

The Essential Commodities (Bihar Amendment) Act, 1977

JHARKHAND

India

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Act 9 of 1978

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The Essential Commodities (Bihar Amendment) Act, 1977(Bihar Act 9 of 1978)[Dated 23.8.1978]Published in Bihar Gazette (Extra Ordinary) dated 6.9.1978.An Act to amend the Essential Commodities Act, 1955 in its application to the State of Bihar.Be it enacted by the Legislature of the State of Bihar in the Twenty-eighth Year of the Republic of India as follows :-

1. Short title and commencement.

(1)This Act may be called the Essential Commodities (Bihar Amendment) Act, 1977.(2)It shall come into force at once.

2. Act 10 of 1955 to be temporarily amended.

- During the period of operation of this Act the Essential Commodities Act, 1955 (Act 10 of 1955), in its application to the State of Bihar (hereinafter referred to as the said Act) shall have effect subject to the amendments specified in Section 3.

3. Amendment of Section 3 of Act 10 of 1955.

- In Section 3 of the said Act-(a)in sub-section (2), for clause (f), the following clause shall be and 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 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 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 to which the order relates, and also 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), the following clauses shall be and 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 (3-B), after clause (a), the following clause shall be and 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".

4. Substitution of new section for Section 6-A of Act X of 1955.

- For the existing Section 6-A the following section shall be substituted, namely;-"6-A. Confiscation of foodgrains, edible oil-seeds, edible oils, etc. - (1) Where any essential commodity is seized in pursuance of an order made under Section 3 in relation there to it shall be reported without any unreasonable 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 oil-seeds 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 to be sold 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 6-C 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.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 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 (Act II 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 the 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 authorised under sub-section (7)."

5. Substitution of new section for Section 6-C of Act X of 1955.

- For Section 6-C of the said Act, the following section shall be substituted, namely:-"6-C. 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 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 6-A 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 other case it is not possible for any reason to return the essential commodity seized, such person shall, save as provided by subsection (3) of Section 6-A, be paid the price therefor as if the 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 oil-seeds or edible oils, in accordance with the provisions of sub-section (3-B) of Section 3 ;(ii)in the case of sugar, in accordance with the provisions of sub-section (3-C) 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."

6. Validation.

- Notwithstanding anything contained in any judgement, decree or order of any Court, every order made before the commencement of this Act by the State Government under Sections 3 of the said Act, with reference to clause (f) of sub-section (2) of that section, in relation to foodgrains shall be deemed to be in accordance with, the provisions of the Essential Commodities Act, 1955 (Act 10 of 1955), as amended by this Act as if the relevant provisions in that Act as amended by this Act have been enforced at the time when such order was made: Provided that notwithstanding the retrospective operation of this section, no contravention of, or failure to comply with any provision of the Essential Commodities Act, 1955 (Act 10 1955), as amended by this Act shall render any person guilty of any offence punishable under the Essential Commodities Act, 1955, if such contravention or failure has occurred before the commencement of this Act.

7. Repeal and Saving.

(1) The Essential Commodities (Bihar Amendment) Ordinance, 1978 (Bihar Ordinance no. 19 of 1978), is hereby repealed. (2) Notwithstanding such repeal anything done or any action taken in exercise of any power conferred by or under the said Act shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act was in force on the day on which such thing or action was done or taken.