

ORISSA ACT I OF 1947

THE ORISSA ESSENTIAL ARTICLES CONTROL AND REQUISITIONING (TEMPORARY POWERS) ACT, 1947

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AN ACT TO PROVIDE FOR THE CONTINUANCE DURING A LIMITED PERIOD OF POWERS TO CONTROL THE PRODUCTION, PROCESSING, SUPPLY, DISTRIBUTION, TRANSPORT AND PRICES OF ESSENTIAL ARTICLES AND TRADE AND COMMERCE THEREIN AND REQUISITIONING OF PROPERTY

WHEREAS it is expedient to provide for the continuance during a limited period of powers to control the production, processing, supply, distribution, transport and prices of essential articles and of trade and commerce therein and for requisitioning of property;

It is hereby enacted as follows:—

Short title, extent, commencement and duration.

1. (1) This Act may be called the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 1947.

(2) It extends to the whole of the Province of Orissa.*

(3) It shall come into force at once.

(4) It shall remain in force for a period of two years; but the Provincial Government may, from time to time, by notification, extend this period by such further period or periods not exceeding two years in the aggregate, if, in the opinion of the Provincial Government, it is expedient so to do. Section 5 of the Orissa General Clauses Act, 1937, shall apply upon the expiry of this Act as if it had then been repealed by an Orissa Act.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context—

(a) "essential article" means any of the articles which is specified in the Schedule to this Act and any other article which may be declared by the Provincial 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.

* NOTE—Extended to all the partially-excluded areas in the Province of Orissa with modification by notification No. 15396-S.T., dated the 22nd May 1947 (Vide *Orissa Gazette*, dated the 30th May 1947, Part III, page 145, dated the 30th May 1947).

Powers to control production, processing, supply, distribution, transport and prices of essential articles.

3. (1) The Provincial Government, so far as it appears to them to be necessary or expedient for maintaining, increasing or securing supplies of essential articles or for arranging for their equitable distribution and availability at fair prices or for directing, maintaining or increasing the production of any essential article, may, by notified order, provide for regulating or prohibiting the production, supply, distribution and transport of essential articles and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), and order made thereunder may provide—

- (a) for regulating by licences, permits or otherwise the production of manufacture of any essential articles ;
- (b) for controlling the prices at which any essential article may be brought or sold ;
- (c) for prohibiting or regulating by licences, permits or otherwise the storage, distribution, transport, disposal, acquisition, use or consumption of any essential article ;
- (d) for prohibiting the withholding from sale of any essential article ordinarily kept for sale ;
- (e) for requiring any person holding stocks of an essential article to sell them at fair prices to specified persons or class of persons or in specified circumstances ;
- (f) for regulating or prohibiting any class of commercial or financial transactions relating to any essential article, which in the opinion of the Provincial Government 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 declare their stocks of essential articles, to maintain and allow inspection of or produce for inspection any books, accounts and records relating to their business, and to furnish any other information relating thereto ;
- (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 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.

Power of requisitioning and acquisition.

4. (1) If, in the opinion of the Provincial Government, it is necessary or expedient so to do for maintaining, increasing or securing supplies of any essential article or for arranging for its equitable distribution and availability at fair prices or for directing, maintaining or increasing the production of any essential article, the Provincial Government may, by order in writing, requisition any property, movable or immovable, and may make such further orders as appear to them to be necessary or expedient in connection with such requisitioning :

Provided that no property used for the purpose of religious worship shall be requisitioned under this section :

Provided further that buildings solely used for residential purposes shall not ordinarily be requisitioned.

(2) Where the Provincial Government have requisitioned any property under sub-section (1), they may use or deal with the property in such manner as may appear to them to be expedient and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the Gazette, a notice stating that the Provincial Government have decided to acquire it in pursuance of this section.

(3) Where a notice of acquisition is served on the owner of the property or is published in the Gazette under sub-section (2), then, at the beginning of the day on which the notice is so served or published, the property shall vest absolutely in the Provincial Government free from all encumbrances and the period of requisition thereof shall end.

Payment of compensation.

5. (1) Whenever in pursuance of section 4 of any movable property is requisitioned or acquired, the compensation payable therefor and the person or persons to whom it should be paid shall be determined in accordance with the rules to be made in this behalf by the Provincial Government.

