It can inspect branches, offices or agencies, in India or outside, and any article or process, in relation to which the standard mark is used or which is required to conform to the Indian standard, irrespective of whether such article or process is in India or is brought or intended to be brought into India from a place outside India.³² The Bureau can co-ordinate activities of any manufacturer or association of manufactures or consumers engaged in standardization and in the improvement of the quality of any article or process or in the implementation of any quality control activities.³³

The Bureau is supposed to perform any other functions as may be assigned to it by the central government.³⁴ It is supposed to ensure the strict implementation of quality control measures by way of undertaking necessary activities conforming to the rules made by the central government in this regard.³⁵

IV. Prohibitions

The Act strictly restricts the use of any standard mark or any colourable

27. *Id.*, sec. 10(1)(f).

28. *Id.*, sec. 10(1)(g).

29. *Id.*, sec. 10(1)(h).

30. *Id.*, secs. 10(1)(i) and (j).

31. *Id.*, secs. 10(1)(k) and (l).

32. *Id.*, sec. 10(1)(m) and (n).

33. *Id.*, sec. 10(1)(o).

34. *Id.*, sec. 10(1)(p).

35. *Id.*, sec. 10(2).

imitation thereof in relation to any article or process, unless such article or process conforms to the Indian standard.³⁶ It prohibits the use of any name which so nearly resembles the name of the Bureau as to deceive or likely to deceive the public or which contains the expression "Indian Standard" or any abbreviation thereof or any mark or trade mark in relation to any article or process containing the expression "Indian Standard" or "Indian Standard Specification" or any abbreviation of such expression. For any such use, previous permission of the Bureau is necessary.³⁷ The Act also restricts every registering authority from registering any company or firm which bears any name or mark if the use of such name or mark is in contravention of such requirements. Same is the case as regards the registration of a trade-mark or design and grant of a patent in respect of an invention.³⁸ Any dispute regarding the registration for use of any name or mark before the registering authority can be referred to the central government whose decision in that behalf is deemed as final.³⁹

In order to ensure compulsory use of standard mark with respect to different articles and processes, the central government is empowered to notify after consulting the Bureau any article or process of any scheduled industry, requiring it to conform to the Indian standard and also direct the use of the standard mark under a licence as compulsory on such article or process.⁴⁰ For the purposes of this section, the "scheduled industry" would be the industry scheduled in the Industries (Development and Regulation) Act, 1951.

V. Grant of Licence

The Bureau is empowered to grant, renew, suspend or cancel any licence for the use of a standard mark.⁴¹ The grant, renewal, suspension or cancellation of a licence is carried out in the manner as has been provided in the regulations, namely the Bureau of Indian Standards (Certification) Regulations, 1988. The conditions for the grant and renewal of the licence have also been set out in the same regulations along with the requirements of fee etc.

According to clause 4 of these regulations, the Bureau has to conduct preliminary enquiries about requisite skills, equipment, systems, resources, previous performance and antecedents of the applicants relevant to issuance of the licence and find out their fitness for use of the standard mark. Any

36. *Id.*, sec. 11

37. *Id.*, sec. 12.

38. *Id.*, sec. 13(1).

39. *Id.*, sec. 13(2). The concerned ministry is the Ministry of Consumer Affairs, Food and Distribution, Government of India, New Delhi.

40. *Id.*, sec. 14.

41. *Id.*, sec. 15.

person aggrieved by an order of the Bureau, in that regards, can prefer an appeal to the central government within ninety days from the date of the decision of the Bureau. An appeal may not be admitted if it is preferred after the expiry of the prescribed period, However, it may be admitted after the expiry of such period if the appellants shows sufficient cause for not preferring the appeal within the prescribed period. Every such appeal has to be made in the prescribed form and accompanied by a copy of the order appealed against and the prescribed fee. Before disposing of an appeal, the appellants shall be given a reasonable opportunity of being heard.

