

Twelfth Kerala Legislative Assembly
Bill No. 119

**THE UNREGISTERED CASHEWNUT FACTORIES
PROHIBITION (AMENDMENT) BILL, 2007**

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to amend the Unregistered Cashewnut Factories Prohibition Act, 1967.

Preamble.—WHEREAS, it is expedient to amend the Unregistered Cashewnut Factories Prohibition Act, 1967 for the purposes hereinafter appearing;

BE it enacted in the Fifty-eighth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may called the Unregistered Cashewnut Factories Prohibition (Amendment) Act, 2007.

(2) It shall come into force at once.

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) of section 5, after the word “found” the words “and the machines, equipments and other instruments used 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. *Confiscation of raw cashewnut.*—(1) Notwithstanding anything contained in section 8, where raw 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 raw cashewnuts are seized, and whether or not a prosecution is instituted for the contravention of the provision of this Act, in respect of such cashewnut, the Revenue Divisional Officer may if he thinks it expedient so to do so, 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 are subjected 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 raw 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 raw 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 raw cashewnuts and certified by the Magistrate, as primary evidence in respect of such offence.

(6) Where any raw 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 in a prosecution if any instituted for the contravention of this Act.

(7) No order of confiscation 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.”.

STATEMENT OF OBJECTS AND REASONS

The existing provisions of the Unregistered Cashewnut Factories Prohibition Act, 1967 does not contain any provision for the speedy disposal of the cashewnuts seized under the Act. Cashewnut is a perishable seed. Hence Government have decided to incorporate section 5A in the parent Act, enabling the authority seizing cashewnuts, early disposal, so as to avoid perishing of the cashewnuts seized, due to delay in finalising the proceedings after seizure.

2. Besides, processing of cashewnuts in an unregistered Cashew Factory is prohibited under the Unregistered Cashewnut Factories (Prohibition) Act, 1967. In spite of this statutory prohibition, several Unregistered Cashewnut Factories, processing cashewnuts are still there in the State and they are functioning without giving the statutory benefits due to the workers. The existing provisions in the above said Act are not sufficient, to prohibit completely the functioning of Unregistered Cashewnut Factories in the State. Therefore, the Government is intending to enhance the punishment prescribed in the Act by amending section 6 and to make the punishment for violation of the provisions of the Act more stringent.

3. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation would not involve any expenditure from the Consolidated Fund of the State.

P. K. GURUDASAN

