

ORISSA ACT 27 OF 1984

**THE ORISSA AGRICULTURAL PRODUCE MARKETS (AMENDMENT) ACT,
1984**

[Received the assent of the Governor on the 20th November 1984, first published in an extraordinary issue of the *Orissa Gazette*, dated the 24th November 1984.]

AN ACT TO AMEND THE ORISSA AGRICULTURAL PRODUCE MARKETS ACT, 1956

BE it enacted by the Legislature of the State of Orissa in the Thirty-fifth Year of the Republic of India, as follows :—

Short title
and commen-
cement.

1. This Act may be called the Orissa Agricultural Produce Markets (Amendment) Act, 1984.

Amendment
of Section 2.

2. In Section 2 of the Orissa Agricultural Produce Markets Act, 1956 (hereinafter referred to as the Principal Act):—

Orissa Act 1
of 1957.

(i) In sub-section (1),—

(a) for clauses (i) and (ii), the following clauses shall be substituted, namely :—

“(i) “Agricultural Produce” means such produce (whether processed or not) of agriculture, forest, animal husbandry, agriculture, horticulture and pisciculture as are specified in the Schedule;

(ii) “Agriculturist” means a person who ordinarily, by his own labour or by the labour of any member of his family or who, by the labour of his tenants, servants, hired labourer or otherwise, is engaged in the production or growth of agricultural produce which has not been processed, but does not include a trader, commission agent, processor or broker in or in relation to agricultural produce although such trader, commission agent, processor or broker may also be engaged in the production or growth of agricultural produce;

(ii-a) "Board" means the Orissa State Agricultural Marketing Board established under Section 18-A of the Act;";

(b) for clause (iv), the following clause shall be substituted, namely :—

"(iv) "Director" means the person appointed as Director of Agricultural Marketing for the State of Orissa and includes a Joint Director, Deputy Director and any other Officers appointed by the State Government for the purposes of the Act;";

(c) clause (v) shall be deleted;

(d) for clauses (vi) and (vii), the following clauses shall be substituted, namely :—

"(vi) "Market" means a market declared as such under Sub-section (5) of Section 4 and includes market yard;

(vii) "Market area" means any area declared as such under Sub-section (1) of Section 4;";

(e) after clause (viii), the following new clause shall be inserted, namely:—

"(viii-a) "market functionary" includes a broker, commission agent, exporter, processor, stockist, trader, vehicle owner and such other persons as may be declared under the rules or bye-laws to be a market functionary;";

(f) for clause (ix), the following clause shall be substituted, namely:—

"(ix) "market yard" means any enclosure, building or locality in any market area declared as market yard under Sub-section (5) of Section 4;";

(g) in clause (x) the word "Council" shall be deleted;

(h) for clause (xii) the following clause shall be substituted, namely:—

xii) "retail sale" in relation to any agricultural produce means the sale of that produce not exceeding such quantity as may be prescribed:

Provided that the sale of cattle, sheep or goat shall not be considered for the purpose of determining any retail sale;";

(i) after clause (xii), the following new clauses shall be inserted, namely:—

"(xiii) "Trader" means a person who buys or sells agricultural produce as a principal or as a duly authorised agent of any person;

(xiv) "Warehouse" means any building, structure or other protected enclosure which is or may be used for the purpose of storing agricultural produce being goods on behalf of depositors, but does not include cloak rooms attached to hotels, railway stations, the premises of other public carriers and the like;";

(ii) in sub-section (2), for the words "decision of the State Government on such question" the words "decision of the Board on such question" shall be substituted.

Amendment
of Section 4.

3. In Section 4 of the principal Act, for Sub-sections (3), (4), (5) and (6), the following Sub-sections shall be substituted, namely:—

"(3) On and from the date of notification issued under sub-section (1) or such later date as may be specified therein, no local authority or person shall, notwithstanding anything contained in any other law for the time being in force, set up, establish or continue or allow to be set up, established or continued any place for the purpose

of sale and purchase of any agricultural produce within the market area or within a distance thereof to be notified in the Gazette in this behalf in each case by the State Government:

Provided that the State Government may, subject to such terms and conditions as they may impose, permit the continuation of any place in the market area for the marketing of any agricultural produce as aforesaid for such period not being later than the date of declaration of market yard within the market area, as they may specify.

