

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

West Bengal Act XXXI of 2001¹

THE WEST BENGAL HORTICULTURAL NURSERIES (REGULATION) ACT, 2001.

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Kolkata Gazette, Extraordinary*, of the 31st July, 2002.]

An Act to provide for the licensing and regulation of horticultural nurseries in West Bengal.

WHEREAS it is expedient to provide for the licensing and regulation of horticultural nurseries in West Bengal;

It is hereby enacted in the Fifty-second Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the West Bengal Horticultural Nurseries (Regulation) Act, 2001.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “competent authority” means any officer appointed as such under section 4;

(b) “Director” means the Director of Food Processing Industries and Horticulture, Government of West Bengal;

(c) “horticultural nursery” means a place where horticultural plant is, in the regular course of business, propagated or sold for transplantation or sowing;

(d) “notification” means a notification published in the *Official Gazette*;

¹For proceedings of the West Bengal Legislative Assembly, see the proceedings of the meeting of that Assembly held on the 11th December, 2001.

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(Section 3.)

- (e) “nurseryman” means a person engaged in the production and sale of horticultural plant or horticultural seed or horticultural plant material;
- (f) “plant material” means the material used for propagation and raising of horticultural plant, and includes bud wood, scion, root-stock, sucker, root, seed, cutting, seedlings, tubers, bulbs, rhizomes, grafts, gooties, other vegetatively propagated materials of food crops including vegetables, fruits and flowers.

Explanation.—“scion” or “bud wood” shall mean the part of a plant used for grafting or budding a root-stock or tree;

- (g) “prescribed” means prescribed by rules made under this Act;
- (h) “root-stock” means a fruit plant or part thereof on which any other plant or part thereof has been grafted or budded;
- (i) “variety” means a sub-division of a kind identifiable by growth, yield, plant, fruits or other characteristics.

Horticultural nurseries not to be established or maintained without registration and licence.

3. (1) On and from the date of commencement of this Act, no person shall,—

- (a) establish or conduct a horticultural nursery, without being registered with the competent authority and without obtaining a licence under this Act, or
- (b) sell, or exchange, or offer or expose for sale, or consign for sale, any variety of horticultural plants material, by himself or by any person on his behalf, unless, such variety is identifiable and properly labelled containing the correct particulars of that kind or variety.

(2) Notwithstanding anything contained in sub-section (1), a nurseryman, who owns and possesses a horticultural nursery immediately before the date of commencement of this Act, may continue to conduct such horticultural nursery,—

- (a) for a period of three months from the date of commencement of this Act, or
- (b) if an application for registration and licence is made to the competent authority within the period specified in clause (a) in accordance with the provisions of section 5, till the disposal of such application.

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(Sections 4-6.)

(3) Where any person or nurseryman, who owns and possesses a horticultural nursery, intends to establish or, as the case may be, to conduct more than one horticultural nursery, he shall obtain a separate licence in respect of each horticultural nursery.

4. The State Government may, by notification,—

Appointment
of competent
authority.

- (a) appoint any officer in horticultural discipline to be the competent authority for the purposes of this Act; and
- (b) define the local limits within which the competent authority shall exercise the powers conferred, and perform the duties imposed, on him by or under this Act.

5. Every application for registration and licence under section 3 shall be made to the competent authority in such form, and accompanied by such fee, as may be prescribed.

Application
for
registration
and licence.

6. (1) Subject to such conditions and restrictions as may be prescribed, if the competent authority is satisfied that—

Grant or
refusal of
licence.

- (a) a horticultural nursery is suitable for the proper propagation of horticultural plants in respect of which licence has been applied for,
- (b) the applicant is competent to conduct or establish any such horticultural nursery,
- (c) the applicant fulfils, or undertakes to fulfil, such other conditions for ensuring the quality of plants to be propagated and their sale at a reasonable price as the competent authority may, by notification, specify, and
- (d) the applicant has, for the grant of licence to him, paid such fee, and furnished such security, as may be prescribed,

the competent authority may grant to the applicant a licence in such Form as may be prescribed for establishing or conducting a horticultural nursery on such terms and conditions as may be specified in the licence.

