

# THE ESSENTIAL COMMODITIES ACT, 1955

## STATEMENT OF OBJECTS AND REASONS OF THE ACT

Under Article 369 of the Constitution, Parliament had power during a period of five years from the commencement thereof to make laws with respect to trade and commerce in, and the production, supply and distribution of certain essential commodities. The life of the Essential Supplies (Temporary Powers) Act, 1946 was therefore limited to the 26th January, 1955. The essential commodities to which that Act applied fell into two broad categories, viz.:—

(a) coal, textile, iron and steel, paper, etc., which are products of industries under Union control, and

(b) foodstuffs, cattle fodder, etc., which are not products of such industries.

As public interest required that Centre should continue to have even after the 26th January, 1955, the same legislative powers as it had under Article 369 of the Constitution, a Bill providing for the necessary amendment of Entry 33 of List 3 in the Seventh Schedule to the Constitution was passed by both Houses of Parliament in September last year. This amendment has now become law, having been ratified by the requisite number of States.

The Constitution (Third Amendment) Act, however, had not become law when the Essential Supplies (Temporary Powers) Act, 1946 expired, and therefor an Ordinance was promulgated to take effect on the 26th day of January, 1955, which provided for the regulation of trade and commerce in, and the production, supply and distribution of commodities which fell within the first category referred to in the preceding paragraph. Under Entry 42 of the Union List, Parliament has power to regulate inter-State trade and commerce in all commodities and the Ordinance also provided for such regulation in section 4, thereof but the application of that section was limited in the first instance to wheat, raw cotton and sugar-cane.

Pending the passing of a Central law providing for control in respect of all essential commodities now falling within Entry 33 of the Concurrent List, certain State Governments have promulgated Ordinance or taken legal action open to them for continuing controls in respect of such commodities as could not be included in the Central Ordinance.

The present Bill seeks to replace the Central Ordinance and at the same time includes within the definition of "essential commodities" those commodities which had to be left out by reason of lack of legislative power. To a very large extent, the Bill follows the provisions contained in the Essential Supplies (Temporary Powers) Act, 1946, but the penalty clause has been simplified and a few other provisions have been omitted as unnecessary.

## ACT 10 OF 1955

The Essential Commodities Bill having been passed by both the Houses of Parliament received the assent of the President on 1st April, 1955. It came on the Statute Book as THE ESSENTIAL COMMODITIES ACT, 1955 (10 of 1955).

## LIST OF AMENDING ACTS AND ADAPTATION OF LAWS ORDER

1. The Adaptation of Laws (No. 3) Order, 1956.
2. The Essential Commodities (Amendment) Act, 1957 (13 of 1957).
3. The Essential Commodities (Second Amendment) Act, 1957 (28 of 1957).

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1. Extended to Goa, Daman and Diu with modifications by Regulation 12 of 1962, section 3 and Schedule, to Dadra and Nagar Haveli by Regulation 6 of 1963, section 2 and Schedule I and to Lakshadweep and Amindivi Islands by Regulation 8 of 1965, section 3 and Schedule, to the State of Sikkim w.e.f. 7-1-1976 vide S.O. 28(E), dated 7th January, 1976. This Act has been amended in Maharashtra by Maharashtra Act 71 of 1976, in Orissa by Orissa act 8 of 1976, in Uttar Pradesh by Uttar Pradesh Acts 9 of 1974, 18 of 1975, 39 of 1975 and 16 of 1978

4. The Essential Commodities (Amendment) Act, 1961 (17 of 1961).
5. The Essential Commodities (Amendment) Act, 1964 (47 of 1964).
6. The Essential Commodities (Amendment) Act, 1966 (25 of 1966).
7. The Essential Commodities (Amendment) Act, 1967 (14 of 1967). (The Provisions of this cease to have effect from 31-3-1968).
8. The Essential Commodities (Second Amendment) Act, 1967 (36 of 1967).
9. The Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968).
10. The Essential Commodities (Amendment) Act, 1971 (66 of 1971).
11. The Essential Commodities (Amendment) Act, 1974 (30 of 1974).
12. The Essential Commodities (Amendment) Act, 1976 (92 of 1976).
13. The Essential Commodities (Special Provisions) Act, 1981 (18 of 1981) for five years (w.e.f. 1-9-1982).
14. The Essential Commodities (Amendment) Act, 1984 (34 of 1984).
15. The Essential Commodities (Amendment) Act, 1986 (42 of 1986).
16. The Essential Commodities (Second Amendment) Act, 1986 (73 of 1986).
17. The Essential Commodities (Special Provisions) Amendment Act, 1993 (34 of 1993).
18. The Essential Commodities (Amendment) Act, 2003 (37 of 2003).

*An Act to provide, in the interests 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 <sup>2</sup>[x x x].

**2. Definitions.** -In this Act, unless the context otherwise requires, - <sup>3</sup>[x x x]

<sup>3</sup>[<sup>4</sup>[(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;

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2. The words "Except the State of Jammu and Kashmir" omitted by Act 25 of 1968 w.e.f. 15-8-1968.

3. Clause (ia) renumbered as clause (iia) and before clause (iia) so renumbered clause (ia) inserted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. See Section 3(a) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

4. Inserted by Act 92 of 1976, w.e.f. 2-9-1976.

<sup>5</sup>[(iv-a) Drugs.

