

28th APRIL, 2021

ISSUE 4

A PRE- AND POST- THE ESSENTIAL COMMODITIES (AMENDMENT) ACT, 2020

INTRODUCTION

Generally understood, essential commodities are those if someone illegally store or hoard them for creating artificial demand or someone indulges in black marketing of such essential commodities, then it will affect the normal life of the people. Some examples of essential commodities are food, medicine, fuel and petroleum products, et cetera.

So, in the interest of general public, Essential Commodities Act [hereinafter referred to as 'the Act'] was enacted which gives power to the Central Government to control production, supply, distribution, et cetera of certain essential commodities. The Act has been legislated by the Parliament of India taking recourse to entry 33 of List III (Concurrent List) of Seventh Schedule of the Constitution of India. Interestingly, the subject matter under this entry was supposed to be temporary as per article 369 of the Constitution of India. But the Constitutional (Third Amendment) Act, 1954 converted this temporary responsibility into a permanent one by substituting this 33rd entry.

With the help of the Act, the central government can include new commodities as and when the need arises and also can take them off the list ones the situation improves. Recently, for example, the Central Government in the month of March 2020 brought face masks and hand sanitizers under the Act so that the people can get these two essential things at the right price and at the right quality during the Covid-19 pandemic in India. Then again from 1st July 2020, the government removed the same two commodities from the list of essential commodities.

The Essential Commodities (Amendment) Act, 2020 [hereinafter interchangeably referred to as 'the amendment Act' or 'the third farm law/legislation'] amended section 3 of the 1955 Act.

THE AMENDMENT ACT IN DETAIL

The Amendment Act authorises Central Government to regulate the supply of cereals, pulses, potato onions, edible oilseeds and oils only under extraordinary circumstances. These extraordinary circumstances have been elaborated to include war, famine, natural calamity of grave

nature or if there is extraordinary rise in prices.

This law further provides that a regulating stock limit order must be based on a fair price and only if there is the retail price of horticulture produce reaches two hundred percent or of non-perishable agriculture foodstuffs reaches one hundred and fifty percent. For determining the benchmark, the lower of the prices prevailing immediately preceding 12 months or average retail price of last 5 years shall be considered. This way a buyer can earn a profit of amount anywhere between fifty and hundred percent depending upon the nature of a commodity.

The Amendment Act further makes it clear that such limits won't be applicable to any order relating Public Distribution System (PDS) or to Targeted PDS and also to a processor or value chain participant of any agricultural produce, if the stock limit of such person does not exceed the overall ceiling of installed capacity of processing, or the demand for export in case of an exporter.

CONCERNS

The Amendment in the Act essentially means that though these commodities are part of every household's daily essential commodities and are consumed almost on a daily basis, are now no longer essential commodities as per the law. Now there is fear and risk of hoarding and there are chances that black marketing of such commodities will increase and as a result the prices of such commodities will go up. Further, it will lead to monopoly of few individuals over these commodities.

Further, if we closely look at the removed essential commodities then we can very well say that most of these commodities are non-perishable in nature. In other words, these can be stored at room temperature for months and years as they have longer shelf life. And in case of a non-perishable commodity, the seller has the liberty to fix the price anywhere between 100 and 150 percent of the cost because the government will only interfere when the prices increases by more than 50 percent of the cost price. But of course a seller naturally cannot blindly sell a commodity at a highest price because the seller will then loose out on customers. Assuming that farmers are



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

also smart and they will also increase the price while selling their farm produce to the private players. If that is the case then still the private players will sell at a higher price to make profit. So it doesn't matter and it is ultimately going to affect and pinch the pocket of people who are regular daily household customers.

Further, it has been argued that it is highly centralising law. The Indian Parliament is interfering with the state subjects. But if we see the Central Government is not interfering as such because it is not deciding the prices of any commodity, it is just setting a limit within which the prices of the commodities have to fluctuate.

CONCLUSION

Soon after the enactment of the Amendment Act, there were wide spread protests across India and the Constitutional validity of this Act along with two other farm laws were challenged before the Supreme Court of India. [Refer Rakesh Vaishnav and Others versus Union of India and Others, Writ Petition (Civil) No. 1118 of 2020.] On January 12, 2021, the full bench (3-judges bench) of the Supreme Court of India passed an interim order whereby the implementation of the three farm legislations has been stayed until further orders.

The Central Government's main argument is that the Essential Commodities Act discourages big traders and the entry of private players in the agriculture market. For processing the final products, they need to keep a stock of these farm produce in

huge quantity which is discouraged by the Essential Commodities Act, 1955. Hence, to overcome this difficulty first of all the Farmers' (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act, 2020 (the second farm law) has been enacted which will have an overriding effect on anything contained in the Essential Commodities Act, 1955 and over any control order issued there under as per section 7(2) of the second farm law. Further out of abundant caution, certain commodities have been deregulated by amending the Essential Commodities Act. This way, any stock limit will not be applicable over the farm produce which is the subject matter of the farming agreement.

Further, if we see this amendment Act along with other two farm legislations (all three Acts enacted together by the Parliament of India), the three farm laws aim to increase the availability of buyers for farmers' produce, by allowing them to trade freely without any license or stock limit, so that an increase in competition among them results in better prices for farmers. Altogether, intention is to integrate fruits and vegetable growers with agro-processing units for better price realization and reduction of post-harvest losses and to create job opportunities in the rural areas.

- Finally, we are not living in the times of 'food crisis' instead now India is a net exporter in agriculture and farm produce. So, slowly and steadily deregulation is required by removing certain commodities from the essentials list.