(4) Notwithstanding anything to the contrary contained in any law for the time being in force, the Market Committee may, after a notification issued under sub-section (1), by requisition, require any Municipality or Grama Panchayat to transfer to it any land or building in possession of such Municipality or Grama Panchayat wholly or partly situated within the concerned market area which immediately before the establishment of the market was being used by such Municipality or Grama Panchayat for similar purpose, and the Municipality or Grama Panchayat, as the case may be, shall, within one month from the date of receipt of the requisition, transfer the land or building or both, as specified in the requisition to the Market Committee and the net income derived therefrom by the Market Committee under Section 11 shall be shared equally by the Market Committee and the concerned Municipality or Grama Panchayat, every year :

Provided that the share of the Municipality or Grama Panchayat in any one year shall not be less than eighty per cent of the average net income derived by it from land or building or both so transferred during the three years immediately preceding the transfer.

Explanation—For the purpose of determining the net income, the expenditure on establishment, stationery and cost of maintenance on construction or forty per cent of the gross income, whichever is less, shall be deducted from the gross income.

(5) After the issue of the notification under sub-section (1), the State Government shall, as soon as possible on the recommendation of the Director, declare by notification, market yards and markets in the market area specifying the area over which each market shall extend around the respective market yard.

(6) Subject to the provisions of this section and of the rules regulating the marketing of agricultural produce at any place in the market area, no person shall, on and after the date on which the declaration is made under sub-section (5), without or otherwise than in conformity with the terms and conditions of a licence granted by—

- (a) the Director, when a Market Committee has not been constituted or has not started functioning, or
- (b) the Market Committee, in any other case,
 - (i) use any place in the market area for the marketing of agricultural produce specified in the said declaration, or
 - (ii) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor or warehouse-man or in any other capacity in relation to the marketing of such agricultural produce :

Provided that when any agricultural produce brought into any market area for the purpose of processing only, or for export, is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been brought into the market area for buying or selling.

Provided further that nothing in clause (i) shall apply to the retail sale by an agriculturist of his own produce, or to sale by a person not being a trader or agriculturist, where such person himself sells to another who buys for his personal consumption or his family.

(7) Subject to the provisions of Section 3, the State Government may, at any time by notification, exclude from a market area, any area comprised therein or any agricultural produce in relation to such market area, or include in any market area, any area or any agricultural produce included in a notification issued under Section 3."

Amendment
of Section 6.

4. In Section 6 of the principal Act,—

for sub-sections (1) and (2), the following sub-sections shall be substituted, namely :—

“(1) Every Market Committee shall be constituted in the manner prescribed and shall consist of seventeen members, of whom,—

- (i) four shall be persons elected by the licensed traders from among themselves;
- (ii) eight shall be persons elected by organisation of agriculturists in the market area recognised by the State Government for the purpose and where no such organisation exists, they shall be nominated by the Collector of the district;
- (iii) two shall be persons elected by the local authorities within whose limits the market area is situated, of whom—
 - (a) one shall be elected by the councillors of the Municipality, and
 - (b) the other shall be elected by the members of the Grama Panchayat:

Provided that where the market area comprises areas included within more than one Municipality or, as the case may be, Grama, such member shall be elected by the councillors of the Municipalities or, as the case may be, members of the Grama Panchayats, concerned, in the prescribed manner:

Provided further that where the market area is only within the limits of a Municipality or Municipalities or, as the case may be, of a Grama Panchayat or Grama Panchayats both such members shall be elected by the councillors of the Municipality or Municipalities or, as the case may be, by the members of the Grama Panchayat or Grama Panchayats, concerned, in the prescribed manner:

Provided also that a person to whom a license has been granted under sub-section (6) of Section 4 shall not be eligible for being elected under this clause.

