

Bill No. 112 of 2009

THE ESSENTIAL COMMODITIES (AMENDMENT AND VALIDATION)
BILL, 2009

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further to amend the Essential Commodities Act, 1955 and to make provisions for validation of certain orders issued by the Central Government determining the price of levy sugar and actions taken under those orders and for matters connected therewith.

WHEREAS a Bench of three Judges of the Hon'ble Supreme Court in the case of Modi Industries Ltd. and Another *versus* Union of India and Others on the 20th February, 1996 reported in (1999) 9 SCC 245, accepted the statement made on behalf of the Union of India that while determining the minimum cane price of levy sugar, regard had been given only to the minimum cane price referred to in section 3(3C) of the Essential Commodities Act, 1955 and that the additional cane price payable under clause 5A of the Sugarcane (Control) Order, 1966 had not been taken into account and held that the case was not covered by the decision of the Supreme Court dated 22-9-1993 in Shri Malaprabha Coop. Sugar Factory Ltd. *versus* Union of India [(1994) 1 SCC 648 Malaprabha (1)];

AND WHEREAS subsequently the decision of a Bench of three Judges of the Supreme Court dated 28-1-1997 in the case of Shri Malaprabha Coop. Sugar Factory Ltd. *versus* Union of India (Malaprabha 2) (1997) 10 SCC 216 held that the decision in Modi Industries' case did not have any bearing on the fixation of price of levy sugar for the year 1975-1976 to 1979-1980;

AND WHEREAS the decision of the Bench of three Judges in Modi Industries Ltd. and Another *versus* Union of India and others was followed in the case of Bharat Sugar Mills Ltd. and another *versus* Union of India, (decided on 19th August, 1998) after noticing the judgments in Shri Malaprabha Coop. Sugar Factory Ltd. (Malaprabha 1) and Shri Malaprabha Coop. Sugar Factory Ltd. [(Malaprabha 2)];

AND WHEREAS in the case of Union of India and Others *versus* Triveni Engineering Works Ltd. (1999) 9 SCC 244, by judgment dated 2-2-1999, the appeal of the Union of India was allowed relying upon the decision in Modi Industries Ltd. and the decision of the Bench of two Judges of the Supreme Court in Bharat Sugar Mills Ltd.;

AND WHEREAS in Shri Malaprabha Coop. Sugar Factory Ltd. *Versus* Union of India, [(2002) 9 SCC 716] (Malaprabha 3) Contempt Petitions filed against the Union of India for alleged non-compliance with the decision in Malaprabha 1 and Malaprabha 2, were dismissed by order dated 16-11-2000 and the working statement given before the Hon'ble Court showed that the retention of fifty per cent. being a factor which can be taken into consideration in determining element (d) in section 3(3C) of the Essential Commodities Act was taken into account, not to the extent as desired by the petitioners, but the result of this was that the levy price fixed at Rs 163.780 in respect of West U.P. had gone up to Rs. 172.430, the Hon'ble Supreme Court held that "the said fixation is in accordance with law and the directions given by this Court have been complied with. Neither a case for contempt has been made out nor is there any justification, in our opinion, for giving any direction to the Government to re-fix the levy price under section 3(3C) of the Essential Commodities Act.";

AND WHEREAS notwithstanding the judgment in the Modi Industries case, the Bharat Sugar Mills case, and the Triveni Engineering Works Ltd. case and the judgment of a Bench of three Judges of the Hon'ble Supreme Court in Shri Malaprabha Coop. Sugar Factory Ltd. (Malaprabha 3), a Bench of two Judges of the Hon'ble Supreme Court in Mahalakhmi Sugar Mills Coop. Ltd. and Anr. *Versus* Union of India and Others (2008) 6 SCALE 275, in a judgment dated 31st March, 2008, in relation to sugar seasons 1983-1984 and 1984-1985, held that the actual price payable to cane growers was absolutely relevant for determining the price of levy sugar;

AND WHEREAS there are thus conflicting decisions as to the factors to be taken into consideration in determining the price of levy sugar;

AND WHEREAS it has become necessary to make suitable amendments to the Essential Commodities Act, 1955 to clarify and reiterate the underlying principles and the factors that needed to be taken into consideration in determining the price of levy sugar and to give effect accordingly;

AND WHEREAS in order to remove doubts and ambiguities it has become necessary to make such provisions with retrospective effect to validate the determination of the price of levy sugar by the Central Government from time to time pursuant to the provisions of the Essential Commodities Act, 1955.

