

***The Odisha Forest Produce (Control of Trade) Act, 1981**

Odisha Act 22 of 1981.

(Assented to by the President on the 21st August, 1981)

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An Act to provide for control and regulation of trade in certain forest produce by creation of State monopoly in such trade

Be it enacted by the Legislature of the State of Odisha in the Thirty Second Year of the Republic of India, as follows :

Statement of Objects and Reasons - Smuggling of various forest produces are increasing day by day. The present provisions of the Odisha Forest Act, 1972 for checking, hoarding and transport of forest are not adequate to bring the culprits to book. The said Act is not adequate for imposition of any restrictions of control on trade in forest produce by framing rules thereunder. Barring few items like sal seeds, most of the important items of minor forest produce such as Mahua flowers, Tamarind, Charmaji, Karanja and the like are grown in private holdings as well as in the forest areas owned by Government. Unscrupulous traders take advantage of this situation and evade the law under the cover that the produce relates to private land and not to forests under the control of Government. Instances of smuggling in such cases are too many and the smugglers are, escaping with impunity because of absence of any legislation providing for State monopoly in forest produce. Enactment of a separate legislation for the purpose is therefore absolutely necessary.

The bill seeks to achieve the above purpose.

CASE LAWS :

Statement of Objects and Reasons-Scope of in judging validity of a statutory notification-The validity of the statutory notification cannot be judged merely on the basis of statement of objects and reasons accompanying the Bill-The executive policy of the Govt. or the statement of object and reasons of the Act or Ordinance cannot control the actual words used in the legislation : **AIR 1987 SC 2310.**

* Published vide O.G.Ext. No. 1117-D/5. 9. 1981-Notfn. No. 14589 Legis-D/4. 8. 1981.
For Statement and Objects of reasons see Odisha Gazette Ext. No. 325/17.3. 1981.

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Objects-The object of the Act was to prevent smuggling and to provide for State monopoly in the specified forest produce-The Preamble of the Act is a key to the enactment is also clear in that object : **AIR 1987 SC 2310.**

1. **Short title, extent and commencement** - (1) This Act may be called the Odisha Forest Produce (Control of Trade) Act, 1981.

(2) It extends to the whole of the State of Odisha.

(3) It shall come into force in such area or areas and in relation to such forest produce and on such 'date or dates as the State Government may, from time to time, by notification, specify in this behalf.

CASE LAWS :

Sec. 1 (3)-Notification under, in relation to sal seeds, validated under Section 5 of the Odisha Produce (Control of Trade) (Amendment and Validation) Ordinance, 1987- Applies to sal seeds grown or found in Government Forest- It shall be valid and effectual as if it were issued Under Section 1 (3) of the Act as amended by the Ordinance-Held, does not suffer from any infirmity : **AIR 1987 SC 2310.**

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

- (a) **agent** means an agent appointed under Section 4;
- (b) **committee** means an Advisory Committee constituted by Government;
- (c) **forest produce** means timber of any of the species specified in Clause (j), Bamboos of all species, Khair, Catechu (katha) Catechin (Cutch), Ganduli Gum, Dharua Gum, Khair Gum, Babul Gum, Sal Resin, Salai Resin, Rosha Grass, Rosia Grass Oil, Lac in all forms, Shelae, Mohua Flowers, Mohua seeds, Chironi Myrobalans, Tassar, Cocoons, Sandal wood, Tamarind, Siali Leaves, Kusum Seeds, Karanja Seeds, Siali Fibres, Sal Seeds, Hill Brooms and such other produce as may be notified by the State Government from time to time, ²[weather grown or found on land owned by private persons or on land owned by the State Government or in Government Forests;]
- (d) **grower of forest produce** means-
 - (i) in respecter forest produce grown on land owned by any person, the owner of such land; and
 - (ii) in all other cases the State Government;
- (e) **licensed vendor** in relation to specified forest produce means a person to whom a licence is issued under Section 13 for retail sale of such forest produce;
- (f) **prescribed** means prescribed by rules made under this Act;
- (g) **retail sale** means the sale of any specified forest produce not exceeding such quantity as the State Government may, by notification, specify in respect of such specified forest produce;
- (h) **specified area** in relation to a specified forest produce means the area specified in the notification under Sub-section (3) of Section 1 for such specified forest produce;

1. The Act came into force at once in the whole of the State at once in relation to sal seeds, vide Odisha Gazette Ext. No. 1744/9.12.1982.

