

The Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009

MAHARASHTRA

India

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Act 19 of 2009

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The Maharashtra Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2009 (Maharashtra Act No. 19 of 2009) (First published after having received the assent of the Governor, in the "Maharashtra Government Gazette" on the 3rd July 2009.) An Act to regulate the supply, distribution, sale and fixation of sale price of cotton seeds and for the matters connected therewith or incidental thereto. Whereas cotton seeds of certain varieties are not notified under section 5 and consequently no sale of such seeds are regulated under section 7 of the Seeds Act, 1966; And Whereas cotton seed is not an essential commodity within the meaning of the Essential Commodities Act, 1955 as amended by the Essential Commodities (Amendment) Act, 2006; And Whereas the provisions of the Seeds (Control) Order, 1983 issued under section 3 of the Essential Commodities Act, 1955 are not applicable in so far as they relate to the cotton seeds; And Whereas there is no provision in the Environment (Protection) Act, 1986 to regulate the supply, distribution and sale of transgenic and genetically modified cotton seed and to control the sale price of such seed in the State; And Whereas the traders in cotton seed including transgenic cotton seed were exploiting poor farmers by collecting exorbitant prices; And Whereas a Khariff season was to commence very soon, it had become imperative on the part of the State to regulate the supply, distribution and sale of cotton seeds by fixing the sale price in the interests of the farmers in the State; And Whereas both Houses of the State-Legislature were not in session; And Whereas the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to regulate the supply, distribution, sale and fixation of sale price of cotton seeds and for the matters connected therewith or incidental thereto, for purposes hereinafter appearing; and therefore, promulgated the Maharashtra Cotton Seeds (Regulation of supply, distribution, sale and fixation of sale price) Ordinance, 2009 on the 9th May, 2009; And Whereas it is expedient to replace the Maharashtra Cotton Seeds (Regulation of supply, distribution, sale and fixation of sale Price) Ordinance 2009 by an Act of the State Legislature; it is hereby enacted in the Sixtieth year of the

Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Maharashtra Cotton Seeds (Regulation of supply, distribution, sale and fixation of sale price) Act, 2009. (2) It shall be deemed to have come into force on the 9th May 2009.

2. Definitions.

(1) In this Act, unless the context otherwise requires, - (i) "Agronomic performance" means distinguishable agronomic qualitative and quantitative characteristics of any cotton seed variety considered for evaluation of performance as claimed by the producer; (ii) "Controller" means the Cotton Seed Controller appointed by the Government under section 3; (iii) "cotton seed" means cotton seed of any variety and includes transgenic and genetically modified cotton seed varieties used for sowing; (iv) "farmer" means any person who raises cotton crops either by cultivating the land by himself or through any other person but shall not include a person engaged in the commercial procurement and sale of cotton seeds; (v) "Government" means the Government of Maharashtra; (vi) "prescribed" means prescribed by rules made under this Act; (vii) "producer" means a person, group of persons, firm or Company or organisation who grows or organizes the production of cotton seed; (viii) "spurious seed" in relation to the cotton seed, means that seed which is not genuine or true to its type; (ix) "Referral Seed Testing Laboratory" means a laboratory established or declared as notified by the Government of India; (x) "substandard seed" means cotton seed which does not meet the prescribed seed standards for the cottonseed; (xi) "transgenic variety" means seed or planting material synthesized or developed by modifying or altering the genetic composition by means of genetic engineering; (xii) "variety" means a plant grouping except micro-organism within a single botanical taxon of the lowest known rank, which can be, - (a) defined by the expression of the characteristics resulting from a given genotype of that plant grouping; (b) distinguished from any other plant grouping by expression of at least one of the said characteristics; and (c) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation, and includes propagating material of such variety, extant variety, transgenic variety, farmers variety and essentially derived variety. (2) Words and expressions used but not defined herein shall have the meanings respectively assigned to them in the Seeds Act, 1966 the Essential Commodities Act, 1955, the Seeds (Control) Order, 1983 and the Environment (Protection) Act, 1986.

3. Appointment of Controller.

- The State Government may by notification in the Official Gazette, appoint an officer, possessing such qualifications as may be prescribed, to be the Controller.