- (iv) the remaining members shall be persons nominated by the State Government of whom one shall be a person from amongst the members of the local co-operative organisations; and the Collector of the district or such other Revenue Officer as the State Government may deem proper, to nominate.

(2) Notwithstanding any thing contained in sub-section (1)—

- (a) On the failure of the licensed traders, any organisation or authority to elect a member under sub-section (1) within a period of three months from the date of the occurrence of the vacancy, the State Government shall give notice in writing to the licensed traders, organisation or authority concerned to elect a member within a month from the date of such notice and on the failure of the said traders, organisation or authority again to elect a member within the said period, the State Government shall nominate a person on behalf of such traders, organisation or authority as a member of the Market Committee; and
- (b) when a Market Committee is constituted for the first time, all the members of the Market Committee shall be persons nominated by the State Government.”;
- (ii) in sub-section (4), for the word, brackets and figure “sub-section (3)” the word, brackets and figure “sub-section (6)” shall be substituted.

Amendment
of Section 9.

5. In Section 9 of the principal Act, after sub-section (2), the following new sub-section shall be inserted, namely:—

“(3) The Chairman, Vice-Chairman, the Secretary and other officers and servants of the Board and Market Committee shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.”.

Amendment
of Section
11.

6. In the principal Act, or Section 11, the following Section shall be substituted, namely:—

"11. It shall be competent for a Market Committee to levy and collect such fees (hereinafter referred to as the market fees) not being less than one rupee from every purchaser for every hundred rupees worth of agricultural produce marketed in the market area in such manner as may be prescribed and at such rate as may be specified in the bye-laws :

Provided that the rate of fees to be specified in the bye-laws shall not exceed three per cent of the value of agricultural produce sold in the markets within the market area :

Provided further that no such fees shall be levied and collected in the same market area in relation to any agricultural produce in respect of which fees under this section have already been levied and collected therein."

Explanation—For the purpose of this section all notified agricultural produce leaving a market yard shall unless the contrary is proved, be presumed to have been bought within such yard by the person in possession of such produce.

Amendment
of Section
12.

"Power of
search
seizure and
inspection
etc.

7. In the principal Act, for Section 12 including the marginal heading, the following section and the marginal heading shall be substituted, namely:—

12. (1) The Chairman, Secretary or any other officer or servant of the Market Committee duly authorised by it in this behalf may, for the purposes of this Act, require any person carrying on business in any kind of notified agricultural produce to produce before him the accounts and other documents and to furnish any information relating to the stocks of such agricultural produce or purchase, sale and delivery of such agricultural produce by such person and also any other information relating to payment of market fees by such person.

(2) All accounts and registers maintained by any person in the ordinary course of business in respect of any notified agricultural produce and documents relating to stock of such agricultural produce or purchase, sale and delivery of such produce in his possession and the office, establishment, godown, vessels or vehicles of such person shall be open to inspection at all reasonable times to the officers or servants referred to in sub-section (1) duly authorised by the Market Committee in this behalf.

(3) If any officer or servant of the Market Committee authorised under sub-section (2) has reason to suspect that any person is attempting to evade payment of any market fees due from him under Section 11, or that any person has purchased or sold any agricultural produce in contravention of any of the provisions of the Act or the rules, or the bye-laws in force in the market area, he may, after recording reasons therefor in writing, seize any books of account, registers or documents of such person as may be necessary on issue of proper receipt therefor and shall retain the same only so long as they are necessary for examination thereof or for prosecution.

(4) For the purposes of sub-sections (2) and (3) the officers and servants authorised thereunder shall have powers to enter into and search any place of business, warehouse, office, establishment, godown, vessel or vehicle where such officer or servant has reason to believe that such person keeps or for the time being keeps any accounts, registers or documents of his business, or stocks of agricultural Produce relating to his business.