2. Inserted by Odisha Act 16 of 1987 w.e.f. 5.9.1987, See Odisha Gazette Ext. No. 1321 Dt. 18.9.1987.

- (i) **specified forest produce** in relation to a specified area means the forest produce specified in the notification issued under Subsection (3) of Section 1 for such specified area;
- (j) **timber** means marketable wood, round, sown or fashioned, straight piece of and above two metres in length, standing or felled (excluding fuel) of the following categories, namely:

Teak	...	Tectona grandis
Sal	...	Shorea robusta
Bija	..	Prerocarpus marsupium
Bandhan	...	Ougenia daidergoides
Sishan	...	Dalbergia latifolia
Dhaura	...	Annogeissus latifolia
Kurum	...	Adina cordifolia
Gamhari	...	Gmelina arborea
Asan	...	Terminalia tomentosa
Mohua	...	Madhuca latifolia
Karuda	...	Chlorxdylon swietnis
Karani	...	Pongania glabra
Kendu	...	Diospyros melanoxylon
Champa	...	Michelia champak
Salai	...	Boswellia serrate

- (k) **unit** means a subdivision of a specified area constituted into a unit under Section 3 ;
- (l) words and expressions used but not defined in this Act shall have the same meaning as assigned to them under the Odisha Forest Act 14 of 1972.

3. Constitution of Units - The State Government may divide every specified area into such number of units as it may deem fit :

Provided that a specified area may be divided into different units for different specified forest produce.

4. Appointment of agents - (1) The State Government may, for the purchase of any trade in specified forest produce on this behalf, appoint one or more agents in respect of different units for all or any specified forest produce and any such agent may be appointed in respect of more than one unit.

(2) Any person including a Grama Panchayat, a Co-operative Society or the State Tribal Development Corporation Ltd., may be appointed as an agent under Sub-section (1).

(3) The term, conditions and the procedure for appointment of agents shall be such as may be prescribed.

5. Restriction on Purchase and Transport and Rescission of Subsisting Contracts - '[(1) Notwithstanding any provision to the contrary in any other law, On the issue of a Notification under Sub-section (3) of Section 1 in respect of any area,-

1. Substituted by Odisha Act 4 of 1989, w.e.f. 5.9.1981, See Odisha Gazette Ext. No. 517 Dt. 3.4.1989.

- (a) all contracts for the purchase, sale, gathering or collection of specified forest produce grown or found in the said area and all grants of *profit-a-prendre* including the right to enter upon the land, fell, cut and remove the specified forest produce from the said area, shall stand rescinded whether such forest produce is grown or found on land owned by private persons or on land owned by the State Government or in Government forests :

Provided that rescission of such contracts and grants shall not affect the customary rights, if any, of the local Tribals to gather and collect the specified forest produce.]

- (b) no person other than-

- (i) the State Government,
- (ii) an officer of the State Government authorised in writing in that behalf, or
- (iii) an agent in respect of the unit in which the specified forest produce is grown or found,

shall purchase or transport any specified forest produce in the said area.

Explanation I - Purchase shall include purchase by batter.

Explanation II - Purchase of specified forest produce from the State Government or the aforesaid Government Officer or agent or a licensed vendor shall not be deemed to be a purchaser in contravention of the provisions of this Act.

Explanation III - A person having no interest of the holding who has acquired the right to collect the specified forest produce grown Or found on such holding shall be deemed to have purchased such produce in contravention of the provisions of this Act.

[Explanation IV - The Explanations I to III shall be deemed to be explanations to Clause (b) of this sub-section and shall not be deemed as in any manner qualifying or detracting from Clause (a) of this subsection or saving any contracts referred to in Clause (a) from the operation of the provision for recession of contracts contained in the said Clause (a).]

(2) Notwithstanding anything contained in Sub-section (1) -

- (a) a grower of forest produce other than Mohua may transport his produce from any place within the unit wherein such produce is grown or found to any other place in that unit and a grower of Mohua may transport the Mohua grown by him from any place within the district wherein such Mohua is grown or found to any place within that District.

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- (c) any person having right to that effect over any forest in respect of any specified forest produce under any law for the time being in force, may transport such produce for his domestic use or consumption in such quantity and subject to such terms and conditions as may be prescribed.

1. Inserted by Odisha Act 16 of 1987 w.e.f. 5.9.1981 See Odisha Gazette Ext. No. 1321 Dt. 13.9.1987.

2. Deleted by Odisha Act 15 of 1987 See O. G. E. No. 1289 Dt. 14.9.1987.

(3) Any person desiring to sell any specified forest produce may sell them to the aforesaid Government officer or agent at any depot situated within the unit wherein such produce was grown or found :

Provided that State Government, the Government officer or the agent shall not be bound to re-purchase specified forest produce once sold.

