
Essential Commodities (Bihar Amendment) Act, 1977

9 of 1978

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Essential Commodities (Bihar Amendment) Act, 1977

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An Act to Amend the Essential Commodities Act, 1955. In its Application to the State of Bihar. Be it enacted by the Legislature of the State of Bihar in the Twenty eighth year of the Republic of India as follows:-

1. Short Title And Commencement :-

- (1) This Act, may be called the Essential Commodities (Bihar Amendment) Act 1977.
- (2) It shall come into force at once.

2. Act 10 Of 1955 To Be Temporarily, Amended :-

During the period of operation of this Act, the Essential Commodities Act, 1955 (Act 10 of 1955) in its application to the State of Bihar (hereinafter referred to as the said Act) shall have effect subject to the amendments specified in Section 3.

3. Amendment Of Section 3 Of Act 10 Of 1955 :-

In Section 3 of the said Act-

- (a) In sub-section (2), for clause (f), the following clause shall be and shall be deemed always to have been substituted, namely :-
"(i) for requiring any person holding in stock, or engaged in the

manufacture or production of, or in the business of buying or selling any essential commodity to sell the whole or a specified part of the quantity held in stock or manufactured or produced or caused to be produced or likely to be manufactured or produced or caused to be produced by him or received or likely to be received by him in the course of the said business, to the Central Government or a State Government or to such other person or class of persons and in such circumstances-as may be specified in the order:

Explanation.-An order relating to foodgrains made with reference to this clause-

(i) may specify the prices, fixed by the Central/State Government in this behalf, after taking into account the recommendations, if any, of the Agricultural Prices Commission and with the prior concurrence of the Central Government, as the amount which shall be paid for the foodgrains required to be sold under the order;

(ii) may fix or provide for the fixation of the quantity to be sold by a producer with reference to the area under cultivation and the availability of irrigation for production of the particular foodgrain to which the order relates, and also fix or provide for the fixation of such quantities on a graded basis having regard to the aggregate area held by or under the cultivation of different producers;"

(b) in sub-section (3) for clause (c), the following clauses shall be and shall be deemed always to have been substituted, namely:-

"(c) in the case of foodgrains, where neither clause (a) nor clause (b) applies, the price, if any, specified in the said order";

(d) where neither clause (a), nor clause (b), nor clause (c) applies the price calculated at the market rate prevailing in the locality at the date of sale";

(c) in sub-section (3B), after clause (a), the following clause shall be and shall be deemed always to have been inserted, namely:-

"(a-a) in the case of foodgrains, where no controlled price is fixed by an order made with reference to clause (c) of sub-section (2), the amount specified in the said order made with reference to clause (f) of sub-section (2) for such grade or variety of foodgrains or".

4. Substitution Of New Section For Section 6A Of Act X Of 1955 :-

For the existing Section 6-A the following Section shall be substituted, namely:-

"6.A. Confiscation of foodgrains, edible oil-seeds, edible oils, etc.-

(1) Where any essential commodity is seized in pursuance of an order made under Section 3 in relation thereto it shall be reported without any unreasonable delay to the Collector of the district in which such essential commodity is seized and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, whether or not the prosecution is instituted for the contravention of such order and the Collector, if satisfied that there has been a contravention of the order, may order confiscation of-

- (a) the essential commodities 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 actions which may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from producer shall if the seized foodgrains or edible oil-seeds have been produced by him, be confiscated under this Section.

(2) Where the Collector, on receiving a report of seizure or in inspection of any essential commodity under sub-section (1) is of the opinion that such essential commodity is subject to speedy and natural decay or that it is otherwise expedient in the public interest so to do, he may order the same to be sold at the controlled price, if any, fixed-under any law for the time being in force.

(3) In the case of foodgrains where there is no controlled price, the Collector if he thinks fit, may order the foodgrains seized under sub-section (1) to be sold through fair price shops at the price fixed by the Central Government or the State Government, as the case may be, for the sale of such foodgrains to the public through these shops or may order such foodgrains to be sold by public auction.