(5) The provisions of Section 100 of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to a search under sub-section (4). 2 of 1974

(6) Where any books of account or other documents are seized from any place and there are entries therein making reference to quantity, quotations, rates, receipt or payment of money or sale or purchase of goods, such books of account or other documents shall be admitted in evidence without witness having to appear to prove the same and such entries shall be *prima facie* evidence of the matters, transactions and accounts purported to be therein recorded.

(7) At any time when required by the Chairman, Secretary or any other officer or servant duly empowered by the Market Committee in this behalf, the driver or any other person in charge of any vehicle, vessel or other conveyance, which is taken or proposed to be taken out of the market area, shall stop the vehicle, vessel or other conveyance, as the case may be, and keep it stationary so long as may reasonably be necessary, and allow such officer or servant to examine the contents

in the vehicle, vessel or other conveyance and inspect all records relating to the notified agricultural produce carried and give name and address of his own and those of the owner of the vehicle, vessel or other conveyance and of the owner of the notified agricultural produce carried in such vehicle, vessel or other conveyance.

(8) The officer or servant of the Market Committee empowered under sub-section (7) shall have power to seize any notified agricultural produce taken or proposed to be taken out of the market area in any vehicle, vessel or other conveyance, if such officer or servant has reason to believe that any fee or other amount due under this Act in respect of such produce has not been paid and such seizure shall forthwith be reported by the officer or servant aforesaid to a Magistrate having jurisdiction to try the offence under this Act and the provisions of sections 457, 458 and 459 of the Code of Criminal Procedure, 1973 shall, so far as may be, apply in relation to notified agricultural produce seized as aforesaid as they apply in relation to property seized by a Police Officer.

2 of 1974

(9) The Market Committee may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act or the rules or bye-laws, on admission, by way of composition of an offence,—

(a) where the offence consists of the failure to pay or the evasion of any fee, or other amount recoverable under this Act or the rules or the bye-laws, in addition to the fee or other amount so recoverable, a sum of money not exceeding five hundred rupees or double the amount of such fee or other amount, whichever is greater; and

(b) in other cases, a sum of money not exceeding five hundred rupees.

(10) On the composition of any offence under sub-section (9), no proceedings shall be taken or continued against the person concerned in respect of such offence, and if any proceedings in respect of that offence have already been instituted against him in any Court, the composition shall have the effect of his acquittal.”

Amendment
of Section 14.

8. In Section 14 of the principal Act, for sub-sections (2) and (3), the following sub-section shall be substituted, namely :—

“(2) The Market Committee may, for the purpose of meeting the initial expenditure on land, buildings and equipment required for establishing a market, obtain a loan from the State Government or the State Bank of India constituted under the State Bank of India Act, 1955, or any Subsidiary Bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, or a Bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or any corporate body including a company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or the State Government or partly by the Central Government and partly by the State Government.”

23 of 1955

38 of 1959

5 of 1970

1 of 1956

Insertion of
new Chapter
IV-A.

9. After Chapter IV of the principal Act, the following new Chapter shall be inserted, namely:—

“CHAPTER IV-A

CONSTITUTION AND POWERS OF THE BOARD

Establishment
of the
Board.

18-A. (1) For the purpose of exercising superintendence and control over Market Committees and for exercising such other powers and performing such functions as are conferred or entrusted under this Act, the State Government shall, by notification in the Official Gazette, establish a Board called the Orissa State Agricultural Marketing Board.

(2) The Board shall consist of the following members, namely:—

(i) Minister-in-charge of Co-operation, *Ex-officio* Chairman;

(ii) the Director of Marketing, *Ex-officio* Member-Secretary ;

(iii) the Secretary, Agriculture and Co-operation Department, Member ;

- (iv) the Secretary, Revenue Department, Member;
- (v) three non-official members to be nominated by the Government from among the members of Market Committees, by rotation;
- (vi) two members of the Orissa Legislative Assembly to be nominated by the State Government;
- (vii) two non official members to be nominated by the State Government from among the leading co-operators;
- (viii) four official members to be nominated by the State Government.

(3) The term of office of the members of the Board shall be four years.