VI. Annual Report to be Laid before Parliament

The Bureau has to prepare in each financial year its annual report giving a full account of its activities during the previous financial year and submit it to the central government.⁴² The central government is required to lay down the annual report of the Bureau, as soon as may be after it is received, before each House of the Parliament.⁴³ The Bureau is, in the exercise of its powers or the performance of its functions, bound by the directions of the central government on questions of policy. The central government may give its direction to the Bureau in writing from time to time. As far as practicable, the Bureau is given an opportunity to express its views before any such direction is given.⁴⁴ Whether a question is one of policy or not is finally decided by the central government.⁴⁵

VII. Inspection, Search and Seizure

The Bureau is authorized to appoint the necessary number of inspecting officers for the purpose of inspecting whether any article or process, in relation to which the standard mark has been used, conforms to the Indian standard or not. They would also have to find out whether the standard mark has been properly used in relation to any article or process, with or without licence. Any other functions may also be assigned to such officers.⁴⁶ An inspecting officer has power to inspect any operation carried out in connection with any article or process in relation to which the standard mark has been used. He can take samples of articles or other materials or substances used in any article or process, in relation to which the standard mark has been used.⁴⁷ Every inspecting officer is furnished by the Bureau with a certificate of appointment as an inspecting officer, which he is bound to produce on demand.⁴⁸

42. *Id.*, sec. 21.

43. *Id.*, sec. 23.

44. *Id.*, sec. 24(1).

45. *Id.*, sec. 24(2).

46. *Id.*, sec. 25(1).

47. *Id.*, sec. 25(2).

48. *Id.*, sec. 25(3).

An inspecting officer is authorized to enter into and search any place, premises or vehicle about which he has reason to believe that contravention has taken place regarding the use of standard mark or name of any article or process, and the same are hidden there.⁴⁹ If on any such search, it is found that the contravention has taken place, he may seize such article and other things which are relevant to any proceeding under this Act.⁵⁰ Where it is not practicable to seize any such article or things, the inspecting officer may serve on the owner an order that he shall not remove, part with or otherwise deal with, the article or things except with the previous permission of the inspecting officer.

The provisions of the Cr PC relating to search and seizure, so far as may be, apply to every search or seizure made under this section.⁵¹

The Bureau can delegate its certain powers and functions to any member, member of the executive committee, officer of the Bureau or any other person. But such delegation of powers can be only as per necessity and on specified conditions.⁵²

Every licensee is bound to supply the Bureau with necessary information and samples of any material or substance which has been used in relation to any article or process, as the Bureau may require.⁵³ Any information so obtained under the provisions of this Act is treated as confidential. However, disclosure of such information can be made for the purpose of prosecution under the Act.⁵⁴ The Act does not exempt any person liable under its provision from any suit or other proceedings under any other law.⁵⁵

VIII. Penalty for Improper Use of Standard Mark

Any person who contravenes the provisions of the Act relating to the use of standard mark or name, or registration of the company or firm, trade mark, or grant of patent is punishable with imprisonment for a term which extend to one year or with fine which may extend to fifty thousand rupees, or with both.⁵⁶ The court trying such a contravention may direct that the property in respect of which the contravention has taken place be forfeited to the Bureau.⁵⁷

49. *Id.*, sec. 26(1).

50. *Id.*, sec. 26(2).

51. *Id.*, sec. 26(3).

52. *Id.*, sec. 27.

53. *Id.*, sec. 28.

54. *Id.*, sec. 30.

55. *Id.*, sec. 29.

56. *Id.*, sec. 32(1).

57. *Id.*, sec. 32(2).

Any court can take cognizance of an offence punishable under this Act on a complaint made by or under the authority of the government or Bureau or by any officer empowered by the government in this behalf. Any consumer or any consumer association, recognized in this behalf by the central or state government, can also initiate proceedings under the Act.⁵⁸ Any offence punishable under this Act can be tried by a court not inferior to that of a metropolitan magistrate or a judicial magistrate of the first class specially empowered in this behalf.⁵⁹

Where an offence has been committed by a company, the person in charge or the person responsible for the conduct of the business of the company at the time of the commission of the offence as well as the company are deemed to be guilty can be proceeded against, and punished accordingly.⁶⁰ However, such a person would not be liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all the due diligence to prevent the commission of such an offence.⁶¹ If it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such a person would be liable to be proceeded against and punished.⁶²

The Act does not affect the operation of the Agricultural Produce (Grading and Marking) Act, 1937 or the Drugs and Cosmetics Act, 1940, or any other law for the time being in force, which may deal with the standardization or quality of any article or process.⁶³

58. *Id.*, sec. 34(1).

59. *Id.*, sec. 34(2).

60. *Id.*, sec. 35(1).

61. *Id.*, proviso to sec. 35(1).

62. *Id.*, sec. 35(2).

63. *Id.*, sec. 40.