

Bihar State Regulation of Cold Storages Act, 1992

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Rule

BIHAR-STATE-REGULATION-OF-COLD-STORAGES-ACT-1992 of 1992

- Published on 17 August 1992
- Commenced on 17 August 1992
- [This is the version of this document from 17 August 1992.]
- [Note: The original publication document is not available and this content could not be verified.]

Bihar State Regulation of Cold Storages Act, 1992 Bihar Act 17, 1992 Published in Bihar Gazette (Extraordinary) dated 17.8.1992. An Act to provide for licensing, supervision and control over Cold Storage in the State of Bihar and for matters connected therewith. Be it enacted by the Legislature of the State of Bihar in the Forty-third year of the Republic of India as follows:-

Chapter I

Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Bihar State Regulation of Cold Storages Act, 1992. (2) It shall extend to the whole of the State of Bihar. (3) It shall come into force on such date as the State Government may by publication in the Official Gazette determine.

2. Definition.

- In this Act unless the context otherwise requires:- (a) "Agriculture Produce" includes produces of Agriculture or Horticulture, Animal Husbandry or Pisciculture and all other articles of food or drinks wholly or partly made from any of them; (b) "Board" means the Cold Storage Advisory Board constituted under Section 3; (c) "Cold Storage" means an enclosed chamber insulated and mechanically cooled by refrigeration machinery to provide refrigerated condition to agricultural produce stored therein, but does not include refrigerated cabinet and chilling plants having a capacity of less than 100 cubic metres; (d) "Hirer" means a person who on payment hires space in a cold storage for storing agricultural produce; (e) "Licence" means a licence granted under this

Act;(f)"Licensee" means any person to whom licence is granted under this Act;(g)"Licensing Officer" means the Director of Horticulture, Bihar and includes-(1)Any other officer, of Directorate of Horticulture not below the rank of District Horticulture Officer;(2)Any officer not below the rank of Sub-Divisional Officer;(h)"Prescribed" means prescribed by rules made under this Act;(i)"Receipt" means a Cold Storage receipt including a duplicate receipt issued by a licensee under this Act;(j)"Tribunal" means the Tribunal constituted under Section 35;(k)"Fixed date" means the date from which the Act comes into force.

Chapter II

Cold Storage Advisory Board

3. Constitution of Board.

- The State Government shall, by notification, constitute a Cold Storage Advisory Board which shall consist of the following members, namely:-(a)The Agriculture Production Commissioner, Bihar-Chairman.(b)A Representative of Agriculture Marketing Advisor to the Government of Bihar.(c)Director of Industries, Bihar.(d)Registrar, Co-operative Societies, Bihar.(e)Managing Director, Bihar State Marketing Board.(f)Advisor, "BISCOMAUN".(g)Two Representatives of Potato Growers, two members of Legislative Assembly and one owner of Cold Storage (nominated by the State Government).(h)Director of Horticulture, Bihar-Member-Secretary.

4. Duties and functions of the Board.

(1)The Board shall discharge the following duties and functions, namely:-(a)to advise the State Government on policy matters relating to the licensing of cold storages and matters connected therewith;(b)to make suggestions to the State Government in respect of scientific planning, maintenance, development and expansion of cold storage and to suggest proper steps for co-ordination of cold storage facilities in the State;(c)to advise the State Government in the matter of fixation, from time to time, of maximum charges for storing agricultural produce in the cold storage; and(d)to advise the State Government on such other matters as may be referred to the Board by the State Government or as may be prescribed.(2)The business of the Board shall be conducted in such manner as may be prescribed.

Chapter III

Licensing of Cold Storage

5. Licence.

- From the fixed date no person shall carry on the business of storing any agricultural produce in a cold storage except under and in accordance with the terms and conditions of a licence granted under this Act.

6. Application for licence.

(1)Every application for a licence under this Act shall be made in the prescribed form to the licensing officer and shall be accompanied by the prescribed fee.(2)No licence under this Act shall be granted, if it appears to the licensing officer that-(a)the cold storage does not conform to the prescribed specification;(b)the cold storage is not suitable for storage of the class of goods for which it is intended;(c)the application is not accompanied by the prescribed fee;(d)the applicant is guilty of any fraud or misrepresentation;(e)the applicant has been convicted of any offence under this Act or the rules made thereunder.

7. Terms and renewal of licence.

(1)A licence granted under Section 6 shall be valid for such period, as may be prescribed and may on application made in that behalf and upon payment of the prescribed fees, be renewed, from time to time, by the Licensing Officer for such further period as may be prescribed.(2)No licence granted under this Act shall be renewed if it appears to the Licensing Officer that-(a)of the grounds mentioned in sub-section (2) of Section 6 exists;(b)the licensee is guilty of breach of provisions of this Act or the Rules made thereunder;(c)that the application involves a breach of any direction issued by the State Government under Section 44.

