



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 149]

नई दिल्ली, सोमवार, फरवरी 12, 2007/माघ 23, 1928

No. 149]

NEW DELHI, MONDAY, FEBRUARY 12, 2007/MAGHA 23, 1928

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

अधिसूचना

नई दिल्ली, 12 फरवरी, 2007

का.अ. 184(अ).—केंद्रीय सरकार, आवश्यक वस्तु (संशोधन) अधिनियम, 2006 (2006 का 54) की धारा 1 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए 12 फरवरी, 2007 को उस तारीख के रूप में नियत करती है जिसको उक्त अधिनियम प्रवृत्त होगा।

[फा. सं. 26(1)/2004-ईसीआर एंड ई (जिल्ड III)]

अलका सिरोही, अपर सचिव

MINISTRY OF CONSUMER AFFAIRS, FOOD AND
PUBLIC DISTRIBUTION
(Department of Consumer Affairs)

NOTIFICATION

New Delhi, the 12th February, 2007

S.O. 184(E).—In exercise of the powers conferred by sub-section (2) of Section 1 of the Essential Commodities (Amendment) Act, 2006 (54 of 2006), the Central Government hereby appoints the 12th February, 2007 as the date on which the said Act shall come into force.

[F. No. 26(1)/2004-ECR & E (Vol. III)]

ALKASIROHI, Addl. Secy.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्रधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 62]

नई दिल्ली, मंगलवार, दिसम्बर 26, 2006 / पौष 5, 1928

No. 62]

NEW DELHI, TUESDAY, DECEMBER 26, 2006 / PAUSA 5, 1928

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 26th December, 2006/Pausa 5, 1928 (Saka)

The following Act of Parliament received the assent of the President on the 24th December, 2006, and is hereby published for general information:—

THE ESSENTIAL COMMODITIES (AMENDMENT) ACT, 2006

No. 54 OF 2006

[24th December 2006.]

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

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Essential Commodities (Amendment) Act, 2006.

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

10 of 1955.

2. In the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act), in section 2, clause (a) shall be omitted.

Short title
and
commence-
ment.

Amendment
of section

Insertion of
new section
2A.

Essential
commodities
declaration,
etc.

3. After section 2 of the principal Act, the following section shall be inserted, namely:—

‘2A. (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.’

Amendment
of section 3.

4. In section 3 of the principal Act, in sub-section (2), in clause (g), the words “or cotton textiles” shall be omitted.

Amendment of
section 12A.

5. In section 12A of the principal Act, in sub-section (2), in clause (a), sub-clause (i) shall be omitted.

Savings of the
orders issued
under section 3.

6. All notifications, orders, directions issued or any appointment made, licence or permit granted under section 3 of the principal Act before the commencement of this Act and are in force, in respect of the essential commodities specified in the Schedule, shall continue to remain in force until and unless it is superseded by any notification, order, appointment made, licence or permit granted or directions issued and it shall be deemed to have been issued under the corresponding provisions of this Act.

THE SCHEDULE

(See section 2A)

ESSENTIAL COMMODITIES

(1) drugs.

23 of 1940. *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;

(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.

K. N. CHATURVEDI,

Secy. to the Govt. of India.

The Essential Commodities Act, 1955 (Act No.10 of 1955)¹

[1st April, 1955]

An Act to provide, in the interest 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[(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;]

(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 woolen textiles;

⁴[(iv a) drugs;

Explanation— In this sub-clause, “drugs” 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 oil seeds and oils;
- (vi) iron and steel, including manufactured products of iron and steel;
- (vii) paper, including newsprint, paperboard and strawboard;
- (viii) petroleum and petroleum products;

1. This Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, s.3 and Sch., and to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 3 and Sch. 1.

2. The words “except the State of Jammu and Kashmir” omitted by Act 25 of 1968, s. 2 and Sch. (w.e.f. 15-8-1968).

3. Ins. By Act 92 of 1976 s. 2.

4. Ins. By Act 30 of 1974, s. 2.

* Cl. (ia) section 2 is renumbered as cl. (iia) and before cl. (iia) as so renumbered, cl. (ia) is ins. by Act 18 of 1981, s. 3 for fifteen years (w.e.f. 1-9-1982)—See Appendix.