(2) Whenever in pursuance of section 4 any immovable property is requisitioned or acquired, there shall be paid compensation determined in the manner and in accordance with the principles hereinafter set out, that is to say—

(a) where the amount of compensation can be fixed by agreement, it shall be paid in accordance with such agreement ;

(b) where no such agreement can be reached, the Provincial Government shall appoint, as arbitrator, the District Judge or Subordinate Judge having jurisdiction over the area in which the immovable property is situated ;

(c) at the commencement of the proceedings before the arbitrator, the Provincial Government and the person to be compensated shall state what in their respective opinions is a fair amount of compensation ;

(d) the arbitrator in making his award shall have regard to—

(i) the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894, so far as the same can be made applicable, and

- (ii) whether the acquisition is of a permanent or temporary character :

Provided that where any property requisitioned is subsequently acquired, the arbitrator, in any proceedings in connection with such acquisition, shall for the purposes of the provisions of the said section 23, take into consideration the market value of the property at the date of requisition as aforesaid and not at the date of its subsequent acquisition ;

- (e) an appeal shall lie to the High Court against the award of an arbitrator where the amount of the award is two thousand rupees and above ;

Explanation—In the case of periodical payments, the amount of the award for the purposes of this clause shall be computed at five times the amount payable for one year.

- (f) Save as provided in this section and in any rules made under this Act, nothing in any law for the time being in force relating to arbitration shall apply to arbitrations under this section.

(3) The Provincial Government may, with a view to requisitioning or acquiring any property under section 4, by order—

- (a) require any person to furnish to such authority as may be specified in the order such information in his possession relating to the property as may be so specified ;
- (b) direct that the owner, occupier or person in possession of the property shall not, without the permission of the Provincial Government, dispose of it or where the property is a building, structurally alter it or where the property is movable, remove it from the premises in which it is kept, until the expiry of such period as may be specified in the order.

6. (1) Where any property requisitioned under this Act, is to be released from such requisition, the Provincial Government or any person generally or specially authorised by them in this behalf may, after such enquiry, if any, as they or he may in any case consider it necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given.

Release from requisition.

(2) The delivery of possession of the property to the person specified in an order under sub-section (1) shall be a full discharge of the Provincial Government from all liabilities in respect of the property, but shall not prejudice any rights in respect of the property, which any other person may be entitled by a due process of law to enforce against the person to whom possession of the property is given.

Delegation of powers.

7. (1) The Provincial Government may, by notified order, authorise any officer or authority subordinate to the Provincial Government to exercise any one or more of the powers vested in them by or under this Act, except the power mentioned in section 17, in relation to such matters and subject to such restrictions and conditions, if any, as may be specified in the order.

(2) The exercise of the powers delegated under sub-section () shall be subject to control and revision by the Provincial Government or by such persons as may be empowered by them in that behalf. The Provincial Government shall also have power to control and revise the Acts or proceedings of any persons so empowered.

Effect of orders in-consistent with other enactments.

8. Any order made under section 3 or section 4 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.

Mode of publication.

9. (1) Every authority or officer who makes any order in writing in pursuance of any of the provisions of this Act shall in the case of an order of a general nature affecting a class of persons publish such order by a notification in such manner as may in the opinion of such authority or officer be best suited for informing the persons whom the order concerns. Where the order is not of a general nature, the authority or officer may serve the order or cause it to be served on the person concerned—

- (a) personally by delivering or tendering him the order ; or
- (b) by sending him an authenticated copy of the order by post ; or
- (c) where the person cannot be found, by leaving an authenticated copy of the order with some adult male member of his family or by affixing it to any part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

(2) Where any provision of this Act empowers an authority or officer to take action by notified order, the provisions of sub-section (1) shall not apply in relation to such order.

Penalties

10. (1) If any person contravenes any order made under section 3 or section 4, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both; and, if the order so provides, any court trying such contravention may direct that any property in respect of which the court is satisfied that the order has been contravened shall be forfeited to the Provincial Government :

Provided that where the contravention is of an order relating to an essential article which contains an express provision in this behalf, the court shall make such direction, unless for reasons to be recorded in writing, it is of opinion that the direction should not be made in respect of the whole or, as the case may be, a part of the property.