8. Suspension and cancellation of a licence.

(1)A licence granted under this Act may be suspended or cancelled if it appears to Licensing Officer that-(a)any of the grounds mentioned in sub-section (2) of Section 7 exists;(b)the licensee has parted wholly or partly with the possession or control of the cold storage or that he has ceased to run it.(2)Where any licence is suspended or cancelled, the licensee shall not be entitled to any compensation therefore nor shall he be entitled to any refund of any fee paid by him for the licence.

9. Licence for construction of cold storage.

(1)No person shall construct any new cold storage without obtaining licence from the Licensing Officer for such construction.(2)Every application for licence under sub-section (1) shall be made in the prescribed form to the Licensing Officer and shall be accompanied by prescribed fee.(3)The Licensing Officer shall, while granting the licence under sub-section (1) have regard to-(a)the number of cold storage operating in the area in which the cold storage is sought to be constructed;(b)the availability of agricultural produce in such area;(c)any other matter which may be prescribed.(4)The Licensing Officer may while granting licence under sub-section (1) impose such conditions as he may consider necessary.

10. Orders to contain reasons.

(1)Every order refusing to grant the licence under Section 6 or refusing to renew the licence under Section 7, or suspending or cancelling the licence under Section 8, or refusing licence under Section

9, shall be in writing and shall contain the reasons in support thereof.(2)Before making an order referred to in sub-section (1) the Licensing Officer shall give the licensee or the applicant, as the case may be, reasonable opportunity of being heard:Provided that when immediate action is required in public interest the Licensing Officer may for reasons to be recorded suspend a licence without any notice under this section.

11. Duplicate Licence.

- Where a licence is lost, destroyed, torn, defaced or otherwise becomes illegible, the Licensing Officer shall in the manner prescribed and on payment of the prescribed fee issue a duplicate licence.

Chapter IV Rights and Duties of Licensee

12. Reasonable care of goods deposited.

- Every licensee shall take such care of goods stored in his cold storage as a man of ordinary prudence would take of his own goods under similar circumstances and conditions.

13. Display of information.

(1)Every licensee, shall before commencement of business every day display and exhibit in the prescribed manner at a conspicuous place on or near the main entrance of the cold storage the following information's in respect of the cold storage-(a)Total capacity of cold storage (Both in area and tonnage),(b)Capacity physically occupied (Both in area and tonnage),(c)Vacant capacity (Both in area and tonnage).

14. Acceptance of goods for deposits.

(1)(a)No licensee shall accept for storage, agricultural produce which is likely to cause damage to other agricultural produce, which is, or may be stored in the cold storage. If and question arises as to whether any agricultural produce is such as is likely to cause damage as aforesaid it shall be referred to the Licensing Officer whose decision shall be final:Provided that a licensee shall not refuse to store potato seeds of bona fide cultivators, so certified in the prescribed form or manner by a Gazetted Officer of Directorate of Horticulture or a Block Development Officer, as the case may be, on the ground that it is likely to cause damage to agricultural produce.(b)A reasonable percentage of the storage capacity of a cold storage shall remain reserved for the hirer and any farmer according to need, on payment of 10 percent in advance of the fixed rent, as part of rent, shall reserve the vacant storage space according to the need. The aforesaid farmer shall have to utilise this vacant, reserved storage space within a stipulated time to be fixed by the Board. After the lapse of this stipulated time, the licensee shall accept the agricultural produce of other applicants.(2)Subject to provisions

of sub-section (1) no licensee shall refuse to accept agricultural produce for the storage without reasonable excuse.

15. Preservation and identity of goods.

- Every licensee shall keep in his cold storage the agricultural produce of one hirer separate from such produce of other hirers and from other produce of same hirer for which a separate receipt has been issued, so as to permit at all times the identification and easy delivery thereof: Provided that where standardised and graded goods are stored in a cold storage, the same variety of goods belonging to same or different hirer may, subject to any contract to the contrary, be cooled together and each hirer shall be entitled for his portion of goods according to weight or shrinkage up to the limit fixed under Explanation to Section 17.

16. Licensee to allow facilities for the hirer to inspect goods.

- Every licensee shall allow during such hours as the Licensing Officer may by order direct, necessary facilities to a hirer or his nominee to inspect and satisfy himself that his goods are properly cared for.