**Explanation.—** In this Sub-clause, "drug" has the meaning assigned to it in Clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940)<sup>1</sup>

- (v) Foodstuffs, including edible oilseeds and oils;
- (vi) Iron and steel, including manufactured products of iron and steel;
- (vii) Paper, including newsprint, paper board and straw board;
- (viii) Petroleum and petroleum products;
- (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 Seventh Schedule to the Constitution:

- (b) "Food-crops" include crops of sugarcane;
- (c) "Notified order" means an order notified in the Official Gazette;

<sup>6</sup>[(cc) "Order" includes a direction issued thereunder;]

<sup>7</sup>[(d) "State Government", in relation to a Union territory, means the administrator thereof;]

<sup>6</sup>[(e) "Sugar" means-

- (i) Any form of sugar containing more than ninety per cent, of sucrose, including sugar candy;
- (ii) Khandsari 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.] <sup>8</sup>[(f)

Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in that Code.]

#### NOTES

Tea is not a foodstuff. It is a stimulant. Even in a wider sense "food-stuffs" will not include tea as tea either in the form of leaves or in the form of beverage does not go into the preparation of food proper to make it more palatable and digestible. Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in boiled water. Such "tea" is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. "Tea" neither nourishes the body nor sustains or promotes its growth. It does not have a nutritional value. It does not help formation of enzymes nor does it enable anabolism. Tea or its beverage do not go into the preparation of any foodstuff. In common parlance, anyone who has taken tea would not say that he has taken or eaten food. Thus, "tea" is not "food". It is not understood as "food" or "foodstuff" either in common parlance or by the opinion of lexicographers. (SC) — *Harrisons Malayalam v. Union of India* — 2004 (1) KLT SN.25 : 2004 (1) SCC 256 : AIR 2004 SC 218.

5. Inserted by Act 30 of 1974, wet. 22-6-1974.

6. Inserted by Act 36 of 1967, wet. 30-12-1967.

7. Substituted by the Adaptation of Laws (No. 3) Order, 1956, for clause (d).

8. Clause (f) inserted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years, which now stands ceased to have effect after the expiry of fifteen years. See Section 3(b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

The word "oil" used in regard to foodstuff pertains to only edible type of oils and not oils like kerosine.— *Tulsidas Modi v. State of Orissa* — 1987 CrLJ 664.

Legislative power is conferred on parliament and on the State with respect to the production of any product of the coir industry. A process is involved, certainly in the retting of coconut husks which is regulated by the Act. Even now husks may well be regarded as products of the coir industry, in large and liberal sense, and that a legislation "with respect to" the production even of raw husks, may well relate to the products of the coir industry and therefore fall within Entry 33 of List 111. There is legislative competence under Entry 33 of List 111 to legislate with respect to the production of husks, raw and retted. The levy of licence fee for retting husk is legal. — *Special Officer for Coir v Yusuf* — ILR 1976 (1) Ker.287.

Coconut husks cannot be considered as the product of any industry. Hence, Coir Retting (Licensing) order, 1966 issued by the Central Government is without jurisdiction. — *Mohammed yusuf v. Union of India* -1972 KLT 238: 1972 KU J 311. (Reversed in ILR 1976 (1) Ker.287).

### 3. Powers to control production, supply, distribution, etc., of essential commodities.— (1)

If the Central Government is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, <sup>9</sup>[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 licences, permits or otherwise the production or manufacture of any essential commodity;

(b) For bringing under cultivation any waste or arable land whether appurtenant to a building or not for the growing thereon of food-crops generally or of specified food-crops, and for 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 licences, 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,

<sup>10f</sup>) 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 or 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.

9. Inserted by Act 36 of 1967, w.e.f. 30-12-1967.

10. Clause (f) substituted by Act 28 of 1957, w.e.f.17-9-1957 and again substituted by Act 92 ,of 1976, w.e.f. 2-9-1976.

**Explanation 11.**—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 foodgrains, 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 the 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 foodstuffs 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;

[(ii) For the grant or issue of licences, permits or other documents, the charging of fees therefor, 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;]

<sup>12</sup>[(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 articles, if such person has reason to believe that such aircraft, vessel, vehicle or other conveyance or animal is liable to be forfeited under the provisions of this Act;

<sup>13</sup>[(iii) Of any books of accounts and documents which in the opinion of such person, may be useful for, or relevant to, any proceeding under this Act and the person from whose custody such books of accounts or documents are seized shall be entitled to make copies thereof or to take extracts therefrom 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;

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11. Inserted by Act 17 of 1961, w.e.f. 10-5-1961.

12. Substituted by Act 66 of 1971, for clause (j) w.e.f. 23-12-1971.

13. Substituted by Act 92 of 1976, for sub-clause (iii) w.e.f. 2-9-1976.

(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 at the market rate prevailing in the locality at the date of sale.

<sup>14</sup>[(3-A) (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 sub-section (2), there shall be paid to the seller as the price therefore—Where the price can, consistently with the controlled price of the foodstuff, if any, fixed under this section, be agreed upon, the agreed price;

(a) Where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(b) Where neither Clause (a) nor Clause (b) applies, the price calculated with reference to 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 authorised 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 neighbouring locality; and the average market rate so determined shall be final and shall not be called in question in any court.]

<sup>15</sup>[(3-B) Where any person is required, 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 or foodgrains, edible oil seeds or edible oils in relation to which no notification has been issued under sub-section (3-A), or such notification having been issued, has ceased to be in force, there shall be paid to the person concerned, notwithstanding anything to the contrary contained sub-section (3), an amount equal to the procurement price of such foodgrains, edible oilseeds or edible oils, 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, fixed 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;  
The general crop prospects;

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14. Inserted by Act 13 of 1957, vv.e.f. 4-6-1957.

15. Sub-section (3B) inserted by Act 25 of 1966, we.f. 3-9-1966 and substituted by Act 92 of 1976, w.e.f. 2-9-1976.

(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.]

<sup>16</sup>[(3-C) 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, fixed for sugarcane by the 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.]

