

THE UNREGISTERED CASHEWNUT FACTORIES PROHIBITION ACT, 1967¹

(Act 11 of 1967)

An Act to prohibit the working of unregistered cashewnut factories in the State of Kerala.

Preamble.-WHEREAS it is expedient to prohibit the working of un-registered cashewnut factories in the State of Kerala;

BE it enacted in the Eighteenth Year of the Republic of India s follows:-

1. Short title and extent.-(1) This Act may be called the Unregistered Cashewnut Factories Prohibition Act, 1967.

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

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

(a)"Factories Act" means the Factories Act, 1948 (Central Act 63 of 1948);

(b) "Inspector" means an Inspector appointed or deemed to be appointed under section 3;

(c) "Prescribed" means prescribed by rules made under this Act;

(d) "Processing:", with reference to cashewnuts, includes extraction of cashewnut oil and, roasting, shelling, peeling, granding and treating of cashewnuts;

(e) "unregistered cashewnut factory" means a factory wherein processing of cashewnuts is being carried on, which has not been registered and licensed in pursuance of the rules made under the Factories Act;

(f) words and expressions used but not defined in this Act and defined in the Factories Act, shall have the meanings respectively assigned to them in that Act.

3. Inspectors.-(1)The Government may, by notification in the Gazette, appoint such persons as they think fit to be Inspectors for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(2) An Inspector appointed under sub-section (1) of section 8 of the Factories Act shall be deemed to be an Inspector for the purposes of this Act within the local limits assigned to him under the Factories Act, unless and until another person is appointed to be an Inspector for the purposes of this Act with jurisdiction within the said local limits.

4. Prohibition of processing of cashewnuts in unregistered factories.-No person shall process any cashewnut in an unregistered cashewnut factory.

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.
7. Offences by companies.-(1) Where an offence under this Act has been committed by a company, every person who at the time the offence 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 offence 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 offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where any 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 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.
8. Forfeiture of cashewnuts, tc.-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.

9. Cognizance of offences.-(1) No court shall take cognizance of any offence punishable under this Act except upon complaint made by an Inspector.
 - (2) No court below the rank of a Magistrate of the First Class shall try any offence punishable under this Act.
10. Protection of action taken in good faith.-(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any of the provisions of this Act or any rule or order made thereunder.
 - (2) No suit or other legal proceedings 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 of the provisions of this Act or any rule or order made thereunder.
11. Inspectors to be public servants.-Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act 45 of 1860).
12. Power to make rules.-(1) The Government may 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 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 in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or the Legislative Assembly agrees 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.
13. Repeal and saving.-(1) The unregistered Cashewnut Factories Prohibition Ordinance, 1967 (5 of 1967), 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 had commenced on the 15th day of June, 1967.

ACT 4 OF 2009

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

An Act 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 cashewnuts seized.*- (1) Notwithstanding anything contained in any other provisions of this Act, where 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 cashewnuts are seized, and whether or not a prosecution is instituted for the contravention of the provisions of this Act, in respect of such cashewnut, 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 cashewnuts under sub-section (1), is of the opinion that the 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 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 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 cashewnuts and certified by the Magistrate, as primary evidence in respect of such offence.

(6) Where any 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 cashewnuts if no prosecution is instituted.

(7) No order for sale of 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 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.