THE ESSENTIAL COMMODITIES ACT, 1955

INTRODUCTION

Article 369 of the Constitution had empowered the Parliament during a period of five years from the commencement of the Constitution to make laws with respect to trade and commerce in, and the production, supply and distribution of, certain essential commodities. The life of the Essential Supplies (Temporary Powers) Act, 1946 was, therefore, limited to the 26th January, 1955. It was in the public interest that Central Government should continue to have the same legislative powers, even after 26th January, 1955, a Bill providing for the necessary amendment of Entry 33 of List I in the Seventh Schedule to the Constitution was passed by both the Houses of Parliament. The Constitution (Third Amendment) Act had however not become law when the Essential Supplies (Temporary Powers) Act, 1946 expired and therefore an Ordinance was promulgated to take effect on the 26th day of January, 1955. To replace the Ordinance the Essential Commodities Bill was introduced in the Parliament to provide for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.

STATEMENT OF OBJECTS AND REASONS

Under Article 369 of the Constitution, Parliament had power during a period of five years from the commencement thereof to make laws with respect to trade and commerce in, and the production, supply and distribution of certain essential commodities. The life of the Essential Supplies (Temporary Powers) Act, 1946 was therefore limited to the 26th January, 1955. The essential commodities to which that Act applied fell into two broad categories, *viz.*:—

(a) coal, textile, iron and steel, paper, etc., which are products of industries under Union control, and

(b) foodstuffs, cattle fodder, etc., which are not products of such industries.

As public interest required that Centre should continue to have even after the 26th January, 1955, the same legislative powers as it had under Article 369 of the Constitution, a Bill providing for the necessary amendment of Entry 33 of List 3 in the Seventh Schedule to the Constitution was passed by both Houses of Parliament in September last year. This amendment has now become law, having been ratified by the requisite number of States.

The Constitution (Third Amendment) Act, however, had not become law when the Essential Supplies (Temporary Powers) Act, 1946 expired, and therefor an Ordinance was promulgated to take effect on the 26th day of January, 1955, which provided for the regulation of trade and commerce in, and the production, supply and distribution of commodities which fell within the first category referred to in the preceding paragraph. Under Entry 42 of the Union List, Parliament has power to regulate inter-State trade and commerce in all commodities and the Ordinance also provided for such regulation in section 4, thereof but the application of that section was limited in the first instance to wheat, raw cotton and sugar-cane.

Pending the passing of a Central law providing for control in respect of all essential commodities now falling within Entry 33 of the Concurrent List, certain State Governments have promulgated Ordinance or taken legal action open to them for continuing controls in respect of such commodities as could not be included in the Central Ordinance.

The present Bill seeks to replace the Central Ordinance and at the same time includes within the definition of "essential commodities" those commodities which had to be left out by reason of lack of legislative power. To a very large extent, the Bill follows the provisions contained in the Essential Supplies (Temporary Powers) Act, 1946, but the penalty clause has been simplified and a few other provisions have been omitted as unnecessary.

ACT 10 OF 1955

The Essential Commodities Bill having been passed by both the Houses of Parliament received the assent of the President on 1st April, 1955. It came on the Statute Book as THE ESSENTIAL COMMODITIES ACT, 1955 (10 of 1955) (*Came into force on 1-4-1955*).

LIST OF AMENDING ACTS, ADAPTATION OF LAWS ORDER AND ORDINANCE

1. The Adaptation of Laws (No. 3) Order, 1956.
2. The Essential Commodities (Amendment) Act, 1957 (13 of 1957) (w.e.f. 4-6-1957).
3. The Essential Commodities (Second Amendment) Act, 1957 (28 of 1957) (w.e.f. 17-9-1957).
4. The Essential Commodities (Amendment) Act, 1961 (17 of 1961) (w.e.f. 10-5-1961).
5. The Essential Commodities (Amendment) Act, 1964 (47 of 1964) (w.e.f. 5-11-1964).
6. The Essential Commodities (Amendment) Act, 1966 (25 of 1966) (w.e.f. 3-9-1966).
7. The Essential Commodities (Amendment) Act, 1967 (14 of 1967) (w.e.f. 1-4-1967).
   (The Provisions of this Act cease to have effect from 31-3-1968).
8. The Essential Commodities (Second Amendment) Act, 1967 (36 of 1967) (w.e.f. 30-12-1967).
9. The Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968) (w.e.f. 15-8-1968).
10. The Essential Commodities (Amendment) Act, 1971 (66 of 1971) (w.e.f. 23-2-1971).
11. The Essential Commodities (Amendment) Act, 1974 (30 of 1974) (w.e.f. 22-6-1974).
12. The Essential Commodities (Amendment) Act, 1976 (92 of 1976) (w.e.f. 2-9-1976).
13. The Essential Commodities (Special Provisions) Act, 1981 (18 of 1981) (w.e.f. 1-9-1982).
14. The Essential Commodities (Amendment) Act, 1984 (34 of 1984) (w.e.f. 1-7-1984).
15. The Essential Commodities (Amendment) Act, 1986 (42 of 1986) (w.e.f. 8-9-1986).
16. The Essential Commodities (Second Amendment) Act, 1986 (73 of 1986) (w.e.f. 1-5-1987).
17. The Essential Commodities (Special Provisions) Amendment Act, 1993 (34 of 1993) (w.r.e.f. 27-8-1992).
*18. The Essential Commodities (Amendment) Act, 2003 (37 of 2003) (w.r.e.f. 14-6-1999).
*19. The Essential Commodities (Amendment) Act, 2006 (54 of 2006) (w.e.f. 12-2-2007).
20. The Essential Commodities (Amendment and Validation) Act, 2009 (36 of 2009) (w.r.e.f. 21-10-2009).
21. The Essential Commodities (Amendment) Act, 2010 (35 of 2010) (w.r.e.f. 1-10-2009).

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* This Act was repealed by the Repealing and Amending (Second) Act, 2015 (19 of 2015), Sec. 2 and First Sch. (w.e.f. 14-5-2015). The Repeal of this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing.

THE ESSENTIAL COMMODITIES ACT, 1955[1]

(10 of 1955)

[*1st April, 1955*]

An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. Short title and extent.—(1) This Act may be called the Essential Commodities Act, 1955.

(2) It extends to the whole of India [2][***].

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

[3][***]

[3][[4][(ia) "Collector" includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the powers of the Collector under this Act;]]

[5][***]

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1. Extended to Goa, Daman and Diu with modifications by Regulation 12 of 1962, sec. 3 and Sch., to Dadra and Nagar Haweli by Regulation 6 of 1963, sec. 2 and Sch. I and to Lakshadweep and Amindivi Islands by Regulation 8 of 1965, sec. 3 and Sch., to the State of Sikkim (w.e.f. 7-1-1976), *vide* S.O. 28(E), dated 7th January, 1976.
This Act has been amended in Maharashtra by Maharashtra Act 71 of 1976, in Orissa by Orissa Act 8 of 1976, in Uttar Pradesh by Uttar Pradesh Acts 9 of 1974, 18 of 1975, 39 of 1975 and 16 of 1978.
2. The words "except the State of Jammu and Kashmir" omitted by Act 25 of 1968, sec. 2 and Sch. (w.e.f. 15-8-1968).
3. Clause (ia) renumbered as clause (iia) and before clause (iia) so renumbered clause (ia) inserted by Act 18 of 1981, sec. 3(a) as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. *See* Appendix—Section 3(a) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
4. Ins. by Act 92 of 1976, sec. 2 (w.e.f. 2-9-1976).
5. Clause (a) omitted by Act 54 of 2006, sec. 2 (w.e.f. 12-2-2007). Earlier clause (a) was amended by Act 30 of 1974, sec. 2 (w.r.e.f. 22-6-1974). Clause (a), before omission by Act 54 of 2006, stood as under:
'(a) "essential commodity" means any of the following classes of commodities:—
(i) cattle fodder, including oilcakes and other concentrates;
(ii) coal including coke and other derivatives;
(iii) component parts and accessories of automobiles;
(iv) cotton and woollen textiles;'.
(iva) drugs.
Explanation.—In this sub-clause, "drug" has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);
(v) foodstuffs, including edible oilseeds and oils;
(vi) iron and steel, including manufactured products of iron and steel;
(vii) paper, including newsprint, paperboard and straw board;
(viii) petroleum and petroleum products;
(ix) raw cotton, whether ginned or unginned, and cotton seed;
(x) raw jute;
(xi) any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution;'.

(b) "food-crops" include crops of sugarcane;

(c) "notified order" means an order notified in the Official Gazette;

[1][(cc) "order" includes a direction issued thereunder;]

[2][(d) "State Government," in relation to a Union territory, means the administrator thereof;]

[3][(e) "sugar" means—

(i) any form of sugar containing more than ninety per cent., of sucrose, including sugar candy;

(ii) khandsari sugar or bura sugar or crushed sugar or any sugar in crystalline or powdered form; or

(iii) sugar in process in vacuum pan sugar factory or raw sugar produced therein.]

[4][***]

STATE AMENDEMNTS

Himachal Pradesh.—In section 2, in clause (a), after sub-clause (vi), insert the following sub-clause, namely:—

"(via) packing cases made wholly or partly of wood, card-board or straw;"

[*Vide* Himachal Pradesh Act 1 of 1992, sec. 2 (w.e.f. 29-2-1992).]

Maharashtra.—In section 2,—

(a) after clause (b), insert the following clauses, namely:—

"(ba) 'holder', in relation to any agricultural land, means the person in actual possession of such land, and includes a company or other body corporate, firm, association, joint family or body of individuals in joint possession of such land;

(bb) 'holding' means the aggregate of all lands in possession of a holder;"

[*Vide* Maharashtra Act 1 of 1976, sec. 2 (w.r.e.f. 12-11-1975).]