(4) The Collector shall whenever it is practicable so to do having regard to the nature of the essential commodity take and preserve sample of the same in the prescribed manner before its sale or distribution.

(5) Where any essential commodity is sold as aforesaid, the sale-proceeds thereof, after deduction of all expenses of the sale or auction, as the case may be, shall-

- (a) where no order of confiscation is ultimately passed by the Collector; or
- (b) where an order passed on appeal under sub-clause (1) of

Section 6-C so requires; or

(c) in the case of prosecution being instituted for the contravention of the order in respect of which an order of confiscation has been made under this Section and where the person concerned is acquitted be paid to the owner thereof or the person from whom it is seized:

Provided that in the case of foodgrains sold through fair price shops in accordance with sub-sections (2) and (3) the owner shall be paid for the foodgrains so sold, the price fixed by the State Government, for retail sale of such foodgrains through such shops less all expenses of sale or auction under sub-sections (2) and (3).

(6) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (Act II of 1974) when Collector or the appellate authority is seized with the matter under this Section no court shall entertain any application in respect of essential commodities, any package, covering, receptacle, any animal, vehicle or other conveyance used in carrying such commodities as far as its release, distribution, etc. is concerned and the jurisdiction of Collector or the appellate authority with regard to the disposal of the same shall be exclusive.

(7) The State Government may, by notification in the Official Gazette, authorise any officer not below the rank of Sub-Divisional Magistrate, to discharge all or any of the functions of a Collector under this Section.

(8) The Collector shall for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 when making enquiries under this Section in respect of the following matters, namely:-

(a) receiving evidence on affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath; and

(c) compelling the production of documents;

(9) All enquiries and proceedings under this Section before the Collector and the Appellate Authority shall be deemed to be judicial proceeding and while discharging functions under this Section the Collector and the Appellate Authority shall be deemed to be a Court.

Explanation.-For the purposes of this Section the Collector shall include authorized Additional Collector and any officer specially authorized under sub-section (7)."

5. Section 5 :-

6. Validation :-

Notwithstanding anything contained in any judgement, decree or order of any Court, every order made before the commencement of this Act, by, the State Government under Section 3 of the said Act, with reference to clause (f) of sub-section (2) of that Section, in relation to foodgrains shall be deemed to be in accordance with, the provisions of the Essential Commodities Act, 1955 (Act 10 of 1955) as amended by this Act, as if the relevant provisions in that Act, as amended by this Act, have been enforced at the time when such order was made:

Provided that notwithstanding the retrospective operation of this Section, no contravention of or failure to comply with any provision of the Essential Commodities Act, 1955 (Act 10 of 1955) as amended by this Act, shall render any person guilty of any offence punishable under the Essential Commodities Act, 1955, if such contravention or failure has occurred before the commencement of this Act.

7. Repeal And Saving :-

(1) The Essential Commodities (Bihar Amendment) Ordinance, 1978 (Bihar Act no. 19, 1978) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken in exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act, as if this Act, was in force on the day on which such thing or action was done or taken.

Comments & Case Laws on E.C. Act.

[To our esteemed Readers: The Case Laws given hereunder are on E.C. Act, which is a Central Legislation but, as the cases are of far reaching importance and involve important precedents so they are being produced here. Ed.]

Section 7-Prosecution for contravening the provisions of Bihar Trade Articles (Licences Unification) Order, 1984-Alleged concealment of .sugar and kerosene oil for black-marketing-Witnesses shown in charge-sheet not examined by prosecution thereby casting doubt on prosecution version-Place of occurrence not conclusively proved-I.O. of the case not examined-Case remained hazy and prosecution not able to prove its charge beyond all reasonable doubts due to non-examination of remaining witnesses-Appeal allowed-Judgment of court below set aside. Ashok Kumar vs. State of Bihar, 2008(1)

BLJ 277 (PHC).

