THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

ARRANGEMENT OF SECTIONS

SECTIONS

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THE PREVENTION OF BLACKMARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES ACT, 1980

ACT NO. 7 OF 1980

[12*th February*, 1980.]

An Act to provide for detention in certain cases for the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith**.**

BE it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(*1*) This Act may be called the Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

(*2*) It extends to the whole of India [1]***.

(*3*) It shall be deemed to have come into force on the 15th day of October, 1979.

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

(*a*) "appropriate Government" means, as respects a detention order made by the Central Government or by an officer of the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer of a State Government or as respects a person detained under such order, the State Government;

(*b*) "detention order" means an order made under section 3;

(*c*) "State Government", in relation to a Union territory, means the administrator thereof.

3. Power to make orders detaining certain persons.—(*1*) The Central Government or a State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community it is necessary so to do, make an order directing that such person be detained.

Explanation.—For the purposes of this sub-section, the expression "acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community" means—

(*a*) committing or instigating any person to commit any offence punishable under the Essential Commodities Act, 1955 (10 of 1955), or under any other law for the time being in force relating to the control of the production, supply or distribution of, or trade and commerce in, any commodity essential to the community; or

(*b*) dealing in any commodity—

(*i*) which is an essential commodity as defined in the Essential Commodities Act, 1955 (10 of 1955), or

(*ii*) with respect to which provisions have been made in any such other law as is referred to in clause (*a*),

with a view to making gain in any manner which may directly or indirectly defeat or tend to defeat the provisions of that Act or other law aforesaid.

(*2*) Any of the following officers, namely:—

(*a*) district magistrates;

(*b*) Commissioners of Police, wherever they have been appointed,

may also, if satisfied as provided in sub-section (*1*), exercise the powers conferred by the said sub-section.

1. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

(*3*) When any order is made under this section by an officer mentioned in sub-section (*2*), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof unless in the meantime it has been approved by the State Government:

Provided that where under section 8 the grounds of detention are communicated by the authority making the order after five days but not later than ten days from the date of detention, this sub-section shall apply subject to the modification that for the words "twelve days", the words "fifteen days" shall be substituted.

(*4*) When any order is made or approved by the State Government under this section or when any order is made under this section by an officer of the State Government not below the rank of Secretary to that Government specially empowered under sub-section (*1*), the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order.

4. Execution of detention orders.—A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Power to regulate place and conditions of detention.—Every person in respect of whom a detention order has been made shall be liable—

(*a*) to be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and

(*b*) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:

Provided that no order shall be made by a State Government under clause (*b*) for the removal of a person from one State to another State except with the consent of the Government of that other State.

6. Detention orders not to be invalid or inoperative on certain grounds.—No detention order shall be invalid or inoperative merely by reason—

(*a*) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(*b*) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.—(*1*) If [1][the appropriate Government or an officer mentioned in sub-section (*2*) of section 3, as the case may be,] has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government [2][or officer] may—

(*a*) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

1. Subs. by Act 27 of 1982, s. 2, for "appropriate Government" (w.e.f. 5-8-1982).
2. Ins. by s. 2, *ibid*. (w.e.f. 5-8-1982).

(*b*) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

(*2*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of1974), every offence under clause (*b*) of sub-section (*1*) shall be cognizable.

8. Grounds of order of detention to be disclosed to person affected by the order.—(*1*) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

(*2*) Nothing in sub-section (*1*) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Boards.—(*1*) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

[1][(*2*) Every such Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the appropriate Government.

(*3*) The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman, and in the case of a Union territory, the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.]

10. Reference to Advisory Boards.—Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer referred to in sub-section (*2*) of section 3, also the report by such officer under sub-section (*3*) of that section.

11. Procedure of Advisory Boards.—(*1*) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

(*2*) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(*3*) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(*4*) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

1. Subs. by Act 19 of 1981, s. 2, for "sub-sections (*2*) and (*3*) and the *Explanation"* (w.e.f. 2-9-1981).

12. Action upon the report of Advisory Board.—(*1*) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

(*2*) In any case where the Advisory Board has reported that there is in its opinion no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention.—The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12, shall be six months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

14. Revocation of detention orders.—(*1*) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897 (10 of 1897), a detention order may, at any time, be revoked or modified—

(*a*) notwithstanding that the order has been made by an officer of a State Government, by that State Government or by the Central Government;

(*b*) notwithstanding that the order has been made by an officer of the Central Government or by a State Government, by the Central Government.

(*2*) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the Central Government or a State Government or an officer, as the case may be, is satisfied that such an order should be made.

15. Temporary release of persons detained.—(*1*) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

(*2*) In directing the release of any person under sub-section (*1*), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(*3*) Any person released under sub-section (*1*) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(*4*) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (*3*), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(*5*) If any person released under sub-section (*1*) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith.—No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Repeal and saving.—(*1*) The Prevention of Black marketing and Maintenance of Supplies of Essential Commodities Ordinance, 1979 (10 of 1979), is hereby repealed.

(*2*) Notwithstanding such repeal anything done or any action taken under the Ordinance so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

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