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The Gujarat Government Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. V] FRIDAY, FEBRUARY 21, 1964/PHALGUNA 2, 1885

Separate paging is given to this part in order that it may be filed as a separate compilation

PART IV

Acts of the Gujarat Legislature and Ordinances promulgated and Regulations made by the Governor.

The following Act of the Gujarat Legislature, having been assented to by the President on the 16th February 1964 is hereby published for general information.

AKBAR S. SARELA,
Secretary to Government,
Legal Department.

GUJARAT ACT NO. 5 OF 1964.

[First published, after having received the assent of the President in the *Gujarat Government Gazette* on the 21st February 1964.]

An Act to consolidate and amend the law relating to the regulation and prohibition of the cultivation of any variety of cotton, of the mixing of the prohibited variety of cotton with other cotton and of the possession or use of, or trade in, the prohibited variety of cotton in any part of the State of Gujarat.

It is hereby enacted in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Gujarat Cotton Control Act, 1963.
- (2) It extends to the whole of the State of Gujarat.
2. In this Act, unless the context otherwise requires,—

(a) "controlled area" means an area specified in a notification under section 3;

(b) "cotton" includes cotton plant, ginned and unginned cotton, cotton waste, cotton seed and *kalas*;

Short title
and extent

Definitions

(c) "Director of Agriculture" means the officer appointed for the time being by the State Government to be the Director of Agriculture, State of Gujarat, and includes any officer appointed by the State Government to exercise all or any of the powers conferred, and to perform all or any of the duties imposed, on the Director of Agriculture by or under this Act in so far as the exercise of powers and performance of duties for which such appointment is made are concerned;

(d) "prohibited variety of cotton" for any area means the variety of cotton the cultivation of which is prohibited in such area under sub-clause (ii) of clause (a) of sub-section (2) of section 3;

(e) "sample" means a sample of cotton taken under the provisions of this Act or of any rules made thereunder;

(f) "standard cotton" for any area means the variety of cotton the cultivation of which is permitted in such area under sub-clause (i) of clause (a) of sub-section (2) of section 3.

Power to fix in any area variety of cotton which may be cultivated etc.

3. (1) (a) The State Government may, by notification in the *Official Gazette*, in respect of any local area specified in the notification, declare its intention of—

(i) fixing the variety of cotton the cultivation of which shall be permitted in such area,

(ii) prohibiting the cultivation of any other variety of cotton in such area,

(iii) prohibiting in such area the mixing of any standard cotton with any other standard cotton or of the variety of cotton specified in sub-clause (ii) with any standard cotton, and

(iv) prohibiting or restricting in such area the possession or use of, or trade in, any standard cotton mixed with any other standard cotton or the variety of cotton specified in sub-clause (ii), whether or not mixed with any standard cotton.

(b) Every such notification shall also be published in the Gujarati language and in such manner as the Collector thinks fit at the office of the Mamlatdar or Mahalkari in the area and in every town and village, persons residing in which are, in the opinion of the Collector, likely to be affected by such notification.

(c) Every such notification shall state that any objection or suggestion which may be received by the State Government within the period specified in the notification, which shall be not less than three months from the date of the notification, shall be considered by the State Government.

(2) (a) After the expiry of the period specified in the notification issued under sub-section (1) and after considering such objections and suggestions as may be received by it within such period, the State Government may, by notification in the *Official Gazette*, in respect of the local area specified in the notification issued under sub-section (1) or any part thereof—

(i) fix the variety of cotton the cultivation of which is permitted in such area,

- (ii) prohibit the cultivation of any other variety of cotton in such area,
- (iii) prohibit in such area the mixing of any standard cotton with any other standard cotton or of the variety of cotton specified in sub-clause (ii) with any standard cotton, and
- (iv) prohibit or restrict in such area the possession or use of, or trade in, any standard cotton mixed with any other standard cotton or the variety of cotton specified in sub-clause (ii), whether or not mixed with any standard cotton.

(b) Every such notification shall also be published in the Gujarati language and in such manner as the Collector thinks fit at the office of the Mamlatdar or Mahalkari in the area and in every town and village, persons residing in which are, in the opinion of the Collector, likely to be affected by such notification.