<sup>17</sup>[(30) The central Government may direct that no producer, importer or exporter shall sell or otherwise dispose of or deliver any kind of sugar or remove any kind of sugar from the bonded godowns of the factory in which it is produced, whether such godowns are situated within the premises of the factory or outside or from the warehouses of the importers or exporters, as the case may be, except under and in accordance with the direction issued by the Government:

Provided that this sub-section shall not affect the pledging of such sugar by any producer or importer in favour of any scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934) or any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), so, however, that no such bank shall sell the sugar pledged to it except under and in accordance with a direction issued by the Central Government.

(3E) The Central Government may, from time to time, by general or special order, direct any producer or importer or exporter or recognised dealer or any class of producers or recognised dealers, to take action regarding production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar in the manner specified in the direction.

**Explanation.—** For the purpose of sub-section (30) and this sub-section,—

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16. Inserted by Act 36 of 1967, w.e.f. 30-12-1967.

17. Inserted by Act 37 of 2003, w.r.e.f. 14-6-1999.

- (a) "producer" means a person carrying on the business of manufacturing sugar;
- (b) "recognised dealer" means a person carrying on the business of purchasing, selling or distributing sugar;
- (c) "sugar" includes plantation white sugar, raw sugar and refined sugar, whether indigenously produced or imported.]
- (4) If the Central Government is of opinion that it is necessary so to do for maintaining or increasing the production and supply of an essential commodity, it may, by order, authorise any person (hereinafter referred to as an authorised 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 authorised 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 authorised 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 or 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 thereof shall be prepared and witnessed by two persons living in the neighbourhood.
- (6) Every order made under this section by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made.

NOTES

Levy of Market fee on Seeds or food grains — It is not possible to arrive at a finding that the food grains meant to be utilised as seeds had irretrievably lost their basic character. Hence, grant of any relief against levy of market fee not possible (SC) — *Seedsman Association, Hyderabad and Others v. Principal Secretary to Govt. ,A.P. and Others* — 2004 (9) SCC 56.

Vanaspati manufactured containing 78% of solvent mustard oil as against 20% permitted — If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are the company itself, every person in charge of the company and any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect, attributable to whom the offence has been committed — *State of Punjab v. Kasturi Lal* -2004 (3) KLT SN 45: AIR 2004 SC 4087.

Suspension of licence — Ground of alleged deficiency in stock of fine boiled rice held by wholesale dealer and four other irregularities. There was no physical weighing of entire stock by Authorities. Order of recovery of value of missing quantity of rice from dealer and forfeiture of entire security deposit



is liable to be quashed The matter is directed to be reconsidered. – *N.Sarojini v. District Collector, Thiruvananthapuram And Others*—AIR 1999 Ker. 119.

Kerosene (Restriction on Use and Fixation of Ceiling Price) Order ,1993 – Constitutionality of creating fund by executive order for administering Control Order – Distribution of Kerosene through public distribution system in State of M.P. – The kerosene price is fixed. Hence an executive instruction for "rounding off" the amount and depositing the savings therefrom by the wholesalers in the Collectors fund for being utilized for maintaining and strengthening supply and availability of kerosene to consumers is held to be ultra vires of Article 265 of the Constitution. – *Nagrik Upbhokta M. Manch v. Union of India* – 2002 (5) SCC 466 : AIR 2002 SC 2405.

Wheat Roller Flour Mills Licensing and Control Order 1957, Clause 10 – Under Kerala Food grains Dealers (Licensing) Order 1967, petitioner is licensed to purchase wheat and sell its products. The rates of wheat and wheat products increased from specified date The petitioner is having stock of some quantity on such date In that case the petitioner cannot be directed to pay differential cost of wheat. Wheat in stock is held by petitioner as its owner and not as agent of Government. – AIR 1990 Kerala 14.

The power of regulation or prohibition to be exercised only without violating any of the fundamental rights. – *Azhaikianambia Pillai & Others v. State of Kerala* – 1968 KLT 27.

Considering the object of the Rice and Paddy (Procurement by Levy) Order, 1966, which is to secure equitable distribution and availability at fair prices of food grains for all at a time of countrywide food-shortage, the determination of quantity to be procured from or to be allowed to be retained by a producer must necessarily be left to the State Government who is the best appraiser of the pressure of the time, the urgency of the situation and the maintenance of public morals. – *State of Kerala & Others v. Annam Alias Thankamma & Others* – 1968 KLT 390 FB : 1968 KU J 664 : ILR 1968 (1) Ker.549.

Levy of administrative surcharge on export of tapioca. The levy is bad is to is not levy of licence fee for regulating the trade or for grant of permits. The order dated 15-4-66 formulating the scheme was not an order under any of the provisions of S.3 of the Act. It was an impost on export which the State had no power to do. – *Kerala Tapioca (Manufacture and Export Control) Order, 1966.* – *State of Kerala v. Govindan* – AIR 1975 SC 152 : 1974 KLT 876.

There is nothing on the face of the Government order to show that there is any correlation between the levy and the expenses to be incurred for rendering services. There is no material furnished to show what exactly was the service that the Government rendered to exporters of tapioca and what exactly was the amount which the Government had to spend on that account. It is to the general revenue or the Consolidated Fund of the State that it goes. The levy cannot be sustained as fee. – *Tapioca (Manufacture and Export Control) Order, 1966– K.P.Govindan v. State of Kerala & Others.*— 1971 KLT 910 : ILR 1971 (2) Ker .524.

To interpret the expression in the sub-section 'as soon as may be' to mean 'within a reasonable time' would make the duration of the law uncertain and therefore cannot be accepted. The obligation is not laid on the State Government to lay Orders made by it before the Parliament. – *State of Kerala & Others v. Annam Alias Thankamma & Others* – 1968 KLT 390 FB : 1968 KU J 664 : ILR 1968 (1) Ker. 549.