(2) Where any essential article is seized under the authority of an order made under this Act and such order provided for the forfeiture of the article in respect of which the order has been contravened, such forfeiture may, whether or not any prosecution is instituted for a contravention of the order, be adjudged by the Collector of the district in which the seizure was made, and any forfeiture so adjudged shall, subject only to an appeal which shall lie to the Provincial Government, be final :

Provided that an adjudication of forfeiture under this sub-section shall be no bar to the prosecution or punishment of any person under sub-section (1).

(3) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class specially empowered by the Provincial Government in this behalf to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under this Act. V of 1898

(4) If any person to whom any provision of any order made under this Act relates, or to whom any such provision is addressed or who is in occupation, possession or control of any land, building, vehicle, vessel or other thing to which such provision relates—

(a) fails, without lawful authority or excuse, himself or in respect of any land, building, vehicle, vessel or other thing of which he is in occupation, possession or control to comply, or to secure compliance, with such provision ; or

(b) evades, or attempts to evade, by any means, such provision, he shall be deemed to have contravened such provision; and in this Act, the expression "contravention" with its grammatical variations includes any such failure, evasion or attempt to evade.

Abetment and assistance of contraventions.

11. Any person who attempts to contravene or abets or attempts to abet or does any act preparatory to a contravention of an order made under the provisions of this Act shall be deemed to have contravened the order; and any person who, knowing or having reasonable cause to believe that any other person is contravening any order made under any of the provisions of this Act, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention, shall also be deemed to have contravened the order.

Offences by corporations.

12. If the person who contravenes or is deemed to contravene an order made under section 3 or section 4 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

Cognizance of offences.

13. 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, 1860.

Burden of proof.

14. Where any person is prosecuted for contravening any order made under this Act which prohibits him from doing an act or being in possession of a thing without lawful authority or excuse or without a permit, licence, certificate or permission, the burden of proof that he has such authority or excuse or, as the case may be, the requisite permit, licence, certificate or permission shall be on him.

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Saving as to orders.

15. () No court shall, in any suit in which the validity of an order issued or action taken under this Act is in question, have power to issue any injunction, whether permanent or temporary, so as to restrain the Provincial Government or any

authority or officer empowered by or under this Act from executing or carrying out any order passed by them or by him under this Act, or in any way interfere with or affect such order.

Nothing contained in this section shall be deemed to prevent the court from granting in the suit any relief by way of compensation to which the party may be entitled.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

Protection of action taken under the Act.

16. (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 or section 4.

(2) No suit or other legal proceeding shall lie against the Provincial 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 or section 4.

Power to make rules.

17. (1) The Provincial Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the procedure to be followed in arbitrations under this Act ;
- (b) the principles to be followed in apportioning costs of proceedings before the arbitrator and on appeal ; and
- (c) the principles to be followed in paying compensation for requisition or acquisition of movable property.

Repeal and savings.

18. (1) The Orissa Drugs Control Ordinance, 1946, the Orissa Cement Control Ordinance, 1946, and the Orissa Essential Articles Control and Requisitioning Ordinance, 1946, are hereby repealed.

Orissa Ordinance No. I of 1946
Orissa Ordinance No. I of 1946
Orissa Ordinance No. IV of 1946.

(2) Any order made or deemed to be made under any of the said Ordinances and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act ; and all appointments made, licences or permits granted, and directions issued under any such order or Ordinance, as the case may be, and in force immediately before such commencement shall likewise continue in force and be deemed to be made, granted, or issued in pursuance of this Act.

(3) For the removal of doubts it is hereby declared that for the purposes of this Act an order made or deemed to be made under any of the said Ordinances and not rescinded prior to the commencement of this Act shall be deemed to be an order in force

immediately before the commencement of this Act, notwithstanding that such order or parts of it, may not then be in operation either at all or in particular areas.

THE SCHEDULE

[See section 2 (a)]

- (i) Live-stock (including poultry);
- (ii) Fish ;
- (iii) Oil-cakes and manures ;
- (iv) Cattle-feed (including bran) ;
- (v) Fuel (including firewood) ;
- (vi) Hides and skins ;
- (vii) Leather ;
- (viii) Cement ; and
- (ix) Drugs.