

The Essential Commodities (Special Provisions) Act, 1981
(18 of 1981)

124

An Act to make certain special provisions by way of amendments to the Essential Commodities Act, 1955 for a temporary period for dealing more effectively with persons indulging in hoarding and blackmarketing of, and profiteering in, essential commodities and with the evil of vicious inflationary prices and for matters connected therewith or incidental thereto.

Whereas for ensuring the availability of essential commodities at fair prices, it is necessary to curb the hoarding and blackmarketing of, and profiteering in, such commodities;

And whereas for dealing more effectively with persons indulging in such anti-social activities and the evil of vicious inflationary prices, it is necessary to make certain special provisions by way of amendments to the Essential Commodities Act, 1955 (10 of 1955), for a period of [fifteen] years;

Be it enacted by Parliament in the Thirty-second Year of the Republic of India as follows:

FACT SHEET ▼

Enforced by 1.9.1982 in all the States and Union territories except in the Union territories of the Andaman and Nicobar Islands, Arunachal Pradesh, Dadra and Nagar Haveli, Lakshadweep and Mizoram, G.S.R. 553(E), dated 31st August, 1982, published in the Gazette of India, Ext., 1982, Pt. II, Section 3(ii), Sl.No.261.

1. Short title, commencement and duration .(1) This Act may be called The Essential Commodities (Special Provisions) Act, 1981.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

(3) It shall cease to have effect on the expiry of [fifteen] years from the date of commencement of this Act except as respects things done or omitted to be done before such cesser of operation of this Act, and section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation of this Act as if it had then been repealed by a Central Act.

(4) References in this Act to the commencement of this Act and to the continuance in force of this Act shall be construed in relation to each State as references, respectively, to the coming into force of this Act in that State and to the continuance in force of this Act in that State.

Object & Reasons ▼

Statement of Objects and Reasons.-The Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) provides for regulation of production, supply and pricing of essential commodities. This Act had been amended from time to time.

(2) In spite of extensive amendments made to the principal Act in 1976, experience has shown that some of the existing provisions of that Act have been adequate and effective for expeditious disposal of cases as well as for ensuring the availability of essential commodities at fair prices and for curbing hoarding and blackmarketing of, and profiteering in, such commodities. There are large number of Court cases pending under the principal Act all over the country and the price rise has continued unabated in the years 1979 and 1980. For dealing more effectively with persons indulging in anti-social activities like hoarding and blackmarketing and the evil of vicious inflationary prices, it is considered necessary to make the following special provisions by way of amendments to the principal Act for a temporary period of five years, namely:-

- (a) in order to expedite the process of prosecutions under the principal Act, it is proposed to provide-
 - (i) for the trial, in a summary way, of all offences under that Act; and
 - (ii) for the constitution, for the purposes of such trial, of Special Courts, consisting of a single Judge who shall be appointed by a High Court and who shall be a person who is qualified to be a Judge of a High Court or who is or has been a Sessions Judge or an Additional Sessions Judge, for not less than one year;
- (b) to strengthen the penal provisions of the principal Act with a view to deterring persons indulging in hoarding and blackmarketing in essential commodities from contravening the provisions of the principal Act, it is proposed to provide for-
 - (i) minimum mandatory imprisonment for a period of not less than three months for all offences under the principal Act except an offence of abetment in regard to procuring of foodstuffs or drugs by them for their own use or for the use of any member of their family, and not for the purpose of carrying on

any business or trade which is proposed to be punishable with fine only;

(ii) enhancement of the term of imprisonment awardable in case of conviction in a summary trial from one year to two years;

(iii) making of all offences under the principal Act to be non-bailable;

(iv) granting of bail by the trial Court after giving the prosecution an opportunity to oppose the application and only in the exceptional cases specified in the new section 12-AA proposed to be inserted, to a person accused or suspected of the commission of an offence under the principal Act if there appear reasonable grounds for believing that he is guilty of the offence concerned; and

(c) in order to ensure availability of essential commodities to the consumers provision is being made-

(i) for sale of all seized essential commodities, the retail sale prices whereof have been fixed by the Central Government or the State Government, as the case may be, through the public distribution system by enlarging the scope of section 6-A(2). The existing provision covers only food-grains to be sold through fair price shops; and

(ii) for preferring appeal against the order of confiscation passed by the Collector of a district to the State Government instead of to a judicial authority.