10 of 1955.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Essential Commodities (Amendment and Validation) Act, 2009.

(2) It shall be deemed to have come into force on the 21st day of October, 2009.

Amendment of section 3.

2. In section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act)—

10 of 1955.

(a) in sub-section (3C), the existing *Explanation* shall be numbered as *Explanation I*, and after *Explanation I* as so numbered, the following *Explanation* shall be inserted and shall be deemed to have been inserted, with effect from the 1st day of October, 1974, namely:—

***‘Explanation II.*—For the removal of doubts, it is hereby declared that the expressions “minimum price” referred to in clause (a), “manufacturing cost of sugar” referred to in clause (b) and “reasonable return on the capital employed” referred to in clause (d) exclude the additional price of sugarcane paid or payable under clause 5A of the Sugarcane (Control) Order, 1966 and**

any price paid or payable under any order or enactment of any State Government and any price agreed to between the producer and the grower of sugarcane or a sugarcane growers' co-operative society.';

(b) for sub-section (3C) and the *Explanations* thereunder, the following shall be substituted, and shall be deemed to have been substituted, on and from the 1st day of October, 2009, namely:—

'(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons) whether a notification was issued under sub-section (3A) or otherwise, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer only such amount as the Central Government may, by order, determine, having regard to—

(a) the fair and remunerative price, if any, determined by the Central Government as the price of sugarcane to be taken into account under this section;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) a reasonable return on the capital employed in the business of manufacturing of sugar:

Provided that the Central Government may determine different prices, from time to time, for different areas or factories or varieties of sugar:

Provided further that where any provisional determination of price of levy sugar has been done in respect of sugar produced up to the sugar season 2008-2009, the final determination of price may be undertaken in accordance with the provisions of this sub-section as it stood immediately before the 1st day of October, 2009.

Explanation.— For the purposes of this sub-section,—

(a) "fair and remunerative price" means the price of sugarcane determined by the Central Government under this section;

(b) "manufacturing cost of sugar" means the net cost incurred on conversion of sugarcane into sugar including net cost of transportation of sugarcane from the purchase centre to the factory gate, to the extent it is borne by the producer;

(c) "producer" means a person carrying on the business of manufacturing sugar;

(d) "reasonable return on the capital employed" means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section.'.

3. (1) Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

(a) all things done or all actions taken by the Central Government under the specified orders shall be deemed to be and deemed to have always been done or taken in accordance with law;

(b) no suit, claim or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority for the payment or adjustment of any payment in relation to the determination of price of levy sugar under any specified order;

Validation of action taken, etc., under specified orders issued under sub-section (3C) of section 3 of the principal Act.

(c) no court shall enforce any decree or order directing any payment in relation to the determination of price of levy sugar under any specified order;

(d) no claim or challenge shall be made in, or entertained by any court, tribunal or other authority on the ground that the Central Government did not take into consideration any of the factors specified in sub-section (3C) of section 3 of the principal Act in the determination of price of levy sugar under any specified order.

(2) In this section, “specified order” means any order relating to the determination of price of sugar issued under sub-section (3C) of section 3 of the principal Act before the 21st day of October, 2009, in relation to sugar produced in any sugar season up to and including the sugar season 2008-2009.

Ord. 9 of
2009.

4. (1) The Essential Commodities (Amendment and Validation) Ordinance, 2009, is hereby repealed.

Repeal and
saving.

Ord. 9 of
2009.