(2) Every licence granted under this section shall remain valid for a period of five years from the date of its issue and may be renewed from time to time for a period in such manner, on payment of such fee, and on fulfilment of such conditions, as may be prescribed.

(3) If the competent authority refuses to grant or renew a licence under this section, he shall record the reasons for such refusal in writing and furnish a copy of his order to the applicant.

(Section 7.)

(4) Every application made under section 5 shall be disposed of within a period of three months from the date of its receipt by the competent authority.

Duties of
licence
holder.

7. Every person, who holds a licence under this Act, shall—

- (a) keep a complete record of the origin or source of every seedling, every root-stock and every scion used for vegetative propagation, showing their botanical name, along with variety, local name or common name, if any;
- (b) utilise only such plant material in respect of root-stock and scion for propagation as may be recommended by the Director from time to time;
- (c) show full particulars of the variety or varieties, if imported or evolved by the nurseryman at his own estate intended for propagation, to the Director or any other officer authorised by the Director on his behalf, and shall obtain his approval before sale of such variety or varieties, as the case may be, under a distinct or separate name;
- (d) utilise such plant material as is required to be used in accordance with the licence granted;
- (e) maintain a map register depicting the plots of the horticultural nursery in respect of each kind, and variety, of plants;
- (f) maintain a register in the prescribed Form and manner, showing the progeny and performance of each mother plant to be utilised for production of plant material;
- (g) keep the nursery plots as well as the parent trees used for propagation of horticultural plant free from insects, pests and diseases;
- (h) prepare the horticultural plant in such manner as may be directed by the competent authority from time to time;
- (i) use the seed material of known and genuine progeny being approved by the Director in the case of seedling or sapling;
- (j) not procure stock for sale from any outside source other than a licensed horticultural nursery, research institute or Government institute and, where stock is procured from any of the sources as aforesaid, inform the competent authority of the source, the quantity and the type of material so procured, before the sale of such stock.

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(Sections 8, 9.)

8. (1) The competent authority may suspend or cancel any licence granted or renewed under this Act, if the licensee—

Suspension
or cancella-
tion of
licence.

- (a) has applied to be adjudicated, or has been adjudicated, an insolvent; or
- (b) has parted, in whole or in part, with his control over the horticultural nursery; or
- (c) has ceased to conduct or to possess such horticultural nursery; or
- (d) has, in the opinion of the competent authority, become incompetent to conduct or to possess such horticultural nursery; or
- (e) has contravened, or has failed to comply with, any of the terms of the licence or any of the provisions of this Act or the rules made thereunder; or
- (f) has refused to surrender or to produce his licence or to produce the registers and other records required to be maintained under this Act or the rules made thereunder to the competent authority or any person authorised by him; or
- (g) becomes subject to such other disqualifications as may be prescribed.

(2) Before passing an order under sub-section (1), the competent authority shall intimate to the licensee the grounds on which it is proposed to pass such order and shall give him a reasonable opportunity of showing cause against the order proposed to be passed.

(3) The competent authority may suspend the licence pending the passing of an order of cancellation of such licence under sub-section (1).

(4) A copy of every order passed under sub-section (1) or sub-section (3) shall be communicated to the licensee.

9. On the expiry of the period of validity of a licence or on the receipt of an order of suspension or cancellation thereof, the licensee shall return the licence to the competent authority:

Return of
licence.

Provided that the competent authority may, after the expiry of the period of validity of a licence, or on the suspension or cancellation, as the case may be, of a licence, give to the nurseryman such reasonable time as the competent authority thinks fit to enable him to wind up his horticultural nursery.

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(Sections 10-13.)

Issue of
duplicate
licence.