(b) For clause (ia), substitute the following clause, namely:—

"(ia) 'Collector' in any Rationing Area means the Controller of Rationing designated for that area and includes the Deputy or Assistant Controller of Rationing, and elsewhere, the Collector of the District and includes Additional Deputy or Assistant Collector, Sub-Divisional Officer and District Supply Officer within this respective jurisdiction;"

[*Vide* Maharashtra Act 6 of 2003, sec. 2 (w.e.f. 24-3-2003).]

COMMENTS

Order made by the Central Government in respect of foodstuffs is *intra vires* the powers conferred by the provisions of section 2

Seeds of foodstuffs is an item which has direct bearing with the production of the foodstuffs and consequently it is competent for the Parliament as well as the States to make laws in relation to seeds of foodstuffs. Surely seeds of food-crops and seeds of fruits and vegetable relate to foodstuffs. An order in respect of foodstuffs made by the Central Government is *intra vires* the powers conferred by sub-clause (xi) of clause (a) of section 2 of the Act; *Rashu Seeds & Farms* v. *Union of India*, AIR 1994 SC 533.

Tea is not foodstuff

In common parlance 'food' is something that is eaten. In wider sense 'food' may include not only solid substances but also a drink. Still the fact remains that the substance called 'food' should possess the quality to maintain life and its growth; it must have nutritive or nourishing value so as to enable the growth, repair or maintenance of the body. Tea does not have any nutritive value. Therefore, tea is not a 'foodstuff'; *S. Samuel, M.D., Harrisons Malayalam* v. *Union of India*, AIR 2004 SC 218.

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1. Ins. by Act 36 of 1967, sec. 2(a)-(w.e.f. 30-12-1967).
2. Subs. by the A.O. (No. 3) Order, 1956, for clause (d).
3. Ins. by Act 36 of 1967, sec. 2(b) (w.e.f. 30-12-1967).
4. Clause (f) ins. by Act 18 of 1981, sec. 3(b) as amended by Act 34 of 1993, sec. 3 for a period of fifteen years, which now stands ceased to have effect after the expiry of fifteen years. *See* Appendix —Section 3(b) of the Essential Commodities (Special Provisions) Act, 1981.

Word "oil" used in regard to foodstuff is edible oil

The word 'oil' was used in regard to foodstuff thus it pertains to only edible type of oils and not oils like kerosene; *Tulsidas Modi* v. *State of Orissa*, 1987 Cr LJ 664.

[1][**2A. Essential commodities declaration, etc.**—(1) For the purposes of this Act, "essential commodity" means a commodity specified in the Schedule.

(2) Subject to the provisions of sub-section (4), the Central Government may, if it is satisfied that it is necessary so to do in the public interest and for reasons to be specified in the notification published in the Official Gazette, amend the Schedule so as to—

(a) add a commodity to the said Schedule;

(b) remove any commodity from the said Schedule,

in consultation with the State Governments.

(3) Any notification issued under sub-section (2) may also direct that an entry shall be made against such commodity in the said Schedule declaring that such commodity shall be deemed to be an essential commodity for such period not exceeding six months to be specified in the notification:

Provided that the Central Government may, in the public interest and for reasons to be specified, by notification in the Official Gazette, extend such period beyond the said six months.

(4) The Central Government may exercise its powers under sub-section (2) in respect of the commodity to which Parliament has power to make laws by virtue of Entry 33 in List III in the Seventh Schedule to the Constitution.

(5) Every notification issued under sub-section (2) shall be laid, as soon as may be after it is issued, before both Houses of Parliament.]

3. Powers to control production, supply, distribution, etc., of essential commodities.—(1) If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, [2][or for securing any essential commodity for the defence of India or the efficient conduct of military operations], it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential commodity;

(b) for bringing under cultivation any waste or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and for otherwise maintaining or increasing the cultivation of food-crops generally, or of specified food-crops;

(c) for controlling the price at which essential commodity may be bought or sold;

(d) for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of, any essential commodity;

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1. Ins. by Act 54 of 2006, sec. 3 (w.e.f. 12-2-2007).
2. Ins. by Act 36 of 1967, sec. 3(a) (w.e.f. 30-12-1967).

(e) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;

[1][(f) for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity,—

(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or

(b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him,

to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation 1.—An order made under this clause in relation to food-grains, edible oilseeds or edible oils, may, having regard to the estimated production, in the concerned area, of such foodgrains, edible oilseeds and edible oils, fix the quantity to be sold by the producers in such area and may also fix, or provide for the fixation of, such quantity on a graded basis, having regard to the aggregate of the area held by, or under the cultivation of, the producers.

Explanation 2.—For the purposes of this clause, "production" with its grammatical variations and cognate expressions includes manufacture of edible oils and sugar;]

(g) for regulating or prohibiting any class of commercial or financial transactions relating to foodstuffs [2][***] which, in the opinion of the authority making the order, are, or, if unregulated, are likely to be, detrimental to the public interest;

(h) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(i) for requiring persons engaged in the production, supply or distribution of or trade and commerce in, any essential commodity to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order;

[3][(ii) for the grant or issue of licences, permits or other documents, the charging of fees therefor, the deposit of such sum, if any, as may be specified in the order as security for the due performance of the conditions of any such licence, permit or other document, the forfeiture of the sum so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as may be specified in the order;]

[4][(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft,

1. Subs. by Act 92 of 1976, sec. 3(a)(i), for clause (f) (w.e.f. 2-9-1976). Earlier clause (f) was substituted by Act 28 of 1957, sec. 2 (w.e.f. 17-9-1957).
2. The words "or cotton textiles" omitted by Act 54 of 2006, sec. 4 (w.e.f. 12-2-2007).
3. Ins. by Act 17 of 1961, sec. 2(a) (w.e.f. 10-5-1961).
4. Subs. by Act 66 of 1971, sec. 2(i), for clause (j) (w.e.f. 23-12-1971). Earlier clause (j) was amended by Act 17 of 1961, sec. 2(b) (w.e.f. 10-5-1961).

vessels, vehicles or other conveyances and animals, and the seizure by a person authorised to make such entry, search or examination,—

(i) of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be, committed and any packages, coverings or receptacles in which such articles are found;

(ii) of any aircraft, vessel, vehicle or other conveyance or animal used in carrying such articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

[1][(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom in the presence of an officer having the custody of such books of accounts or documents.]]

(3) Where any person sells any essential commodity in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to him the price therefor as hereinafter provided—

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

[2][(3A) (i) If the Central Government is of opinion that it is necessary so to do for controlling the rise in prices, or preventing the hoarding, of any food-stuff in any locality, it may, by notification in the Official Gazette, direct that notwithstanding anything contained in sub-section (3), the price at which the food-stuff shall be sold in the locality in compliance with an order made with reference to clause (f) of sub-section (2) shall be regulated in accordance with the provisions of this sub-section.

(ii) Any notification issued under this sub-section shall remain in force for such period not exceeding three months as may be specified in the notification.

(iii) Where, after the issue of a notification under this sub-section, any person sells foodstuff of the kind specified therein and in the locality so specified, in compliance with an order made with reference to clause (f) of sub-section (2), there shall be paid to the seller as the price therefor—

(a) where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated with reference to average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification.

(iv) For the purposes of sub-clause (c) of clause (iii), the average market rate prevailing in the locality shall be determined by an officer authorised by the Central Government in this behalf, with reference to the prevailing market rates for which published figures are available in respect of that locality or of a neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court.]

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1. Subs. by Act 92 of 1976, sec. 3(a)(ii), for sub-clause (iii) (w.e.f. 2-9-1976).
2. Ins. by Act 13 of 1957, sec. 2 (w.e.f. 4-6-1957).

[1][(3B) Where any person is required, by an order made with reference to clause (f) of sub-section (2), to sell to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government, any grade or variety of foodgrains, edible oilseeds or edible oils in relation to which no notification has been issued under sub-section (3A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained in sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, as the case may be, specified by the State Government, with the previous approval of the Central Government having regard to—

(a) the controlled price, if any, fixed under this section or by or under any other law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils;

(b) the general crop prospects;

(c) the need for making such grade or variety of foodgrains, edible oilseeds or edible oils available at reasonable prices to the consumers, particularly the vulnerable sections of the consumers; and

(d) the recommendations, if any, of the Agricultural Prices Commission with regard to the price of the concerned grade or variety of foodgrains, edible oilseeds or edible oils.]

[2][(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central

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1. Subs. by Act 92 of 1976, sec. 3(b) (w.e.f. 2-9-1976). Earlier sub-section (3B) was inserted by Act 25 of 1966, sec. 2 (w.e.f. 3-9-1966) and was amended by Act 66 of 1971, sec. 2(ii) (w.e.f. 23-12-1971), by Act 30 of 1974, sec. 3 (w.r.e.f. 22-6-1974).

2. Subs. by Act 36 of 2009, sec. 2(b), for sub-section (3C) (w.r.e.f. 1-10-2009). Earlier sub-section (3C) was inserted. by Act 36 of 1967, sec. 3(c) (w.e.f. 30-12-1967). Sub-section (3C), before substitution, stood as under:

"(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to—

(a) the minimum price, if any, fixed for sugarcane by the Central Government under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar,

and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

* *Explanation I.*—For the purposes of this sub-section, "producer" means a person carrying on the business of manufacturing sugar.

***Explanation II.*—For the removal of doubts, it is hereby declared that the expressions "minimum price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d) exclude the additional price of sugarcane paid or payable under clause 5A of the Sugarcane (Control) Order, 1966 and any price paid or payable under any order or enactment of any State Government and any price agreed to between the producer and the grower of sugarcane or a sugarcane growers' co-operative society.".