The State Government can only pass Orders by virtue of the powers conferred on it by the Central Government by notified order as contemplated by Section 5. The powers of the State Government are confined to the matters specified in the order conferring the powers. – *Abdulla v. State of Kerala* – 1973 KLT 261 :1973 KU J 347.

**4. Imposition of duties on State Governments, 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 the 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<sup>18</sup>[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-

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18. Substituted by Act 66 of 1971, for "the power to make orders under section 3" w.e.f. 23-12-1971.

- (a) Such officer or authority subordinate to the Central Government; or
- (b) Such State Government or such officer or authority subordinate to a State Government.  
As may be specified in the direction.

**6. Effect of 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.

<sup>19</sup>[6-A. **Confiscation of essential commodity.**— <sup>20</sup>[(1)] Where any <sup>21</sup>[essential commodity is seized] in pursuance of an or er un er Section 3 in relation thereto, <sup>22</sup>[a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such <sup>21</sup>[essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector <sup>23</sup>[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 <sup>24</sup>[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 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this Section:

<sup>25</sup> 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.]

<sup>25</sup>[(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:

<sup>26</sup>[Provided that in the case of any such essential commodity the retail sale price whereof has been fixed by the Central Government or a State Government under this Act or under any other

19. Inserted by Act 25 of 1966, w.e.f. 3-9-1966.

20. Section 6A renumbered as sub-section (1) thereof by Act 92 of 1976, w.e.f. 2-9-1976.

21. Substituted by Act 36 of 1967, for " foodgrains, edible oilseeds or edible oils are seized" w.e.f. 30-12-1967.

22. Substituted by Act 92 of 1976, for "it may be produced without any unreasonable delay, before" w.e.f. 2-9-1976.

23. Substituted by Act 92 of 1976, for "if satisfied" w.e.f. 2-9-1976.

24. Substituted by Act 30 of 1974, for "may order confiscation of the essential commodity so seized" w.r.e.f. 22-6-1974.

25. Inserted by Act 92 of 1976, w.e.f. 2-9-1976.

26. Proviso substituted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. See Section 4 of the Essential Commodities

27. (Special Provisions) Act, 1981 (18 of 1981).

law for the time being in force, 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 so fixed.]

(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 60 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.]

<sup>27</sup>[**6B. Issue of show cause notice before confiscation of food grains.**-<sup>2</sup> 8[(<sup>A</sup> 1)1 No order confiscating <sup>29</sup>[any 9essential commodity, package, covering or receptacle, animal, vehicle, vessel or other conveyance]] shall be made under Section 6A unless the owner of such 9essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance] or the person from whom <sup>31</sup>[it is seized]—

(a) Is given a notice in writing informing him of the grounds on which it is proposed to confiscate the lessential commodity, package, covering or 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 grounds of confiscation; and

(c) Is given a reasonable opportunity of being heard in the matter.]

9(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.

<sup>32</sup>E3) 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.]

<sup>33</sup>[**6C. Appeal.**— (1) Any person aggrieved by an order of confiscation under Section 6A may, within one month from the date of the communication to him of such order, appeal to lany

27 Inserted by Act 25 of 1966, w.e.f. 3-9-1966.

28 Section 6B re-numbered as sub-section (1) thereof by Act 30 of 1974, w.e.f. 22-6-1974.

29 Substituted by Act 36 of 1967, for "any foodgrains, edible oilseeds or edible oils" w.e.f. 30-12-1967.

30 Substituted by Act 30 of 1974, for "essential commodity" w.e.f. 22-6-1974,

31 Substituted by Act 36 of 1967, for "they are seized".

32 Inserted by Act 92 of 1976, w.e.f. 2-9-1976.

33 Inserted by Act 25 of 1966, w.e.f. 3-9-1966.

34 The words "the State Government concerned and the State Government" Substituted by Act 18 of 1981 as amended by Act 34 of 1993, for "any judicial authority appointed by the State Government and the judicial authority" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. See Section 5(a) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

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 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 6A, the person concerned is acquitted, and in either case it is not possible for any reason to <sup>36</sup>[return the essential commodities seized], [such persons shall, except as provided by sub-section (3) of Section 6-A, be paid] the price therefor <sup>38</sup>[as if the essential commodity,] had been sold to the Government with reasonable interest calculated from the day of the seizure of <sup>39</sup>[the essential commodity] and such price shall be determined-

(i) In the case foodgrains, edible oilseeds 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.]

<sup>41</sup>[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.]

<sup>42</sup>[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 6-A, the Collector, or, as the case may be, <sup>43</sup>[the Judicial authority appointed under Section 6C] shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, *any* other court, tribunal or 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.]

35. The words "the State Government" substituted by Act 18 of 1981 as amended by Act 34 of 1993, for "such judicial authority" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years, See Section 5 (b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

36. Substituted by Act 36 of 1967, for "return the foodgrains or edible oilseeds or edible oils seized" w.e.f. 30-12-1967

37. Substituted by Act 92 of 1976, for "such person shall be paid".

38. Substituted by Act 36 of 1967, for "as if the foodgrains, edible oilseeds or edible oils, as the case may be," w.e.f. 30-12-1967.

