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ISSUE 5

THE TWO FARM LAWS AND DISPUTE RESOLUTION MECHANISM: HOW FAR EFFECTIVE?

INTRODUCTION AND BACKGROUND

The Farmers' Produce Trade and Commerce (Promotion & Facilitation) Act, 2020 [hereinafter referred to as "first farm law"] and the Farmers' (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020 [hereinafter referred to as "second farm law"] specifically bars the jurisdiction of civil courts under section 15 and section 19. These two farm laws now instead stipulate for a new dispute resolution mechanism in case a dispute arises between and among the parties. The orders of the deciding authorities and of the Advisor have been given the status equal to the decree of a civil court for the purposes of enforcement and the decretal amount shall be recovered as arrears of land revenue.

RESOLUTION OF DISPUTES UNDER THE FIRST FARM LAW

In case of a dispute arising out of section 4, a following three-tier structure has been created under section 8 of chapter III of the first farm law:

THE AMENDMENT ACT IN DETAIL

1. Conciliation Board: The disputing parties may file an application to the Sub-Divisional Magistrate who shall constitute a Conciliation Board consisting of minimum 2 and maximum 4 members. The chairperson of the Board shall be an officer serving under the supervision and control of the Sub-Divisional Magistrate and the other members shall be persons appointed in equal numbers to represent the disputing parties on receipt of recommendations within 7 days. The settlement arrived at by the parties shall be binding in personam.

2. Sub-Divisional Authority: If parties fail to resolve the matter through conciliation within 30 days, then they may approach the Sub-Divisional Magistrate again who himself shall act as the second-tier authority. The Sub-Divisional Authority has the power to take up the matter *sou motu* and as well as on the reference from the government agency. The proceedings before the Authority shall take place in a summary manner and to be completed within 30 days.

3. Appellate Authority: Any party aggrieved by the Sub-Divisional Authority's order may approach

the Appellate Authority who shall be the Collector or Additional Collector of the District. The Appellate Authority is bound to dispose of the appeal within 30 days from the date of preferring of the appeal.

Agriculture Marketing Advisor

The power to take cognizance for any breach of the procedures, norms, manner of registration and code of conduct or any breach of the guidelines for fair trade practices by the electronic trading and transaction platform established under section 5 or in case of contravention the provisions of section 7 has been vested in the Agriculture Marketing Adviser [advisor], Directorate of Marketing and Inspection, Government of India or an officer of the State Government to whom such powers are delegated by the Central Government in consultation with the respective State Government. The advisor may act either on its own motion or on a petition or on the reference from any Government Agency. The said advisor can pass order for recovery of amount, imposition of penalty or for suspension or cancellation of the right to operate, within 60 days of date of receipt. Further the Act provides for the said advisor to give a reasoned decision and also to provide opportunity to be heard to all the disputing parties (*audi alteram partem*) and therefore this way the principles of natural justice have been taken care of.

Appeals from the Advisor's order

Any person aggrieved by an order under section 9 may, prefer an appeal from the date of such order, to an officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government. If the appellant satisfies the appellate authority of having sufficient reasons for inability to prefer the same within 60 days then still may be preferred after 60 days but not beyond 90 days. An appeal preferred has to be disposed of within a period of 90 days from the date when it is preferred.

RESOLUTION OF DISPUTES UNDER THE SECOND FARM LAW

Under chapter III of the second farm law, a similar three tier structure has been created (as has been



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provided under the first farm law) though with a different procedure to follow:

1. Conciliation Board: The farming agreement itself must provide for a dispute settlement through a Conciliation Board consisting of fair and balanced representation of parties to the agreement. If the agreement did not provide for dispute resolution through conciliation process then any of the disputing parties may approach the Sub-Divisional Authority who may constitute a Conciliation Board for reaching a settlement between and among the parties. Every endeavor shall be made by the Conciliation Board to arrive at a settlement and if reached shall be binding on the parties.

2. Sub-Divisional Authority: If the parties fail to settle their dispute through the above-mentioned conciliation process within a period of thirty days, then the disputing parties may again approach the Sub-Divisional Magistrate who shall while acting as a Sub-Divisional Authority, decide the dispute in a summary manner within thirty days of receipt of such matter, after giving the parties a reasonable opportunity of being heard.

3. Appellate Authority: The Collector or Additional Collector of the District shall act as the Appellate Authority and who is bound to dispose of the appeal within 30 days from the date of filing of the appeal.

Further, for the purposes of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed by the Central Government, the Sub-Divisional Authority and the Appellate Authority have been given all the powers of a civil court.

CONCERNS, SUGGESTION AND CONCLUSION

Farmers and other stakeholders have raised the concerns of limiting their right of access to justice by barring the jurisdiction of civil courts and vesting adjudicatory powers with the state executive authorities only. Further, these two farm laws have been criticised for depriving disputing parties of fair adjudication and resolution of dispute through a judicious application of mind.

Another concern which has been raised is that these farm laws violate the concept of Separation of Power, which is a part of basic structure of Indian Constitution [refer Indira Nehru Gandhi versus Raj Narain, 1975 Supp SCC 1, per Justice Beg] and promotes constitutionalism. However, there lies not much weight in such concern because the separation of power in its traditional form is no more effective and applicable in a welfare state and frequently, we see the powers, functions and duties are blended and not strictly compartmentalised. The three organs of a state are supposed to work in coordination and cooperation with each other. In respect of adjudication, we have seen that number of laws provide for setting up of a body or vesting in a body, quasi-judicial functions having trappings of a court. However, it is difficult to say that giving additional charge to the already burdened executive magistrates would attain the objective of setting up of a different dispute resolution mechanism and especially when he has to decide the dispute within a limited time frame. Further, how far an executive magistrate would be able to deal with specialised issues involving contract, commercial, farm and agriculture and that to in a time bound manner is a concern which time will only tell.

In any case, if the parties feel that miscarriage of justice has been caused or the order of the authorities is impugned with malafide or gross error, then any of the aggrieved party may approach the High Court under article 226 of the Constitution of India. [refer West Bengal Central School Service Commission and Others versus Abdul Halim and Others, 2019 SCC Online SC 902]

The provision regarding the promotion of dispute resolution through conciliation process is laudable and praiseworthy as it promotes alternative dispute resolution mechanism through an amicable means. However, instead of providing for two tier authority at the executive level for dispute resolution, the Parliament could have provided for only one tier authority at the executive level and then a provision could have been made for an appeal from such executive authority to a judicial authority and thus this way ameliorating the concerns, fears and apprehension of every stakeholder in dispute resolution process.