* *Explanation* renumbered as *Explanation I* thereof by Act 36 of 2009, sec. 2(a) (w.r.e.f. 1-10-1974).

** Ins. by Act 36 of 2009, sec. 2(a) (w.r.e.f. 1-10-1974).

Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under sub-section (3A) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to—

(a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;
(b) the manufacturing cost of sugar;
(c) the duty or tax, if any, paid or payable thereon; and
(d) a reasonable return on the capital employed in the business of manufacturing of sugar:

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar:

Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced upto the sugar season 2008-2009, the final determination of price may be undertaken in accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

[1][*Explanation I*].—For the purposes of this sub-section,—

(a) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;
(b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to factory gate, to the extent it is borne by the producer;
(c) "producer" means a person carrying on the business of manufacturing sugar;
(d) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.]

[2][*Explanation II*.—For the removal of doubts, it is hereby declared that the expressions "fair and remunerative price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugarcane growers' co-operative society.]

[3][(3D) The Central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production,

1. *Explanation* renumbered as *Explanation I* thereof by Act 35 of 2010, sec. 2 (w.r.e.f. 1-10-2009).
2. Ins. by Act 35 of 2010, sec. 2 (w.r.e.f. 1-10-2009).
3. Ins. by Act 37 of 2003, sec. 2 (w.r.e.f. 14-6-1999).

maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

Explanation.—For the purposes of sub-section (3D) and this sub-section,—

(a) "producer" means a person carrying on the business of manufacturing sugar;

(b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar;

(c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.]

(4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorized controller) to exercise, with respect to the whole or any part of any such undertaking engaged in the production and supply of the commodity as may be specified in the order such functions of control as may be provided therein and so long as such order is in force with respect to any undertaking or part thereof,—

(a) the authorized controller shall exercise his functions in accordance with any instructions given to him by the Central Government, so, however, that he shall not have any power to give any direction inconsistent with the provisions of any enactment or any instrument determining the functions of the persons in-charge of the management of the undertaking, except in so far as may be specifically provided by the order; and

(b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller under the provisions of the order, and any person having any functions of management in relation to the undertaking or part shall comply with any such directions.

[1][***]

(5) An order made under this section shall,—

(a) in the case of an order of a general nature or affecting a class of persons, be notified in the Official Gazette; and

(b) in the case of an order directed to a specified individual be served on such individual—

(i) by delivering or tendering it to that individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood.

(6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

STATE AMENDMENTS

Bihar.—In section 3,—

(i) in sub-section (2), for clause (f), substitute the following clause which shall be deemed always to have been substituted, namely:—

"(f) for requiring any person holding in stock, or engaged in the manufacture or production of, or in the business of buying or selling any essential commodity to sell the whole or a specified part of the quantity held in stock or produced or caused to be produced or likely to be manufactured or produced or caused to be produced by him or received or likely to be received by him in the course of the said business, to the Central Government or a State Government or to such other person or class of persons and in such circumstances as may be specified in the order.

1. Sub-sections (4A), (4B) and (4C) as inserted by Act 14 of 1967, sec. 2 (w.e.f. 1-4-1967) ceased to have effect from 31st day of March, 1968, *vide* Act 14 of 1967, sec. 1(2).

Explanation.—An order relating to foodgrains made with reference to this clause,—

(i) may specify the prices, fixed by the Central/State Government in this behalf, after taking into account the recommendations, if any of the Agricultural Prices Commission and with the prior concurrence of the Central Government as the amount which shall be paid for the foodgrain required to be sold under the order,

(ii) may fix or provide for the fixation of the quantity to be sold by a producer with reference to the area under cultivation and the availability of irrigation for production of the particular foodgrain which the order relates, and also fix or provide for the fixation of such quantities on a graded basis having regard to the aggregate area held by or under the cultivation of different producers."

(ii) in sub-section (3), for clause (c), substitute the following clauses which shall be deemed always to have been substituted, namely:—

"(c) in the case of foodgrains, where neither clause (a) nor clause (b) applies, the price, if any specified in the said order;

(d) where neither clause (a), nor clause (b), nor clause (c) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

(iii) in sub-section (3B), after clause (a), insert the following clause which shall be deemed always to have been inserted, namely:—

"(aa) in the case of foodgrains, where no controlled price is fixed by an order made with reference to clause (c) of sub-section (2), the amount specified in the said order made with reference to clause (f) of sub-section (2) for such grade or variety of foodgrains; or"

[*Vide* Bihar Act 9 of 1978, sec. 3 (w.e.f. 6-9-1978).]

Maharashtra.—In section 3,—

(a) in sub-section (2), for clause (f), substitute the following clause which shall be deemed always to have been substituted, namely:—

"(f) for requiring any person holding in stock, or likely to hold in stock, or engaged in the manufacture or production or processing of, or in the business of buying or selling, any essential commodity, to sell, the whole or a specified part of the quantity of the essential commodity held in stock or likely to be held in stock by him or manufactured or produced or processed or likely to be manufactured or produced or processed by him or received or likely to be received by him in his business of buying or selling to the Central Government or the State Government or to an officer or agent of any Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation.—An order made under this clause in respect of foodgrains may fix or provide for fixation of the quantity to be sold by a producer with reference to the nature and extent of his holding or the land revenue payable by him with certain weightages which may be prescribed for certain crops or lands enjoying irrigation or other facilities and also fix or provide for fixation of the quantity to be sold on a graded basis having regard to the size of the holdings of different producers."

(b) In sub-section (3), for clause (c), substitute the following clause which shall be deemed always to have been substituted, namely:—

"(c) where neither clause (a) nor clause (b) applies, in the case of foodgrains, the amount, if any, specified in or calculated in accordance with the order made under clause (f) of sub-section (2) read with sub-section (3B), and in the case of any other essential commodity, the price calculated at the market rate prevailing in the locality at the date of sale."

(c) for sub-section (3B), substitute the following sub-section which shall be deemed always to have been substituted, namely:—

"(3B) where, by an order made with reference to clause (f) of sub-section (2), any person is required to sell any grade or variety or foodgrains, edible oilseeds or edible oils to the Central Government or a State Government or an officer or agent of such Government or a corporation owned or controlled by such Government or to a person or class of persons specified in the order, and either no notification in respect of such foodgrains, edible

oilseeds or edible oils has been issued under sub-section (3A) or any such notification having been issued, has ceased to remain in force by efflux of time then, notwithstanding anything contained in sub-section (3), there shall be paid to the person concerned an amount determined by the Central Government or the State Government, as the case may be,—

(a) having regard to the Controlled price, if any, fixed under this section or by or under any law for the time being in force for such grade or variety of foodgrains, edible oilseeds or edible oils, or

(b) having regard to the prices recommended by the Agricultural Prices Commission for the concerned essential commodity, where no controlled price in relation to such commodity, has been fixed by or under any law for the time being in force."

[*Vide* Maharashtra Act 1 of 1976, sec. 3(c) (w.r.e.f. 12-11-1975).]

Orissa.—In section 3,—

(a) in sub-section (2), for clause (f), substitute the following clause which shall be deemed always to have been substituted, namely:—

"(f) for requiring any person holding in stock or engaged in the manufacture or production of, or in the business of buying or selling, any essential commodity to sell the whole or a specified part of the quantity held in stock or manufactured or produced or caused to be produced or likely to be manufactured or produced or caused to be produced by him or received or likely to be received by him in the course of the said business, to the Central Government or a State Government or to an officer or agent of such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

Explanation.—An order relating to foodgrains made with reference to this clause,—

(i) may specify the prices, fixed by the State Government in this behalf, after taking into account the recommendations, if any, of the Agricultural Prices Commission and with the prior concurrence of the Central Government, as the amount which shall be paid for the foodgrain required to be sold under the order,

(ii) may fix or provide for the fixation of the quantity to be sold by a producer with reference to the area under cultivation and the availability of irrigation for production of the particular foodgrain to which the order relates, and also fix or provide for the fixation of such quantities on a graded basis having regard to the aggregate area held by or under the cultivation of different producers."

(b) in sub-section (3), for clause (c), substitute the following clauses which shall be deemed always to have been substituted, namely:—

"(c) in the case of foodgrains, where neither clause (a) nor clause (b) applies, the price, if any, specified in the said order;

(d) where neither clause (a) nor clause (b), nor clause (c) applies, the price calculated at the market rate prevailing in the locality at the date of sale."

(c) in sub-section (3B), after clause (i), insert the following clause which shall be deemed always to have been inserted, namely:—

"(ia) in the case of foodgrains, where no controlled price is fixed by an order made with reference to clause (c) of sub-section (2), the amount specified in the said Order made with reference to clause (f) of sub-section (2) for such grade or variety of foodgrains; or"

[*Vide* Orissa Act 8 of 1976, sec. 2 (w.e.f. 29-3-1976).]

Uttar Pradesh.—In section 3,—

(i) in sub-section (2), after clause (f), insert the following clause, namely:—

"(ff) for preventing the hoarding of any essential commodity."

[*Vide* Uttar Pradesh Act 9 of 1974, sec. 2.]

(ii) in sub-section (2), in clause (f), for *Explanation 1*, substitute the following *Explanation*, namely:—

"*Explanation 1.*—An order made under this clause in relation to rice, having regard to the milling capacity of a rice mill, fix the quantity to be sold by the licensed miller and may also fix or provide for the fixation of such quantity on a graded basis."

[*Vide* Uttar Pradesh Act 16 of 1978, sec. 3(2).]