10. If a licence granted or renewed under this Act is lost, destroyed, mutilated or damaged, the competent authority shall, on application and on payment of the prescribed fee, issue a duplicate licence.

Appeal.

11. (1) Any person aggrieved by an order of the competent authority passed under section 6 or section 8 may, within a period of thirty days from the date of the order, prefer an appeal to such authority (hereinafter referred to as the appellate authority), in such Form, and in such manner, as may be prescribed:

Provided that the appellate authority may admit an appeal after the period of thirty days as aforesaid, if sufficient cause is shown by such person.

(2) The appellate authority may, after hearing the appellant, pass such order as it thinks fit.

(3) Subject to the provisions of section 12, any order passed under this section shall be final.

Revision.

12. (1) The State Government, on an application of any person aggrieved by an order passed under this Act and within a period of ninety days from the date of the order, may, for the purposes of satisfying itself as to the legality or propriety of such order, call for and examine the records of the case and may pass such order as it may deem fit:

Provided that the State Government shall not exercise the power under sub-section (1) in respect of an order against which an appeal, preferred under section 11, is pending or, where no appeal has been preferred, before the expiry of the period of ninety days as aforesaid.

(2) An order passed under this section shall be final.

Inspection of
horticultural
nursery and
records.

13. (1) The competent authority or any officer authorised by him or the State Government may enter into the premises of a horticultural nursery and inspect or examine the plant material or the books of accounts, registers, records or other documents relating to the horticultural nursery at all reasonable hours, for the purpose of satisfying himself that the requirement of this Act and the rules made thereunder are being complied with.

(2) Every nurseryman or his agent and every person employed in connection with a horticultural nursery shall, for the purposes of sub-section (1), afford all reasonable access and facilities as may be required by the competent authority or the officer authorised by him or the State Government, as the case may be, and shall furnish all information, books of accounts, registers, records and other documents relating to such

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(Sections 14-16.)

horticultural nursery as may be required by the competent authority or the officer authorised by him or the State Government, as the case may be.

(3) If the competent authority or the officer authorised by him or the State Government is of the opinion that the use of any plant material or its mother tree or both may not be in the interest of the horticultural industry on account of—

- (a) poor quality of fruits or plants, or
- (b) poor fruit-bearing capacity, or
- (c) infestation of insects, pests and diseases of incurable nature, or

(d) such other reason as he may consider appropriate, he may declare such plant material and, if necessary, its mother tree as unfit for use, and may direct the nurseryman in writing to remove and destroy such plant material and mother tree within the prescribed period.

(4) The nurseryman shall, on receipt of such direction, remove or destroy such plant material and mother tree within the prescribed period, failing which, the competent authority or, as the case may be, the officer authorised by him or the State Government, as the case may be, shall cause the same to be removed and destroyed and the expenditure incurred therefor shall be recovered from the nurseryman as an arrear of land revenue.

14. (1) A package or container containing plant or plants shall be distinctly labelled to designate the kind and variety of plant or plants sold.

Packages
and their
labelling.

(2) In case the package or the container contains plants of more than one kind and variety, each individual plant shall be labelled.

(3) The name of the root-stock and the scion shall be mentioned on the label.

15. The State Government may, by notification, prohibit or regulate, subject to such restriction and conditions as it may impose the bringing into, or taking out of the State otherwise than across a custom frontier as defined by the Central Government, or the transport within the State, of any horticultural plant of unknown pedigree or affected by any infectious or contagious disease or pest as declared by the competent authority.

Power of
State
Government
to prohibit or
regulate the
bringing
into, or
taking out of,
West Bengal
fruits or
plants.

16. (1) If any person contravenes, or attempts to contravene, or abets the contravention of, any provision of this Act or the rules made thereunder, he shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both.

Penalties.

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(Sections 17-20.)