(4) The Board shall be a body corporate by the name of the Orissa State Agricultural Marketing Board having perpetual succession and a common seal with power to acquire and hold property both movable and immovable and subject to the prescribed conditions and restrictions to lease, sell or otherwise transfer any property and may sue or be sued in its corporate name and shall, subject to the provisions of this Act, and the rules and bye-laws made thereunder, be competent to contract and do all other things as may be necessary for the purposes for which it is established.

Powers and functions of the Board.

18-B. (1) The Board shall, subject to the provisions of this Act, exercise the following powers, namely:—

- (i) superintendence and control over the working and other affairs of the Market Committees including programmes undertaken by such Committees for the development of markets and market areas;
- (ii) giving direction to Market Committees in general or any Market Committee in particular with a view to ensuring efficiency thereof;
- (iii) approval of proposals for selection of sites by a Market Committee for development of market.

(2) Without prejudice to the generality of the foregoing provisions, it shall be duty of the Board—

- (i) to supervise and guide the Market Committees in the preparation of plan and estimates of construction programme undertaken by the Market Committee;
- (ii) to execute all works chargeable to Marketing Development Fund;
- (iii) to maintain accounts in such forms as may be prescribed and get the same audited in such manner as may be laid down in the regulations of the Board;
- (iv) to publish annually at the close of the year its progress report, balance-sheet and the statement of assets and liabilities;
- (v) to make necessary arrangements for propaganda and publicity on matters related to marketing of an agricultural produce;
- (vi) to provide facilities for the training of officers and servants of Market Committees;
- (vii) to prepare and adopt budget for the ensuing year;
- (viii) to grant subventions to Market Committees for the purpose of this Act on such terms and conditions as the Board may determine;
- (ix) to do such other things as may be of general interest to Market Committees or considered necessary for the efficient functioning of the Board.

Power of the Board to make regulations.

18-C. (1) The Board may, with the previous approval of the State Government, make regulations not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Board.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely :—

- (a) the summoning and holding of meetings of the Board, the time and date when such meetings are to be held, the conduct of business at such meetings and the number of persons necessary to form a quorum thereof;
- (b) the powers and duties of the officers and servants of the Board;
- (c) the salaries and allowances and other conditions of service of officers and servants of the Board;
- (d) the management of the property of the Board;
- (e) the execution of contracts and assurances of property on behalf of the Board;
- (f) the maintenance of accounts and preparation of balance-sheet of the Board;
- (g) the procedure for carrying out the functions of the Board under the Act; and
- (h) any other matter for which provision is to be or may be made in the regulations.

Power of the Board to borrow.

18-D. The Board, subject to the provisions of this Act, may, from time to time, with the previous sanction of the State Government and subject to such conditions as the State Government may by general or special order determine, borrow any sum required for the purposes of this Act from the State Government or from any financial institution whether by issue of bond or stock.

Constitution of the Marketing Development Fund.

18-E. All moneys received by or on behalf of the Board shall constitute a fund called the Marketing Development Fund.

Proceedings not invalidated by reasons of vacancies etc.

18-F. No act done or proceedings taken under this Act by the Board or a sub-committee appointed by the Board shall be invalidated merely on the ground of—

- (a) any vacancy or defect in the constitution of the Board or any sub-committee; or
- (b) any defect or irregularity in the appointment of any person acting as a member thereof; or
- (c) any defect or irregularity in such act or proceedings not affecting the substance.

Contribution to be paid to the Board.

18-G. Every Market Committee shall, out of its funds, pay to the Board as contribution such percentage of its income derived from licence fees and market fees not less than five percent of such income as may be prescribed to meet the expenses of the establishment of the Board and also those incurred in the interest of the Market Committee.”

Amendment of Section 21.