4. Powers of Controller.

(1) Subject to the control of the State Government, the Controller, if it appears to him to be necessary

or expedient for regulating maintaining or increasing the supply or distribution or sale of cotton seeds, may, by order in writing, require any person-(i)holding stock of cottonseed to sell the whole or specified part thereof at such prices as may be fixed by the State Government, by publication of notification in the Official Gazette, from time to time and to such persons in such circumstances as may be specified in the notification;(ii)engaged in the supply, distribution and sale of cotton seeds, to comply with directions, as may be specified in the notification, as to the variety, quality or quantity of the cotton seeds to be sold or delivered by him.(2)The Controller shall determine the compensation payable for sale of misbranded or spurious or substandard seed, in such manner, as may be prescribed.(3)Notwithstanding anything contained in any contract or instrument to the contrary, every person to whom an order is issued under sub-section (1) shall comply with such order.

5. Functions of Controller.

(1)The Controller shall register the persons engaged in the trade of cotton seeds in the State and make necessary arrangements for payment of compensation to farmers.(2)The Controller shall advice the State Government on the following matters, namely:-(i)regulation of sale of cotton seed by way of compulsory DNA finger printing test or genetic purity test;(ii)any other matter referred to him for advice by the Government.(3)In the discharge of its functions, the Controller shall be assisted by the Seed Inspectors, Seed Analysts and such other officers as the State Government may, by order direct.

6. State Seed Testing Laboratory.

- The State Government may, after consultation with the Controller and by publication of notification in the Official Gazette,-(i)for the purpose of carrying out analysis of cotton seed, establish one or more State Seed Testing Laboratories or declare any seed testing laboratory in the Government or non-Government sector as a State Seed Testing Laboratory;(ii)for the purpose of referral analysis, may recognize one or more seed testing laboratories as Referral Seed Testing Laboratories.

7. Seed Inspector.

(1)The State Government may, by publication of notification in the Official Gazette, appoint persons possessing the prescribed qualifications, to be the Seed Inspectors and specify the local areas within which they shall exercise jurisdiction.(2)The Seed Inspector, if he has reason to believe that any person dealing in trade of cotton seed has contravened any of the directions issued by the Controller, or that the quality of the cotton seed supplied by such person is of suspicious nature or that any person is about to commit an offence in respect of cotton seed, shall enter and search any premises and draw samples and detain or seize or seize the stock of cotton seed and records and after receiving the report of Seed Analyst, shall take all future action as specified in this Act.(3)When a sample has been taken by the Seed Inspector, he shall forward one seed sample to the Analyst for analysis and hand over another sealed sample in the prescribed manner, to the person from whom it was taken.

8. Seed Analysts.

- The State Government may, by notification in the Official Gazette, appoint persons, possessing the prescribed qualifications, to be the Seed Analysts and specify the local areas within which they shall exercise their jurisdiction.

9. Report of Seed Analyst.

(1)The Seed Analyst shall, as soon as may be, after the receipt of the sample from the seed Inspector, analyse the sample at the State Seed Testing Laboratory and furnish a report on the result of the analysis to the Seed Inspector.(2)The Laboratory to which a sample has been sent by a Seed Inspector for analysis shall send the analysis report to the concerned Seed Inspector within thirty days from the date of receipt of the sample to the Laboratory.(3)The Seed Inspector may, on the basis of the report of the Seed Analyst under sub-section (1), institute proceedings for the prosecution of the producer or vendor, as the case may be, of the said seed.(4)After institution of prosecution under this Act, the accused vendor or the complainant, as the case may be on payment of the prescribed fee, may make an application to the Court, for sending any of the sample retained with the Seed Inspector or vendor to any of the Referral Seed Testing Laboratory prescribed under section 6 of the Act, for the analysis. The Court shall first ascertain that the mark or seal or fastening, as prescribed is intact. On receipt of the application, the Court may dispatch the sample under its own seal to any of the Referral Seed Testing Laboratory specified for the purpose, which shall, thereupon, within a period of thirty days from the date of receipt of sample, send its report to the Court, in the prescribed form.(5)The report sent by the Referral Seed Testing Laboratory under sub-section (4) shall supersede the report given by the Seed Analyst under sub-section (1).