(3) The Bill seeks to achieve the above objects.

2. Act 10 of 1955 to have effect subject to certain special provisions for a temporary period .During the continuance in force of this Act, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 11:

Provided that the amendments specified in sections 7 to 11 shall not apply to, or in relation to, any offence under the principal Act committed before the commencement of this Act and the provisions of the principal Act shall apply to, and in relation to, such offence as if those amendments had not been made.

3. Amendment of section 2 .In section 2 of the principal Act,

(a) clause (ia) shall be renumbered as clause (iia), and before clause (iia) as so renumbered, the following clause shall be inserted, namely:

(ia) Code means the Code of Criminal Procedure, 1973 (2 of 1974);
and;

(b) after clause (e), the following clause shall be inserted, namely:

(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.

4. Amendment of section 6-A .In section 6-A of the principal Act, for the proviso to sub-section (2), the following proviso shall be substituted, namely:

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 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.

5. Amendment of section 6-C .In section 6-C of the principal Act,

(a) in sub-section (1), for the words any judicial authority appointed by the State Government concerned and the judicial authority, the words the State Government concerned and the State Government shall be substituted;

(b) in sub-section (2), for the words such judicial authority, the words the State Government shall be substituted.

6. Amendment of section 6-E .In section 6-E of the principal Act,

(a) for the words, figure and letter the judicial authority appointed under section 6-C the words, figure and letter the State Government concerned under section 6-C shall be substituted;

(b) for the words any other Court, tribunal or authority, the words any Court, tribunal or other authority shall be substituted.

7. Amendment of section 7 .In section 7 of the principal Act,

(a) in sub-section (1), the proviso to sub-clause (ii) of clause (a) shall be omitted;

(b) the proviso to sub-section (2) shall be omitted;

(c) the proviso to sub-section (2-A) shall be omitted;

(d) sub-section (2-B) shall be omitted.

8. Amendment of section 8 .To section 8 of the principal Act, the following proviso shall be added, namely:

Provided that where a person has abetted the contravention of any order for the purpose of procuring any essential commodity of the nature mentioned in sub-clause (iva) or sub-clause (v) of clause (a) of section 2 for his own use or for the use of any member of his family or for the use of any person dependent on him, and not for the purpose of carrying on any business or trade in such essential commodity, the Court may, notwithstanding anything contained in section 7 and for reasons to be mentioned in the judgment, impose a sentence of fine only.

9. Amendment of section 10-A .In section 10-A of the principal Act, after the word cognizable the words and non-bailable shall be inserted.

[9-A. Insertion of new section 10-AA in Act 10 of 1955 .In the Essential Commodities Act, 1955 (10 of 1955), after section 10-A, the following section shall be inserted, namely:

*10-AA. Power to arrest.*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no officer below the rank of an officer incharge of a police station or any police officer authorised by him in this behalf in writing shall arrest any person accused of committing an offence punishable under this Act.]

10. Omission of section 12 .Section 12 of the principal Act shall be omitted.

11. Substitution of new sections for section 12-A .For section 12-A of the principal Act, the following sections shall be substituted, namely:

12-A. Constitution of Special Courts.(1) The State Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the High Court upon a request made by the State Government.

Explanation. In this sub-section, the word appoint shall have the meaning given to it in the *Explanation*. to section 9 of the Code.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless

- (a) he is qualified for appointment as a Judge of a High Court, or
- (b) he has, for a period of not less than one year, been a Sessions Judge or an Additional Sessions Judge.

12-AA. Offences triable by Special Courts.(1) Notwithstanding anything contained in the Code,

- (a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court.

- (b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section

(2) or sub-section (2-A) of section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers

- (i) when such person is forwarded to him as aforesaid; or
 - (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;
- (c) the Special Court may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which is Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;
- (d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any Court other than a Special Court or the High Court:

Provided that a Special Court shall not release any such person on bail

- (i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and
- (ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned:

Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;

- (e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act [or upon a complaint made by an Officer of the Central Government or a State Government authorised in this behalf by the Government concerned][or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not,] take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of sections 262 to 265 (both inclusive) of the 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 Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to Magistrate in that section included also a reference to a Special Court constituted under section 12-A.

12-AB. Appeal and revision. The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Sessions trying cases within the local limits of the jurisdiction of the High Court.

12-AC. Application of Code to proceedings before a Special Court. Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.