

THE KERALA ESSENTIAL COMMODITIES AND SERVICES (REGULATION) BILL

A bill to ensure the due availability at all times of essential commodities and services at a fair and reasonable price especially for low income and below poverty line group of people.

BE it enacted the Fifty ninth Year of the Republic.

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Essential Commodities and Services (Regulation) Act.

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

(3) It shall come into force on such date as the Government may notify.

2. *Definitions.*—(1) “Essential Commodity” means and includes all kinds of products which are essential for life, health and all such other products notified by the Government as such for the purpose of this Act.

(2) “Essential service” means and includes all kinds of services rendered by a person to another person for consideration monetary or otherwise which are essential for life, health, freedom of movement, securing justice and such other services as may be notified by the Government.

(3) Person includes an individual, group of individuals incorporated or otherwise or any organization institution or any other entity.

(4) Commissioner.—the officer notified by the Government for the purpose of fixing fair price of commodities and services under section 3.

(5) “Government” means the Government of Kerala.

(6) “Dealer” means a person carrying on the business of purchase or sale of all or any of the essential commodities whether wholesale or retail and whether or not in conjunction with any other business and includes a member, manufacturer and a Commission agent engaged in any such business.

(7) “Enforcement Inspector” means any person appointed by order of the State Government as Enforcement Inspector in respect of such area as may be specified in such order and where no such person has been appointed in any area, any officer of the Civil Supplies Department not below the rank of Rationing Inspector or any officer of the Police Department not below the rank of Sub Inspector having jurisdiction in the area.

(8) “Maximum price” means the fair and reasonable price fixed by the Commission or exercising powers under the Act for buying or securing essential commodities and services.

3. *Government to take time bound steps to implement the provisions of this Act.*—(1) Within one month from the date of commencement of this Act the Government shall take all necessary steps to notify an officer not below the rank of a Secretary to function as Commissioner to exercise the powers and to perform the duties conferred on the Commissioner under the provisions of the Act. The Government shall also notify suitable member of officers to be ‘enforcement inspectors’ as defined in clause (7) of section 2.

(2) The Commissioner and Inspectors so appointed shall be provided with all facilities within a further period of one month from the date of their appointment to exercise their powers and perform their duties under the Act on an urgent basis.

4. *Powers of the Commissioner*—(1) The Commissioner shall have exclusive authority to fix the maximum value and maximum price of essential commodities and services under the Act.

(2) The Commissioner shall have full powers to collect all informations found relevant and necessary to fix the maximum price of essential commodities and services from any individual or from the public generally.

(3) For the purpose of collecting information the Commissioner may call upon any person by individual notice or by public notice or in any other manner to inform him in writing the probable maximum value or cost as the case may be which according to the person giving information is a fair value or cost of each essential commodity or service as the case may be. For collecting such information Commissioner may also hold sittings or discussions or conferences with any person or group of persons at any place or places giving wide publicity so that all persons interested in providing information in the matter may take part and express their views to him within the shortest time possible.

(4) For the purpose of collecting such information the commissioner may authorize the Inspectors also to take such steps as the Commissioner may deem fit.

(5) After conducting all the steps indicated in Clauses (3) and (4) and after due consideration of all the facts and circumstances having a bearing on the question of arriving at the maximum price of essential commodities and services he may fix such price and publish the same as the maximum price so that the public may be informed about such fixation, within a maximum period of 3 months or such other extended period the Government may grant on the application of the Commissioner.

5. Appeal against the order of fixation by the Commission.—Any person aggrieved by the fixation of maximum price of any or all the essential commodities or services may challenge such fixation by moving the High Court under Article 226 of the Constitution of India and such petition shall be disposed of by a Division Bench of the High Court and such orders passed by the Division Bench shall be final in respect of any or all of the price fixed by the Commissioner and challenged or considered and determined by the Division Bench. While considering the petition filed against the order of the Commissioner, the Division Bench may either increase or decrease the price fixed by the Commissioner appropriately for reasons to be stated in the order.

6. Prohibition against demand and receipt of more than the maximum Price.—On and after the date of publication of the maximum price fixed by the Commissioner or if challenged before the High Court the price as approved by the Division Bench or re-fixed by the Bench.

No person shall demand and receive more than the maximum price fixed by the Commissioner for sale and purchase of any essential Commodity or for rendering any essential services for which maximum price is fixed by the Commissioner or the Division Bench of the High Court under Section 5 of the Act.

7. Punishment.—(1) If any person violates the prohibitions contained in Section 6, he shall be committing a cognizable offence punishable by a fine of Rs. 5000 for the first offence and for a second and any subsequent offence with imprisonment upto period of 3 months or fine of Rs 10,000 or with both.

8. Powers of Enforcement Inspector to search and find out violations and initiate prosecutions.—(a) The Enforcement Inspectors may enter and examine any premises from where any essential commodity is sold or any essential service is rendered to consumers for the purpose of ascertaining whether any violation of the provisions in section 6 is taking place therein.

