

ACT 14 OF 1981

THE KERALA RAW CASHEW NUTS (PROCUREMENT AND DISTRIBUTION) ACT,
1981 1

An Act to provide for the trade in raw cashew nuts by the State to the exclusion of all others by the procurement and sale thereof at fair prices.

Preamble.-WHEREAS by judgment dated the 23rd January, 1981, the Supreme Court has quashed the declaration made by the Government of Kerala to the effect that raw cashew nut is an essential article under the Kerala Essential Articles Control (Temporary Powers) Act, 1961 and the Kerala Raw Cashew nuts (Procurement and Distribution) Order, 1977, made under that Act;

AND WHEREAS raw cashew nut is an essential raw material for the cashew industry which is one of the most important traditional industries in the state;

AND WHEREAS the maintenance of supplies of raw cashew nuts is essential for the continued employment of about one and a half lakhs workers employed in more than two hundred and fifty cashew factories in the State;

AND WHEREAS unemployment of the workers employed in the cashew factories in the State will adversely affects he economy of the State;

AND WHEREAS the quantity of imported raw cashew nuts made available to the factories in the State has dwindled down considerably and consequently the quantity of imported raw cashew nut is not sufficient to give more than seven days' work in an year to the workers in the cashew industry in the State;

AND WHEREAS, in the circumstances, it is considered necessary to provide that trade in raw cashew nuts with the State should be undertaken by the State to the exclusion of all others by the procurement and sale thereof at fair prices;

BE it enacted in the Thirty-second Year of the Republic of India as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Kerala Raw Cashew nuts (Procurement and Distribution) Act, 1981.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 2nd day of February, 1981.

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

2 (a)[“agent” means the agent authorised by the Government under sub-section (1) of section 3;]

(b) “competent authority” means the Government or an officer authorised by the Government to grant permits;

(c) “co-operative society” means a society registered or deemed to be registered under the Kerala co-operative Societies Act, 1969 (21 of 1969);

(d) “cultivator” means a person who actually cultivates any land with cashew or who is entitled to take the usufructs from any land cultivated with cashew ;

(dd) 3 [*****]

4 [(e) “notified price”, in relation to raw cashew nuts, means the price notified under sub-section (2) of section 5;]

(f) “occupier” means an occupier as defined in the Factories Act, 1948 (Central Act 63 of 1948) ;

(g) “person” includes a body corporate, a company, a firm, an association of individuals or a co-operative society ;

(h) “permit” means a permit referred to in section 15 ;

(i) “prescribed” means prescribed by rules made under this Act;

(j) “raw cashewnut” does not include roasted cashewnut;

(k) “State” means the State of Kerala ;

(l) “sub-agent” means a co-operative society appointed by the agent under section 9.

5 (m) [*****]

2A 6 [*****]

2B 7 [*****]

2C 8[*****]

9 [“3. Restriction on sale and purchase of raw cashew nuts.- (1) The Government may, by notification in the Gazette authorise any co-operative society as agent of the Government for the purpose of purchase and sale of raw cashew nuts within the State.

(2) No person shall sell any raw cashew nuts within the State except to the agent or a sub-agent.

(3) No person other than the agent or a sub-agent shall purchase any raw cashew nuts within the State.”].

10 [4. Restriction on possession of raw cashew nuts.- No person other than the agent or a sub-agent shall have in his possession, any time, raw cashew nuts in excess of the quantity of fifty kilograms:

Provided that nothing contained in this section shall apply to raw cashew nuts sold to any cashew factory under section 11 and kept in that factory.]

11 [5. Price to be paid by agent and sub-agents.- (1) When raw cashew nuts are tendered to the agent or a sub-agent by or on behalf of a cultivator, the agent or such sub-agent shall pay the price thereof at the rate notified for the locality under sub-section (2)

(2) For the purposes of sub-section (1), the Government shall, from time to time, notify the prices of raw cashew nuts in the different locality in the State, in such manner as they think fit.

(3) The agent or sub-agent shall not refuse to purchase any raw cashew nut tendered to him by or on behalf of a cultivator.

11A Provided that the agent or a sub-agent may refuse to purchase the raw cashew nuts tendered for sale which do not conform to such quality or standard as may be prescribed vide Act 5 of 1988

6. Agent to furnish returns.- The agent shall furnish to the Government and to any officer specified by the Government in this behalf by notification in the Gazette, on such day or days as may be prescribed, a return showing the place or places where raw cashew nuts have been stocked by him, the quantity thereof and the price paid by him therefore.]