Section 7-Conviction for violation of Bihar Essential Articles (Display of Price and Stock) Order, 1971-Case reported to police after a delay of one month thereby creating a doubt-Evidence of prosecution is only of informant who was on hostile terms with appellant from before-Seized article was 250 grams initially which was later on noted to be 25 kg, which creates doubt and falsifies prosecution version-Case should be lodged as early as possible to rule out chance of interpolation-It was incumbent upon court below to grant benefit of doubt to appellant-Conviction and sentence set aside. Dwarika Prasad Choudhary vs. State of Bihar, 2008(1) BLJ 284 (PHC).

Sections 3 and 6-A-Confiscation of vehicle carrying wheat-Valid seizure is sine qua non for passing order of confiscation of property-Order of confiscation is not passed only because it would be lawful to do so-Authorities must arrive at a clear finding in regard to violation made under Section 3-Violation of an Order made under Section 3, is a precondition for passing an order of confiscation-Appellants herein not concerned with wheat in question-Matter pending before criminal court-Not a fit case where order of confiscation could have been passed- Impugned judgments set aside. Kailash Prasad Yadav vs. State of Jharkhand, 2007(2) BLJ (SC)52.

Sections 7 and 12AA read with Sections 262 to 265 and 326 of Criminal Procedure Code, 1973-Prosecution for irregularity in stocks kept in shop-Evidence of witnesses not recorded by same Judge-In a summary trial the Judge who records the evidence should hear the case and pass the judgment-Same was not done in instant case-Judgment of conviction cannot be upheld under law- Offence relating to the year 1986, no justification in remanding the case for retrial. Dinesh Singh vs. State of Bihar, 2008(1) BLJ PHC-101.

Sections 7 and 12AA-Prosecution and conviction for alleged violation of conditions of licence-Section 12AA is a special provision and for taking recourse to said provision conditions prescribed therein must be followed-Evidence was recorded by predecessor of Special Judge who heard arguments and delivered judgment-In view of prescribed procedure of summary trial, Special Judge who delivered judgment, could not have used evidence recorded by his predecessor- Impugned judgment and order was illegal which vitiates trial-In view of lapse of 20 years in between it would not be expedient to order for de novo trial-Impugned judgment and order set aside. Rajgrihi Raut vs. State of Bihar, 2007(1) BLJ PHC-46.

Prosecution for alleged offence that the rice was brought from a certain district to another with intention for black marketing-Food-grains (Movement Control Order) 1957, stood rescinded as far back as 30th September, 1977-Vide notification dated 11-2-2002, food-grains were deleted from the Bihar Trade Articles (Licences Unification) Control Order, 1984-No offence is made out-Nowhere allegation that that food-grains seized in any way connected or belonged to PDS or Government Account-Prosecution quashed. Shriram Rai vs. State of Bihar, 2006(1) PLJR 504.

Sections 6(c) and 6(2) of the E.C. Act. Confiscation of gram seeds. "Once it was found that the article seized was gram seed and not gram then, even though the petitioner did not get it analysed at the time of purchase, a step which was not required to be taken in law, it cannot be treated as gram by juristic interpretation of the District Magistrate and once it is found to be gram seed, it could not be seized and the confiscation proceeding started in the manner done and for the reason stated by the District Magistrate. If the seeds were not distributed by the BISCOMAUN to the farmers due to the delay in receiving the analyst report, it is only the BISCOMAUN and the authorities who are to blame for it. The petitioner can hardly be held responsible for the lapses on the part of the BISCOMAUN or the Collector. If the seeds by lapse of time became food-grains and they according to the Collector come within the description of edible grains then the petitioner cannot be subjected to the penalty of confiscation because the situation created was entirely due to the negligence of the authorities and the institution and not the petitioner. It is even more ridiculous to saddle the petitioner with the confiscation of the articles for no fault of it." [Para 9] Consequently, direction was given to pay the price of the seeds as per the contract entered into between the BISCOMAUN and the petitioner within fifteen days and an interest at the rate of 10% per annum of the price fixed by the contract to cover the loss caused to the petitioner. The amount of interest will be calculated from the date of the seizure of the seeds in question till the date of the payment." [Para. 12] M/s Rajesh Trading Company vs. State of Bihar, 1988 BLJR 769 : 1988 BR & LJ 57 :1988 PLJR 463.