(iii) in sub-section (3), for clause (c), substitute the following clauses which shall be deemed always to have been substituted, namely:—

"(c) in the case of foodgrains, where neither clause (a) nor clause (b) applies, the amount, if any, specified in the said order made with reference to clause (f) of sub-section (2);

(d) where neither clause (a), nor clause (b), nor clause (c) applies, the price calculated, at the market rate prevailing in the locality at the date of sale."

[*Vide* Uttar Pradesh Act 18 of 1975, sec. 3(b).]

(iv) in clause (f) as substituted by the Central Amendment (Act 92 of 1976), after *Explanation 1*, insert the following *Explanation*, namely:—

"*Explanation 1A.*—An order made under this clause in relation to rice may having regard to the milling capacity of a rice mill, fix the quantity to be sold by the licenced miller and may also fix or provide for the fixation of such quantity on a graded basis."

[*Vide* Uttar Pradesh Act 16 of 1978 (w.e.f. 27-4-1978).]

COMMENTS

Appointment of new retail outlet dealership of petrol

Grant of dealership to other person in same area may result in loss of income to the existing dealer. It would cause damage to the existing dealer. However, it would not infringe any legal right of the dealer. Existing dealer would have no locus to challenge order of appointment of new outlet dealer in same area *Latha Kalichamy* v. *Union of India*, AIR 2013 Mad 119.

Award of Gas Agency in the defence category

The purpose of obtaining the eligibility certificate from the Director-General of Resettlement in defence services is obviously with a view to identify suitable candidates in the defence category for being considered for selection and appointment for award of gas agency. The candidate who has been certified to be covered in the defence category and fulfilling the required income limit cannot lose his eligibility merely because certificate was not obtained pursuant to a particular advertisement and for a particular location; *Sunil Dutt* v. *Chief Regional Manager, HPC Ltd.*, AIR 2004 SC 157.

Ban on manufacture of skimmed milk powder is illogical

The ban imposed on manufacture of skimmed milk powder from skimmed milk during the season when milk is available in abundance and when there is no ban on manufacture of ghee, khoya, paneer, was held wholly illogical, irrational and arbitrary on the point that it is not logical on the face of it and further more skimmed milk powder can be reconverted to milk unlike the other by-products such as paneer, khoya, etc.; *Daily Foods* v. *Union of India*, AIR 1993 Del 278.

Kerosene dealership

In the case of wholesale kerosene dealership the parties to the agreement are the dealer and the petrol company and the State Government and any of its officials are complete strangers to that agreement. Further as in case of a dealership under the public distribution system a wholesale dealer of kerosene oil must obtain a wholesale kerosene dealer's licence under the unification order and on the basis of that licence alone he can carry on the wholesale business in kerosene. The grant and revocation of licence is regulated by the provisions of the unification order and a licence issued under the unification order can by no means be cancelled by directions contained in executive instructions; *Veena Devi* v. *State of Bihar*, AIR 2004 Pat 113.

Public Distribution System

It was found that most of the existing sub-wholesalers reside at far off places, *i.e.*, 30 to 80 kms. away from the residential places and it has become difficult on their part to go to their depots at regular intervals. The Collector after taking into consideration all the various factors, recommended the appointment of opposite parties as sub-wholesalers. The State Government on due consideration accordingly appointed them as sub-wholesalers. Further, the petitioners have no inherent right to get a particular quota. The aim and purpose of Public Distribution System is that a common man should get the essential commodities easily and any inconvenience caused to him is against the system; *Manas Ranjan Das* v. *State of Orissa*, AIR 2004 Ori 62.

4. Imposition of duties on State Governments, etc.—An order made under section 3 may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central Government or State Government, and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties.

5. Delegation of powers.—The Central Government may, by notified order, direct that [1][the power to make orders or issue notifications under section 3] shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by—

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government,

as may be specified in the direction.

6. Effect of orders inconsistent with other enactments.—Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

[2]**[6A. Confiscation of essential commodity.**—[3][(1)] Where any [4][essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [5][a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [4][essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [6][may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order [7][may order confiscation of—

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1. Subs. by Act 66 of 1971, sec. 3, for "the power to make orders under section 3" (w.e.f. 23-12-1971).
2. Ins. by Act 25 of 1966, sec. 3 (w.e.f. 3-9-1966).
3. Section 6A renumbered as sub-section (1) thereof by Act 92 of 1976, sec. 4 (w.e.f. 2-9-1976). Earlier section 6A, before it was renumbered as sub-section (1), was amended by Act 30 of 1974, sec. 4 (w.r.e.f. 22-6-1974).
4. Subs. by Act 36 of 1967, sec. 4(a), for "foodgrains, edible oilseeds or edible oils are seized" (w.e.f. 30-12-1967).
5. Subs. by Act 92 of 1976, sec. 4(a)(i), for "it may be produced without any unreasonable delay, before" (w.e.f. 2-9-1976).
6. Subs. by Act 92 of 1976, sec. 4(a)(i), for "if satisfied" (w.e.f. 2-9-1976).
7. Subs. by Act 30 of 1974, sec. 4, for "may order confiscation of the essential commodity so seized" (w.r.e.f. 22-6-1974).

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]

Provided that without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:]

[1][Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.]

[2][(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

(i) order the same to be sold at the controlled price, if any, fixed for essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

[3][Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.]

(3) Where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall—

(a) where no order or confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted,

be paid to the owner or the person from whom it is seized.]

STATE AMENDMENTS

Bihar. —For section 6A, substitute the following section, namely:—

"*6A. Confiscation of foodgrains, edible oilseeds, edible oils, etc.*—(1) Where any essential commodity is seized in pursuance of an order made under section 3

1. Ins. by Act 92 of 1976, sec. 4(a)(ii) (w.e.f. 2-9-1976).
2. Ins. by Act 92 of 1976, sec. 4(b) (w.e.f. 2-9-1976).
3. Proviso was substituted by Act 18 of 1981, sec. 4 as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. The original proviso has been restored. *See* Appendix—Section 4 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

in relation thereto it shall be reported without any reasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied that there has been a contravention of the order, may order confiscation of—

(a) the essential commodities so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

Provided that, without prejudice to any action which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under section 3 in relation thereto from producer shall, if the seized foodgrains or edible oil-seeds have been produced by him, be confiscated under this section.

(2) Where the Collector, on receiving a report of seizure or in inspection of any essential commodity under sub-section (1), is of the opinion that such essential commodity is subject to speedy and natural decay or that it is otherwise, expedient in the public interest so to do, he may order the same to be sold at the controlled price if any, fixed under any law for the time being in force.

(3) In the case of foodgrains, where there is no controlled price, the Collector, if he thinks fit, may order the foodgrains seized under sub-section (1) to be sold through fair price shops at the price fixed by the Central Government or the State Government, as the case may be for the sale of such foodgrains to the public through these shops or may order such foodgrains by public auction.

(4) The Collector shall whenever it is practicable so to do having regard to the nature of the essential commodity take and preserve sample of the same in the prescribed manner before its sale or distribution.

(5) Where any essential commodity is sold as aforesaid, the sale proceeds thereof, after deduction of all expenses of the sale or auction, as the case may be, shall—

(a) where no order of confiscation is ultimately passed by the Collector; or

(b) where an order passed on appeal under sub-clause (1) of section 6C so requires; or

(c) in the case of prosecution being instituted for the contravention of the order in respect of which an order of confiscation has been made under this section and where the person concerned is acquitted to paid to the owner thereof or the person from whom it is seized:

Provided that in the case of foodgrains sold through fair price shops in accordance with sub-sections (2) and (3) the owner shall be paid for the foodgrains so sold, the price fixed by the State Government, for retail sale of such foodgrains through such shops less all expenses of sale or auction under sub-sections (2) and (3).

(6) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), when Collector or the appellate authority is seized with the matter under this section no court shall entertain any application in respect of essential commodities, any package covering,

receptacle, any animal, vehicle or other conveyance used in carrying such commodities as far as its release, distribution etc. is concerned and the jurisdiction of Collector or the appellate authority with regard to the disposal of the same shall be exclusive.

(7) The State Government may by notification in the Official Gazette, authorise any officer not below the rank of Sub-Divisional Magistrate, to discharge all or any of the functions of a Collector under this section.

(8) The Collector shall for the purposes of this Act have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 when making enquiries under this section in respect of following matters, namely:—

(a) receiving evidence on affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath; and

(c) compelling the production of documents.

(9) All enquiries and proceedings under this section before the Collector and the appellate authority shall be deemed to be judicial proceeding and while discharging functions under this section the Collector and the appellate authority shall be deemed to be a Court.

Explanation.—For the purposes of this section the Collector shall include 'Additional Collector' and any officer specially authorized under sub-section (7)."

[*Vide* Bihar Act 9 of 1978, sec. 4 (w.e.f. 6-9-1978).]

Maharashtra.—For section 6A, substitute the following section, namely:—

"*6A. Confiscation of seized commodities.*—(1) Where any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report to that effect shall, without any unreasonable delay, be sent to the Collector within whose jurisdiction the seizure is made, and the Collector may, if he thinks it expedient so to so, inspect or cause to be inspected such essential commodity, and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been contravention of the order, may order confiscation of—

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:

Provided that without prejudice to any action that may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

Provided further that where any animal, vehicle, vessel or other conveyance is used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay in lieu of its confiscation a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried.

(2) Where the Collector on receiving a report of seizure or on inspection of any essential commodity under sub-section (1) is of the opinion that such

essential commodity is subject to speedy and natural decay or that it is otherwise expedient in the public interest so to so , he may order the same to be sold at the controlled price if any, fixed under any law for the time being in force; or where no such price is fixed by auction:

Provided that, in the case of foodgrains where there is no controlled price, the Collector may order the foodgrains seized to be sold through fair price shops at the price fixed by the Central Government or the State Government, as the case may be, for the sale of such foodgrains to the public through these shops:

Provided further that, whenever it is practicable so to so, having regard to the nature of the essential commodity, he shall take and preserve sample of the same before its sale or auction.