- (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 Seventy 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) khan sari 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.

* * * * *

COMMENTS

- (i) The *sherbet* in question is an essential commodity within the meaning of Sec. 2 of the Act. (*Humdard Dawakhana v. U.O.I.*, AIR 1956 SC 1167).
- (ii) 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).

3. Powers to control production, supply, distribution, etc., of essential commodities— If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of essential commodity or for securing their equitable distribution and availability at fair prices, ³[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 licenses, permits or otherwise the production or manufacture of any essential commodity;

1. Ins. by Act 36 of 1967, s. 2.
 2. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for the former clause.
 3. Ins. by Act 36 of 1967, s. 3.
 + After Cl. (e) of s. 2 cl (f) is ins. by Act 18 of 1981, s. 3 for fifteen years (w.e.f. 1-9-1982)—See Appendix.

- (b) for bringing under cultivation any waster or arable land, whether appurtenant to a building or not, for the growing thereon of food-crops generally or of specified food-crops, and or 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 licenses, permits or otherwise the storage, transport, distribution, disposal, acquisition use or consumption of, any essential commodity;
- (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 of 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 food grains, 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 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 food stuffs or cotton textiles 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;

¹[(ii) for the grant or issue of licenses, permits or other documents, the charging of fees therefore, 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;]

²[(j) for any incidental and supplementary matters, including, in particular, the entry, search or examination of premises, aircraft, vessels, vehicles or other conveyances and animals, and the seizure by a person authorized 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 article, if such person has reason to believe that such aircraft, vessel, vehicle or conveyance or animal is liable to be forfeited under the provisions of this Act.

³[(iii) of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceedings under this Act and the person from whose custody such books or documents are seized shall be entitled to make copies thereof or take extracts there from 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;

1. Ins. by Act 17 of 1961, s. 2.

2. Subs. by Act 66 of 1971, s. 2 for cl. (f).

3. Subs. by Act 92 of 1976, s. 3, for sub-cl. (iii) (j).

- (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.

¹[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 the sub-section (20), 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 the 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 authorized 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 neighboring locality; and the average market rate so determined shall be final and shall not be called in question in any court.]

²[(3B) Where any person is required to, 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 food grains, edible oilseeds or edible oils in relation to which no 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,

1. Ins. By Act 13 of 1957, S.2

2. Subs. By Act 92 of 1976, s. 3 for former sub-section (3B).

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, fix 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.].

¹[(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 (3 A) 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, fix for sugarcane by 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.- For the purposes of this sub-section, "producer" means a person carrying on the business of manufacturing sugar.]

(4) If the central Government is of opinion that is necessary so to do for the maintaining or increasing the production and supply of an essential commodity, it may, by order, authorize 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 authorized 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.

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

- (a) in the case of an order of a general nature of 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 there of shall be prepared and witnessed by two persons living in the neighborhood.

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

COMMENTS

- (i) 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 panel, khoya etc. *M/s Daily Foods v. Union of India*, AIR 1993 Delhi 278.
- (ii) The State Government has been given a power to issue notification but such power should be exercised after prior concurrence of Central Government. In a case of *Durga Utpadak Evam Vikareta Sangh Jabalpur v. State of MP* (AIR 1986 MP 9), it was held that a notification issued by State Govt. which was not as per prior concurrence of Central Government and thus invalid.

4. Imposition of duties on State Government, 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 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 such authority subordinate to a State Government; as may be specified in the direction.

6. Effect of the 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 ⁵[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 ⁶[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 which may be taken under any other provision of this Act, no foodgrains or edible oilseeds in pursuance of an order made under section 34 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

⁷[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.]