4. (1) Notwithstanding anything contained in section 3 or any notification issued thereunder, the State Government may, by notification in the *Official Gazette*, permit any standard cotton to be mixed with any other standard cotton or any prohibited variety of cotton to be mixed with any standard cotton in any factory in which cotton is manufactured into yarn or cloth:

Permission to factories to mix standard cotton with any other standard cotton or any prohibited variety of cotton with standard cotton.

Provided that the mixed cotton—

- (a) is not made into fully pressed bales, and
 - (b) is used in such factory exclusively in the manufacture of yarn or cloth.
- (2) The owner or person in charge of the factory shall maintain or cause to be maintained—

- (i) a register containing the daily record of cotton other than standard cotton received into and used in the factory; and
- (ii) a register containing the daily record of standard cotton received into and used in the factory.

He shall preserve such registers for a period of not less than two years from the date of the last entry made therein.

(3) The owner or person in charge of the factory shall produce the registers maintained under sub-section (2) when required to do so by the Director of Agriculture, or any person appointed by him in this behalf.

5. (1) Any person, who in any controlled area, in contravention of the provisions of this Act or of any notification issued or rule made thereunder—

Penalty

- (a) cultivates any prohibited variety of cotton shall, on conviction, be punishable with fine which may extend to five hundred rupees for the first offence and to two thousand rupees for every subsequent offence,
- (b) (i) mixes or causes to be mixed any standard cotton, with any other standard cotton or any prohibited variety of cotton with the standard cotton, or
- (ii) possesses, uses or trades in, any standard cotton mixed with any other standard cotton or any prohibited variety of cotton, whether mixed with the standard cotton or not,

shall, on conviction, be punishable with fine which may extend to five hundred rupees for the first offence and with imprisonment for a term which may extend to one month or with fine which may extend to two thousand rupees or with both for every subsequent offence.

(2) Any owner or person in charge of a factory who—

(a) in contravention of the provisions of sub-section (1) of section 4 makes the mixed cotton into fully pressed bales or uses the mixed cotton otherwise than in the manufacture of yarn or cloth in his factory, or

(b) fails to comply with any of the provisions of sub-section (2) or sub-section (3) of section 4,

shall, on conviction, be punishable with fine which may extend to one thousand rupees for the first offence and with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or both for every subsequent offence.

Confiscation.

6. Whenever an offence under this Act has been committed, all cotton in respect of which an offence has been committed and every box, receptacle, package or covering in which such cotton is contained shall be liable to confiscation.

Procedure in confiscation.

7. (1) When in any case tried by a criminal court, the court decides that anything is liable to confiscation under section 6, it may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation.

(2) When an offence under this Act has been committed and the offender is not known or cannot be found or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the officer authorised by the State Government in this behalf may hold an inquiry and may order confiscation:

Provided that no such order shall be made before the expiration of one month from the date of seizing the thing liable to confiscation or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim.

Compounding of offences.

8. (1) The officer authorised under sub-section (2) of section 7 may accept from any person who is reasonably suspected of having committed an offence under section 5, a sum of money as may be prescribed by rules made under section 16 by way of composition for such offence.

(2) On payment of such sum, such person, if in custody, shall be set at liberty and if proceedings in any criminal court have been instituted against such person in respect of such offence, the composition shall be deemed to amount to an acquittal and no further proceedings shall be taken against such person in respect of such offence.

(3) Notwithstanding anything contained in sub-section (2), it shall be lawful for the court or the officer authorised under sub-section (2) of section 7 to order confiscation of anything liable to confiscation under section 6.

Power of entry and seizure.

9. (1) Any officer authorised in this behalf by the State Government may,—

(a) enter upon any land in a controlled area in which he knows or has reason to believe that any prohibited variety of cotton has been or is being cultivated in contravention of a notification under section 3, uproot or cause to be uprooted such cotton and seize the cotton so uprooted; or

(b) enter upon or into any land, building, ship, vessel, vehicle or place in a controlled area in which he knows or has reason to believe that any prohibited variety of cotton, whether mixed with the standard cotton or not, is kept in contravention of a notification under section 3, and seize such cotton.