39. Substituted by Act 36 of 1967, for "articles" w.e.f. 30-12-1967.

40. Substituted by Act 36 of 1967, for certain words w.e.f. 30-12-1967.

41. Inserted by Act 25 of 1966, w.e.f. 3-9-1966.

42. Inserted by Act 92 of 1976, w.e.f. 2-9-1976 and substituted by Act 42 of 1986, w.e.f. 9-9-1986.

43. The words "the state Government concerned under section 6C" substituted by Act 18 of 1981 as amended by Act 34 of 1993, for "the judicial authority appointed under section 6C" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. See section 6(a) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

44. The words "any court, tribunal or other authority" substituted by Act 18 of 1981 as amended by Act 34 of 1993, for "any other court, tribunal or authority" for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. See Section 6(b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

NOTES

Confiscation of vehicles or container containing essential commodity under Section 6A, is not contemplated in absence of violation of Section 3. Under Section 6A, first target is confiscation of the essential commodity. If the commodity is not liable to be confiscated, question of confiscation of vehicles or container cannot arise. ( Andhra Pradesh Petroleum Products Order, 1980) — *Govt. of A.*<sup>13</sup>. v. *V.Ranga Rao* – (2005) 12 SCC 274.

The contravention of the conditions of licence is not a sufficient ground for confiscation in terms of Section 6A of the Act and, therefore, storage of goods in a place other than the place mentioned as godown in the licence could only be a contravention of the conditions of licence and therefore, insufficient to justify a confiscation under Section 6A of the Act. – *Moideen v. State of Kerala* -1999 (1) KLT 824: AIR 1999 Ker.282.

A contravention of the provision may justify a seizure but cannot justify a confiscation under S.6A of the Act. In this view of the matter, assuming for argument's sake that a seizure of the goods belonging to the appellant stored in the godown of the State Warehousing Corporation is justifiable, it cannot justify a confiscation under S.6A of the Act because the appellant has not done any business in the said rice in Kozhikode and therefore, there has, actually not been a sale of any essential commodity by a dealer having his place of business noted in the licence elsewhere. If that be so, contravention of the Licensing Order in the matter of storing cannot be considered as a contravention of Clause 3 of the Licensing Order. We accordingly hold that mere storage without an actual sale in a place other than the place of business does not result in contravention of the provisions of the Licensing Order and therefore, does not justify confiscation under S.6A of the Act. – *Moideen v. State of Kerala* – 1999 (1) KLT 824 : AIR 1999 Ker.282. [1981 KLT SN 43; Followed; 1983 KLT 240; 1978 KLT 29; AIR 1969 SC 110; AIR 1962 SC 1962; Relied on ]

Validity of confiscation proceedings – The petitioner licensee is having licence of purchase, sale and storage of food grains for a District Place 'I'. Hence the storage of foodgrains at District Place 'K' is without licence from place 'K' and hence in contravention of licensing order. In that case licensing authority from place 'K' can confiscate such stock of foodgrains – *D. Batcha Moideen v. State of Kerala And Others* –AIR 1999 Ker.243. [1983 KLT 240; 1982 KU J 592; 1981 KLT SN 81; 1978 KLT 291; ILR 1978 (1) Ker 673; Referred to]

Reference to property or object should always be understood as comprehending its money value equivalent. A reading of S.6A (3) (a) shows that it contemplates confiscation even after the essential commodity is sold. Even in genuine cases where confiscation is warranted the property may have to be sold before ordering confiscation. When S.6A (3) is read along with S.6A (3) (a) what follows is that even where sale of the essential commodity is succeeded by an order of confiscation the sale proceeds need not be returned. The money equivalent of the essential commodity or property is also liable to confiscation or forfeiture. – *Ragha van v. State of Kerala* – 1986 KLT 635: ILR 1986 (2) Ker.527 : KLT 189 Overruled #

Confiscation under S.6A is independent of prosecution. Even without a prosecution for contravention of the order confiscation could be resorted to. But the satisfaction that there was contravention of the order is a condition precedent to confiscation. Such a satisfaction by itself is not sufficient to order confiscation. Something more is required. On the basis of the materials collected in the enquiry, over and above the satisfaction of the contravention of the order, there must be the further satisfaction that it is a fit case for confiscation. The discretion will have to be exercised judiciously and properly. The order is justiciable under S.6 (c) and therefore the order must be supported by reasons also. – *Ragha van v. State of Kerala* – 1986 KLT 635 : ILR 1986 (2) Ker.527.

The provisions in S.6A of the Act are not mandatory and the Section is only an enabling one. Before passing an order of confiscation, the concerned authority must be satisfied that there was contravention of a provision of law touching the matter and there was proper and justifiable grounds for confiscation. – *Sathish & Co. v. State* – 1983 KLT 240 : 21982 KU 592.

If prosecution ends in a conviction, S.7(1)(b) enjoins that property in respect of which order was contracted, ' shall be forfeited' to Government. The language of this clause is clearly, mandatory and leaves no option to court to order forfeiture. Only a limited power of sale of the commodity in the manner prescribed by sub-s.(2) of S.6A is granted. This shows that legislature did not intend to confer a power on Collector to return the essential commodity to the owner or the person from whose possession it was seized. (SC) – *Shambu Dayal v. State of West Bengal* – 1990 (2) KLT SN.2 P.2

The criminal courts of the country have the jurisdiction and the ouster of the ordinary criminal court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. High Court was right in coming to the conclusion that the Criminal Court

retained jurisdiction and was not completely ousted of the jurisdiction. (SC) — *State of MR v. Rameswar Rathod* — 1990 (2) KU J 775.

Though proceedings for confiscation by the Collector and criminal prosecution for contravention of the order in respect of which an order of confiscation has been made under S.6A are independent and parallel proceedings, acquittal in the prosecution will amount to annulling the confiscation order. — *Unni v. State* — 1983 KLT 11: 1983 KLN 40: 1982 KU J 716.

In the absence of any prohibition with respect to the issue of notice or giving of an opportunity of being heard, there is a discretion in the matter vested in the Collector and that has to be exercised after due satisfaction on an objective consideration of all aspects touching the matter. The public authorities making public orders should clearly state the reasons behind the decision arrived at by them. — *Balsubramanian v. District Collector* — 1984 KLT 174: 1984 KLN 77: 1984 KU J 54 : ILR 1984 (2) Ker.136 : AIR 1984 Ker.87.