(2) Notwithstanding the repeal of the Essential Commodities (Amendment and Validation) Ordinance, 2009, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall, subject to the provisions contained in sub-section (3), be deemed to have been done or taken under the principal Act, as amended by this Act.

(3) Nothing contained in sub-section (2) shall apply to clause 3B of the Sugarcane (Control) Order, 1966, as inserted by the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution Order number S.O. 266 (E)/Ess Com./Sugarcane dated the 22nd October, 2009 or any thing done or any action taken thereunder.

STATEMENT OF OBJECTS AND REASONS

Sugar and sugarcane are essential commodities under the Essential Commodities Act, 1955. Under the system of partial control on sugar, a part of the sugar produced by sugar mills is requisitioned as levy sugar and the balance is allowed to be sold as non-levy (free sale) sugar in the open market. While price of non-levy sugar is determined by the market forces, the price of levy sugar is determined by the Central Government under the provisions of sub-section (3C) of section 3 of the Essential Commodities Act, 1955, having regard to—

(a) the minimum price, if any, fixed for sugarcane by the Central Government;

(b) the manufacturing cost of sugar;

(c) the duty or tax, if any, paid or payable thereon; and

(d) the securing of a reasonable return on the capital employed in the business of manufacturing of sugar.

2. A new clause 5A was inserted in the Sugarcane (Control) Order, 1966, with effect from the 1st day of October, 1974, providing for additional cane price to the cane growers as fifty per cent. share of the excess realisation from sale of sugar after the working results of the sugar factory become known.

3. The methodology regarding determination of price of levy sugar by the Central Government has been under continuous litigation in various courts. The Hon'ble Supreme Court in its two judgments on levy sugar prices delivered on the 22nd September, 1993 in C.A. Nos. 122-123 of 1981 (Malaprabha-I) and on the 28th January, 1997 also in C.A. Nos. 122-123 of 1981 (Malaprabha-II) directed the Central Government to amend the notifications taking into account the liability of the manufacturers under clause 5A of the Sugarcane (Control) Order, 1966 as regards cane price and re-fix the price of levy sugar for the years 1974-75 to 1979-80 having regard to the factors mentioned in sub-section (3C) of section 3 of the Essential Commodities Act, 1955. The Hon'ble Supreme Court also in its Order dated the 28th January, 1997 (*supra*) clarified that the liability of additional price of sugarcane under clause 5A of the Sugarcane (Control) Order, 1966 would get reflected in factors (a) or (b) or both of sub-section (3C) of the aforesaid section 3. The Hon'ble Supreme Court further held that mopping up of extra realisation is an element of factor (d) of sub-section (3C) of section 3 of the Essential Commodities Act, 1955.

4. The Hon'ble Supreme Court, in *Modi Industries Ltd. and Anr. vs. Union of India and Ors.* [T.C. (Civil) No.9/1990] on the 20th February, 1996 upheld the determination of price of levy sugar in respect of the sugar season 1982-1983 by taking note of the statement made by the Central Government in its additional affidavit that while determining the price of levy sugar regard had been taken only to the minimum cane price as spoken to in section 3(3C)(a) of the Essential Commodities Act, 1955 and the additional cane price payable under clause 5A of the Sugarcane (Control) Order, 1966 had not been taken into account and that also there had been no mopping up of excess realisation on free sale sugar while fixing the price of levy sugar for the season 1982-83. The Hon'ble Supreme Court was satisfied that this matter is not covered by the decision of the Supreme Court in *Shri Malaprabha Co-operative Sugar Factory Ltd. vs. Union of India and Another* [1994 (1) SCC 648]. Subsequently, in the case of *Bharat Sugar Mills Ltd. and Another vs. Union of India and Others* [T.C.(Civil) Nos. 15-17/1993] the Hon'ble Supreme Court held on the 19th August, 1998 that the price of levy sugar fixed for the sugar season 1982-83 was not covered by the decision of the Supreme Court in *Shri Malaprabha Co-operative Sugar Factory Ltd. vs. Union of India* and that the decision in the *Modi Industries case* [T.C. (Civil) No. 9 of 1990] is directly applicable to the set of transferred cases which also deal with the sugar price fixed for the season 1982-83. In

the case of Union of India and Others vs. Triveni Engineering Works Ltd. and Others [(1999(9) SCC 244] on the 2nd February, 1999, the Hon'ble Supreme Court again held that the price of levy sugar for the year 1982-83 has already been upheld in its earlier three decisions. The Central Government has consistently followed the methodology upheld by these judgments of the Supreme Court for determination of prices of levy sugar from the year 1980-81 onwards.