(2) Every officer seizing any cotton under sub-section (1),—

(a) shall forthwith take a sample of the cotton so seized and shall then and there separate the sample into three equal parts, and securely pack and seal each part with his seal in the presence of the occupier, or person in charge of the land, building, ship, vessel, vehicle or place on or in which such seizure was made (hereinafter referred to in this section as "person aforesaid") and also of two witnesses; and where such occupier or person aforesaid desires to seal each of such parts with his seal also, the parts shall also be sealed with the seal of such occupier or person aforesaid; and

(b) subject to rules made under section 16, shall send without delay one of the parts of the sample to such officer as may be authorised by the State Government in that behalf for examination who shall examine the sample and send his report to the Director of Agriculture;

(c) shall deliver another part to the occupier or person aforesaid, and retain the remaining part with himself; and then

(d) shall either entrust the remainder of the seized cotton to the occupier or person aforesaid (on his giving an undertaking in writing to produce it before any criminal court if the officer requires him so to do), or make other arrangements for its custody; and

(e) shall make a report of such seizure to the nearest Magistrate having jurisdiction to try the offence committed in respect of cotton seized specifying therein the particulars of such cotton, and furnish a copy of such particulars to the occupier or person aforesaid.

(3) The opinion of the officer authorised under sub-section (2) regarding such cotton recorded in any document signed by such officer shall be evidence as to the nature of such cotton in any inquiry, trial or proceeding under this Act.

10. (1) Every owner, occupier, or person in charge, of any land, building ship, vessel, vehicle, or place shall give all reasonable facilities to the officer authorised under sub-section (1) of section 9, to inspect such land, building, ship, vessel, vehicle, or place and to take sample.

Duty of owner or occupier and person in charge to give facilities for inspection by authorised officer.

(2) If any ship, vessel or vehicle when required to be stopped for the purpose of inspection is not stopped, the officer authorised under sub-section (1) of section 9, may stop it by use of reasonable force including in the case of vehicle bursting of a tyre thereof.

(3) If the occupier or the person referred to in clause (a) of sub-section (2) of section 9 does not co-operate with the officer in respect of taking a sample the officer shall make a *panchnama* to that effect in the presence of two witnesses.

(4) Any person who contravenes the provisions of this section shall, on conviction, be punishable with fine which may extend to one hundred rupees.

Previous sanction.

11. No prosecution under this Act shall be instituted without the previous sanction of the Director of Agriculture.

Cognizance of offences.

12. No criminal court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

Magistrate's power to impose enhanced penalties.

13. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Judicial Magistrate not below the rank of a Magistrate of the First Class to pass any sentence authorised under section 5.

V of 1898.

Protection for acts done under this Act.

14. No suit, prosecution or other legal proceeding shall be instituted against any person for anything which is in good faith done or intended to be done under this Act.

Officer acting under Act to be public servant.

15. Every officer acting or purporting to act in pursuance of the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

XLV of 1860.

Power to make rules.

16. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may be made for all matters required or allowed by this Act to be prescribed by rules.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to five hundred rupees.

(4) The power to make rules under this section shall be subject to the condition of previous publication.

(5) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make, during the session in which they are so laid or the session immediately following.

(6) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

Repeal and savings.

17. On the commencement of this Act, the following laws, that is to say,—

(a) the Bombay Cotton Control Act, 1942, and

(b) the Saurashtra Cotton Control Act, 1955,

shall stand repealed:

Provided that, such repeal shall not—

(i) affect the previous operation of any law so repealed or anything duly done or suffered thereunder;

(ii) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed;

Bom. XXX of 1942. Sau. Act XXXI of 1955.

(iii) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or

(iv) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

(2) and that any such investigation, legal proceeding or remedy may be continued, instituted or enforced and any such penalty, forfeiture and punishment may be imposed, as if the aforesaid laws had not been repealed :

Provided further that, subject to the preceding proviso, anything done or any action taken under any such law, including any notification, order, notice or receipt issued or declaration made, shall in so far as it is not inconsistent with the provisions of this Act be deemed to have been done, taken, issued or made under the corresponding provisions of this Act, and shall continue in force accordingly, unless and until superseded by anything done or any action taken under this Act.