

26th March, 2021

ISSUE 2

A PRE- AND POST- THE FARMERS' PRODUCE TRADE AND COMMERCE (PROMOTION & FACILITATION) ACT, 2020

Introduction

The Farmers' Produce Trade and Commerce (Promotion & Facilitation) Act, 2020 [hereinafter interchangeably referred to as "first farm law/legislation" or "the Act"] was enacted by the Parliament of India in September 2020 using its legislative power given under entry 33 of List III (Concurrent List) of Seventh Schedule of the Constitution of India. The Act deemed to have come into force from the 5th of June, 2020 which was the date on which the Indian President promulgated the Farmers' Produce Trade and Commerce (Promotion & Facilitation) Ordinance, 2020.

Position before the first farm Act

Since subjects like agriculture; trade and commerce within the state; production, supply and distribution of goods; and markets and fairs are state subjects under Entries 14, 26, 27 & 28 respectively of List II (State List) of Seventh Schedule of the Constitution of India, state governments themselves are entitled to regulate the agriculture market within their respective state. For ensuring fair agriculture trade and also for ensuring fair and minimum prices for farmers, several states set up Agriculture Produce Marketing Committee (APMC) by enacting the APMC Acts within their state. These APMCs provide licenses to buyers, private markets and commission agents and imposes market fees and levy in order to regulate the agriculture trade and provide better agriculture market infrastructure.

However, the purposes for which the APMCs were set up were not met as per the 2018-19 Report of the Standing Committee on Agriculture [hereinafter referred to as "**Standing Committee report**"]. The drawbacks in the implementation of the APMCs Act by the various States identified by the committee included undue deductions in the form of commission charges and market fees and most of the APMCs having limited number of traders operating which is leading to cartelization and reduction in competition. May be for all these reasons, the states like Kerala, Manipur and many Union Territories never had any provision for APMCs mandis or markets. Even Bihar which initially had the APMC law later repealed it in the year 2006.

Before the report of the Standing Committee came in the year 2018-19, the Central Government in 2017 came up with a Model law on APMC to be followed by all the State Governments, however, the same was not implemented by the State Governments. Therefore, to reach a common framework on agriculture, constitution of a Committee which shall include all the Agriculture Ministers of State Governments was recommended by the Standing Committee. In pursuance to this recommendation, in the month of July, 2019, a High Powered Committee consisting of 7 members was set up but all efforts to streamline the implementation of Central Model Law remained fruitless.

Therefore, finally the Central Government came up with the 3 farm laws to bring changes, reformation and transformation in the agriculture and farming sector.

The Act in detail

The Act can be elaborated and understood under the following heads:

Promotion and Facilitation of trade and commerce of farmers' produce

- As per section 3 of the Act, any farmer or trader or electronic trading and transaction platform shall have the freedom to carry on the trade and commerce in a trade area [refer clause (n) of section 2] i.e., at any place of production, collection and aggregation of farmer's produce including but not limited to farm gates, factory premises, warehouses, silos and cold storages.
- The Act allowed the farmers to sell their produce beyond the markets set up by the APMCs yards/-mandis/markets, constituted and established by the respective State Governments and also beyond the markets so specified and notified by the respective State Governments under any other law. This way the law paved the way for barrier free inter-state and intra-state trade in agriculture produce.
- Section 5 of the Act also allows electronic trading of produce by the scheduled farmers in a specified trade area. Companies, partnership firms or registered societies {having permanent account number (PAN) under the Income Tax Act, 1961 or any other document as



Amit Meharia

Managing Partner, MCO Legals

LLB (Hons) King's
College London

Solicitor (Supreme Court of
England & Wales)

Expertise:

Corporate Due Diligence &
Corporate/Commercial Arbitration

✉ amit.m@mcolegals.co.in



Amit Singhal

Research Partner

B.A.

LLB (Hons)

National Law Institute University

the Central Government notifies} and even a farmer produce organisation or an agriculture co-operative society can set up and operate an electronic trading and transaction platform in order to facilitate inter-state and intra-state trading.

- As per section 6 of the Act, if any farmer, trader, or electronic trading and transaction platform wishes to trade and commerce in scheduled farmers' produce in a trade area then the respective state government cannot impose any market fee, cess or levy under any state law.
- As per section 7 of the Act, the Central Government may, through any Central Government Organization, develop a Price Information and Market Intelligence System for farmers' produce and a framework for dissemination of information relating thereto. After having the system in place, the Central Government may require any person owning and operating an electronic trading and transaction platform to provide information regarding such transactions.

3 Resolution of disputes

- Since the jurisdictions of the civil courts have been specifically barred under section 15 of the Act, a different mechanism has been provided for resolution of dispute under Chapter III of the Act.
- The Act recognizes the need of amicable, expedient and non-technical dispute resolution mechanism by creating a following 3-tier structure:
 1. Conciliation Board.
 2. Sub-Divisional Authority
 3. Appellate Authority
- Another Authority has been provided namely Agriculture Marketing Advisor who will have 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.
- Appeals from the Advisor's order shall lie to an officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government.

Penalties

- Chapter IV deals with the 'penalties' wherein if anyone contravenes the provisions of the Act shall be liable to pay a penalty as mentioned in section 11 of the Act.
- Considering the form of punishment that has been provided in case of violations of the provisions of the Act, it can be concluded that the form of liability under the Act is a civil liability.

Miscellaneous provisions

- Powers to issue instructions, directions, orders or guidelines has been kept by the Central Government.
- The Act shall have an overriding effect on the State APMC Acts as well as on any other law inconsistent with the provisions of the Act.
- The Stock Exchanges and Clearing Corporations recognized under the Securities Contracts (Regulation) Act, 1956 and the transactions made there under shall not be effected by the provisions of the Act.

Concerns and Conclusion

The Act is a step towards giving a farmer freedom to sell his agriculture produce anywhere within a State and outside that State. So, the Act will allow barrier free trade outside the notified APMCs mandis. However, there are few concerns as well.

As has been mentioned earlier in the article, the State of Bihar repealed the APMC Act in order to deregulate the agriculture market and attract the private investment. However, subsequent reports show that the State failed to develop sufficient agriculture marketing infrastructure and also failed to properly upkeep the existing infrastructure in the absence of any APMC law. Further due to deregulation, farmers may face lots of issues including bearing high transaction charges, lack of proper information which eventually will effect the small farmers and small traders mostly. So, complete deregulation of the agriculture may not at all be advisable as it will adversely affect the small and marginal farmers.

Secondly, as per the Act, the State Governments cannot impose market fee or any kind of levy, then the big agricultural States like Uttar Pradesh, Madhya Pradesh, Punjab and Haryana may lose a big source of state revenue.

Thirdly, the Act may be largely beneficial for big farmers because they will have more choices and they can start selling to the private players. On the other hand, the Act will hardly make any difference to small farmers because presently they are selling outside the APMCs. Moreover, due to transportation and logistics costs, small farmers may not have incentive to go long distance or intra-state to sell their produce.

Fourthly, the enactment of the Act may be one of the ways in which the Government wants to get out of the agriculture business. Once the farmers get an entry into this free market they can sell to anyone and earn more. However, farmers' income will become dependent upon the ups and downs of this free market. So, one cannot have everything. Further, the private players function on low cost and their ultimate motive is to earn profit, therefore they will employ every strategy to buy at less price and sell at a higher price.

Lastly, the Act has not repealed the states APMCs Acts therefore the existing APMCs will continue to function parallelly.