10. In the principal Act, for Section 21, the following section shall be substituted, namely :—

“21 (1) Whoever—

- (a) in contravention of Section 4 establishes a market or use any place in the market area for marketing of any agricultural produce or operates as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity without a licence thereon conviction, be punishable with imprisonment which may extend to

six months or with fine which may extend to one thousand rupees or with both and in the case of continuing contravention, with a further fine which may in the case of contravention of sub-section (3) of the said Section extend to one-hundred rupees and in any other case to fifty rupees per day during which the contravention is continued after the first conviction;

(b) in contravention of Section 11 evades or tries to evade payment of market fees or cess or obstructs any officer or servant of a Market Committee in the exercise of his power of inspection and seizure under Section 12 shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both; and

(c) makes or recovers any trade allowance other than an allowance prescribed by rules or bye-laws made under this Act shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or with both.

(2) Whoever contravenes any provision of this Act, or the rules or bye-laws made thereunder, shall, if no other penalty is provided for the offence, on conviction, be punishable with a fine which may extend to two hundred rupees.

Amendment
of Section 24.

11. In the principal Act, for Section 24 including its marginal heading, the following Section and the marginal heading shall be substituted, namely:—

“ Recovery
of dues as
arrears of
land revenue.”

24. Every sum due to a Market Committee or the Board on account of any charges, costs, expenses, fees, rent or any other account under the provisions of this Act or the rules or bye-laws made thereunder and every sum due from a Market Committee or the Board to the State Government shall be recoverable as arrears of land revenue.”

Amendment
of Section 27.

12. In the principal Act, in sub-section (2) of Section 27,—

(i) in clause (f), the comma and word, “ adatyas ” shall be deleted; and

(ii) after clause (z), the following new clause shall be inserted, namely:—

“ (z-1) any matter which has to be or may be prescribed under the Act.”

Amendment
of Section 28.

13. In the principal Act, for Section 28, the following Section shall be substituted, namely:—

“ 28. (1) Subject to any rules and regulations made under this Act, and with the previous sanction of the Director or any other officer specially empowered in this behalf by the State Government, a Market Committee may, in respect of the market area for which it is constituted or any market established therein, make bye-laws, for the regulation of the business (including meeting, quorum and procedure) of the Market Committee, and the conditions of trading in the market area including the rates and manner of collection or refund of Market fees or any other fees levied under this Act.

(2) Where a Market Committee fails to make bye-laws under this Section within six months from the date on which the Orissa Agricultural Produce Markets (Amendment) Act, 1984 comes into force or the date of its constitution, whichever is later, the Director may make such bye-laws as he may think fit and the bye-laws so made shall remain in operation in relation to that Market Committee, until the market Committee makes its bye-laws duly approved by the Director.

Orissa Act of
1984.

(3) Notwithstanding anything contained in this Act or the rules, regulations or bye-laws made thereunder, if the Director considers that an amendment, alteration or rescission of any provision of the bye-laws or adoption of any new bye-laws is necessary or desirable in the interest of a Market Committee, he may, by an order in writing to be served on the Market Committee, direct to make such amendment, alteration or rescission of such provision or provisions or adoption of any new bye-laws within such time as may be specified in such order.

(4) If the Market Committee fails to make the amendment, alteration or rescission or to adopt the new bye-laws within the time specified by the Director in his order under sub-section (3), the Director may, after giving the Market Committee an opportunity of being heard, register such amendment, alteration or rescission of the bye-laws or the adoption of such new bye-laws, as the case may be, and issue a certified copy thereof to the Market Committee.

(5) The Market Committee may, within thirty days from the date of issue of the certified copy referred to in sub-section (4), appeal against such order to the State Government.

(6) Where an appeal is presented within the period specified in sub-section (5), the amendment, alteration or rescission of the bye-laws or the adoption of new bye-laws shall not come into force till the order is confirmed by the State Government.

(7) A certified copy of the amendment, alteration, rescission or the new bye-laws registered by the Director under sub-section (4) shall, subject to the result of appeal, if any, under sub-section (5), be conclusive evidence that the same has been duly registered and such amendment, alteration, rescission or new bye-laws shall be deemed to have been made by the Market Committee.

(8) Any bye-laws made under this Act may provide that any contravention thereof shall, on conviction, be punishable with fine which may extend to one hundred rupees."