17. Goods deterioration in cold storage and their disposal.

(1) Whenever goods stored in cold storage begin to deteriorate or are likely to deteriorate from a cause beyond the control of the licensee, or where the hirer fails to take delivery of goods stored in a cold storage within a period of fifteen days from the date specified therefor in the receipt, the licensee shall forthwith give notice thereof to the hirer, requiring him to take delivery of the goods immediately after surrendering the receipt duly discharged and paying all charges due to the licensee and send a copy of such notice to the Licensing Officer. (2) Where the hirer fails to comply with the notice referred to in sub-section (1) within a period of seven days from the date of service thereof the licensee may cause the goods to be removed from cold storage and be sold by public auction at the cost and risk of the hirer: Provided that the licensee shall give notice of the sale to the Licensing Officer, at least forty-eight hours before such sale, and the Licensing Officer shall supervise such sale either himself or through an Officer authorised by him in that behalf. Auction shall be done after permission from the authorised officer. Explanation. - Loss of weight or bulk by damage or shrinkage or gain of weight by or bulk by absorption of moisture shall be deemed to amount to deterioration within the meaning of this Section, if the loss or gain exceeds such limits as the Licensing Officer may, from time to time having regard to the climatic conditions of different areas fixed by notification published in the Bihar Gazette. (3) If there is any excess in the weight or bulk of an agricultural produce stored in a cold storage by absorption of moisture or other causes the licensee shall not be entitled to such excess.

18. Intimation regarding condition of goods.

- Any person having an interest in any goods stored in a cold storage or in the receipt covering such

goods, inform the licensee in writing of the fact and nature of his interest and the licensee shall keep a record thereof and if such person requests in writing the intimation be given to him regarding the condition of goods and agree to pay the prescribed charge for giving such intimation, the licensee is bound to give him intimation accordingly.

19. Delivery of goods

(1) Every licensee shall, on demand made by or on behalf of the hirer, deliver the goods stored in the cold storage provided the hirer surrenders the receipt and pays all charges due to the licensee. (2) Every receipt so surrendered to the licensee shall be defaced and shall not be re-issued. (3) Subject to an agreement between the parties, the hirer may take partial delivery of goods stored in a cold storage and in every such case the licensee shall make necessary endorsement on the receipt and return to the hirer.

20. Licensees lien.

- Every licensee in possession of the goods in his cold storage is entitled to retain the possession thereof until the receipt therefor is surrendered and necessary charges are duly paid in accordance with Section 19.

21. Licensee not to pledge or deal in the goods in cold storage without the authority of the hirer.

- No licensee shall except with the written authority of the hirer, pledge or otherwise deal in goods received by him for storage in cold storage.

22. Rate of interest on loan to hirer.

- If any money is lent by the licensee to a hirer against the goods stored by some hirer in cold storage, the rate of interest, in no case, shall be higher than one half of one per cent per annum simple interest over the current rate of interest charged by the State Bank of India, at the time of loan, for like purposes in respect of advances made by it against goods pledged in its favour.

23. Insurance.

- Every licensee shall insure the agricultural produce stored in his cold storage against loss or damage by fire, break-down (whether mechanically or otherwise) or such other like cause.

24. Compensation for loss, destruction, etc.

- Except as otherwise provided in this Act the licensee shall be liable to pay to the hirer, compensation for every loss, destruction, damage, deterioration or non-delivery of the goods in his cold storage caused by negligence, misconduct or default on the part of such licensee.

25. Dispute regarding compensation to be referred to the Licensing Officer.

(1) Every dispute regarding compensation payable by the licensee under Section 24 shall be referred to the Licensing Officer, and subject to the result of appeal, if any, under Section 36, the order of the Licensing Officer shall be final. (2) When the Licensing Officer is satisfied that any compensation payable by a licensee under sub-section (1) has not been paid within thirty days from the date of the order under sub-section (1) or, as the case may be, from the date of the decision of the Tribunal under Section 36, he shall issue a certificate of recovery to the Collector, and the Collector shall recover the amount of such compensation together with cost of recovery as arrears of land revenue and pay the amount realised after deduction of costs to the hirer.

26. Prohibition from recovery of excess amount.

- No licensee shall take or receive for storage or any other service rendered to the hirer, any amount over and above the charges fixed by the State Government under Section 29.

27. Licensee to maintain Account Books.

- Every licensee shall maintain account books and records in such form and in such manner as may be prescribed.

28. Power of Licensing Officer to issue directions.

- Every licensee shall be bound to comply with such directions of the Licensing Officer under this Act as may be issued from time to time for or carrying out the purposes of this Act.

Chapter V

Service Charges

29. [Determination of maximum charges. [Substituted by Act 7 of 2000.]

(1) Every licensee shall, from time to time, fix the maximum charges for storing Agricultural produce in the Cold Storage or for any other service rendered in connection therewith and different charges may be fixed for different Agricultural produce. (2) Every licensee shall display and exhibit on or near the main entrance of the Cold Storage the charges fixed under sub-section (1) and shall also deliver a copy thereof in the office of the Licensing Officer. (3) If the State Government is of the opinion that the charges fixed by a licensee under sub-section (1) is not reasonable the State Government may by notified order fix the maximum charges for the purposes of sub-section (1) with respect to such licensee and the charges so fixed by the State Government shall be effective for the remaining part of the financial year in which they are fixed.]