The fact that the 2<sup>nd</sup> report alone referred to the perishable character of the goods, and not the first report, is immaterial so long as the two reports can be regarded as integral parts of one report. — *Kunju Labha v. Director of Coir* — 1981 KLT SN.136 P.74.

When confiscation is upheld and the person is also convicted, it looks strange that money will have to be returned on the sole ground that the sale proceeds are not liable for confiscation. A person guilty of contravening the provisions of Cement Control Order cannot thus retain either the goods confiscated or the money to which it is converted. — *State v. Chakku* — 1984 KLT 742 : 1984 KLN 429 1984 KU J 574.

The expression District and Sessions Judge' wherever used, connotes that the concerned Officer acts as District Judge when he functions on the criminal side. Once it is held that the judicial authority is a court the provisions of either the Civil Courts Act or the Code of Criminal Procedure should apply. — *Venugopal v. Tahsildar* — 1982 KLT 950.

Food Grains stored in contravention of provisions in Food Grains Dealers Licensing order — Element of mens rea is not necessary. — *Kunhimannan v. Addl. S.I. of Police* — 1976 KLT 585 : ILR 1976 (2) Ker.397.

Confiscation of articles belonging to a person is in the nature of a penalty and before that is ordered he is entitled to know the place where and the time when the alleged offence was committed and the facts constituting the offence. — *Abdul Kader v. State of Kerala* — 1975 KLT 151.

## 7. Penalties—<sup>45</sup>R 1 ) If any 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 Shall also be liable to fine;

<sup>46</sup>[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;]

(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.

45. Substituted by Act 30 of 1974, for sub-sections (1) and (2) w.e.f. 22-6-1974.

46. Proviso was omitted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands restored after the expiry of fifteen years. See Section 7(a) Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

(2) If any Person to whom a direction is given under Clause (b) of subsection (4) 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:

<sup>47</sup>[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:

<sup>48</sup>[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 six months.]

<sup>49</sup>[(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.]]

<sup>50</sup>[(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 be 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 Court in the order.]

<sup>51</sup>[**7-A. Power of Central Government to recover certain amounts as arrears of land revenue.—** (1) Where any person, liable to—

(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 (34 of 1984), and whether the liability of such person to pay or deposit such amount arose before or after such commencement be recoverable by Government together with simple interest due thereon comp4ed

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47 Proviso was omitted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands restored after the expiry of fifteen years. See Section 7(b) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

48 Proviso was omitted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands restored after the expiry of fifteen years. See Section 7(c) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

49 Sub-section (2B) omitted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands restored after the expiry of fifteen years. See Section 7(d) of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

50 Inserted by act 36 of 1967, w.e.f. 30-12-1967.

51 Inserted by Act 34 of 1984, w.e.f. 1-7-1984.

at the rate of "[fifteen percent] per annum from the date of such default to the date of recovery of such amount, as an arrear of land revenue "[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 arrear of land revenue "[or as a public demand] in pursuance of the provisions of sub-section (1).

(4) if any order, in pursuance of which any amount has been recovered by Government as an arrear of land revenue [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 was recovered, together with simple interest due thereon, computed at the rate of "[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.]

#### NOTES

Maximum punishment for offence under S.7 (1) (a) (ii) of Essential Commodities Act is not one year but seven years. Order of High Court is liable to be set aside. (SC) — *State of A. P v. Farmers Service Coop. Society and Others* — 2004 (6) SCC 683.

S.7 refers to contravention of any order made under S.3. It is essential for bringing in application of S.7 to show that some order has been made under S.3 and the order has been contravened. S.3 deals with powers to control production, supply, distribution etc. of essential commodities. Excise of such powers, can be done by "order". According to S.2(c), "notified order" means an order notified in the Official Gazette, and S.2 (cc) provides that "order" includes a direction issued thereunder. (SC) — *Prakash Babu v. State of M. P.* -2004 (3) KLT 7E1 : 2004 (7) SCC 490. [1981 (4) SCC 535; *Referred to*]

In the present case the Special Court constituted for the trial of E.C. Act cases was a court of exclusive jurisdiction and it had not been vested with the power of Judicial Magistrate for the purpose of dealing with E.C. Act cases. Therefore, the learned special judge had no jurisdiction to pass the impugned order of conviction and sentence. — *Mahadeve Iyer v. State of Kerala* — 2004 (2) KLT 562. [AIR 2001 SC 2972: *Followed*]

S.7, S.12AA (j) — S262 (2) of Code providing that in summary trials court cannot pass sentence of imprisonment exceeding three months The contention that since offences under the Act have to be tried summarily, sentence of imprisonment for more than 3 months cannot be passed negated. (Go).) — *Rama Fertilizers (P) Ltd v. State of Gujarat* — 2001 (3) KLT SN 121. [Cd.RA 410 of 1989; *Overruled* 1984 (9) Efr 340; *Dissented from*]

It does not require much effort to convince any one that the opinion formed by a person without conducting any scientific test is likely to go wrong. Moreover, it is almost impossible for any human being, however experienced he may be, to pronounce opinion regarding the scientific standard of any stuff merely by smelling it. Whenever a particular scientific standard is fixed for a commodity the ascertainment must be made by subjecting it to scientific test. The position may perhaps be different if no standard as such is fixed for a particular commodity or article the possession of which amounts to an offence. If the supply officers who inspect places of storage of such suspected commodities fail to take samples from such stocks and have then analysed in the laboratory, the consequence is inevitable that

52. Substituted by Act 42 of 1986, for "six per cent" wet. 8-9-1986.

53. Inserted by Act 42 of 1986, w.e.f. 8-9-1986.

54. Inserted by Act 42 of 1986, wet. 8-9-1986.

55. Substituted by Act 42 of 1986, for "six per cent" wet. 8-9-1986.



criminal courts would find it difficult to conclude that the commodity concerned is of the particular standard fixed by law. Kerosene Control Order, 1968 (Kerala), Clause 16 — *Kunhimoideenkutty v State of Kerala* — 1988 (2) KLT 128; 1988 (2) KU J 63.