(4) Any person who has paid any amount as an advance in respect of any such contract as is rescinded under Sub-section (1) shall on an application made to the prescribed authority within six months from the date of issue of the notification referred to in the said subsection be entitled to the refund of such portion of the amount of advance as it proportionate to the unexpired portion of the period for which the contract was entered into.

CASE LAWS :

Section 5 (1) (a), (3)-Object of the Act is to prevent smuggling of forest produce grown on Government land-State is granted monopoly right to purchase forest produce grown on private land-Government granting lease to a company to collect sal seeds from Government forests-On commencement of Act the agreement granting lease does not stand rescinded-AIR 1983 Ori. 266 reversed : AIR 1987 SC 1454.

Section 5 (1) applies to forest produce grown in private holdings-Notification dated 9.12.1982 applies to forest produce grown in Government Forest-interpretation of statutes-Reasons for a statute is the safest guide to understand the statute : AIR 1987 SC 1454.

6. Constitution of Advisory Committee - (1) The State Government shall, for each calendar year constitute in respect of each specified forest produce an Advisory Committee for each Revenue Commissioner's Division in the State consisting of not more than nine members as may be notified by the State Government from time to time for the purpose of advising the State Government in the matter of fixation of fair and reasonable price of each specified forest produce at which such produce may be purchased by the State Government or its authorised officer or agent when they are offered for sale in such Division in accordance with the provisions of this Act;

Provided that-

- (i) two of the members shall be from amongst the traders in such specified forest produce or manufacturers of goods in which such specified forest produce is used as raw materials;
- (ii) at least two members shall be from amongst the growers of such specified forest produce other than the State Government
- (iii) one member shall be from amongst the members of Parliament representing the State and belonging to the Scheduled Tribes; and
- (iv) one member shall be from amongst the members of State Legislature belonging to such Tribes.

(2) It shall also be the duty of Committee to advise the State Government on such other matters as may be referred to it by the State Government.

(3) The business of the Committee shall be conducted in such manner as may be prescribed.

(4) The members of the Committee shall be entitled to such allowances as may be prescribed.

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(5) The Committee shall tender its advice to State Government within such period as the State Government may, for each Committee, specify in this behalf.

7. Government to fix Price in connection with Committee - The State Government shall, after consultation with the Committee constituted under Section 6, fix the price at which specified forest produce shall be purchased by it or by any of its authorised officers or agents from growers of specified forest produce in the Revenue Commissioner's Division and shall publish the same in the Gazette and in such other manner as may be prescribed not later than the 30th day of June of the calendar year for which the Committee is constituted and the price so fixed shall remain in force up to the end of such calendar year and shall not be altered during that year :

Provided that if the Committee fails to tender advice within the period specified under Sub-section (5) of Section 6 or such further period not exceeding fifteen days as the State Government may allow, the State Government may proceed to fix the price without waiting for the advice of the Committee :

Provided further that different prices may be fixed for different units, and in so doing regard shall be had amongst other things to :

- (a) the prices of specified forest produce obtained or fixed under the Act or any other enactment during the preceding three years in respect of the area comprised in the unit ;
- (b) the quality of the specified forest produce in the unit;
- (c) transport facilities available in the unit;
- (d) the cost of transport; and
- (e) general level of wages for unskilled labour prevalent in the unit and the provisions of the Minimum Wages Act, II of 1948.

8. Opening of Depots and Publication of the Price List, etc. at the Depot - There shall be set up in each unit such number of depots and at such places as the State Government may taking into consideration the convenience of the growers of specified forest produce direct and price list of specified forest produce fixed by the State Government under Section 7 and the hours or business shall be prominently displayed on the notice board kept for the purpose at every such depot.

9. State Government or Agent to Purchase Specified Forest Produce - (1) The State Government or their authorised officer or agent shall be bound to purchase at the price fixed under Section 7 and specified forest produce offered for sale at the depot during the hours of business :

Provided that it shall be open to the State Government or the authorised officer or the agent to refuse to purchase any specified forest produce which in their opinion is not fit for the purpose of consumption or use as raw-material for manufacture or for trade.

(2) Any person aggrieved by the rejection of his specified forest produce by an authorised officer or agent under the provision to Sub-section (1), may within fifteen days therefrom, refer the matter to the Divisional Forest Officer, or such other officer who may be empowered by the State Government in this behalf, having jurisdiction over the unit in which the specified forest produce has been grown or found.