(b) If on enquiry he is satisfied that a violation of the prohibition contained in Section 6 has occurred he may collect materials to establish the violation and file a complaint before the Court of the Judicial Magistrate of the Ist Class within whose jurisdiction, the violation has taken place.

(c) Enforcement Inspector may also file a complaint on receipt of a written information supported by evidence, prima facie sufficient, to establish a violation of the prohibition under Section 6, from any consumer of commodities or a person who has secured service from a provider of service, before the Judicial Magistrate of the Ist Class within whose jurisdiction the violation is alleged to have taken place.

(d) On receipt of a complaint from the Inspector, the Court may initiate proceedings against the person accused of violation of the prohibition.

(e) On filing of a complaint before the Court, the Inspector shall furnish a copy of the same to the Assistant Public Prosecutor in charge of the cases before the Court and the Assistant Public Prosecutor shall prosecute the same and the Inspector shall assist him in conducting the prosecution as directed by the Assistant Public Prosecutor.

(f) The Inspector may send half yearly reports to the Commissioner giving briefly the details of the actions taken by him especially the details of the violations detected by him, if any, and the details of the complaints filed by him and the result thereof .

(g) The Court while passing a sentence of fine may direct payment of not more than 25% of the fine collected from the convicted person to the Inspector who has detected the offence and filed the complaint.

9. *Inspectors to assist the Commissioner and to perform the duties entrusted to them—* The Inspectors shall function under the Commissioner and shall perform all the duties assigned to them by the Commissioner with due diligence.

11. *Basic principle to be followed while fixing the maximum price.*—When fixing the maximum price of any commodity or service, the primary perspective shall be the fact that the social justice and socialist economy are basic features of public price fixation.

12. *Other matters to be taken into consideration by the Commissioner while fixing the maximum price*—(1) The Commissioner while fixing the maximum value of a commodity shall take note of all material and relevant facts and circumstances which may aid and assist him to arrive at a fair and reasonable value of the Commodity concerned; such as the following:

(a) the cost of production of the commodity and preservation of the same in the condition in which it is offered for sale.

(b) the charges for conveyance from the place of production to the place where it is offered for sale.

(c) tax, fees and other charges imposed by Government, Central or State or any other local authority on the commodity at or before it is offered for sale.

(d) the maximum price for which the commodity was sold two successive years before the date of enquiry by the Commissioner.

(e) is the Commodity one mainly bought by consumers belonging to below poverty line or having low income.

(f) facts and circumstances brought out by producers and dealers of the commodities or their representative bodies.

(g) facts and circumstances brought out by the consumers or their representative bodies or the local bodies.

(2) While fixing the maximum price of any essential service, the Commissioner shall take note of all material and relevant facts and circumstances which may aid and assist him to arrive at a fair and reasonable price of the essential services concerned such as the following:

- (a) if the provider of service is a member of any association, organization, institution or union, then, the price declared by such representative bodies,
- (b) the relevant facts and circumstances if any brought to the notice of the Commissioner by any consumer, consumers or any forum or association of consumers.

13. *The limit of maximum price.*—The maximum price fixed by the Commissioner for any commodity or service shall not exceed the maximum price of any such essential commodity or service two years prior to the date of fixation of the maximum price by the Commissioner.

14. *Commissioner's power to revise the maximum value or price inappropriate cases.*—

(a) The Commissioner may on an application filed by any person interested; revise the maximum value or cost fixed and refix the same after the expiry of a minimum period of two years increasing or decreasing the same for justifiable reasons to be recorded in the order refixing the value or price.

(b) If any person is aggrieved by the order refixing the maximum value or price the order can be challenged before the High Court and a Division Bench of the High Court shall hear and dispose of the petition and the order passed by the Division Bench shall be final.

15. *Government and local bodies to encourage consumers of Essential Commodities and service to form Associations*—Government and local bodies may persuade the consumers generally and especially through Residential Associations to form consumer forums to act vigilantly to control prices of essential commodities and services by implementing the provisions of this Act.

16. *Overriding effect of the provisions in the Act.*—Notwithstanding anything contained in any other law for the time being in force the provisions in this Act shall have full force and effect as far as the fixation and implementation of the maximum price and cost of essential commodities and services are concerned.

17. *Rule making power.*—(1) The Government may frame Rules by publishing in the Gazette for implementing the provisions of this Act.

(2) Every rule under this Act shall be laid as soon as may be after it is made or issued before the legislative assembly for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session to which it is so laid or the session immediately following, the legislative assembly makes any modification in the rule or decided that the rule should not be made

or issued, 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 modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

Statement of Objects and Reasons

There has been abnormal price increase in essential commodities such as rice, wheat and other consumable goods which are essential to support life on this planet. Likewise, there are many services rendered by a plethora of persons and bodies which are essential for a proper living. The persons who suffer most are those below the poverty line and to some extent, the lower and upper middle class people whose income is more or less fixed. To them, spiraling prices make life extremely difficult to make both ends meet. The Bill seeks to fix the maximum price for essential commodities and to create a machinery to lay down the maximum price of such commodities and enforce the distribution of essential commodities at reasonable prices.