10. Fixation of maximum sale price.

(1)The Government, after taking into consideration the costs of production etc. including trait value, wherever necessary, obtained from various agencies concerned, may fix, from time to time, the maximum sale price of all types of cotton seeds.(2)Every such price shall be published in the Official Gazette and shall be effective from such date as may be specified therein.

11. Licence for vendor.

(1)Every person desirous of conducting the business of sale in cotton seeds shall apply to the Controller for grant of licence in such form as may be prescribed.(2)Such application shall be accompanied by such fees and such other documents as may be prescribed.(3)The Controller shall, after making such enquiry as he deems fit, either allow the application or reject it.(4)If the Controller allows the application, he shall grant the licence to conduct the business of sale in cotton seeds, on such terms and conditions and in such form as may be prescribed.

12. Prohibition of misbranding.

(1) No person shall sell or keep in his possession for sale, any cotton seed which is misbranded. (2) For the purposes of sub-section (1), cotton seed shall be deemed to be misbranded, if, - (a) it is a substitute for, or resembles in a manner likely to deceive another variety of seed under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true nature; (b) it is falsely stated to be the produce of any place or country; (c) it is sold by a name which belongs to another kind of variety of seed; (d) false claims are made for it upon the label or otherwise; (e) it is sold in a package which has been sealed or prepared by or at the instance of the dealer and which bears his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act; (f) the package containing it or the label on the package bears any statement, design or device regarding the quality of cotton seed contained therein, which is false or misleading in any material particular or if the package is otherwise deceptive with respect of its contents; (g) it is not registered in the manner required by or under this Act; (h) its label does not contain a warning or caution which may be necessary and sufficient, if complied with, to prevent risk to human beings or animals; (i) the package containing it or the label on the package bears the name of a fictitious individual or company as the dealer of the kind or variety; or (j) the package is not labelled in accordance with the requirements of this Act or rules made thereunder.

13. Penalties.

(1) Any person who contravenes any order issued to him by the Controller under section 4, shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees five thousand or with both. (2) If any person commits any act amounting to sale of misbranding, or of spurious or of substandard seed, then he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees five thousand or with both. (3) Any person who sells the cotton seed at the price in excess of the maximum price fixed under section 10 shall be punishable with a fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees.

14. Offences by companies.

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, or was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence 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 under this Act, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence. (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 a body corporate and includes a firm, association of persons or body of individuals whether incorporated or not; (b) "director", in relation to firm, means a partner in the firm, and in relation to any association of persons or body of individuals, means any member controlling the affairs thereof.

15. Cognizance of offences.

- No Court shall take cognizance of an offence punishable under this Act except upon a complaint, in writing, made by the Controller or any other officer authorised by him for this purpose.

16. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any authority or person for anything done or purported to have been done in good faith in pursuance of the provisions of this Act or the rules made thereunder.

17. Officers to be public servants.

- The Controller, every Seed Inspector, every Seed Analyst and every other person assisting the Controller, Seed Inspector or Seed Analyst, in pursuance of the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

18. Appeals.

(1) Any person aggrieved by a decision of the Controller under section 4 or section 5 may, within thirty days from the date on which the decision is communicated to him and on payment of such fees as may be prescribed, prefer an appeal to the Commissioner, Agriculture, Maharashtra State: Provided that, the appellate authority may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible. (3) Every order of the appellate authority under this section shall be final.

19. Forfeiture of property.

- Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or the rules made thereunder, the cotton seed in respect of which the contravention has been committed may be forfeited to the Government.

20. Power to give directions.

- The Government may give such directions to the Controller, Seed Inspector and Seed Analyst as may appear to it to be necessary for carrying into execution in the State any of the provisions of this Act or of any rules made thereunder.

21. Exemption.

- Nothing in this Act shall apply to any cotton seed grown by a farmer and sold or delivered by him on his own premises directly to another farmer for being used by that farmer for the purpose of sowing.

22. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, and subject to the condition of previous publication, make rules to carry out the purposes of this Act.(2)Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

23. Power to remove difficulty.

(1)If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary of expedient for the purpose of removing the difficulty:Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

24. Repeal of Maharashtra Order VI of 2009 and saving.

(1)The Maharashtra Cotton Seeds (Regulation of supply, distribution, sale and fixation of sale price) Ordinance, 2009, is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act.