(3) Where any essential commodity is sold as aforesaid, the sale proceeds thereof after deduction of the expenses of the sale or auction, as the case may be, shall—

(a) where no order of confiscation is ultimately passed by the Collector; or

(b) where an order passed, on appeal under sub-clause (1) of section 6C so requires; or

(c) in the case of a prosecution being instituted for the contravention of the order in respect of which an order of confiscation has been made under section, where the person concerned is acquitted,

be paid to the owner thereof or the person from whom it is seized:

Provided that, in the case of foodgrains sold through fair price shops in accordance with the first proviso to sub-section (2) the owner shall be paid for the foodgrains so sold the price fixed by the State Government, for retail sale of such foodgrains through such shops, less all expenses of sale or auction under sub-section (2)."

[*Vide* Maharashtra Act 1 of 1976, sec. 4 (w.r.e.f. 12-11-1975).]

COMMENTS

Scope of expression "it is otherwise expedient in the public interest"

The expression, 'it is otherwise expedient in the public interest' in section 6A (2) has to be understood so as to advance the legislative objective of ensuring that the goods do not suffer either in quality or quantity, for instance, fertilizer may not be susceptible to speedy and natural decay but it is expedient in public interest to ensure that it is either sold to the agriculturist or disposed of at least before the next season; *N. Nagendra Rao & Co.* v. *State of Andhra Pradesh,* AIR 1994 SC 2663.

[1]**[6B. Issue of show cause notice before confiscation of foodgrains, etc.—** [2][(1)] No order confiscating [3][any [4][essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance]] shall be made under section 6A unless the owner of such [4][essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance] or the person from whom [5][it is seized]—

1. Ins. by Act 25 of 1966, sec. 3 (w.e.f. 3-9-1966).
2. Section 6B re-numbered as sub-section (1) thereof by Act 30 of 1974, sec. 5 (w.r.e.f. 22-6-1974).
3. Subs. by Act 36 of 1967, sec. 5(a), for "any foodgrains, edible oilseeds or edible oils" (w.e.f. 30-12-1967).
4. Subs. by Act 30 of 1974, sec. 5, for "essential commodity" (w.r.e.f. 22-6-1974).
5. Subs. by Act 36 of 1967, sec. 5(c), for "they are seized" (w.e.f. 30-12-1967).

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the [1][essential commodity package, covering or receptacle, animal, vehicle, vessel or other conveyance];

(b) is given an opportunity of making a presentation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.]

[2][(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.]

[3][(3) No order confiscating any essential commodity package, covering, receptacle, animal, vehicle, vessel or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice, given under clause (a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.]

STATE AMENDMENT

Uttar Pradesh.—After section 6B, insert the following section, namely:—

"*6BB. Review.*—(1) Where the Collector is satisfied that an order of confiscation or an order refusing confiscation made under section 6A suffers from a mistake apparent on the face of the record (including any mistake of law) he may within one month of such order issue notice to the owner of the essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance, or, as the case may be, the person from whom it was seized, to show cause why that order should not be reviewed, and after giving him a reasonable opportunity of being heard, pass such order on review as he thinks fit.

(2) The provisions of sections 6C and 6D shall apply in relation to an order passed originally under section 6A."

[*Vide* Uttar Pradesh Act 18 of 1975, sec. 6 (w.e.f. 31-3-1975).]

COMMENTS

Reasonable opportunity of being heard is required to be given

Under section 6B of the Act, a reasonable opportunity of being heard is required to be given before making any order confiscating any essential commodity under section 6A of the Act; *Kiran Oil Industries* v. *District Collector*, AIR 1997 Guj 153.

[4]**[6C. Appeal.**—(1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of

1. Subs. by Act 36 of 1967, sec. 5(a), for "any foodgrains, edible oilseeds or edible oils" (w.e.f. 30-12-1967).
2. Ins. by Act 30 of 1974, sec. 5 (w.r.e.f. 22-6-1974).
3. Ins. by Act 92 of 1976, sec. 5 (w.e.f. 2-9-1976).
4. Ins. by Act 25 of 1966, sec. 3 (w.e.f. 3-9-1966).

such order, appeal to [1][any judicial authority appointed by the State Government concerned and the judicial authority] shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6A is modified or annulled by [2][such judicial authority], or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquitted, and in either case it is not possible for any reason to [3][return the essential commodity seized], [4][such persons shall, except as provided by sub-section (3) of section 6A, be paid] the price therefor [5][as if the essential commodity,] had been sold to the Government with reasonable interest calculated from the day of the seizure of [6][the essential commodity] [7][and such price shall be determined—

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;

(ii) in the case of sugar, in accordance with the provisions of sub-section (3C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3.]]

STATE AMENDMENT

Bihar.—For section 6C, substitute the following section, namely:—

"6C. *Appeal.*—(1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 6A modified or annulled by such judicial authority, or where in a prosecution for the contravention of the order in respect of which an order of confiscation has been made under section 6A, the person concerned is acquitted and in either case it is not possible for any reason to return the essential commodity seized, such person shall, save as provided by sub-section (3) of section 6A, be paid the price thereof as if the

1. The words "the State Government concerned and the State Government" subs. by Act 18 of 1981, sec. 5(a) as amended by Act 34 of 1993, sec. 3, for "any judicial authority appointed by the State Government and the judicial authority" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. *See* Appendix — Section 5(a) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
2. The words "the State Government" subs. by Act 18 of 1981, sec. 5(b) as amended by Act 34 of 1993, sec. 3, for "such judicial authority" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years, *See* Appendix — Section 5(b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
3. Subs. by Act 36 of 1967, sec. 6(a), for "return the foodgrains or edible oilseeds or edible oils seized" (w.e.f. 30-12-1967).
4. Subs. by Act 92 of 1976, sec. 6, for "such person shall be paid".
5. Subs. by Act 36 of 1967, sec. 6(b), for "as if the foodgrains, edible oilseeds or edible oils, as the case may be," (w.e.f. 30-12-1967).
6. Subs. by Act 36 of 1967, sec. 6(c), for "articles" (w.e.f. 30-12-1967).
7. Subs. by Act 36 of 1967, sec. 6(d), for certain words (w.e.f. 30-12-1967).

essential commodity had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity and such price shall be determined—

(i) in the case of foodgrains, edible oilseeds or edible oils, in accordance with the provisions of sub-section (3B) of section 3;

(ii) in the case of sugar in accordance with the provisions of sub-section (3C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the provisions of sub-section (3) of section 3."

[*Vide* Bihar Act 9 of 1978, sec. 5 (w.e.f. 6-9-1978).]

COMMENTS

Order passed under section 6A (2) does not attract section 6C

There is a difference in orders of confiscation passed by the Collector under section 6A(1) and section 6A(2) of the Act. Thus, an order passed under section 6A(2) of the Act does not attract section 6C and hence no appeal lies. Section 6C is clear in its words that an appeal is provided only for orders issued for confiscation under section 6A(1) of the Act; *State of U.P.* v. *Ram Avtar Jaiswal*, 1983 All LJ 1197.

Scope of expression "for any reason"

The expression, 'for any reason' used in section 6C (2) of the Act should be understood in broader and larger sense as it appears from the context in which it has been used; *N. Nagendra Rao & Co.* v. *State of Andhra Pradesh*, AIR 1994 SC 2663.

[1][**6D. Award of confiscation not to interfere with other punishments**—The award of any confiscation under this Act by the Collector shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.]

[2][**6E. Bar of jurisdiction in certain cases.**—Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or, as the case may be, [3][the judicial authority appointed under section 6C] shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, [4][any other court, tribunal or authority] shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.]

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1. Ins. by Act 25 of 1966, sec. 3 (w.e.f. 3-9-1966).
2. Subs. by Act 42 of 1986, sec. 2 (w.e.f. 8-9-1986). Earlier sec. 6E was inserted by Act 92 of 1976, sec. 7 (w.e.f. 2-9-1976).
3. The words "the State Government concerned under section 6C" subs. by Act 18 of 1981, sec. 6(a) as amended by Act 34 of 1993, sec. 3, for "the judicial authority appointed under section 6C" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. *See* Appendix — Section 6(a) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
4. The words "any court, tribunal or other authority" subs. by Act 18 of 1981, sec. 6(b) as amended by Act 34 of 1993, sec. 3, for "any other court, tribunal or authority" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. *See* Appendix — Section 6(b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

7. **Penalties.**—[1][(1) If any person contravenes any order made under section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[2][Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;]

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government.]

[3][(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

[4][Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.]

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

[5][Provided that the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than six months.]

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1. Subs. by Act 30 of 1974, sec. 6, for sub-section (1) (w.r.e.f. 22-6-1974). Earlier sub-section (1) was amended by Act 25 of 1966, sec. 4 (w.e.f. 3-9-1966) and by Act 36 of 1967, sec. 7(a) (w.e.f. 30-12-1967).

2. Proviso was omitted by Act 18 of 1981, sec. 7(a) as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands restored after the expiry of fifteen years. *See* Appendix — Section 7(a) Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

3. Subs. by Act 30 of 1974, sec. 6, for sub-section (2) (w.r.e.f. 22-6-1974). Earlier sub-section (2) was amended by Act 36 of 1967, sec. 8(b) (w.e.f. 30-12-1967).

4. Proviso was omitted by Act 18 of 1981, sec. 7(b) as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands restored after the expiry of fifteen years. *See* Appendix — Section 7(b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

5. Proviso was omitted by Act 18 of 1981, sec. 7(c) as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands restored after the expiry of fifteen years. *See* Appendix — Section 7(c) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

[1][(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual, shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months, or six months, as the case may be.]]