Unless the accused succeeds in proving beyond reasonable doubt that he had no mens rea in the contravention of any particular clause of the Orders issued under the Act, the court has to proceed on the assumption that the accused has the requisite mens rea. Though it cannot be said that unless the accused adduces defence evidence the burden cast on him would remain undischarged in all cases, it would normally be difficult to prove any fact "beyond reasonable doubt" without the aid of positive evidence adduced for that purpose. However, an accused may succeed in discharging the onus either by adducing defence evidence or by eliciting answers from prosecution witnesses or by highlighting circumstances available in prosecution evidence itself. It would all depend upon facts and circumstances in each case. — *Viswanathan Na/ru Drugs Inspector*— 1988 (2) KLT 565 : 1988 (2) KU J 423.

In the case of statutory offence, the Courts have held that the Parliament intended to impose strict liability and have convicted defendants who lacked mens rea. In the case of statutory offence the offences are always the creation of statute. The Courts in enforcing them profess merely to be implementing the express intention of Parliament. The courts are greatly influenced in their construction of the statute by the degree of social danger which they believe to be involved in the offence in question: They take judicial notice of the problems with which the country is confronted. The imposition of strict liability does something towards insuring to do everything possible to see that important welfare regulations are carried out. — *Muhammed v. State of Kerala* — 1990 (1) KLT SN.49.P.42 : 1990 (1) KU J 308.

Notifications of the kind in question are not matters for judicial notice, but for proof by production of the gazette or otherwise. As no notification fixing the maximum price for the goods is in proof here, the prosecution cannot be said to have made out a case against the accused. — *Chandrasekharan v State* - 1966 KLT 638.

**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.

<sup>56</sup>[x x x x]

**9. False statements.**— 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 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, 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 term which may extend to <sup>57</sup>[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 the contravention 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 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.

<sup>56</sup> Proviso was inserted by Act 18 of 1981 as amended Act 34 of 1993 for a period of fifteen years. It now stands ceased to have effect after the expiry of fifteen years. See Section 8 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

<sup>57</sup> Substituted for "three years" by Act 36 of 1967, w.e.f. 30-12-1967.

(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 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.

<sup>68</sup>[10-A. Offences **to be cognizable** <sup>59</sup><sup>60</sup>[x x 4.— Notwithstanding anything contained in <sup>61</sup>[the Code of Criminal Procedure, 1973(2 of 1974)] every offence punishable under this Act shall be \*cognizable <sup>59</sup><sup>60</sup>[x x x]].

<sup>62</sup>[x x .x]

<sup>63</sup>[**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 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 orders 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.]

<sup>64</sup>[**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 a fact and the belief in, or reason to believe, a fact.

58. Inserted by Act 36 of 1967, w.e.f. 30-12-1967.

59. The words "and bailable" omitted by Act 30 of 1974, w.r.e.f. 22-6-1974.

60. After the word "cognizable" the words "and non-bailable" were inserted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years, now they stand ceased to have effect after the expiry of fifteen years. See Section 9 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

61. Substituted by Act 30 of 1974, for" the Code of Criminal Procedure, 1898 (5 of 1898)", w.e.f. 22-6-1974.

62. Section 10AA was inserted by Act 34 of 1993 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. See section 9A of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

63. Inserted by Act 30 of 1974, w.r.e.f. 22-6-1974.

64. Inserted by Act 30 of 1974, w.r.e.f. 22-6-1974.

(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.]

#### NOTES

The persons in charge, or the officers of the company or the company itself may be prosecuted jointly or severally for contravention contravening order made under S.3. It was further held that there is no statutory compulsion that the person in charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. It was also held that the directors of the company seeking to have the charge for violation of the order against themselves quashed, on ground that the Production Manager alone was liable to be proceeded against is not justified. The High Court was not justified in quashing the charge framed as far as the said Directors were concerned. — *State of Punjab v. Kasturi Lal*, (2004) 12 SCC 195 :AIR 2004 SC 4087 : 2004 Cri LJ 3866.

**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)<sup>65</sup> [or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not].

<sup>66</sup>[**Explanation—**For the Purposes of this section and Section 12-AA, " recognised 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.]

#### NOTES

One of the objects of S.11 E.C.Act is a avoidance of frivolous prosecutions. But that object or purpose will only be defeated by giving a long rope to the public servant and placing his opinion beyond the purview of judicial scrutiny. Vindication of justice by bringing an offender to justice in a deserving case is also one of the purposes of S.11. Whether it be a charge –sheet or a refer report or a complaint, the sufficiency of the material for taking cognizance is solely subject to judicial review. The only restriction or limitation imposed on the cognizance under 5.190 of the Code by S.11.E.C.Act is concerning the source of information on which cognizance could be taken. Even though wording of S.11 is slightly different cognizance is on information of facts which constitute an offence. Whether the facts brought to the notice of the court by a report or complaint or other information constitute an offence is not a matter left, to the sweet will and pleasure of the public servant to decide even under S.11 of the E.C.Act. Even under Section E.C. Act, the final discretion is that of the Court. — *Sadanandan v State* – 1989 (2) KLT 819:1989 (2) KU J 465. [1980 CrLJ 537 Dissented]

