

Chapter - 11

THE AGRICULTURAL PRODUCE (GRADING AND MARKING) ACT, 1937

The Agricultural Produce (Grading and Marking) Act, 1937 (hereinafter referred as the "Act") is an important legislation providing for grading and marking of agricultural and other allied commodities with the objectives of making available quality agricultural products to consumers. The provisions of the Act cover the horticulture and livestock products also. The central government has been authorized to make rules for fixing grade designations to indicate the quality of any article to which the provisions of the Act apply. It can also specify 'grade designation marks' to represent particular grade designations. The Act empowers the central government to authorize the interested parties to grade and specify conditions regarding manner of marking and packaging and related matters. The insignia used for grading is 'AGMARK'.

Grading under this Act is ordinarily voluntary in nature. The standardization is carried out by the Directorate of Marketing and Inspection established for the purposes of the Act. The manufacturers who comply with standards laid down by the directorate are allowed to put 'AGMARK' labels on their products.

The articles covered under the Act have been specified in the schedule appended to it. These include: (a) fruits, vegetables, eggs, dairy produce and poultry products; (b) foodgrains and allied products; (c) pulses, oilseeds, oils and cakes, essential oils, fibres, spices and condiments; (d) forest produce, edible nuts, tobacco, tea, coffee, honey, wheat, atta, besan, suji and maida; (e) raw meat etc.

The Act empowers the central government to include additional commodities/products in the schedule for the implementation and enforcement of the grade standards, and quality control. So far AGMARK standards have been framed and notified in respect of various commodities which include food-grains, pulses, fruits and vegetables, spices, edible nuts, oilseeds, vegetable oils and fats, fibres, forest products, livestock, dairy and poultry products.

I. Grade Designation

Grade designation means a designation prescribed as indicative of the

quality of any scheduled article.¹ Section 3 is an enabling provision, which empowers the central government to make rules to carry out the function of prescribing grade designations. It specifically empowers the central government to:²

- (i) fix grade designations to indicate the quality of any scheduled article;
- (ii) define the quality indicated by each grade designation;
- (iii) specify the grade designation mark to represent particular grade designations;
- (iv) prescribe the manner in which an article could be packed, sealed and marked;
- (v) authorize a person or a body of persons to use a grade designation mark with respect to any article subject to prescribed conditions.
- (vi) provide for the confiscation and disposal of produce marked otherwise than in accordance with the prescribed conditions with a grade designation mark.

The rules made by the central government about the above mentioned subjects are to be laid before each House of Parliament while it is in session, for a total period of thirty days in one, two or more successive sessions. If any modifications are made in these rules by the Parliament, they will be accordingly applicable.³

II. Search and Seizure of Wrongly Marked Goods

Section 3A and 3B of the Act provide for entry, inspection and search of such a premises wherein any contravention of this Act or its rules in relation to any specified goods is taking place. The central government is empowered to authorize any officer of the central or state government of the gazetted rank to carry out such a function or exercise such powers.⁴ The authorized officer is empowered to seize or detain any agricultural produce in relation to which either an offence under the Act has been committed or is intended or likely to be committed as such.⁵ If the seized agricultural produce is immediately perishable, it should be disposed of in the prescribed manner.⁶ Provisions of section 102 Cr PC, dealing with the power of a police officer to seize property, apply to any act of

1. The Agricultural Produce (Grading and Marking) Act, 1937, sec. 2(d).

2. *Id.*, sec. 3(1) and (2).

3. *Id.*, sec. 3(3).

4. *Id.*, sec. 3A.

5. *Id.*, sec. 3B.

6. *Id.*, proviso to sec. 3B.

seizure under the Act.⁷

Section 5B is one of the important provisions from the point of view of consumers as it provides for compulsory grade designation in respect of certain articles in the interest of the public. Under this section, the central government can make a declaration in the public interest or for the protection of consumers that any particular scheduled article or class of articles should not be sold or distributed before they are marked with the prescribed grade designation mark.⁸ Any notification, issued to that effect should specify the area or areas in relation to which the declaration would have effect.⁹ Where such a notification has been issued in respect of any area or areas, no person can sell or offer to sell or distribute or offer or distribute any scheduled article or class thereof in such notified area or areas except in accordance with the provisions of this Act and the rules made hereunder.¹⁰

III. Process of Marking

The Act practically works on the basis of the rules made under the General Grading and Marking Rules, 1937 and these rules are subject to frequent revision and amendments due to fast changes in market trends.

Rule 2 of the said rules provides that any person or body of persons "desirous of" being authorized to mark any article with a grade designation mark has to submit an application to that effect to the Agricultural Marketing Advisor to the Government of India. If after due enquiry, he is satisfied that it is expedient in the interest of better marketing that the authorization be granted and that the applicant is a fit and proper person to receive a certificate of authorization, he would issue such a certificate to the applicant.

