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The Kerala Essential Articles Control Act, 1986

Act 13 of 1986

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THE KERALA ESSENTIAL ARTICLES CONTROL ACT, 1986
(ACT 13 OF 1986)[1]

An Act to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain articles.

Preamble.- WHEREAS it is expedient, in the public interest, to provide for the control of the production, supply and distribution of, and trade and commerce in, certain articles;

BE it enacted in the Thirty-seventh Year of the Republic of India as follows:-

1. *Short title and commencement* .-(1) This Act may be called the Kerala Essential Articles Control Act, 1986.

(2) It shall be deemed to have come into force on the 11th day of March, 1982.

2. *Definitions* .-In this Act, unless the context otherwise requires,-

(a) "essential article" means any article, not being an essential commodity as defined in the Essential Commodities Act, 1955 (Central Act 10 of 1955), which may be declared by the Government by notified order to be an essential article ;

(b) "notified order " means an order notified in the Gazette ;

(c) "undertaking" means any undertaking by way of any trade or business and includes the occupation of handling, loading or unloading goods in the course of transport.

3. *Power to control production, supply distribution, etc., of essential articles* .- (1) If the Government are of opinion that it is necessary or expedient so to do for maintaining or increasing the supplies of any essential article or for securing their equitable distribution and availability at fair prices, they may, by notified 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 article;

(b) for controlling the price at which any essential article may be bought or sold ;

(c) for regulating by licences, permits, or otherwise the storage, distribution, transport, disposal, acquisition use or consumption of any essential article ;

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(d) for prohibiting the withholding from sale of any essential article ordinarily kept for sale ;

(e) for requiting any person holding in stock any essential article to sell the whole or a specified part of the stock to the Government or to an officer or agent of the Government or to such other person or class of persons and in such circumstances as may be specified in the order ;

(f) for regulating or prohibiting any class of commercial or financial transactions relating to any essential article, which, in the opinion of the authority making the order, are, or if unregulated are likely to be detrimental to the public interest ;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters ;

(h) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential article 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;

(i) for regulating the processing of any essential article ;

(j) for exercising over the whole or any part of an existing undertaking, such functions of control and subject to such conditions, as may be specified in the order ;

(k) for any incidental and supplementary matters including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any article 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, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

(3) Where any person sells any essential article in compliance with an order made with reference to clause (e) 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 ;

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

(c) where neither clause (a) not clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

4. *Delegation of powers* .-The Government may, by notified order direct that the power to make orders shall, in relation to such matters and subject to such conditions, if any, as

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may be specified in the direction, be exercisable also by such officer or authority subordinate to the Government, as may be specified in the direction.

5. *Notified order to be laid before the Legislative Assembly* .-Every notified order made under sub-section (1) of section 3 after the publication of this Act in the Gazette by the Government or any officer or authority referred to in section 4 shall be laid as soon as may be, after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the order or decides that the order should not be made, the order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under the order.

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 in any instrument having effect by virtue of any enactment other than this Act.

7. *Penalties* .-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 (g) or clause (h) 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 may extend to three years and shall also be liable to fine:

Provided that if the court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment; and

(b) any property in respect of which the order has been contravened or such part thereof as the court may deem fit shall be forfeited to the Government :

Provided that if the court is of opinion that it is not necessary to direct forefeiture in respect of the whole or, as the case may be, any part of the property, it may, for reasons to be recorded, refrain from doing so.

8. *Attempt 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.

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9. *False statement* .-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, accounts, 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 extent to three 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.

(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.

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 (Central Act 45 of 1860).

12. *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 (Central Act 1 of 1872).

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13. *Burden of proof* .-Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an 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, or as the case may be, the requisite permit, licence, or other document shall be on him.

14. *Protection of action taken in good faith.* -(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done 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.

15. *Validation.*- Notwithstanding the expiry of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 (3 of 1962) (hereinafter referred to as the said Act), on the 11th day of March, 1982,-

(a) anything purporting to have been done or any action purporting to have been taken after the 11th day of March, 1982 under or in pursuance of the said Act shall be deemed to have been done or taken under the corresponding provision of this Act;

(b) any notified order made under the said Act and in force on the 11th day of March, 1982, shall be deemed to have continued in force after that date as if such notified order had been made under the corresponding provision of this Act ;

and accordingly anything done or purporting to have been done or any action taken or purporting to have been taken under or in pursuance of the said Act or any notified order made thereunder after the 11th day of March, 1982, shall not be deemed to be invalid or ever to have been invalid merely on the ground that the said Act had ceased to be in force on the said date.

16. *Saving* .-Nothing contained in this Act shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him after the 11th day of March, 1982 and before the date of publication of the Kerala Essential Articles Control Ordinance, 1984 (41 of 1984), in the Gazette.

17. *Repeal and saving* .-(1) The Kerala Essential Articles Control Ordinance, 1985 (29 of 1986), is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been take under the said Ordinance shall be deemed to have been done or taken under this Act.

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