

Twelfth Kerala Legislative Assembly
Bill No. 220

**THE UNREGISTERED CASHEWNUT FACTORIES
PROHIBITION (AMENDMENT) BILL, 2008**

818/2008.

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BILL

to amend the Unregistered Cashewnut Factories Prohibition Act, 1967.

Preamble.—WHEREAS, it is expedient to amend the Unregistered Cashewnut Factories Prohibition Act, 1967 (11 of 1967) for the purposes hereinafter appearing ;

BE it enacted in the Fifty-ninth year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Unregistered Cashewnut Factories Prohibition (Amendment) Act, 2008.

(2) It shall be deemed to have come into force on the 13th day of December, 2007.

2. *Amendment of Section 5.*—In section 5 of the Unregistered Cashewnut Factories Prohibition Act, 1967 (11 of 1967) (hereinafter referred to as the principal Act), in clause (b) of sub-section (1), after the word “found” the words “and the machines, equipments and other instruments used or about to be used for such processing, in such premises” shall be added.

3. *Insertion of new section 5A.*—After section 5 of the principal Act, the following section shall be inserted, namely:—

“5A *Sale of raw cashewnuts seized.*—(1) Notwithstanding anything contained in any other provisions of this Act, where raw cashewnuts are seized under section 5, 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 cashewnuts are seized, and whether or not a prosecution is instituted for the contravention of the provisions of this Act, in respect of such cashewnuts, the Revenue Divisional Officer may if he thinks it expedient so to do, direct the raw cashewnuts so seized to be produced before him for inspection.

(2) Where the Revenue Divisional Officer, on receipt of a report of seizure of raw cashewnuts and on inspection under sub-section (1), is of the opinion that the raw cashewnuts seized 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 either to the Kerala State Cashew Development Corporation or to the Kerala State Cashew Workers' Apex Industrial Co-operative Society Ltd. at the prevailing market rate or in public auction as the situation justifies.

(3) Where the Revenue Divisional Officer, so order the sale of any raw cashewnuts seized under this section, he shall prepare an inventory of such seized cashewnuts containing such details relating to their description, quality, quantity, mode of packing and other particulars as the Revenue Divisional Officer may consider relevant to prove the identity of the raw cashewnuts seized in any proceedings under this Act, and make an application to any Magistrate for the purpose of,—

(a) certifying the correctness of the inventory so prepared ; or ;

(b) taking, in the presence of such Magistrate, photographs of such raw cashewnuts and certifying such photographs as true.

(4) Where an application is made under sub-section (3), the Magistrate shall, as soon as may be, allow the application.

(5) Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872) or the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) any Court trying an offence under this Act, shall treat the inventory and the photographs of the seized raw cashewnuts and certified by the Magistrate, as primary evidence in respect of such offence.

(6) Where any raw cashewnuts are sold under sub-section (2), the sale proceeds thereof, after deducting the expenses if any of such sale or other incidental expenses relating thereto shall be kept under revenue deposit subject to the orders of the Court if a prosecution is instituted for the contravention of this Act, or of the concerned Inspector who seized the raw cashewnuts if no prosecution is instituted.

(7) No order for sale of raw cashewnuts shall be passed under this section, unless the person from whom the same is seized, is given an opportunity of being heard in the matter.”.

4. *Amendment of section 6.*—For section 6 of the principal Act, the following section shall be substituted, namely :—

“6. *Penalties.*—If any person contravenes or attempts to contravene or abets the contravention of the provisions of section 4, or of any rule made

under this Act, he shall be punished with imprisonment for a term which may extend to two years but which shall not be less than six months and with a fine which may extend to one lakh rupees but which shall not be less than twenty five thousand rupees and in the case of repeated contravention with an additional fine which may extend to ten thousand rupees for every such contravention.” .

5. *Amendment of section 8.*— In section 8 of the principal Act, after the words “were found”, the words “and the machines, equipments and other instruments used for such contravention” shall be inserted.

6. *Repeal and Saving.*—(1) The Unregistered Cashewnut Factories Prohibition (Amendment) Ordinance, 2008 (25 of 2008) is hereby repealed.