(3) On receipt of a reference under Sub-section (2) the Divisional Forest Officer or such other officer, as the case may be, shall hold an enquiry in the prescribed manner and after hearing the parties concerned, shall pass such orders as he may deem fit and in case he finds the rejection of the specified forest produce to be improper, may direct the authorised officer or agent, as the case may be, to purchase the same and may also award to the person aggrieved such further compensation not exceeding twenty per centum of the price of the specified forest produce, payable to him as he may deem fit.

'[(4) The State Government or its authorised officer or agent shall be entitled to take delivery of any specified forest produce collected by any person from land owned by the State Government or Government Forest on payment of such collection charges as may be determined by the State Government from time to time :

Provided that it shall be open to the State Government or the authorised officer or agent to refuse to take delivery of any such forest produce which is not fit for consumption or use as raw material for manufacture or trade:

Provided further that in the case of any dispute, the Divisional Forest Officer or such other officer who may be specifically empowered in this behalf, as specified in Sub-section (2) shall hear and dispose of the same in the manner provided in this Act and the Rules made thereunder.]

10. Registration - Every grower of specified forest produce shall, if the quantity of a specified forest produce grown by him during a year is likely to exceed such quantity as may be prescribed get himself registered in the prescribed manner.

11. Registration of Manufacturers, Traders and Consumers of Specified Forest Produce - (1) Every manufacturer who uses any specified forest produce as a raw material and every trader or consumer, whose annual use, requirement or consumption, as the case may be, exceeds such quantity as may be prescribed, shall get himself registered within such period on payment of such fee and in such manner, as may be prescribed.

(2) Every such manufacturer, trader or consumer shall submit such declarations, accounts and returns in such forms to such officer and at such intervals as may be prescribed.

12. Disposal of Specified Forest Produce - ²[Specified forest produce purchased or collected by the State Government or by its officers or agents under this Act, shall be sold by auction or by calling tenders or otherwise as the State Government may, in public interest, by general or special order direct.]

13. Retail Sale of Specified Forest Produce - (1) No person shall engage himself in retail sale of any specified forest produce except under a licence granted under this section.

(2) The State Government may, for the purpose of facilitating retail sale of a specified forest produce within the State, grant licence to as many persons as it may deem fit.

1. Substituted by Odisha Act 16 of 1987 w.e.f. 5.9.1981 See Odisha Gazette Ext. No.1321 Dt. 18.9.1987.

2. Substituted by the Odisha Act 15 of 1987, See Odisha Gazette Ext. No. 1289 Dt. 14.9.1987.

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(3) Any person who desires to engage himself in retail sale of any specified forest produce, shall make an application in such form to such authority and in such manner as may be prescribed.

(4) The prescribed authority may, on receiving such application and on payment of such fee as may be prescribed, grant or renew a licence subject to such terms and conditions as may be prescribed.

14. Delegation of Power - The State Government may, by order delegate any of its powers or functions under this Act or the rules made thereunder, except those conferred under Section (3) of Section 1 and Section 21 to any Officer or authority not below the rank of an Assistant Conservator of forests who shall exercise or perform the same, subject to such conditions and restrictions as the State Government may specify in the order.

15. Power of entry, Search, Seizure, etc. - (1) Any Police Officer not below the rank of an Assistant Sub-inspector, or any other person authorised by the State Government may, with a view to securing compliance with the provision of this Act or the rules made thereunder or to satisfy himself that the said provisions have been complied with-

- (i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of any specified forest produce;
- (ii) enter and search any place; and
- (iii) seize the specified forest produce in respect of which he suspects that any provision of this Act or the rules made thereunder has been, is being or is about to be contravened along with the receptacles containing such produce, or the vehicle or boats used in carrying such produce,

(2) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

16. Penalty - If any person contravenes any of the provisions of this Act or the rules made thereunder-

- (a) he shall be punishable with imprisonment which may extend to one year or with fine which may extend to five thousand rupees or with both;
- (b) the specified forest produce in respect of which such contravention have been made or such part thereof as the Court may deem fit shall be forfeited to the Government :

Provided that if the Court is of the opinion that it is not necessary, to direct forfeiture in respect of the whole, or, as the case may be, any part of the specified forest produce, it may, for reasons to be recorded, refrain from doing so.

17. Attempts and Abetment - Any person who attempts to contravene or abets the contravention of any provision of this Act or the rules made thereunder shall be deemed to have contravened such provision.