5. The Hon'ble Supreme Court in Mahalakshmi Sugar Mills Company Ltd. and Another vs. Union of India and Others [2008 (6) Scale 275] by its judgment dated the 31st March, 2008 has considered the scope and ambit of sub-section (3C) of section 3 of the Essential Commodities Act, 1955 and construed in relation to the sugar seasons 1983-1984 and 1984-1985 that both the additional price paid to the cane growers in terms of clause 5A of the Sugarcane (Control) Order, 1966 made under the said Act and the State Advised Price (SAP) or actual price of sugarcane paid should be factored in the computation of price of levy sugar. The Hon'ble Supreme Court while laying down the law for the future in its judgment dated the 31st March, 2008 also ordered for re-fixation of prices of levy sugar for the sugar years 1983-84 and 1984-85. Following the issues settled in the case of Mahalakshmi Sugar Mills Company Ltd., the Hon'ble Supreme Court in a later Order dated the 8th July, 2008 upheld the judgment of the Delhi High Court in the case of Saraswati Industrial Syndicate [LPA No. 1053/2007] directing the Central Government to re-fix the prices of levy sugar for the sugar years 1980-81 to 2000 - 2001(except for the year 1982-83).

6. Thus, due to the ambiguities in the existing law pertaining to determination of price of levy sugar, there have been conflicting decisions as to the factors to be taken into consideration in determining the price of levy sugar. It, therefore, became absolutely necessary to amend the Essential Commodities Act, 1955 to remove the defects and ambiguities in the law pertaining to determination of price of levy sugar thereby clarifying the expressions of cost components of levy sugar mentioned in sub-section (3C) of section 3 of the Essential Commodities Act, 1955. Further, since the re-fixation of prices of levy sugar for the years since 1980-81 would have led to controversy and confusion regarding the benefit of such re-fixation to various sugar mills with potential for huge unbudgeted financial burden on the Central Exchequer, it also became necessary to validate the actions of the Central Government taken since the 1st day of October, 1974 [that is the date of insertion of clause 5A in the Sugarcane (Control) Order, 1966] under the orders issued for determination of price of levy sugar under sub-section (3C) of section 3 of the Essential Commodities Act, 1955.

7. Having regard to the above, it is considered necessary to replace the concept of 'Minimum Price' of sugarcane with 'Fair and Remunerative Price' (FRP) of sugarcane by giving a reasonable margin to the farmers of sugarcane on account of 'risk' and 'profit' and, therefore, section 3 of the Essential Commodities Act, 1955 had to be amended to provide in clause (a) of sub-section (3C) thereof, the fair and remunerative price. Fixation of Fair and Remunerative Price not only meant giving higher price to the farmers for their sugarcane than the statutory minimum price fixed previously, but also ensured that a fair and remunerative price for sugarcane is fixed by the Central Government.

8. The sugar season 2009-2010 had already commenced on the 1st October, 2009 and, therefore, to achieve the above purposes immediately, the Essential Commodities (Amendment and Validation) Ordinance, 2009 (Ord. 9 of 2009) was promulgated by the President on the 21st October, 2009.

9. The Bill seeks to replace the aforesaid Ordinance.

SHARAD PAWAR.

