THE HIMACHAL PRADESH PRESERVATION OF FORESTS AND MAINTENANCE OF SUPPLIES OF FOREST BASED ESSENTIAL COMMODITIES ACT, 1984

ARRANGEMENT OF SECTIONS

Sections:

1. Short title, extent and commencement.
2. Definitions.
3. Power to make orders detaining certain persons.
4. Execution of detention orders.
5. Powers to regulate place and conditions of detention.
6. Detention orders not to be invalid or inoperative on certain.
7. Powers in relation to absconding persons.
8. Grounds of order of detention to be disclosed to persons affected by the orders.
9. Constitution of Advisory Board.
10. Reference to Advisory Board.
11. Procedure of Advisory Board.
12. Action upon the report of Advisory Board.
13. Maximum period of detention.
14. Revocation of detention orders.
15. Temporary release of persons detained.
16. Protection of action taken in good faith.
17. Repeal and savings.

THE HIMACHAL PRADESH PRESERVATION OF FORESTS AND MAINTENANCE OF SUPPLIES OF FOREST BASED ESSENTIAL COMMODITIES ACT, 1984

(ACT NO. 22 OF 1984)[1]

(Received the assent of the President on the 20th October, 1984 and was published in Hindi in the Rajpatra, Himachal Pradesh (Extra-ordinary), dated 22nd October, 1984 p. 1795-1802 and in English in the Rajpatra, Himachal Pradesh (Extra-ordinary, dated 8th July, 1985, pp. 1035-1039.

An Act to provide for preventive detention in certain cases for the purpose of preservation of forests in the State of Himachal Pradesh, and maintenance of supplies in forest-based commodities essential to the community and for matters connected therewith.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Thirty-fifth Year of the Republic of India as follows:

1. Short title, extent and commencement.- (1)This Act may be called the Himachal Pradesh Preservation of Forests and Maintenance of Supplies of Forest Based Essential Commodities Act, 1984.

(2) It extends to the whole of the State of Himachal Pradesh.

(3) It shall and shall be deemed to have come into force on the 27th day of June, 1984.

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

(a) "Board" means the Advisory Board constituted under section 9;

(b) "detention order" means order made under section 3;

(c) "High Court" means the High Court of Himachal Pradesh;

(d) "forest produce" has the meaning assigned to it in clause (4) of section 2 of the Indian Forest Act, 1927 (16 of 1927); and

(e) all other words and expressions used, but not defined in this Act and defined in the Indian Forest Act, 1927 (16 of 1927), shall have the meanings respectively assigned to them in that Act.

3. Power to make orders detaining certain persons.- The State Government may, if satisfied with respect to any person that with a view to preserving him from action in any manner prejudicial to the prevention of the forests in the State and the maintenance of the forest-based supplies and services essential to the community and for matters connected therewith, it is necessary so to do, make an order directing that such person be detained.

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1. Passed in Hindi by the Himachal Pradesh Vidhan Sabha. For Statement of Objects and Reasons see the Rajpatra, Himachal Pradesh on the 12th September, 1984, pp. 1571 and 1578.

Explanation: For the purposes of this section, the expression "acting" in any manner prejudicial to the preservation of the forests in the State and maintenance of forest-based supplies of commodities essential to the community and matters connected therewith means,-

(a) committing or abetting or instigating any person to commit, any offence punishable under the Indian Forest Act, 1927 (16 of 1927), the Himachal Pradesh Land Preservation Act, 1978 (28 of 1978), the Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act 1981 (6 of 1981), or the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 (5 of 1982), or under any other law for the time being in force, relating to the control, acquisition, supply or distribution of, or trade and commerce in, any forest produce; or

(b) dealing in forest produce with a view to making gain in any manner in which may directly or indirectly defeat or tend to defeat the enactments as are referred to in clause (a).

4. Execution of detention orders.- A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrests under the Code of Criminal Procedure, 1973 (2 of 1974).

5. Powers to regulate place and conditions of detention.- Every person in respect of whom a detention order has been made shall be liable,-

(a) to be detained in such place and under such conditions including conditions as to maintenance, discipline, and punishment for breaches of discipline, as the State Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the State or outside the State by order of the State Government:

Provided that no order shall be made by the State Government under clause (b) for the removal of a person to a place outside the State, except with the consent of the State Government in which the place to which the person is to be removed is situated.

6. Detention orders not to be invalid or inoperative on certain grounds.- No detention order shall be invalid or inoperative merely by reason,-

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the State Government or of the officer making the order; or

(b) that the place of detention of such person is outside the said limits.

7. Powers in relation to absconding persons.- (1) If the State Government has reason to believe that a person in respect of whom a

detention order has been made had absconded or is concealing himself so that the order cannot be executed, the State Government may,-

(a) make a report in writing of the fact to a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; or

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(2) Upon the making of a report against any person under clause (a) of subsection (1), the provisions of sections 82, 83, 84 and 85 of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by the Magistrate.

(3) If any person fails to comply with an order issued under clause (b) of sub-section (1) he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under sub-section (3) shall be cognizable.

8. Grounds of order of detention to be disclosed to persons affected by the orders.- (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detection, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the State Government.

(2) Nothing in subsection (1) shall require the authority to disclose the facts which it considers to be against the public interest to disclose.

9. Constitution of Advisory Board.- (1) The State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.

(2) Every such Board shall consist of three persons who are or have been or are qualified to be appointed as, Judges of a High Court, and such persons shall be appointed by the State Government.

(3) The State Government shall appoint one of the members of the Advisory Board who is, or has been, a Judge of a High Court to be its Chairman.

10. Reference to Advisory Board.- Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the State Government shall, within four weeks, from the date of detention of a person under the order, place before the Advisory Board, constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order.

11. Procedure of Advisory Board.- (1) The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the person concerned, and if in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the State Government within ten weeks from the date of detention of the person concerned.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board, and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

12. Action upon the report of Advisory Board.- (1) In any case where the Advisory Board has reported that there is in its opinion sufficient cause for the detention of a person, the State Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.(2)In any case where the Advisory Board has reported that there is in its opinion, no sufficient cause for the detention of the person concerned the State Government shall revoke the detention order and cause the person to be released forthwith.

13. Maximum period of detention.- The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12, shall be one year from the date of detention:

Provided that nothing contained in this section shall affect the power of the State Government to revoke or modify the detention order at any earlier time.

14. Revocation of detention orders.- (1)Without prejudice to the provision of section 20 of the Himachal Pradesh General Clauses Act, 1968

(16 of 1969), a detention order may, at any time, be revoked or modified by the State Government.

(2) The revocation or expiry of a detention order shall not bar the making of a fresh detention order under section 3 against the same person in any case where fresh facts have arisen after the date of revocation or expiry on which the State Government is satisfied that such an order should be made.

15. Temporary release of persons detained.- (1) The State Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as the person accepts, and it may, at any time, cancel his release.

(2) In directing the release of any person under subsection (1), the State Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction.

(3) Any person released under subsection (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If any person fails without sufficient cause to surrender himself in the manner specified in subsection (3), he shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

(5) If any person released under subsection (1) fails to fulfil any of the conditions imposed upon him under the said subsection or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

16. Protection of action taken in good faith.- No suit or other legal proceedings shall lie against the State Government, and no suit, prosecution or other legal proceedings shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

17. Repeal and savings.- (1)The Himachal Pradesh Preservation of Forests and Maintenance of Supplies of Essential Commodities Ordinance, 1984 (2 of 1984), 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 the corresponding provisions of this Act, as if this Act had come into force on 27th June, 1984.