

Government of India
Department of Consumer Affairs

Review of provisions of the Essential Commodities Act, 1955 & PBMMSEC Act, 1980

Existing Provision

Section 6A
Confiscation of essential commodity

(1) Whether any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [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 [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 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section: 4 [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.

(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 such 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: Provided that in case of foodgrains, 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 fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such foodgrains to the public.

(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 6C 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 thereof or the person from whom it is seized.

Section 7 - Penalties

[(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: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, 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 property shall, if the court so orders, be forfeited to the Government.(2) If any person to whom a direction is given under clause (b) of sub-section(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: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, 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: Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.(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.2[(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 the Court in the Order.

Section 7A

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 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 computed at the rate of1[fifteen per cent.] per annum from the date of such default to the date of recovery of such amount, as an arrear of land revenue2[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 revenue²[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 ²[or as a public demand] under subsection (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 ¹[fifteen per cent.] per annum, from the date of recovery of such amount to the date on which such refund is made.

Section 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.

Section 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.

(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 anybody corporate, and includes a firm or other association of individuals; and (b) “director” in relation to a firm means a partner in the firm.

Section 10 A

Offences to be cognizable.—Notwithstanding anything contained in ²[the Code of Criminal Procedure, 1973 (2 of 1974)] every offence punishable under this Act shall be “cognizable”.

Section 10 B

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.

Section 10 C

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.(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.

Section 11

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)5[or any person aggrieved or any recognized consumer association, whether such person is a member of that association or not.

Section 12 A

Power to try summarily – (1) If the Central Government is of opinion that situation has arisen where, in the interests of production, supply or distribution of [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 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:

[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 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]

[(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all, offences relating –

- (a) the contravention of an order made under section 3 with respect to –
[***]
(ii) foodstuffs, including edible oilseeds and oil; or
(iii) drugs; and
- (c) 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 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 witnesses 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 in excess of the aforesaid limits is passed by the Magistrate.

[(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 pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification 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.]]

Section 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 authority, permit, licence or other document shall be on him.

PBMMSEC Act, 1980

- (i) Preventive Detention needs to be discontinued with a proviso that if any State wants to enforce the same, it may do so with a State specified amendment.
- (ii) An Omnibus clause needs to be introduced to shift all/most financial limits to the rules, to facilitate further revisions.
- (iii) Another Omnibus clause needs to be introduced for reporting of select parameters such as Purchase, Sale, Stock etc. on a voluntary basis in the portal.
- (iv) PBMMSEC Act, 1980 retained by States based amendment for States who want to retain the same.