[2][(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the court in the order.]

STATE AMENDMENTS

Punjab, Haryana, Chandigarh.—After section 7, insert the following section, namely:—

"*7A. Forfeiture of certain property used in the commission of the offence.*—Whenever any offence relating to foodstuffs which is punishable under section 7 had been committed, the Court shall direct that all the packages, coverings or receptacles in which any property liable to be forfeited under the said section is found and all the animals, vehicles, vessels or other conveyances used in carrying the said property shall be forfeited to the Government."

[*Vide* Punjab Act 34 of 1959, sec. 2 (w.e.f. 27-8-1959).]

Rajasthan.—After section 7, insert the following section, namely:—

"*7A.* Same as in Punjab with following proviso:

Provided that if the Court is of opinion that it is not necessary to direct forfeiture in respect of all such packages, coverings or receptacles or such animals, vehicles, vessels, or other conveyances or any of them, it may, for reasons to be recorded, refrain from doing so."

[*Vide* Rajasthan Act 32 of 1960, sec. 2 (w.e.f. 24-9-1960).]

[3]**[7A. Power of Central Government to recover certain amounts as arrears of land revenue.**—(1) Where any person, liable to—

(a) pay any amount in pursuance of any order made under section 3, or

(b) deposit any amount to the credit of any Account or Fund constituted by or in pursuance of any order made under that section,

makes any default in paying or depositing the whole or any part of such amount, the amount in respect of which such default has been made shall whether such order was made before or after the commencement of the Essential Commodities (Amendment) Act, 1984 (34 of 1984), and whether the liability of such person to pay or deposit such amount arose before or after such commencement be recoverable by Government together with simple interest due thereon computed at the rate of [4][fifteen per cent.] per annum from the date of such default to the

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1. Sub-section (2B) was omitted by Act 18 of 1981, sec.7(d) as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands restored after the expiry of fifteen years. *See* Appendix —Section 7(d) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
2. Ins. by Act 36 of 1967, sec. 7(c) (w.e.f. 30-12-1967).
3. Ins. by Act 34 of 1984, sec. 2 (w.e.f. 1-7-1984).
4. Subs. by Act 42 of 1986, sec. 3(a), for "six per cent." (w.e.f. 8-9-1986).

date of recovery of such amount, as an arrear of land revenue [1][or as a public demand].

(2) The amount recovered under sub-section (1) shall be dealt with in accordance with the order under which the liability to pay or deposit such amount arose.

(3) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, no court, tribunal or other authority shall grant any injunction or make any order prohibiting or restraining any Government from recovering any amount as an arrear of land revenue [1][or as a public demand] in pursuance of the provisions of sub-section (1).

(4) If any order, in pursuance of which any amount has been recovered by Government as an arrear of land revenue [1][or as a public demand] under sub-section (1) is declared by a competent court, after giving to the Government a reasonable opportunity of being heard, to be invalid, the Government shall refund the amount so recovered by it to the person from whom it was recovered, together with simple interest due thereon, computed at the rate of [2][fifteen per cent.] per annum, from the date of recovery of such amount to the date on which such refund is made.

Explanation.—For the purposes of this section, "Government" means the Government by which the concerned order under section 3 was made or where such order was made by an officer or authority subordinate to any Government, that Government.]

8. Attempts and abetment.—Any person who attempts to contravene, or abets a contravention of, any order made under section 3 shall be deemed to have contravened that order.

[3][***]

9. False statement.—If any person,—

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extend to [4][five years,] or with fine, or with both.

10. Offences by companies.—(1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention 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

1. Ins. by Act 42 of 1986, sec. 3(b) (w.e.f. 8-9-1986).
2. Subs. by Act 42 of 1986, sec. 3(a), for "six per cent." (w.e.f. 8-9-1986).
3. Proviso was added by Act 18 of 1981, sec. 8 as amended Act 34 of 1993, sec. 3 for a period of fifteen years. It now stands ceased to have effect after the expiry of fifteen years. *See* Appendix — Section 8 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
4. Subs. by Act 36 of 1967, sec. 8, for "three years" (w.e.f. 30-12-1967).

to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an 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 neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

[1][**10A. Offences to be cognizable** [2][[3][***]]—Notwithstanding anything contained in [4][the Code of Criminal Procedure, 1973 (2 of 1974)] every offence punishable under this Act shall be cognizable [2][[3][***]]].

[5][***]

[6][**10B. Power of court to publish name, place of business, etc., of companies convicted under the Act.**—(1) Where any company is convicted under this Act, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (1) shall be recoverable from the company as if it were a fine imposed by the court.

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1. Ins. by Act 36 of 1967, sec. 9 (w.e.f. 30-12-1967).
2. The words "and bailable" omitted by Act 30 of 1974, sec. 7 (w.r.e.f. 22-6-1974).
3. After the word "cognizable" the words "and non-bailable" were ins. by Act 18 of 1981, sec. 9 as amended by Act 34 of 1993, sec. 3 for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. *See* Appendix — Section 9 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
4. Subs. by Act 30 of 1974, sec. 7, for "the Code of Criminal Procedure, 1898 (5 of 1898)" (w.r.e.f. 22-6-1974).
5. Section 10AA was inserted by Act 34 of 1993 for a limited period *i.e.*, upto 1996 which now stands ceased to have effect. *See* Appendix — Section 9A of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
6. Ins. by Act 30 of 1974, sec. 8 (w.r.e.f. 22-6-1974).

Explanation.—For the purposes of this section, "company" has the meaning assigned to it in clause (a) of the *Explanation* of section 10.]

[1][**10C. Presumption of culpable mental state.**—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.]

11. Cognizance of offences.—No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860) [2][or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not].

[3][*Explanation.*—For the purposes of this section and section 12AA, "recognised consumer association" means a voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.]

STATE AMENDMENT

Uttar Pradesh.—In section 11, for the wrods "by a person who is a public servant as defined in section 21 of the Indian Penal Code" substitute the words "by order of, or under authority from the District Magistrate or such other officer as may be empowered by the State Government by general or special order in this behalf."

[*Vide* Uttar Pradesh Act 9 of 1974, sec. 7 (w.e.f. 24-4-1974).]

[4][5][**12. Special provision regarding fine.**—Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3.]]

[6][7][**12A. Power to try summarily.**—(1) If the Central Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of [8][any essential commodity not being an essential commodity referred to in clause (a) of sub-section (2)] or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order

1. Ins. by Act 30 of 1974, sec. 8 (w.r.e.f. 22-6-1974).
2. Ins. by Act 73 of 1986, sec. 2(a) (w.e.f. 1-5-1987).
3. Added by Act 73 of 1986, sec. 2(b) (w.e.f. 1-5-1987).
4. Subs. by Act 30 of 1974, sec. 9, for section 12 (w.r.e.f. 22-6-1974).
5. Section 12 was omitted by Act 18 of 1981, sec. 10 as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands restored after the expiry of fifteen years. *See* Appendix — Section 10 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
6. Ins. by Act 47 of 1964, sec. 2 (w.e.f. 5-11-1964).
7. Section 12A was substituted by Act 18 of 1981, sec. 11 as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. The original section 12A as inserted by Act 47 of 1964, sec. 2 (w.e.f. 5-11-1964) and amended by Act 66 of 1971 and by Act 30 of 1974, sec. 10 (w.r.e.f. 22-6-1974) has been restored. *See* Appendix — Section 11 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
8. Subs. by Act 30 of 1974, sec. 10, for "any essential commodity" (w.r.e.f. 22-6-1974).

made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:

[1][Provided that—

(a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;

(b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.]

[2][(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all, offences relating to—

(a) the contravention of an order made under section 3 with respect to—

[3][***]

(ii) foodstuffs, including edible oilseeds and oil; or

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order,

shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code.]

(3) Notwithstanding anything to the contrary contained in [4][the Code of Criminal Procedure, 1973 (2 of 1974),] there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, [5][and of fine not exceeding two thousand rupees] whether or not any order of forfeiture of property or an order under [6][section 452] of the said Code is made in addition

1. Added by Act 66 of 1971, sec. 5 (w.e.f. 23-12-1971).
2. Subs. by Act 30 of 1974, sec. 10, for sub-section (2) (w.r.e.f. 22-6-1974).
3. Sub-clause (i) omitted by Act 54 of 2006, sec. 5 (w.e.f. 12-2-2007). Sub-clause (i), before omission, stood as under:
   '(i) cotton or woollen textiles; or'.
4. Subs. by Act 30 of 1974, sec. 10, for "the Code of Criminal Procedure, 1898 (5 of 1898)" (w.r.e.f. 22-6-1974).
5. Subs. by Act 30 of 1974, sec. 10, for "or of fine not exceeding two thousand rupees or both" (w.r.e.f. 22-6-1974).
6. Subs. by Act 30 of 1974, sec. 10, for "section 517" (w.r.e.f. 22-6-1974).

to such sentences, but an appeal shall lie where any sentence [1][***] in excess of the aforesaid limits is passed by the Magistrate.

[2][(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.]]]

STATE AMENDMENTS

Uttar Pradesh.—In section 12,—

(i) after sub-section (1), insert the following sub-section, namely:—

"(1A) without prejudice to the powers of the Central Government under sub-section (i) if the State Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of any essential commodity, or trade or commerce therein, and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the State Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section and every such notification shall be laid as soon as may be after it is issued, before both Houses of the State Legislature.";

(ii) in sub-section (2), after the words, figure and brackets "under sub-section (1)" the words, figure, letter and brackets "or under sub-section (1A)" shall be inserted and for the words "a Megistrate of the first class specially empowered in this behalf by the State Government", the words "a Magistrate of the first class having experience as such of not less than five years" shall be substituted;

(iii) in sub-section (4), after the words, figure and brackets, "under sub-section (1)" the words, figure, letter and brackets "or under sub-section (1A)" shall be inserted.