7. Power of government to issue instructions to agent and sub-agent.- The Government may, from time to time, give to the agent and the sub-agents general instructions for the purpose of efficiently carrying out their duties under this Act, and the agent and the sub-agents shall comply with such instructions.

8. Removal of agent.- If the agent contravenes any of the provisions of this Act or does not comply with any instruction issued by the Government under section 7, his agency shall, without prejudice to any penalty to which he is liable under this Act, be liable to be terminated:

Provided that the agency shall not be terminated without giving the agent an opportunity for making representations in writing against such termination.

9. Appointment of Co-operative Societies as sub-agents.- (1) The agent may, by order in writing, appoint any co-operative society to be a sub-agent for the purposes of this Act and define the local area for which such appointment is made:

Provided that no such order shall be valid unless it is approved by the Government or an officer specified by the Government in this behalf by notification in the Gazette.

(2) Every sub-agent appointed under sub-section (1) shall furnish to the agent on such dates as may be specified by the agent in this behalf a return showing the place or places where cashew nuts are stocked by him, the quantity thereof and the price paid by him therefore.

(3) If any sub-agent contravenes any of the provisions of this Act or does not comply with any instruction issued by the Government under section 7 or any instruction issued to him by the agent, the Government or the agent may, without prejudice to any penalty to which he is liable under this Act, terminate his appointment as sub-agent :

Provided that before terminating, the appointment of a sub-agent, he shall be given an opportunity for making representations in writing against such termination.

12 [“10. Prohibition of processing or conversion and restriction on sale etc. The agent or a sub-agent shall not-

(a) Process or convert; or

(b) sell, except in accordance with the provisions of section 11, or otherwise dispose of, any raw cashew nuts purchased by him under this Act:

Provided that nothing contained in this section shall prohibit the agent or a sub-agent who is an occupier of cashew factory, from processing or converting any raw cashew nuts sold to him under section 11.”].

13 [11. Sale of raw cashew nuts to cashew factories.- (1) all raw cashew nuts purchased by the agent and the sub-agents under this Act shall be sold to the cashew factories in the State which are registered in pursuance of the rules made under the Factories Act, 1948 (Central Act 63 of 1948), and which were eligible for imported cashew nuts under the Import Trade Control Policy of the Government of India, in accordance with the provisions of sub-section (2).

(2) The quantity of raw cashew nuts to be sold to each cashew factory shall be determined on the basis of the muster-roll strength of the workers of the factory as on the 1st day of January, 1982 or on the basis of the average of the muster-roll strength of the workers of the factory for the three years of 1985, 1986 and 1987, whichever is higher, subject to the maximum of the licensed strength.

(3) An officer authorised by the Government in this behalf by notification in the Gazette shall, in accordance with the principle specified in sub-section (2), by order, specify the quantity to be sold to each cashew factory.

(4) An order under sub-section (3) shall be served on the agent and the occupiers of the cashew factories specified in that order.

(5) The officer authorised under sub-section (3) shall give notice to the occupier of every cashew factory specified in an order under that sub-section requiring him to take delivery of the raw cashew nuts offered for sale to that factory from the place specified in the notice within seven days of the service of the notice.

(6) If any dispute arises in respect of any order under sub-section (3), such dispute shall be referred to the Government, whose decision thereon shall be final.]

14 [12. Duty of occupier to take delivery of raw cashew nuts.-(1) If an occupier of a cashew factory fails to take delivery of the raw cashew nuts offered to be sold to his factory from the place and before the date referred to in sub-section (5) of section 11, such offer for sale shall stand cancelled.

(2) Failure of an occupier of a cashew factory to take delivery of raw cashew nuts under sub-section (1) shall constitute a contravention of the provisions of this Act punishable under section 25.

(3) Without prejudice to the provisions of sub-sections (1) and (2), an occupier of a cashew factory who fails to take delivery of the raw cashew nuts from the place and before the date referred to in sub-section (5) or section 11, shall not be offered for sale raw cashew nuts under this Act, for a period of two years immediately succeeding the year in which the offer for sale was cancelled under sub-section (1).]

15 [13. Price to be paid by occupiers.-(1) The price to be paid by the occupiers of cashew factories for the raw cashew nuts sold to them under section 11 shall be decided by the Government from time to time.

(2) In deciding the price under sub-section (1), the Government shall take into consideration-

(a) the grade and quality of the raw cashew nuts;

(b) the notified price of raw cashew nuts; and

(c) incidental expenses incurred by the Government, the agent and the sub-agents]

16 [14. Processing of raw cashew nuts to be done in the concerned factory.- Roasting, shelling, peeling and grading of raw cashew nuts sold to a cashew factory under section 11 shall be done only in that factory and at no other place.]