18. Cognizance of Offences - No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a forest officer not below the rank of a Divisional Forest Officer or by any other officer as may be authorised by the State Government in this behalf.

19. Composition of Offences - (1) The State Government may, by notification, empower any Forest Officer-

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed an offence punishable under this Act, a sum of money by way of compensation for the offence which such person is suspected to have committed; and
- (b) when any property other than a specified forest produce has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by officer.

(2) On the payment of such sum of money or such value or both, as the case may be to such officer, the suspected person shall be discharged, the property, other than the specified forest produce, if any, seized shall be released and no further proceedings shall be taken against such person or property.

(3) A Forest Officer shall not be empowered under this section unless he is a Forest Officer of a rank not inferior to that of a Divisional Forest Officer, and the sum of money accepted as compensation under Clause (a) of Sub-section (1) shall in no case exceed the sum of rupees.

20. Saving in respect of acts done in Good Faith - (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be so done in pursuance of this Act or the rules made thereunder.

(2) No suit or other legal proceedings shall lie against the State Government for any damage caused or likely to be caused or any injury suffered or likely to be suffered by virtue of the provisions of this Act or by anything which is in good faith done or intended to be so done in pursuance of this Act or the rules made thereunder.

21. Power to make Rules - (1) The State Government may, subject to the condition of previous publication, make rules to carry out all or any of the provisions of this Act.

(2) In this particular and without prejudice to the generality of the following matters, namely :

(a) the terms, conditions and the procedure for appointment of agents under Section 4;

(b) (i) the quantity of specified forest produce which may be transported by a consumer under Section 5 (2) (b);

(ii) the terms and conditions of a permit subject to which specified forest produce may be transported, the authority by which and manner in which such permit shall be issued under Section 5 (2) (c);

(c)(i) the manner of conduct of business of committee under Section 6 (3);

(ii) the allowances to which the members of the committee shall be entitled under Section 6 (4) ;

(d) the publication of the price-list under Section 7;

(e) the manner of holding enquiry under Section 9 (3);

(f) (i) the prescription of the quantity of specified forest produce under Section 10;

(ii) the manner of registration under Section 10;

(g) (i) prescription of the quantity of specified forest produce under Sub-section (1) of Section 11;

(ii) the period within which the fee on payment of which and the manner in which the registration under Sub-section (1) of Section 11 shall be made;

(iii) declarations, accounts and returns which shall be submitted under Sub-section (2) of Section 11 and the form in which, the Officer to whom and the intervals at which they shall be submitted;

(h) (i) the form in which, the authority to whom and the manner in which an application under Sub-section (3) of Section 13 shall be made;

(ii) the fee for issue and renewal of a licence and the terms and conditions subject to which such licence shall be granted under Sub-section (4) of Section 13;

(iii) Any other matter which is either expressly or impliedly required to be prescribed under this Act.

After Section 21 of the principal Act, the following new Section shall be inserted, namely :

[21-A. Notwithstanding any judgment, decree or order of any Court to the contrary, the notification dated the 9th December, 1982, issued by the State Government under Sub-section (3) of Section 1 of the principal Act in respect of sal seeds shall be deemed to have been issued in respect of sal seeds whether grown or found on land owned by private persons or on land owned by the State Government or in Government forests and shall be as valid and effectual as if it was issued under Sub-section (3) of Section 1 of the principal Act as amended by this Act and all instructions and orders issued or made and all actions taken or things done pursuant to the said notification in respect of sale, purchase and collection of sal seeds shall be deemed to have been validly made, taken or done under the principal Act as amended by this Act.]

22. Odisha Forest Act, 1972 and other Laws not to apply to Specific Forest Produce for Purposes covered under the Act - (1) Nothing contained in the Odisha Forest Act, 14 of 1972 shall apply to specified forest produce in respect of matters for which provisions are made under this Act.

(2) Nothing contained in any other law, rule, order or any other thing having a force of law in any region of the State shall apply to the specified forest produce in respect of matters for which provisions are made under this Act.

23. Power to Exclude Specified Forest Produce from the operation of the Act - (1) The State Government may, from time to time, by notification, direct that from a date specified therein, a forest produce specified in the notification mentioned in or issued under Sub-section (3), Section 1 shall cease to be a specified forest produce in relation to the areas as may be specified in the notification.

(2) The State Government may from time to time, by a like notification, direct that from a date specified therein, the specified forest produce in relation to the area or areas as may be specified in the said notification.

(3) Every notification issued under Sub-section (1) or Sub-section (2) shall, as soon as may be, after it is issued, be laid before the Legislative Assembly.

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