(2) Whoever, after conviction under sub-section (1), continues the contravention of any provision of this Act or the rules made thereunder, he shall, on conviction, be punished with fine which may extend to one hundred rupees for every day after the first day, during which such contravention continues.

Offence by
companies.

17. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) “company” means a body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means partner in the firm.

Cognizance
of offence.

18. No court shall take cognizance of an offence punishable under this Act except on a complaint in writing made by the competent authority or any officer authorised by him in this behalf by general or special order.

Delegation
of powers.

19. The State Government may, by notification, delegate to any officer or authority subordinate to it all or any of its powers under this Act except the power to make rules.

Compensa-
tion not
payable for
suspension
or cancella-
tion of
licences.

20. Where any licence granted to a nurseryman under this Act is suspended or cancelled, he shall not be entitled to any compensation therefor, nor shall he be entitled to the refund of any fee paid by him for the grant of such licence.

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21. The competent authority and every person duly authorised to discharge any duty imposed on him by or under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Competent authority and certain other persons to be public servants.

22. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of that Government or any person authorised by that Government for anything which is in good faith done or intended to be done in pursuance of any provision of this Act or the rules, or the orders, made thereunder.

Protection of action taken in good faith.

23. The State Government may, by notification, make rules for carrying out the purposes of this Act.

Power to make rules.

**Statement of Objects and Reasons on the West Bengal
Horticultural Nurseries (Regulation) Bill, 2001
(Bill No. 34 of 2001).**

STATEMENT OF OBJECTS AND REASONS.

The Government of India have laid a lot of emphasis on horticulture plantations and the Government of West Bengal have also envisaged a large-scale horticultural development. The plan allocation has also registered a quantum jump in the horticulture sector. The Government of West Bengal have also viewed horticulture as one of the prime movers of development in the agro-based economy. Considering the magnitude of plantation, the availability of quality planting materials is indispensable for any horticultural development. With the steady increase in the requirement of such planting materials, it has become imperative to encourage nurseries in private, public and co-operative sectors. By involving various sectors in the production of planting materials, an atmosphere of healthy competition may be created with a view to fostering improvement in the quality as well as the cost competitiveness. Given the magnitude of the requirement, it has become expedient that such nurseries should be regulated by an Act of the Legislature. One of the objects of the proposed law is, therefore, to ensure control over nurseries and to make them liable to punishment in the case of violation of quality requirement and production of sub-standard materials. At present, Government have no control over such nurseries. It is, therefore, necessary to provide for licensing and regulation of horticultural nurseries in West Bengal by legislation.

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2. The Bill has been framed with the above objects in view.
3. There is no financial implication involved in the Bill.

KOLKATA,

SAILÉN SARKAR,

The 29th November, 2001.

Member-in-charge.

Statement of Objects and Reasons on the West Bengal
Horticultural Nurseries (Regulation) Bill, 2001
Bills No. 24 of 2001.

STATEMENT OF OBJECTS AND REASONS

The Government of West Bengal have laid a lot of emphasis on horticulture and the Government of West Bengal have also envisaged a large-scale horticultural development. The plan allocation has also registered a quantum jump in the horticulture sector. The Government of West Bengal have also viewed horticulture as one of the prime movers of development in the agro-based economy. Considering the magnitude of horticulture, the availability of quality planting materials is indispensable for any horticultural development. With the steady increase in the requirement of such planting materials, it has become imperative to encourage nurseries in private, public and co-operative sectors. By involving various sectors in the production of planting materials, an atmosphere of healthy competition may be created with a view to fostering improvement in the quality as well as the cost competitiveness. Given the magnitude of the requirement, it has become expedient that such nurseries should be regulated by an Act of the Legislature. One of the objects of the proposed law is, therefore, to ensure control over nurseries and to make them liable to punishment in the case of violation of quality requirement and production of sub-standard materials. At present, Government have no control over such nurseries. It is, therefore, necessary to provide for licensing and regulation of horticultural nurseries in West Bengal by legislation.