30.

[xxx] [Repealed by Act 7 of 2000.]

31. Board's report to be considered.

- Where a Board has been constituted under Section 3, the State Government shall consider its report before fixing the charges referred to in Section 29.

Chapter VI

Cold Storage Receipt

32. Duty to issue receipts.

- Every licensee shall issue, in the form prescribed, a receipt for agricultural produce stored in his cold storage.

33. Cold Storage receipt transferable by endorsement and delivery.

- The receipt referred to in Section 32, shall, unless it is otherwise specified therein, be transferable by endorsement and delivery and shall entitle the holder in due course to receive the goods specified in it as if he were the original hirer.

34. Duplicate Receipt.

- If a receipt is lost, destroyed, torn, defaced or otherwise becomes illegible, the licensee shall on application made by the hirer and upon payment of the prescribed fee, issue a duplicate receipt subject to such conditions, if any, as may be prescribed.

Chapter VII

Tribunal

35. Constitution of Tribunal.

- There shall be a Tribunal consisting of the following members, namely:-(a)The Agricultural Marketing Advisor to the Government of India-Chairman.(b)The Legal Remembrancer to the Government of Bihar or an officer of his department nominated by him not below the rank of Additional Legal Remembrancer Member.(c)The Secretary of the Government in the Department of Agriculture or an officer of that department nominated by him not below the rank of Joint Secretary-Member.

36. Appeal.

- Any person aggrieved by an order of the Licensing Officer refusing to grant a Licence under sub-section (2) of Section 6 or refusing to renew it under sub-section (2) of Section 7 or suspending or cancelling it under subsection (1) of Section 8 or refusing permission under Section 9, or deciding a dispute referred to in sub-section (1) of Section 14 or in sub-section (1) of Section 25, may prefer an appeal to the Tribunal within thirty days from the date of communication of such order, and the decision of the Tribunal thereon, shall be final.

Chapter VIII

Penalties and Procedure

37. Penalties.

- Whoever contravenes any provisions of this Act or any rule, order or direction made thereunder shall on conviction be punished with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.

38. Offences by Companies.

(1) If the person committing an offence under this Act is a Company, the Company as well as every person in charge of and responsible to the Company for the conduct of its business at the time of the commission of the offence 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 if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where any 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 that the commission of the offence is attributable to any neglect on the part of any Managing Agent, Secretary, Treasurer, Director, Manager or other Officer of the Company such Managing Agent, Secretary, Treasurer, Director, Manager or other Officer of the Company 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 any body corporate, and included a firm or other association of individuals; (b) "Director" in relation to a firm means a partner in the firm.

39. Cognizance of offence.

(1) Every offence punishable under this Act shall be cognizable. (2) No Court inferior to that of a Magistrate of the first class shall try any such offence.

Chapter IX

Miscellaneous

40. Power of Licensing Officer.

(a)The Licensing Officer may require any licensee to furnish such information as he may specify in respect of the cold storage owned or run by the licensee;(b)Enter upon and inspect or cause to be inspected any cold storage, its machinery and equipment, goods stored therein, and the account books and records relating thereto, for the purpose of satisfying himself that the requirements of this Act and the rules made thereunder are being complied with;(c)Collect samples of agricultural produce stored in any cold storage and get them analysed, examined or tested in any laboratory selected for the purpose.

41. Protection of action taken in good faith.

(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 under this Act or the rules made thereunder.(2)No suit or other legal proceedings shall lie against the State Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

42. Saving as to orders.

- No order made in exercise of any power conferred by or under this Act shall be called in question in any Civil Court.

43. Overriding effect of the Act.

- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having the effect of law.

44. Direction by State Government.

- The Licensing Officer in discharge of his duties under this Act shall carry out such directions of the State Government on matters of policy as may be issued by the State Government from time to time or on the advise of the Board.

45. Power to make Rules.

(1)The State Government may by notification published in the Official Gazette make rules for carrying out the purposes under this Act.(2)All rules made under this Act shall, as soon as, may be, after they are made, be laid before each House of the State Legislature while it is in session, for a

total period of not less than fourteen days, extending in its one session or more than one successive sessions and shall unless some later date is appointed, take effect from the date of their publication in the Official Gazette subject to such modifications or amendments as the two Houses of the Legislature may during the said period agree to make, so however, that any such modification or amendment shall be without prejudice to the validity to anything previously done thereunder.

46. Repeal and Savings.

(1)The Bihar State Regulation of Cold Storage Ordinance, 1992 (Bihar Ordinance No. 20, 1992) is hereby repealed.(2)Notwithstanding such repeal anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done, or taken in exercise of powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action taken.