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

STATEMENT OF OBJECTS AND REASONS

The existing provisions of the Unregistered Cashewnut Factories Prohibition Act, 1967 does not contain any provision for the speedy disposal of the cashewnuts seized under the Act. Cashewnut is a perishable seed. Hence Government have decided to incorporate section 5A in the parent Act, enabling early disposal of the same by the authority seizing cashewnuts, so as to avoid perishing of the cashewnuts seized due to delay in finalising the proceedings after seizure.

2. Besides, processing of cashewnuts in an unregistered Cashew Factory is prohibited under the Unregistered Cashewnut Factories (Prohibition) Act, 1967. In spite of this statutory prohibition, several unregistered Cashewnut Factories, processing cashewnuts are still there in the State and they are functioning without giving the statutory benefits due to the workers. The existing provisions in the above said Act are not sufficient, to prohibit completely the functioning of unregistered Cashewnut Factories in the State. Therefore, the Government have decided to enhance the punishment prescribed in the Act by amending section 6 and to make the punishment for violation of the provisions of the Act more stringent.

3. A Bill to amend the Unregistered Cashewnut Factories Prohibition Act, 1967 was published as Bill No.119 of the Twelfth Kerala Legislative Assembly, but the same could not be introduced in the Assembly. As the Legislative Assembly of the State was not in session and the Governor was satisfied that

circumstances existed to bring in an immediate legislation, the Unregistered Cashewnut Factories Prohibition (Amendment) Ordinance, 2007 (63 of 2007) was promulgated by the Governor on the 12th day of December, 2007 and the same was published in the Kerala Gazette Extraordinary No.2242 dated 13th December, 2007.

4. A Bill to replace the Unregistered Cashewnut Factories Prohibition (Amendment) Ordinance, 2007 (63 of 2007) was published as Bill No.157 of the Twelfth Kerala Legislative Assembly, but the same could not be introduced in, and passed by the Legislative Assembly during its session which commenced on the 20th day of February, 2008 and ended on the 19th day of March, 2008 and as the provisions of the said Ordinance are to be kept alive, the Unregistered Cashewnut Factories Prohibition (Amendment) Ordinance, 2008 (7 of 2008) was promulgated by the Governor on the 1st day of April, 2008 and the same was published in the Kerala Gazette Extraordinary No. 657 dated 1st April.

5. A Bill to replace Ordinance No.7 of 2008 was published as Bill No. 189 of the Twelfth Kerala Legislative Assembly, but the same could not be introduced in, and passed by the Legislative Assembly of the State of Kerala during its session which commenced on the 23rd day of June, 2008 and ended on the 24th day of July, 2008 and as the provisions of the said Ordinance are to be kept alive, the Unregistered Cashewnut Factories Prohibition (Amendment) Ordinance, 2008 (25 of 2008) was promulgated by the Governor on the 1st day of August, 2008 and the same was published in the Kerala Gazette Extraordinary No. 1679 dated 2nd August, 2008.

6. The Bill seeks to replace Ordinance No. 25 of 2008 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation would not involve any expenditure from the Consolidated Fund of the State.

P. K. GURUDASAN

EXTRACT FROM THE UNREGISTERED CASHEWNUT FACTORIES
PROHIBITION ACT, 1967
(11 of 1967)

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5. *Powers of Inspectors.*—(1) An Inspector may, if he has reasons to believe that processing of cashewnuts in contravention of section 4 is being, or is about to be, carried on in any premises,—

(a) enter such premises, if necessary by force, at any time for the purpose of search of the premises ;

(b) seize any cashewnuts in respect of which the provisions of section 4 are being, or are about to be, contravened, along with the package, covering or receptacle, if any, in which such cashewnuts are found ;

(c) seize any books of account, return or any other document relating to any cashewnuts in respect of which the provisions of section 4 are being, or are about to be, contravened.

(2) The provisions of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), relating to search and seizure shall, so far as they are applicable, apply in relation to search and seizure made under this section.

6. *Penalties.*—If any person contravenes or attempts to contravene or abets the contravention of the provisions of section 4, or of any rule made under this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

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8. *Forfeiture of cashewnuts, etc.*—Where any person has been convicted under this Act for the contravention of any provision of this Act or of any rule thereunder, the cashewnuts in respect of which the contravention has been committed, together with the package, covering or receptacle, if any, in which such cashewnuts were found shall be forfeited to the Government on the orders of the court to that effect.

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