How cognizance will have to be taken by the courts it may not be proper for the Courts to read into the provisions that one of the modes of cognizance provided in the statute has been impliedly repealed by another provision especially when an interpretation of the latter provision cannot yield such a consequence. S.12-AA (1) (a) only clarifies the position by saying that cognizance could be had on the basis of a police report also. It appears that the main object of S.12AA (1)(a) is to provide that in spite of the provision in S.193 of the Code of Criminal procedure, as a court of original jurisdiction, the special Judge will be competent to take cognizance without a committal proceeding. By no stretch of imagination, it could be read into the provisions of S.12-AA (1) (e), a Legislative intent to exclude the operation of S.11. A harmonious interpretation keeping alive Ss.11 and 12-AA (1) (e) which appear in quick succession in the statute is possible and a contrary interpretation is impossible also. None of the provisions of the principal Act or the Amending Act are indicative of the fact that the right to take cognizance or the right to vindication of justice in relation to the offences under the Act are restricted or taken away except as provided in S.11 which has to be read subject to the provisions of S.12-AA (1) (e). There is no possibility of any conflict between the two provisions. They are not mutually exclusive also. Therefore no question implied repeal could be considered as the legislative intent. — *Abdul Nazar v. Mohammed Kutty* – 1985 KLT 824.

65. Inserted by Act 73 of 1986, wet. 1-5-1987.

66. Inserted by Act 73 of 1986, w.e.f. 1-5-1987.

<sup>67</sup><sup>68</sup> [12. Special Provision regarding<sup>9</sup> 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 the 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]

## NOTES

Special Court for trial of E.G. Act came into existence as provided under S.12(9) of E.C.Act. The Act was enforced initially for five years and was later extended for a further period of five years from 1987 to 1992 and again extended for five years from 1992 to 1997. The Act was in force till 31-8-1997. It was thereafter Central Ordinance, 1997 was promulgated as E.C.Special Provisions Ordinance. Again Central Ordinance, 1998 was promulgated as no enactment of E.C. Amendment Act was in force at that time. But on failure to replace the ordinance by enactment, the ordinance lapsed. As a result special courts established for trial of E.C.Act cases ceased to function. The consequential position that followed was that cases registered under the E.C.Act were to be tried before the Magistrate having jurisdiction as it was being<sup>9</sup> done prior to enactment of E.C. (Special Provisions) Act, 1981.— *Karim v. State of Kerala* 2006 (2) KLT 874. [(2002) 1 SCC 15 = 2002 (1) KLT (SC) (SN) 108 Relied on]

<sup>68</sup>[91 2A. 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 <sup>71</sup>[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:

<sup>72</sup>[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 if 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.]

67 Substituted by Act 30 of 1974, w.r.e.f. 22-6-1974.

68 Section 12 was omitted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands restored after the expiry of fifteen years. See Section 10 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

69 Section 12A inserted by Act 47 of 1964, wet. 5-11-1964.

70 Section 12A was substituted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stands ceased to have effect after the expiry of fifteen years. The Original section 12A as inserted by Act 47 of 1964 and amended by Act 66 of 1971 and Act 30 of 1974 stands restored. See Section 11 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

71 Substituted by Act 30 of 1974, for "any essential commodity", w.e.f. 22-6-1974.

72 Added by Act 66 of 1971, w.r.e.f. 23-12-1971.

9(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 woollen 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 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

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

<sup>78</sup>[(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 pendi<sup>9</sup> before a Magistrate immediately before the commencement of the 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 the contravention of such special order and pending before a Magistrate immediately before the date of the 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.]

<sup>79</sup>[x x x]

73. Substituted by Act 30 of 1974, for sub-section (2) w.r.e.f. 22-6-1974.

74. Substituted by Act 30 of 1974, for "the Code of Criminal Procedure, 1898 (5 of 1898)" w.r.e.f. 22-6-1974.

75. Substituted by Act 30 of 1974, for "or of fine not exceeding two thousand rupees or both" v.v.r.e.f. 22-6-1974.

76. Substituted by Act 30 of 1974, for "section 517" w.r.e.f. 22-6-1974.

77. The words "of imprisonment or fine" omitted by Act 30 of 1974, w.r.e.f. 22-6-1974

78. Substituted by Act 30 of 1974, for sub-section (4), w.r.e.f. 22-6-1974.

79. Sections 12AA, 12AB, 12AC, were inserted by Act 18 of 1981 as amended by Act 34 of 1993 for a period of fifteen years which now stand ceased to have effect after the expiry of fifteen years. See Section 11 of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981).

NOTES

The remand orders passed by the Special Court long after it had ceased to exercise jurisdiction in cases under the E.C. Act were without jurisdiction. Special Court dealing with the NDPS Act cases exclusively has no power to deal with the cases under the EC Act. *State of Tamil Nadu v. Paramasiva Pandian*, (2002) 1 SCC 15 : AIR 2001 SC 2972.

**912B. 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.]

NOTES

Proviso to S.12AA (f) empowers the Special Judge to award sentence of imprisonment for more than 3 months. Limit of sentence of imprisonment not exceeding three months prescribed by S.262(2) is applicable only to offences enumerated in S.260 Cr.P.C. and not offences which are rendered summarily triable by virtue of the special enactment. 1989 (2) KLT SN.43 P.37.

**13. Presumption as to orders.—** 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).

**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, licence or other document, the burden of proving that he has such authority, permit, licence 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.

**915A. 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.]

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80. Inserted by Act 30 1974, wr.e.f. 22-6-1974.

81. Inserted by Act 92 of 1976, wet. 2-9-1976.

**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 authorises 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, licence 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, licence or permit granted or direction issued under this Act.

(3) The provisions 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.

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