15. Restriction on transport of raw cashew nuts.- No person shall transport or attempt to transport or abet the transport of raw cashew nuts from one place to another place in the State except under and in accordance with a permit issued in that behalf by the competent authority or any other officer authorised by the Government in this behalf:

Provided that nothing contained in this section shall apply to the movement of raw cashew nuts by a cultivator for sale thereof to 17 [*****] the agent or a sub-agent.

16. Application form and form of permit.- (1) An application for the grant of a permit shall be in the prescribed form and shall be verified in the prescribed manner and shall be affixed with a court-fee stamp of the value of 18 [ten] rupees.

(2) The permit shall be in such form as may be prescribed.

17. Power to refuse permit.- The competent authority may, if it is satisfied that the grant of a permit will defeat any of the provisions of this Act, refuse to grant the permit:

Provided that, before refusing to grant a permit, the applicant shall be given an opportunity to state his case against such refusal.

18. Cancellation of permit.-Where the competent authority is satisfied that an applicant for a permit issued by it has furnished incorrect information or that he has, after the issue of the permit, contravened any of the provisions of this Act or any of the terms and conditions of the permit, it may, without prejudice to any other action against the holder of the permit under his Act, by order, cancel the permit:

Provided that no permit shall be cancelled without giving the holder thereof an opportunity to state his case against such cancellation.

19. Powers of entry, seizure, etc.- (1) Any revenue officer of and above the rank of Revenue Inspector, or any officer of the Sales Tax Department not below the rank of Sales Tax Inspector, or any officer of the Co-operative Department 19 [or the Industries Department] not below the rank of Junior Co-operative Inspector, or any Block Development Officer, or any other officer authorised by the Government in this behalf, or any police officer not below the rank of Sub Inspector, may, with a view to securing compliance with the provisions of this Act or to satisfying himself that the said provisions have been complied with,-

(a) enter and search any premises;

(b) inspect any books, accounts or other documents maintained in the course of business or any stock of raw cashew nuts in the possession or under the control of any person;

(c) seize any such books, accounts or other documents which in his opinion would be useful for, or relevant to, any proceedings under this Act;

(d) search any animal, vessel, vehicle or other conveyance or any package, covering or receptacle, which has been, or is being, used, or is about to be used, for the contravention of this Act;

(e) seize any raw cashew nuts in respect of which he has reason to believe that a contravention of this Act has been, is being, or is about to be, committed, and any packages, coverings, or receptacles in which such raw cashew nuts are found;

(f) seize any animal, vessel, vehicle or other conveyance used in carrying such raw cashew nuts, if he has reason to believe that such animal, vessel, vehicle or other conveyance is liable to be forfeited under the provisions of this Act.

(2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), relating to search and seizure shall, so far as may be, apply to search and seizure under this section.

20. Confiscation of raw cashew nuts.- (1) Where raw cashew nuts are seized under section 19, a report of such seizure shall, without unreasonable delay, be made to the Revenue Divisional Officer having jurisdiction over the area in which such raw cashew nuts are seized, and whether or not a prosecution is instituted for the contravention of this Act in respect of such raw cashew nuts, the Revenue Divisional Officer may, if he thinks it expedient so to do, direct the raw cashew nuts so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of this Act, may order confiscation of-

(a) the raw cashew nuts so seized;

(b) any package, covering or receptacle in which such raw cashew nuts are found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such raw cashew nuts:

Provided that, in the case of any animal, vessel, vehicle or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vessel, vehicle or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not less than one-half of the value of such animal, vessel, vehicle or other conveyance as determined by the Revenue Divisional Officer.

(2) Where the Revenue Divisional Officer, on receiving a report of seizure of any raw cashew nuts under sub-section (1), is of the opinion that the raw cashew nuts are

subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may order the same to be sold to the agent or the sub-agent appointed for the area in which the raw cashew nuts were seized, 20 [at the notified price] under sub-section (2) of section 5.

(3) Where any raw cashew nuts are sold under sub-section (2), the sale proceeds thereof, after deduction of the expenses of such sale or other incidental expenses relating thereto, shall-

(a) where no order of confiscation is ultimately passed by the Revenue Divisional Officer; or

(b) where an order passed on appeal under sub-section (1) of section 22 so requires; or

(c) where in a prosecution instituted for the contravention of this Act in respect of which an order of confiscation has been made under this section, the person concerned, is acquitted,

be paid to the owner thereof or the person from whom they are seized.

