

The Gujarat Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2008

GUJARAT

India

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Act 20 of 2008

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The Gujarat Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2008 Gujarat Act No. 20 of 2008 (First published, after having received the assent of the Governor, in the "Gujarat Government Gazette" on the 30th September, 2008). An Act to regulate the supply, distribution, sale and fixation of sale price of cotton seeds and for the matters connected therewith and incidental thereto. Whereas cotton seeds of certain varieties are not notified under section 5 of the Seeds Act, 1966 (54 of 1966) and consequently no sale of such seeds are regulated under section 7 of the said Act; And Whereas cotton seeds is not an essential commodity within the meaning of the Essential Commodities Act, 1955 (10 of 1955) as amended by the Essential Commodities (Amendment) Act, 2006 (54 of 2006); And Whereas the provisions of the Seeds (Control) Order, 1983, issued under section 3 of the Essential Commodities Act, 1955 (10 of 1955) are not applicable in so far as they relate to the cotton seeds with effect from 12th February, 2007; And Whereas there is no provisions in the Environment (Protection) Act, 1986 (29 of 1986) to regulate the supply, distribution and sale of transgenic and genetically modified cotton seeds and to control the sale price of such cotton seeds in the State; And Whereas the traders in cotton seeds including transgenic cotton seeds are exploiting poor farmers by collecting exorbitant price; And Whereas there is no provision to regulate the supply, distribution, sale of cotton seeds and to control the sale price of such cotton seeds in the State; And Whereas it has become imperative on the part of the State Government to regulate the supply, distribution and sale of cotton seeds by fixing the sale price in the interests of the farmers in the State. It is hereby enacted in the Fifty-ninth Year of the Republic of India as follows:-

1. Short title and commencement.

(1) This Act may be called the Gujarat Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Act, 2008. (2) It shall be deemed to have come into force on 11th June, 2008.

2. Definitions.

- In this Act, unless the context otherwise requires, (1) "Agronomic Performances" means distinguishable agronomic qualitative and quantitative characteristics of any cotton seeds variety considered for evaluation of performance as claimed by the producer on label; (2) "Controller" means the Cotton Seeds Controller appointed under section 3; (3) "Cotton Seeds" means cotton seeds of any variety and includes transgenic and genetically modified cotton seeds varieties used for sowing; (4) "Farmer" means any person who raises cotton crops either by cultivating the land by himself or through any other person but shall not include persons, companies, traders, dealers who are engaged in the commercial procurement and sale of seeds; (5) "Misbranded" the seeds shall be deemed to be misbranded, if- (i) 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 labeled so as to indicate its true nature; or (ii) it is falsely stated to be the produce of any place or country; or (iii) it is sold by a name which belongs to another kind or variety of seeds; or (iv) false claims are made for it upon the label or otherwise; or (v) 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; or (vi) the package containing it or the label on the package bears any statement, design or device regarding the quality of cotton seeds contained therein, which is false or misleading in any material particular or if the package is otherwise deceptive with respect of its contents; or (vii) it is not registered in the manner required by or under the provisions of this Act; or (viii) 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; or (ix) 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 (x) it is not labeled in accordance with the requirement of the provisions of this Act or the rules made thereunder; (6) "prescribed" means prescribed by rules made under this Act; (7) "producer" means a person, group of persons, firm or company or organisation who grows or organises the production of cotton seeds; (8) "Spurious Seeds" means the cotton seeds which is not genuine or true to its type; (9) "State Seeds Testing Laboratory" means a laboratory established or declared as such by the State Government by a notification published in the Official Gazette; (10) "sub-standard seeds" means cotton seeds which does not meet with the prescribed standards for the cotton seeds; (11) "Transgenic Variety" means seeds or planting material synthesized or developed by modifying or altering the genetic composition by means of genetic engineering; (12) "Variety" means a plant grouping except micro-organism within a single botanical tax on of the lowest known rank, which can be- (i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping; (ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; (iii) 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;(13)The words and expressions used in this Act but not defined shall have the same meaning assigned to them in the Seeds Act, 1966 (54 of 1966), the Essential Commodities Act, 1955 (10 of 1955) Seeds (Control) Order, 1983 issued thereunder and the Environment (Protection)Act, 1986 (29 of 1986).

3. Appointment of Controller.

- The State Government may, by notification published in the Official Gazette, appoint an officer to be the Cotton Seeds Controller for the State.

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 of distribution or sale of cotton seeds, may, by order in writing.-(a)require any person holding stock of cotton seeds to sell the whole or specified part thereof at such prices as may be fixed by the State Government from time to time and to such persons in such circumstances as may be specified in the said order;(b)require any person engaged in the supply, distribution and sale of cotton seeds to comply with such directions as may be specified in the order as to the variety quality or quantity of the cotton seeds to be sold or delivered by him from time to time.(2)Any person to whom an order is issued under sub-section (1) shall comply with such order, notwithstanding anything inconsistent therewith contained in any contract or other instrument to which he is a party.

5. Licence for vendor.

(1)Every person desirous to carry on 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 grant the application or reject it.(4)If the Controller grants the application, he shall issue a licence to carry on the business of sale in cotton seeds, subject to such terms and conditions and in such form as may be prescribed.

6. Functions of Controller.

- The Controller appointed under this Act shall perform the following functions, namely:-(a)arrange for mandatory registration of cotton seeds firms which are engaged in the trade of cotton seeds duly indicating the production aspects and areas of operation etc;(b)arrange for payment of compensation to the farmers;(c)advise the State Government on matters relating to regulation of sale of cotton seeds by way of compulsory DNA finger printing test or genetic purity test; and(d)such other matters as assigned to him by the State Government.