7. *Id.*, sec. 3B(2); section 102 Cr PC reads as follows:

Power to police officer to seize certain property - (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required and to give effect to the further orders of the court as to the disposal of the same.

8. *Id.*, sec. 5B(1).

9. *Id.*, sec. 5B (2).

10. *Id.*, sec. 5B (3).

The provisions of the rule 2 show the voluntary nature of this Act. The words "any person desirous of" show that anyone who wants to get his goods or produce Agmarked should submit an application to the Agricultural Marketing Advisor, the Government of India whose seat is at Delhi. The Act does not make it mandatory for producers and manufacturers to seek the AGMARK standards or label their products with such mark. This is partly because of the existence of a large chunk of impoverished and disadvantaged consuming population in the country, which has no option, but to choose low quality goods at a low price. Furthermore, there is a general absence of initiative on the part of consumers in insisting upon quality food products. Besides the government's own hands are tied because of paucity of officers and overseers to enforce quality standards upon the producers. The country's vast size compounds the problem further.

Practically, the applications are being received by the sub-offices of the Directorate of Marketing and Inspection all over the country. The certificate of authorization issued under the Act, after the due enquiry, should state:¹¹

- (a) the name and address of the authorized person or body of persons;
- (b) the articles to which grade designation marks may, under the certificate, be applied;
- (c) the period for which the certificate is valid; and
- (d) the premises at which alone the grade designation marks may be applied.

The words "due enquiry" mean that upon submission of the application the concerned officer of the AGMARK shall inspect the premises of the applicant, the produce sought to be Agmarked, his bank certificates and other specified conditions for ascertaining quality of the produce and then issue a certificate of authority. The specified conditions about the certificate of authorization are as follows:¹²

- (a) that grade designation marks would apply only to the articles mentioned in the certificate of authorization and at the premises therein mentioned.
- (b) that during the operation of the certificate the holder thereof, would at all reasonable times, give access to the premises named therein to any person duly authorized by the agriculture marketing advisor or by the central government and shall afford

11. General Grading and Marketing Rules, 1937, rule 3.

12. *Id.*, r. 4.

him facilities for ascertaining that marking is being correctly performed.

- (c) that the holder of the certificate would keep a record of the number of packages marked with each grade designation mark and will permit any person duly authorized by the agriculture marketing advisor or by the central government to examine the record;
- (d) that the holder of the certificate would permit any duly authorized person to take samples of any graded produce or to open and inspect any package bearing a grade designation mark, provided that all samples shall be paid for.

Once the certificate of authorization is issued, the applicant is entitled to put AGMARK symbol on his product. This certificate is issued free of cost and is valid for a period of five years.

The produce sought to be marked should be of the requisite quality. Before offering the lot for chemical analysis, the packer is required to ensure that the material offered is thoroughly cleaned, dried, free from rancidity, insect excreta, presence of human hair, added colours and other undesirable attributes. A chemist should examine the lot for its homogeneity and draw a representative sample of about 200 grams in duplicate and undertake its physical and chemical analysis in accordance with the prescribed AGMARK grade standards. Those which conform to the standards are to be passed and to be issued AGMARK labels/replica (obtained from the directorate after depositing AGMARK replica charges) to be affixed on AGMARK package/pouches which have been printed at the approved printing press.

Section 3(2)(d) of the Act authorizes the central government to make rules in respect of any article and the conditions as to the manner of marking – the manner in which the article be packed, the type of covering to be used, and the quantity by weight or number to be included in each covering. Under section 3(2)(f), rules can also be made about the payment of any expenses incurred in connection with the manufacture or use of any implement necessary for the reproduction of a grade designation mark, and in connection with the manufacture or use of any covering or label marked with a grade designation mark. Same would be the position with respect to expenses about the adoption of measures for the control of the quality of articles marked with grade designation marks including testing of samples and inspection of such articles or with any publicity work carried out to promote the sale of any class of such articles.

According to rule 4 of the General Grading and Marking Rules, the holder of a certificate of authorization has to pay such charges as may be prescribed by the central government, towards the expenses incurred in

connection with measures for enforcing the quality control or testing of samples and inspection of such articles or with any publicity work carried out to promote the sale of any class of such articles. An authorised packer, as he is called once a person becomes the holder of a certificate of authorization, is required to make payment to the directorate for the cost of any implement like die plate or other instrument required for marking his produce, which may be issued to him by the directorate.

IV. Charges for Agmarking Goods

The directorate levies negligible charges varying between 1.5 paise/kg to 20 paise/kg for issuing AGMARK labels/replicas to the packers. The grading charges for commodities are minimal so as to encourage manufacturers and producers to come forward for grading their produce before marketing it. For wheat *atta*, the grading charges are Rs. 15/tonne which amounts to 1.5 p/kg; for *besan* Rs. 35/tonne or paise 3.5/kg.; for turmeric Rs. 60/tonne or paise 6/kg.; for chilli Rs. 150/tonne or paise 15/kg.; for ground spices Rs. 150/tonne or paise 15/kg.; for ghee paise 20/kg.; for honey paise 12/kg. Thus, a person seeking to AGMARK his turmeric powder in packs of 250 grams each must pay in all about 1 paise per pack to the directorate to have his packet branded with AGMARK symbol.