1. Subs. by Act 66 of 1971, s. 3, for certain words.

2. Ins. by Act 25 of 1966, s. 3.

3. S. 6A renumbered as sub-section (1) thereof by Act 92 of 1976, s. 4.

4. Subs. by Act 36 of 1967 s. 4, for certain words.

5. Subs. by Act 92 of 1976 s. 4, for certain words.

6. Subs. by Act 30 of 1974, s. 4, for certain words.

7. Proviso added by Act 92 of 1976, s. 4.

¹[(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;

*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 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.]

6B. Issue of show cause notice before confiscation of essential commodity—

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

- (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the ⁴[⁵essential commodity] package, covering, 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 ground of confiscation; and

1. Ins by Act 92 of 1976, S. 4.

* Proviso to sub-section (2) of s 6 A, has been subs. by Act 18 of 1981, s. 4 for fifteen years (w.e.f. 1-9-1982)—See Appendix.

2. Section 6B renumbered as sub-section (1) thereof by Act 30 of 1974 S. 5.

3. Subs. by Act 36 of 1967, S. 5, for “any foodgrain, edible oilseeds or edible oils”.

4. Subs. by Act 30 of 1967, S. 5, for the words “essential commodity”.

5. Subs. by Act 36 of 1967, S. 5, for “articles”.

6. Sub. by Act 36 of 1967, s. 5, for the words “they are seized”.

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

¹[(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 6 A 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.]

²[(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.]

6C. Appeal—(1) Any person aggrieved by an order of confiscation under section 6 A may, within one month from the date of the communication to him of such order, appeal to* any judicial authority by the State Government concerned and 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 6 A is modified or annulled by** 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 6 A, 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 in sub-section (3) of section 6 A, be paid] the price therefor ³[as if the essential commodity,] had been sold to the Government with reasonable interest calculated from the day of seizure of ³[the essential commodity] ³[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.]

1. Ins. by Act 30 of 1974, s. 5.

2. Ins. by Act 92 of 1976, s. 5.

3. Subs. by Act 36 of 1967, s. 6, for certain words.

4. Subs. by Act 92 of 1976, s. 6, for certain words.

* In sub-section (1) of section 6C, 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" have been subs. by Act 18 of 1981, s. 5 for fifteen years (w.e.f. 1-9-1982)—See Appendix.

** In sub-section (2) of section 6C, for the words "such judicial authority", the words "the State Government" have been subs. by Act 18 of 1981, s. 5 (w.e.f. 1-9-1982)—See Appendix.

COMMENTS

There is a difference in order of confiscation passed by the Collector under section 6A(1) and section 6 A(2) of the Act. Thus, an order passed under section 6 A(2) of the Act does not attract 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. L.J. 1197.

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.

¹**[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 the State Government concerned under section 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any court, tribunal or other 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;].

7. Penalties² [(1) If any such 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 also be liable to fine;

*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.

1. Subs. by Act 42 of 1986 in s. 2 for section 6E which was ins. by Act 92 of 1976, s. 7.

2. Subs. by Act 30 of 1974, s. 6, for the former sub-sections.

* The proviso to sub-cl (ii) of cl (a) of sub-section (1) of section 7, has been omitted by Act 18 of 1981, s. 7, for fifteen years (w.e.f. 1-9-1982)—See Appendix.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of whom 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:

*Provided that the court may, for any adequate and special reasons to be mentioned in the judgement, 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:

** 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.

*** (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.]

¹[(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 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.]

COMMENTS

In case *Isher Dass v. State of Haryana*, AIR 1992 SC 1595, the penalty was imposed by the lower court under section 7 of Essential Commodities Act. The Supreme Court disposed off the appeal and confirmed the conviction thereby reducing the sentence period under certain circumstances.

²[7A. Power of Central Government to recover certain amounts as arrears of land revenue—(1) Where any person, liable to—

* The proviso to sub-section (2) of section 7 has been omitted by s. 7, Act 18 of 1981, for fifteen years (w.e.f. 1-9-1982)—See Appendix.

** The Proviso to sub-section (2A) of section 7 has been omitted by Act 18 of 1981, S. 7, for fifteen years (w.e.f. 1-9-1982)—See Appendix.