21. Issue of show-cause notice before confiscation.- (1) No order confiscating any raw cashew nuts, package, covering, receptacle, animal, vessel, vehicle or other conveyance shall be made under section 20 unless the owner of such raw cashew nuts, package, covering, receptacle, animal, vessel, vehicle or other conveyance or the person from whom the same is seized-

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the raw cashew nuts; package, covering, receptacle, animal, vessel, or other conveyance;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, vessel, vehicle or other conveyance shall be made under section 20, if the owner of the animal, vessel, vehicle or other conveyance proves to the satisfaction of the Revenue Divisional Officer that it was used in carrying the raw cashew nuts without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vessel, vehicle or other conveyance and that each of them had taken all reasonable and necessary precautions against such use.

(3) No order confiscating any raw cashew nuts, package, covering, receptacle, animal, vessel, vehicle or other conveyance shall be invalid merely by reason of any defect or irregularity in the notice given under clause(a) of sub-section (1), if, in giving such notice, the provisions of that clause have been substantially complied with.

22. Appeal.- (1) Any person aggrieved by an order of confiscation under section 20 may, within one month from the date of the communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the raw cashew nuts to which such order relates were seized, and the District Judge shall, after giving an opportunity to the appellant to be heard, pass such order as he may think fit, confirming, modifying or annulling the order appealed against.

(2) Where an order under section 20 is modified or annulled by the District Judge, or where in a prosecution instituted for the contravention of this Act in respect of which an order of confiscation has been made under section 20, the person concerned is acquitted, and in either case it is not possible for any reason to return the raw cashew nuts seized, such person shall, except as provided by sub-section (3) of section 20, the person concerned to acquitted, and in either case it is not possible for any reason to return the raw cashew nuts seized, such person shall, except, as provided by sub-section (3) of section 20, 21[be paid the price] therefore as if the raw cashew nuts had been sold to the Government with reasonable interest calculated from the day of the seizure of the raw cashew nuts, 22[and such price shall be determined in accordance with the provisions of section 5.]

23. Award of confiscation not to interfere with other punishment.- The award of any confiscation under this Act by the Revenue Divisional Officer shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

24. Bar of jurisdiction in certain cases.-Whenever any raw cashew nuts are seized under section 19, the Revenue Divisional Officer or, as the case may be, the District Judge shall have, and notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, tribunal or authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal or distribution of such raw cashew nuts.

25. Penalties.- (1) If any person contravenes any provision of this Act,-

(a) he shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to one thousand rupees;

(b) any property in respect of which such provision has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which raw cashew nuts are found and any animal, vessel, vehicle or other conveyance used in carrying the raw cashew nuts shall, if the court so orders, be forfeited to the Government.

(2) If any person convicted of an offence under sub-section (1), is again convicted of an offence under that sub-section, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than one month but which may extend to one year and shall also be liable to fine which may extend to one thousand rupees:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than one month.

26. Attempts and abetment.- Any person who attempts to contravene, or abets a contravention of, any provision of this Act shall be deemed to have contravened that provision.

26. False statement.- If any person, -

(i) when required by any of the provisions of this Act or any rule made thereunder to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as foresaid in any book, account, record, declaration, return or other document which he is required by any of the provisions of this Act or any rule made thereunder to maintain or furnish, he shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

28. Offences by companies.- (1) If the person contravening any of the provisions of this Act is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section, -

(a) 'company means any body corporate, and includes a firm or other association of individuals; and

(b) 'director', in relation to a firm, means a partner in the firm.

29. Offences to be cognizable.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), every offence punishable under this Act shall be cognizable.

30. Cognizance of offences.- 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 an officer authorised in this behalf by the Government by notification in the Gazette

31. Grant of injunction, etc., by civil courts.- No civil court shall grant an injunction or make any order for any other relief against the Government or the agent or a sub-agent or any officer specified or authorised under this Act, in respect of any act done or purporting to be done by the Government or the agent or the sub-agent or such officer under this Act or any rule made thereunder, until after notice of the application for such injunction or other relief has been given to the Government or the agent or the sub-agent or such officer, as the case may be

32. Protection of action taken under Act.- (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 provision of this Act or any rule made thereunder.

(2) No suit or other legal proceeding shall lie against the 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 provision of this Act or any rule made thereunder.

33. Exemption.- Nothing contained in this Act shall apply in respect of imported raw cashew nuts allotted by the Cashew Corporation of India to cashew factories under the Import Trade Control Policy for the time being in force of the Government of India.

34. Power to make rules.- (1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry

of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

35. Repeal and saving.- (1) The Kerala Raw Cashew nuts (Procurement and Distribution) Ordinance, 1981 (1 of 1981), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.