[In this case one of the opposite party namely, BISCOMAUN went on appeal (S.L.P) to the Supreme Court. The Supreme Court passed the following brief Order: "We find that the directions made by the High Court are just and proper. There are no grounds for interference. Special Leave Petition is accordingly dismissed". The

State Co-op. Marketing Union Ltd. vs. State of Bihar, 1988 PLJR SC 44.-Ed.]

Sec. 7 E.C. Act-Prosecution for manufacturing of Khesari Dal and adulteration of other Dalú-Dal is no longer covered by E.C. Act-No notification produced by prosecution to show that State has banned the manufacture of Khesari Dal- Mixing a fodder with human food will not be adulteration unless, it is alleged that such mixed-up material was proposed to be sold as human food, which allegation was absent-F.I.R. not disclosing any offence-F.I.R. and order taking cognizance-Quashed. Mithilesh Prasad vs. State of Bihar, 2006(1) PLJR 375.

Deputy Commissioner, being District Magistrate under the Act by Notification dated 28-6-1999 can add Pera, Chura and Elaichi-dana in the Schedule II as the Essential Article in the Order. Also fixation of prices of various items like Pera, Chura, Elaichi-dana in Baidyanath Dham by the authorities-Notification dated 177-1999 challenged-Held, Notifications issued in the terms of G.S.R. 906, dated 9-8-1966 issued by the Central Government thus, it cannot be said that State Government has issued Order without concurrence of the Central Government. Baidyanath Dham Prasadi {Chura, Pera, Elaichi-dana) Bikreta Sangh, through its Secretary Bharat Bhushan vs. State of Bihar, 2000(2) BLJ 922.

Read with Essential Commodities Act, 1955-Section 7-Fair price shop- Mal-distribution of sugar and kerosene oil-Neither substance of accusation explained to appellant were explicit in terms as to these allegations, nor statement of appellant recorded by trial Court was specific as in his statement appellant was made answerable by trial judge only with regard to sale of 18 litres of kerosene oil in Black Market-No enquiry made by Circle Officer-Further witness turned volte face to state about seizure of such offending articles-No storage limit fixed by Government-Hence in the circumstances prosecution vitiated-Appellant acquitted of charges. Rajendra Sharma vs. State of Bihar, 2004(2) BLJ 358 :2004(3) PLJR 105.

Read with Circular Letter No. 3281 dated 6-8-2002-Dealership of wholesale trade licence for kerosene oil-Direction contained in circular dated 6-8-2002 declared illegal as a statutory licensing order cannot be supplanted by executive instructions. Smt.Veena Devi vs. State of Bihar, 2003(2) BLJ 356.

E. C. Act, Sections 7 and 11- Charge-sheet does not contain the facts disclosing any offence-Special Judge taking cognizance on the basis of charge-sheet alone, no other document was perused by him-Held, cognizance taken on the basis of such charge-sheet bad

in law. *Kanhaiya Sah vs. State of Bihar*, 1991 BBCJ 638 : 1991 BR & LJ 182 : 1992(1) PLJR 716.

E.C.Act-A Magistrate/Judge is not competent to use the evidence recorded by his predecessor in a Summary Trial-It is the bounded duty of the concerned Presiding Officer to record the evidence of prosecution witnesses himself and the earlier recorded evidence be expunged from the record. *Shiv Sagar Sao vs. State of Bihar*, 2000(3) BLJ 425.