[*Vide* Uttar Pradesh Act 9 of 1974 (w.e.f. 27-9-1974).]

Ed. These amendments are prior to the amendments made by the Central Act 30 of 1974 (w.e.f. 22-6-1974).

[3][***]

[4][**12B. Grant of injunction, etc., by civil courts.**—No civil court shall grant injunction or make any order for any other relief, against the Central Government or any State Government or a Public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer.]

13. Presumption as to orders.—Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872 (1 of 1872).

14. Burden of proof in certain cases.—Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing

1. The words "of imprisonment or fine" omitted by Act 30 of 1974, sec. 10 (w.r.e.f. 22-6-1974).
2. Subs. by Act 30 of 1974, sec. 10, for sub-section (4), (w.r.e.f. 22-6-1974).
3. Sections 12AA, 12AB, 12AC were substituted by Act 18 of 1981, sec. 11, for section 12 as amended by Act 34 of 1993, sec. 3 for a period of fifteen years which now stand ceased to have effect after the expiry of fifteen years. Earlier section 12AA was amended by Act 42 of 1986, sec. 4 (w.e.f. 8-9-1986) and by Act 73 of 1986, sec. 3 (w.e.f. 1-5-1987). *See* Appendix — Section 11 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).
4. Ins. by Act 30 of 1974, sec. 11 (w.r.e.f. 22-6-1974).

any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him.

15. Protection of action taken under Act.—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

[1][**15A. Prosecution of public servants.**—Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no court shall take cognizance of such offence except with the previous sanction—

(a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;

(b) of the State Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.]

16. Repeals and savings.—(1) The following laws are hereby repealed:—

(a) the Essential Commodities Ordinance, 1955 (1 of 1955);

(b) any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of, and trade and commerce in, any essential commodity.

(2) Notwithstanding such repeal, any order made or deemed to be made by any authority whatsoever, under any law repealed hereby and in force immediately before the commencement of this Act, shall, in so far as such order may be made under this Act, be deemed to be made under this Act and continue in force, and accordingly any appointment made, licence or permit granted or direction issued under any such order and in force immediately before such commencement shall continue in force until and unless it is superseded by any appointment made, licence or permit granted or direction issued under this Act.

(3) The provision of sub-section (2) shall be without prejudice to the provision contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the Ordinance or other law referred to in sub-section (1) as if such Ordinance or other law had been an enactment.

[2][*THE SCHEDULE*

(*See* section 2A)

ESSENTIAL COMMODITIES

(1) drugs.

Explanation.—For the purposes of this Schedule, "drugs" has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

(2) fertilizer, whether inorganic, organic or mixed;

(3) foodstuffs, including edible oilseeds and oils;

(4) hank yarn made wholly from cotton;

(5) petroleum and petroleum products;

(6) raw jute and jute textiles;

(7) (i) seeds of food-crops and seeds of fruits and vegetables;

(ii) seeds of cattle fodder; and

(iii) jute seeds;]

[3][(iv) cotton seed.]

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1. Ins. by Act 92 of 1976, sec. 8 (w.e.f. 2-9-1976).
2. Ins. by Act 54 of 2006, sec. 6 (w.e.f. 12-2-2007).
3. Ins. by S.O. 2988(E), dated 22nd December, 2010.

APPENDIX

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ACT, 1981

INTRODUCTION

For regulation of production, supply and pricing of essential commodities, the Essential Commodities Act, 1955 was enacted. In spite of extensive amendments in the Act experience had shown that some of the provisions had not been adequate and effective for expeditious disposal of cases as well as for ensuring the availability of essential commodities at fair prices and for curbing hoarding and blackmarketing of, and profiteering in such commodities. For dealing more effectively with persons indulging in anti-social activities like hoarding and blackmarketing and the evil of inflationary prices , the Essential Commodities (Special Provisions) Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) provides for regulation of production, supply and pricing of essential commodities. This Act had been amended from time to time.

2. In spite of extensive amendments made to the principal Act in 1976, experience has shown that some of the existing provisions of that Act have not been adequate and effective for expeditious disposal of cases as well as for ensuring the availability of essential commodities at fair prices and for curbing hoarding and blackmarketing of, and profiteering in, such commodities. There are large number of court cases pending under the principal Act all over the country and the price rise has continued unabated in the years 1979 and 1980. For dealing more effectively with persons indulging in anti-social activities like hoarding and blackmarketing and the evil of vicious inflationary prices, it is considered necessary to make the following special provisions by way of amendments to the principal Act for a temporary period of five years, namely:—

(a) in order to expedite the process of prosecutions under the principal Act, it is proposed to provide—

  (i) for the trial, in a summary way, of all offences under that Act; and

  (ii) for the constitution, for the purposes of such trial, of Special Courts, consisting of a single judge who shall be appointed by a High Court and who shall be a person who is qualified to be a judge of a High Court or who is or has been a Sessions Judge or an Additional Sessions Judge, for not less than one year;

(b) to strengthen the penal provisions of the principal Act with a view to deterring persons indulging in hoarding and blackmarketing in essential commodities from contravening the provisions of the principal Act, it is proposed to provide for—

  (i) minimum mandatory imprisonment for a period of not less than three months for all offences under the principal Act except an

offence of abetment in regard to procuring of foodstuffs or drugs by them for their own use or for the use of any member of their family, and not for the purpose of carrying on any business or trade which is proposed to be punishable with fine only;

(ii) enhancement of the term of imprisonment awardable in case of conviction in a summary trial from one year to two years;

(iii) making of all offences under the principal Act to be non-bailable;

(iv) granting of bail by the trial court after giving the prosecution an opportunity to oppose the application and only in the exceptional cases specified in the new section 12AA proposed to be inserted, to a person accused or suspected of the commission of an offence under the principal Act if there appear reasonable grounds for believing that he is guilty of the offence concerned; and

(c) in order to ensure availability of essential commodities to the consumers provision is being made—

(i) for sale of all seized essential commodities, the retail sale prices whereof have been fixed by the Central Government or the State Government, as the case may be, through the public distribution system by enlarging the scope of section 6A (2). The existing provision covers only food-grains to be sold through fair price shops; and

(ii) for preferring appeal against the order of confiscation passed by the Collector of a district to the State Government instead of a judicial authority.

3. The Bill seeks to achieve the above objects.

ACT 18 OF 1981

The Essential Commodities (Special Provisions) Bill having been passed by both the Houses of Parliament received the assent of the President on 26th September, 1981. It came on the Statute Book as THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ACT, 1981 (18 OF 1981) (*Came into force on 1-9-1982 in all the States and Union Territories except in the Union Territories of the Andman and Nicobar Islands, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshadweep and Mizoram*).

LIST OF AMENDING ACTS

1. The Essential Commodities (Amendment) Act, 1986 (42 of 1986) (w.e.f. 8-9-1986).
2. The Essential Commodities (Second Amendment) Act, 1986 (73 of 1986) (w.e.f. 1-5-1987).
3. The Essential Commodities (Special Provisions) Continuance Act, 1987 (25 of 1987) (w.e.f. 28-8-1987).
4. The Essential Commodities (Special Provisions) Amendment Act, 1993 (34 of 1993) (w.r.e.f. 27-8-1992).

APPENDIX

THE ESSENTIAL COMMODITIES (SPECIAL PROVISIONS) ACT, 1981

(18 of 1981)

[*26th September, 1981*]

An Act to make certain special provisions by way of amendments to the Essential Commodities Act, 1955 for a temporary period for dealing more effectively with persons indulging in hoarding and black marketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices and for matters connected therewith or incidental thereto.

WHEREAS for ensuring the availability of essential commodities at fair prices, it is necessary to curb the hoarding and blackmarketing of, and profiteering in, such commodities;

AND WHEREAS for dealing more effectively with persons indulging in such anti-social activities and the evil of vicious inflationary prices, it is necessary to make certain special provisions by way of amendments to the Essential Commodities Act, 1955 (10 of 1955), for a period of [1][fifteen years];

BE it enacted by Parliament in the Thirty-second Year of the Republic of India as follows:—

1. Short title, commencement and duration.—(1) This Act may be called the Essential Commodities (Special Provisions) Act, 1981.

(2) It shall come into force on such date[2] as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

(3) It shall cease to have effect on the expiry of [3][fifteen years] from the date of commencement of this Act except as respects things done or omitted to be done before such cesser of operation of this Act, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation of this Act as if it had then been repealed by a Central Act.

(4) References in this Act of the commencement of this Act and to the continuance in force of this Act shall be construed in relation to each State as references, respectively, to the coming into force of this Act in that State and to the continuance in force of this Act in that State.

2. Act 10 of 1955 to have effect subject to certain special provisions for a temporary period.—During the continuance in force of this Act, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 11:

1. Subs. by Act 34 of 1993, sec. 2, for "ten years" (w.r.e.f. 27-8-1992). Earlier the words "ten years" were substituted by Act 25 of 1987, sec. 2, for the words "five years" (w.e.f. 28-8-1987).
2. Came into force on 1-9-1982 in all the States and Union Territories except in the Union Territories of the Andaman and Nicobar Islands, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshadweep and Mizoram—*Vide* G.S.R. 553 (E), dated 31st August, 1982, published in the Gazette of India, Extra., 1982, Pt. II, Sec. 3.
3. Subs. by Act 34 of 1993, sec. 3, for "ten years" (w.r.e.f. 27-8-1992). Earlier the words "ten years" were substituted by Act 25 of 1987, sec. 3, for the words "five years" (w.e.f. 28-8-1987).