V. Measures for Maintaining Quality

To implement the food quality certification system under the Act, the Directorate of Marketing and Inspection has an infrastructure with its head office at Faridabad, one branch head office at Nagpur and five regional offices at Delhi, Chennai, Kolkata, Guntur and Mumbai. Its sub-offices are found all over the country. Besides one central AGMARK laboratory, various regional AGMARK laboratories, a number of packers laboratories, state grading laboratories and thousands of licensed packers are under its umbrella.

The standard division of the directorate evaluates and updates the existing standards according to consumer requirements and preferences and the marketing situation. In addition to this, it also frames food standards for new commodities depending upon the demand. Standardization is a continuous process as it involves getting samples of different kinds of produce from all over the country and subjecting them to chemical analysis at the regional AGMARK laboratories.

The directorate which is the chief executive body under the Act is empowered with a number of supervisory powers *vis a vis* maintaining AGMARK standards in food quality. Section 3A of the Act, as mentioned above, says that any officer authorized by the central government may check any premises to make inspection of produce with respect to which certificate of authorization for Agmarking has been obtained. Under the

section, if any authorized officer has reason to believe that any provision of the Act has been or is being contravened, he can enter any premises at any reasonable time and make necessary inspection and search for the agricultural produce in relation to which such contravention has been or is being made. Section 93 Cr PC, dealing with search warrants, applies to such proceedings.¹³

This implies that an authorized packers must offer to such officer at all times samples of his produce to which AGMARK applies for analysis. Such officer sends such samples to the chemical laboratory attached to his office to confirm the quality of the product.

Further check on quality is kept by way of drawing market samples from outlets such as departmental stores, *kendriya bhandars*, co-operative stores, super *bazars* etc. At times, surprise inspections are conducted at the packers premises and samples drawn and analyzed. Under section 3B, an officer authorized can seize and detain any agricultural produce in relation to which an offence under this Act is being or has been committed or is intended or likely to be used in the commission of such offence.

VI. Cognizance of Offences and Penalties

Section 5C of the Act lays down the procedure for institution of prosecution against an offender under this Act. It prescribes that a complaint in writing against an offender under this Act should be made either by the aggrieved consumer or a recognized consumer association, or an official of the state or the central government. The Act prescribes different punishments for different offences committed under its various provisions. Whoever marks any scheduled article with a grade designation mark, not being authorized to

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13. Section 93 Cr PC provides: When search warrant may be issued – (1)(a) where any court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or (b) where such document or thing is not known to the court to be in the possession of any person, or (c) where the court considers that the purposes of any inquiry, trial or other proceeding under this code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.
- (2) The court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.
- (3) Nothing contained in this section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.
14. The Agricultural Produce (Grading and Marking) Act, 1937, sec. 4.

do so, shall be punishable with imprisonment for a term not exceeding six months and fine not exceeding five thousand rupees.¹⁴ Penalty for counterfeiting any grade designation mark or having in possession any dye, plate or other instrument for the purpose of counterfeiting a grade designation mark is imprisonment for a term not exceeding three years and fine not exceeding five thousand rupees.¹⁵ Penalty for selling misgraded articles is imprisonment for a term not exceeding six months and fine not exceeding five thousand rupees.¹⁶ Any person contravening the provisions of the Act regarding compulsory grade designation is punishable with imprisonment up to six month or fine not exceeding five thousand rupees.¹⁷

The issue or use of grade designation mark labels or any stencil, rubber stamp, punch or other instrument required for marking produce in the prescribed manner, may be withheld or withdrawn by the agriculture marketing advisor without any notice for any period as he may consider expedient in the interest of better marketing. Such an action can be taken only if he is satisfied or has reason to believe that the authorized packer is not supplying or is not likely to apply grade designation marks correctly.

In practical situations, the AGMARK officers hardly ever resort to the IPC or court cases to book offenders under the Act. Generally the remedy resorted to by the staff of the directorate is that if on inspection one sample fails in quality standards, the packer is left off with a warning. If, from the samples collected, two fail in physical or chemical analysis his certificate of authority is suspended for one month and if three samples fail, his certificate of authority is suspended for six months.

The object of the Act is quite lofty but the grading under it is voluntary in nature. Those who want to use the label of AGMARK on their products have to comply with the standards set by the Directorate of Marketing and Inspection. The machinery established under the Act should be made more effective and AGMARK should be made compulsory for all sorts of agricultural produce. The punishments for contravention in use of AGMARK should be made deterrent because such contraventions affect the basic health of the people of the country.

15. *Id.*, sec. 5.

16. *Id.*, sec. 5A.

17. *Id.*, sec. 5B(4).