NEW DELHI;
The 24th November, 2009.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION
OF INDIA

[Copy of letter No. 3-4/2009-SP.II from Shri Sharad Pawar, Minister of Agriculture,
Consumer Affairs, Food and Public Distribution to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Essential
Commodities (Amendment and Validation) Bill, 2009, recommends introduction of the Bill in
Lok Sabha under article 117(1) of the Constitution and the consideration of the Bill under
article 117 (3) of the Constitution.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to amend section 3 of the Essential Commodities Act, 1955. Sub-clause (a) seeks to insert an *Explanation* in the said sub-section with effect from the 1st day of October, 1974 whereas sub-clause (b) seeks to substitute sub-section (3C) of section 3 of the Act on and from the 1st day of October, 2009. The proposed sub-section (3C) of section 3 of the Act provides that when sugar is sold to the Central Government or to a State Government or to an officer or agent of such Government or to any other person or class of persons, the producer has to be paid the price therefor in accordance with the provisions of that sub-section. Although, the provision empowers the Central Government for procurement of sugar from the factories, yet, in practice, the sugar factories will be directed to sell sugar to the State Governments or their nominees or other purchasing organisations authorised in the matter. The quantum of sugar that may be levied also vary from season to season and also may depend on the production and stock position. Hence, it is not practicable to estimate the recurring expenditure involved from the Consolidated Fund of India at this stage. No non-recurring expenditure is likely to be incurred.

2. The Bill does not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill seeks to amend section 3 of the Essential Commodities Act, 1955 so as to empower the Central Government to determine, from time to time, the price of sugar which may be paid to a producer of sugar who is required to sell any kind of sugar by an order with reference to clause (f) of sub-section (2) of section 3 of the aforesaid Act. The factors which are to be taken into consideration for the determination of price of levy sugar have been incorporated in the proposed provision. The determination of price of levy sugar under the said clause 2 is a matter of procedure and administrative detail and it is not practicable to provide for the same in the Bill itself.

2. The delegation of legislative power is, therefore, of a normal character.

*Memorandum explaining the modifications contained in the Bill to replace the
Essential Commodities (Amendment and Validation) Ordinance, 2009*

The Essential Commodities (Amendment and Validation) Bill, 2009 which seeks to repeal and replace the Essential Commodities (Amendment and Validation) Ordinance, 2009 modifies, apart from modifications of a drafting or consequential nature in the provisions of the Bill, the preamble to the Ordinance by a new preamble so as to make the intention more clear.

It is also proposed *vide* sub-clause (3) of clause 4 of the Bill that the provisions of clause 3B of the Sugarcane (Control) Order, 1966 shall not be saved and the saving clause contained in sub-clause (2) of clause 4 shall not apply.

ANNEXURE

EXTRACT FROM THE ESSENTIAL COMMODITIES ACT, 1955

(10 OF 1955)

* * * * *

3. (1) * * * *

* Powers to control production, supply, distribution, etc., of essential commodities.

(3C) Where any producer is required by an order made with reference to clause (f) of sub-section (2) to sell any kind of sugar (whether to the Central Government or a State Government or to an officer or agent of such Government or to any other person or class of persons) and either no notification in respect of such sugar has been issued under sub-section (3A) or any such notification, having been issued, has ceased to remain in force by efflux of time, then, notwithstanding anything contained in sub-section (3), there shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to—

- (a) the minimum price, if any, fixed for sugarcane by the Central Government under this section;
- (b) the manufacturing cost of sugar;
- (c) the duty or tax, if any, paid or payable thereon; and
- (d) the securing of a reasonable return on the capital employed in the business of manufacturing sugar,

and different prices may be determined from time to time for different areas or for different factories or for different kinds of sugar.

Explanation.—For the purposes of this sub-section, “producer” means a person carrying on the business of manufacturing sugar.

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further to amend the Essential Commodities Act, 1955 and to make provisions for validation of certain orders issued by the Central Government determining the price of levy sugar and actions taken under those orders and for matters connected therewith.

*(Shri Sharad Pawar, Minister of Agriculture, Consumer Affairs, Food and
Public Distribution)*

GMGIPMRND—4814LS(S5)—26-11-2009.