7. State Seeds Testing Laboratory.

- The State Government may in consultation with the Controller and by notification in the Official Gazette, - (a) establish one or more State Seeds Testing Laboratories or declare any seeds testing laboratory in the Government or non-Government sector as the State Seeds Testing Laboratory where analysis of cotton seeds shall be carried out in the prescribed manner; (b) recognize one or more seeds testing laboratories as referral seeds testing laboratories for the purpose of referral analysis in the prescribed manner.

8. Compensation to farmers.

(1) The producer or distributor or vendor of cotton seeds or, as the case may be, whose address appears on the label shall disclose the expected performance of such seeds, under given conditions to the Controller and if such seeds fails to provide the expected performance under such given conditions, the State Government or farmer may claim compensation in such manner as may be prescribed. In respect of transgenic seeds all the conditions that are imposed by Genetic Engineering Approval Committee has to be complied. (2) In case the claim of expected performance is found fictitious, the producer whose address appears on the label, shall be responsible for payment of all such claims related to agronomic performance as specified in sub-section (1). (3) The compensation payable under sub-sections (1) and (2) shall be assessed and fixed by the committee appointed for each agro-climatic zone separately, consisting of crop experts and representatives of the State Government, as may be notified by the State Government.

9. Seeds Inspector.

(1) The State Government may, by notification published in the Official Gazette, appoint such person as it thinks fit to be Seeds Inspector and specify the areas within which he shall exercise his jurisdiction. (2) The Seeds Inspector, if he has information that any person dealing in the trade of cotton seeds has contravened any of the conditions issued by the Controller, or suspecting the quality of the cotton seeds or any person is about to commit an offence in respect of cotton seeds, he may enter in any premises for the purpose of search, and draw samples and detain or seize the stock of cotton seeds and records and after receiving the reports of Seeds Analysts, shall take all further actions in accordance with the provisions of this Act.

10. Seeds Analyst.

- The State Government may, by notification published in the Official Gazette, appoint such person as it thinks fit, to be the Seeds Analyst and specify the areas within which he shall exercise his jurisdiction.

11. Report of Seeds Analyst.

(1)The Seeds Analyst shall, as soon as may be after the receipt of the sample from the Seeds Inspector, analyse the sample at the State Seeds Testing Laboratory and furnish a report on the result of the analysis to the Seeds Inspector, within thirty days of receipt of the sample to the laboratory.(2)The Seeds Inspector shall on the basis of the report of the Seeds Analyst under sub-section (1), institute proceedings for the prosecution on the producer or, as the case may be, vendor of the said seeds.(3)After institution of prosecution under this Act, the accused producer or vendor or, as the case may be, the complainant may on payment of the prescribed fees, make an application to the Court for sending any of the sample retained with Seeds Inspector or producer or vendor as per discretion of Magistrate to any of the laboratory referred to in section 7 of this Act, for its report. The Court shall first ascertain the mark or seal or the fastening as may be prescribed or the intact. On receipt of the application, the Court may dispatch the sample under its own seal to any of the referral laboratory specified for the purpose, which shall thereupon send its report to the Court in the prescribed form specifying the result of the analysis within a period of thirty days from the date of receipt of the sample.(4)The report sent by the referral laboratory under sub-section (3) shall supersede the report given by the Seeds Analyst under sub-section (1).(5)When the report sent by the referral laboratory under sub-section (3) is produced in any proceedings, it shall not be necessary to produce any such sample or part thereof taken for analysis in any proceedings.

12. Power to fix the price.

(1)The State Government may, after taking into consideration of the cost of production, etc. including trait value and other related factors wherever necessary, obtained from various agencies concerned, fix maximum sale price from time to time, 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.

13. Penalties.

(1)If any person contravenes any of the provisions of this Act or the rules or the order issued to him by the Controller under this Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend up to rupees five thousand or with both.(2)If any person commits any act of misbranding, sale of spurious and substandard cotton seeds 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.

14. Offences by companies.

(1)Where an offence under this Act or the rules thereunder has been committed by a company, every person who, at the time the offence 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 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 provided in this Act if he proves that the offence was committed without his knowledge or that he had 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 purpose of this section, - (a) "company" means a body corporate, and includes a firm or other association of persons; and (b) "director" in relation to a firm means a partner in the firm.

15. 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 the Controller or any other authority authorized by him.

16. Appeal.

(1) Any person aggrieved by a decision of the Controller under section 4 or 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 State Government: Provided that the appellate authority may admit 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.

17. Forfeiture of cotton seeds.

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

18. Exemptions.

- Nothing in this Act shall apply to any cotton seeds 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.

19. Officers to be public servants.

- The Controller and all other officers appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

20. Protection of section taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the State Government or the Controller, the Seeds Inspector, the Seeds Analyst or an officer or employee of the State Government for anything which is done or intended to be done in pursuance of any of the provisions of this Act or rules made thereunder.

21. Power of State Government to give directions.

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

22. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the matters, which under any provision of this Act, are required to be prescribed or to be provided for by rules.(3)All rules made under this section shall be laid for not less than thirty day's before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.(4)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

23. Power to remove difficulty.

(1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears it to be necessary or expedient for removing the difficulty:Provided that no order under sub-section (1) shall be made after the expiry 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 the State Legislature.

24. Repeal and savings.

(1)The Gujarat Cotton Seeds (Regulation of Supply, Distribution, Sale and Fixation of Sale Price) Ordinance, 2008 (Gujarat Ordinance No. 1 of 2008) is hereby repealed.(2)Notwithstanding such

repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.