*** Sub-section (2B) of section 7 has been omitted by s. 7, *ibid*, for fifteen years (w.e.f. 1-9-1982)—See Appendix.

1. Ins. by Act 36 of 1967, s. 7.

2. Ins. by Act 34 of 1984, s. 2 (w.e.f. 1-7-1984).

- (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, and whether the liability of such person to pay or deposit such amount arose before after such commencement be recoverable by Government together with simple interest due thereon computed at the rate of ¹[fifteen percent,] per annum from the date of such default to the date of recovery of such amount, as an arrears of land revenue ²[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 arrears of land revenue ²[or as a public demand] in pursuance of the provisions of sub-section (1).

(4) In any order, in pursuance of which any amount has been recovered by Government as an arrears of land revenue ²[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 has recovered, together with simple interest due thereon, computed at the rate of ¹[fifteen percent,] 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.

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

1. Subs by Act 42 of 1986, s. 3 for “six per cent”.

2. Ins. By s. 3 *ibid*.

* Proviso has been added to section 8, by Act 18 of 1981.

- 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, or 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 terms which may extend to ¹[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 of contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company shall be deemed 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 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.

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

⁵[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

1. Sub. By Act 36 of 1967, s. 8, for “three years”.

2. Ins. by Act 36 of 1967, s. 9.

3. Subs. By Act 30 of 1974, s. 7, for certain words.

4. Words “and bailable” omitted by s. 7, *ibid*.

* In section 10A after the word “cognizable”, the words “and non-bailable” have been ins. by Act 18 of 1981, s. 9 for fifteen years (w.e.f. 1-9-1982).

5. Ins. by Act 30 of 1974, s. 8.

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 order 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.

Explanation.—For the purposes of this section, “company” has the meaning assigned to it in clause (a) of the explanation of section 10.

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 the act 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) ¹[or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not.]

¹[*Explanation.*—For the purposes of this section and section 12AA, “recognized 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.]

²[**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 a 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.]

1. Ins. by Act 73 of s. 2 (w.e.f. 1-5-1987).

2. Subs. By Act 30 of 1974, s. 9, for the previous section.

* Section 12 stands omitted by Act 18 of 1981, s. 10 for fifteen years (w.e.f. 1-9-1982)—See Appendix.

****¹[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 ²[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 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.

³[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 in 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.]

⁴[(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:
 - (i) cotton or woolen textiles or
 - (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 and 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

1. Ins. by Act 47 of 1964, s. 2.
 2. Subs. By Act 30 of 1974, s. 10, for "any essential commodity".
 3. Added by Act 66 of 1971, s. 5.
 4. Subs. by Act 30 of 1974, s. 10.
 ** Section 12 A has been subs. By section 12A, 12AA, 12AB and 12AC of Act 18 of 1981, s. 11 for fifteen years (w.e.f. 1-9-1982)—See Appendix.

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 for 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 the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter 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 ¹[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 ²[and of fine not exceeding two thousand rupees] whether or not any order of forfeiture of property or an order under ³[section 452] of the said Code is made in addition to such sentences, but an appeal shall lie where any sentence⁴ in excess of the aforesaid limits is passed by the Magistrate.

⁵[(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 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 a contravention of such special order and pending before a Magistrate immediately before the date of 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,].

⁶[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 order—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).

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1. Subs. by Act 30 of 1974, S. 10, for "the Code of Criminal Procedure, 1898."
 2. Subs. by s.10, *ibid.* for certain words.
 3. Subs. by s. 10 *ibid.* for "section 517."
 4. Certain words omitted by s. 10, *ibid.*
 5. Subs. by s. 10 *ibid.*
 6. Ins. by s. 11, *ibid.*

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 any act or being in possession of a thing without lawful authority or without a permit, license or other document, the burden proving that he has such authority, permit, license 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 authorizes 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, license 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, license 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.

1. Ins. by Act 92 of 1976, s. 8.