Provided that the amendments specified in sections 7 to 11 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Act and the provisions of the principal Act shall apply to, and in relation to, such offence as if those amendments had not been made.

3. Amendment of section 2.—In section 2 of the principal Act,—

(a) clause (ia) shall be renumbered as clause (iia), and before clause (iia) as so re-numbered, the following clause shall be inserted namely:—

'(ia) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974); and';

(b) after clause (e), the following clause shall be inserted, namely:—

"(f) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code.".

4. Amendment of section 6A.—In section 6A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:—

"Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other law for the time being in force, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price so fixed."

5. Amendment of section 6C.—In section 6C of the principal Act,—

(a) in sub-section (1), for the words "any judicial authority appointed by the State Government concerned and the judicial authority", the words "the State Government concerned and the State Government" shall be substituted.

(b) in sub-section (2), for the words "such judicial authority", the words "the State Government" shall be substituted.

6. Amendment of section 6E.—In section 6E of the principal Act,—

(a) for the words, figure and letter "the judicial authority appointed under section 6C" the words, figure and letter "the State Government concerned under section 6C" shall be substituted;

(b) for the words "any other court, tribunal or authority", the words "any court, tribunal or other authority" shall be substituted.

7. Amendment of section 7.—In section 7 of the principal Act,—

(a) in sub-section (1), the proviso to sub-clause (ii) of clause (a) shall be omitted;

(b) the proviso to sub-section (2) shall be omitted;

(c) the proviso to sub-section (2A) shall be omitted;

(d) sub-section (2B) shall be omitted.

8. Amendment of section 8.—To section 8 of the principal Act, the following proviso shall be added, namely:—

"Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature

mentioned in sub-clause (iva) or sub-clause (v) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only.".

9. Amendment of section 10A.—In section 10A of the principal Act, after the word "cognizable" the words "and non-bailable" shall be inserted.

[1][**9A. Insertion of new section 10AA in Act 10 of 1955.**—In the Essential Commodities Act, 1955 (10 of 1955), after section 10A, the following section shall be inserted, namely:—

"**10AA. Power to arrest.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no officer below the rank of an officer incharge of a police station or any police officer authorised by him in this behalf in writing shall arrest any person accused of committing an offence punishable under this Act."]

10. Omission of section 12.—Section 12 of the principal Act shall be omitted.

11. Substitution of new sections for section 12A.—For section 12A of the principal Act, the following sections shall be substituted, namely:—

'**12A. Constitution of Special Courts.**—(1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation.—In this sub-section, the word "appoint" shall have the meaning given to it in the explanation to section 9 of the Code.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless—

(a) he is qualified for appointment as a judge of a High Court, or

(b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12AA. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code,—

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-

1. Ins. by Act 34 of 1993, sec. 4 (w.r.e.f. 27-8-1992).

section (2) or sub-section (2A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him,

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which is Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court:

Provided that a Special Court shall not release any such person on bail—

(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and

(ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned:

Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act [1][or upon a complaint made by the officer of the Central Government or a State Government authorised in this behalf by the Government concerned] [2][or any person aggrieved or any recognised consumer association, whether such person is a member of that

1. Ins. by Act 42 of 1986, sec. 4 (w.e.f. 8-9-1986).
2. Ins. by Act 73 of 1986, sec. 3 (w.e.f. 1-5-1987).

association or not,] take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (*b*) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 12A.

12AB. Appeal and revision.—The High Court may exercise, so far as may be applicable, all the persons conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12AC. Application of Code to proceedings before a Special Court.—Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor'.

THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

INTRODUCTION

The Essential Commodities Act, 1955, contains comprehensive provisions for the regulation of production, supply, distribution, prices and trade and commerce in commodities declared essential under the Act and although the penal provisions were made more stringent in accordance with the recommendation of the Law Commission in their Forty-seventh Report, it was found not adequate to deal effectively with malpractices like blackmarketing, hoarding, profiteering, and to arrest the unjustified rise in prices of essential commodities by providing for the preventive detention of persons likely to indulge in such practices. In order to deal with such malpractices and to arrest the unjustified rise in prices of essential commodities, the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Ordinance, 1979 was promulgated on 5th October, 1979. To replace the said Ordinance by an Act of Parliament the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The Prevention of Blackmarketing and Maintenance of Supplies of the Essential Commodities Ordinance, 1979 was promulgated on the 5th October, 1979 to deal effectively with malpractices like blackmarketing, hoarding, profiteering, and to arrest the unjustified rise in prices of essential commodities by providing for the preventive detention of persons likely to indulge in such practices. Although the Essential Commodities Act, 1955 made comprehensive provisions for the regulation of production, supply, distribution, prices and trade and commerce in commodities declared essential under the Act and although the penal provisions in the Act were made more stringent in accordance with the recommendations of the Law Commission in their Forty-seventh Report, it was found not adequate to deal with the situation.

2. The Ordinance recognised preventive detention as a necessary evil and accordingly sought to provide for various safeguards to avoid scope for possible abuse of powers thereunder. The ground on which a person could be detained under the Ordinance was defined specifically. It provided that an order directing the detention of a person could be made thereunder only with a view to preventing such person from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community and it also defined the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community". The Ordinance made provisions to ensure that the composition of the Advisory Boards thereunder was in accordance with the amendments proposed to Article 22 of the Constitution by section 3 of the Constitution (Forty-fourth Amendment) Act, 1978. It also made the necessary

provisions for ensuring, in accordance with the said amendments, that a person is not detained for a period longer than two months without the approval of an Advisory Board. Unlike the earlier laws as to preventive detention, the Ordinance limited the maximum period of detention to six months.

3. The provisions of the Ordinance are useful as a deterrent measure to combat malpractices like blackmarketing, hoarding and profiteering.

4. The Bill seeks to replace the said Ordinance.

ACT 7 OF 1980

The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Bill having been passed by both the Houses of Parliament received the assent of the President on 12th February, 1980. It came on the Statute Book as THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980 (7 of 1980) (*Came into force on w.r.e.f. 5-10-1979*).

LIST OF AMENDING ACTS

1. The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities (Amendment) Act, 1981 (19 of 1981).
2. The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities (Amendment) Act, 1982 (27 of 1982).

THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

(7 of 1980)

[*12th February, 1980*]

An Act to provide for detention in certain cases for the purpose of prevention of blackmarketing and maintenance of supplies of commodities essential to the community and for matters connected therewith.

BE it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 5th day of October, 1979.

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

(a) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government or person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or as respects a person detained under such order, the State Government;

(b) "detention order" means an order made under section 3;

(c) "State Government", in relation to a Union Territory, means the administrator thereof.

3. Power to make orders detaining certain persons.—(1) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of the commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means—

(a) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955) or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(b) dealing in any commodity—

(i) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(ii) with respect to which provisions have been made in any such other law as is referred to in clause (a),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(2) Any of the following officers, namely:—

(a) District Magistrates;

(b) Commissioners of Police, wherever they have been appointed,

may also if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section.

(3) When any order is made under this section by an officer mentioned in sub-section (2) he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(4) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (1) the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

6. Detention orders not to be invalid or in-operative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(1) If [1][the appropriate Government or an officer mentioned in sub-section (2) of section 3, as the case may be,] has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government [2][or officer] may—

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order, of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under clause (b) of sub-section (1) shall be cognizable.

8. Grounds of order of detention to be disclosed to person affected by the order.—(1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.—(1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

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1. Subs. by Act 27 of 1982, sec. 2, for "appropriate Government" (w.e.f. 5-8-1982).
2. Ins. by Act 27 of 1982, sec. 2 (w.e.f. 5-8-1982).

[1][2 Every such Board shall consist of three persons who are, or have been or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(3) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union Territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.]

10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order and in case where the order has been made by an officer referred to in sub-section (2) of section 3, also the report by such officer under sub-section (3), of that section.

11. Procedure of Advisory Boards.—(1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(2) The report of Advisory Board shall specify in separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of Advisory Board.—(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the concerned for such period as it thinks fit.

(2) In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention.—(1) The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12, shall be six months from the date of detention:

1. Subs. by Act 19 of 1981, sec. 2, for sub-sections (2) and (3) (w.e.f. 2-9-1981).

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

14. Revocation of detention orders.—(1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

(a) notwithstanding that the order has been made by an officer of the State Government, by that State Government or by the Central Government;

(b) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

15. Temporary release of persons detained.—(1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as the person accepts, and may, at any time, cancel his release.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

(5) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for any thing in good faith done or intended to be done in pursuance of this Act.

17. Repeal and saving.—(1) The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Ordinance, 1979 (10 of 1979), is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

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IMPORTANT

AMENDMENT HAS BEEN INCORPORATED IN THE MAIN ACT AT APPROPRIATE PLACE.
THE TEXT OF THE AMENDING ACT IS REPRODUCED BELOW FOR REFERENCE.

THE ESSENTIAL COMMODITIES (AMENDMENT) ACT, 2010

(35 of 2010)

[*8th September, 2010*]

An Act further to amend the Essential Commodities Act, 1955.

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

1. **Short title.**—This Act may be called the Essential Commodities (Amendment) Act, 2010.

2. **Amendment of section 3 of Act 10 of 1955.**—In section 3 of the Essential Commodities Act, 1955, in sub-section (3C), the *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of October, 2009, namely:—

'*Explanation II.*—For the removal of doubts, it is hereby declared that the expressions "fair and remunerative price" referred to in clause (a), "manufacturing cost of sugar" referred to in clause (b) and "reasonable return on the capital employed" referred to in clause (d), of this sub-section do not include the price paid or payable under any order or any enactment of any State Government and any price agreed to between the producer and the grower or a sugarcane growers' co-operative society.'.