



The Orissa Kendu Leaves (Control of Trade) Act, 1961

Act 28 of 1961

Keyword(s):

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Amendment appended: 10 of 2004

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ORISSA ACT 28 OF 1961

THE ORISSA KENDU LEAVES (CONTROL OF TRADE) ACT, 1961

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ORISSA ACT 28 OF 1961

[THE ORISSA KENDU LEAVES (CONTROL OF TRADE) ACT, 1961]

[Received the assent of the President on the 28th December, 1961 first published in an extraordinary issue of the Orissa Gazette, dated the 3rd January 1962]

AN ACT TO PROVIDE FOR CONTROL OF TRADE IN KENDU LEAVES

WHEREAS it is expedient to provide for regulation of trade in Kendu leaves by creation of State monopoly in such trade ;

It is hereby enacted by the Legislature of the State of Orissa in the Twelfth Year of the Republic of India, as follows :—

1. (1) This Act may be called the Orissa Kendu Leaves (Control of Trade) Act, 1961. Short title, extent and commencement.

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

(3) It shall come into force² in any district on such date as Government may, by notification, appoint

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

(a) "agent" means an agent appointed under section 8 ;

(b) "Government" means the State Government of Orissa ;

³[(c) "Grama Panchayat" means a Grama Panchayat constituted under the Orissa Grama Panchayat Act, 1964;]

(d) "grower of Kendu leaves" means any person who owns lands on which Kendu plants grow or who is in possession of such lands under a lease or otherwise ;

⁴[(e) "Samiti" means a Samiti constituted under the Orissa Panchayat Samiti Act, 1959;]

Orissa Act
1 of 1965.

Orissa Act
7 of 1960.

1. For the Statement of Objects and Reasons, see *Orissa Gazette, Extraordinary*, dated the 4th October 1961 (No. 682).

2. Came into force with effect from the 5th January 1962—Vide Notification No. 330-C. F. dated the 4th January 1962, published in *Orissa Gazette, Extraordinary*, dated the 6th January 1962 (No. 5).

3. Substituted by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act, 1969 (Or. Act 6 of 1969), s. 2 (a).

4. Substituted by *ibid.* s. 2 (b).

(Sec. 3)

- (f) "prescribed" means prescribed by the rules made under this Act ;
- (g) "permit" means a permit issued under section 3; and
- ¹[(g-1) "registered grower" means a grower of Kendu leaves who has registered himself under section 9 ;]
- (h) "unit" means a unit constituted under section 5.

Restriction
on purchase.

3. (1) No person other than—

- (a) the Government ;
- (b) an officer of Government authorised in that behalf ; or
- (c) an agent in respect of the unit in which the leaves have grown ;

shall purchase or transport Kendu leaves.

Explanation I—Purchase of Kendu leaves from the aforesaid Government officer or agent shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation II—A person having no interest in the land who has acquired the right to collect Kendu leaves grown on such land shall be deemed to have purchased such leaves in contravention of the provisions of this Act.

(2) Notwithstanding anything contained in subsection (1)—

- (a) a grower of Kendu leaves may transport his leaves from any place within the unit wherein such leaves have grown to any other place in that unit;* ²

³[Provided that a registered grower may also transport his leaves from any place within the unit wherein such leaves have grown to any other place outside the unit for the purpose of sale to the Government or any agent in respect of the unit authorised to purchase the same from him; and]

1. Inserted by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act, 1969 (Or. Act 6 of 1969), s.2 (c).

2. Omitted by *ibid.*, s. 3.

3. Inserted by *ibid.*

(Sec. 4)

(b) leaves purchased from Government or any officer or agent specified in the said sub-section by any person for manufacture of bidis within the State or by any person for sale outside the State may be transported by such person outside the unit under a permit to be issued in that behalf by such authority and in such manner as may be prescribed and the permit so issued shall be subject to such conditions as may be prescribed.

(3) Any person desiring to sell Kendu leaves may sell them to the aforesaid Government Officer or agent at any depot situated within the said unit.

4. (1) The Government shall, after consultation ^{Sale price} with the Advisory Committee constituted under sub-section (2) fix the price at which Kendu leaves shall be purchased by them or by any officer or agent from growers of Kendu leaves during any year and shall publish the same in the prescribed manner not later than the 31st day of January of that year and the price so fixed shall not be altered during such year :

Provided that different prices may be fixed for different units having regard to—

- (a) prices fixed under any law during the preceding three years in respect of the area comprised in the unit ;
- (b) quality of the leaves grown 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.

(2) The Government shall constitute an Advisory Committee for the State consisting of not less than six members as may be notified by Government from time to time :

Provided that not more than one-third of such members shall be from amongst persons who are growers of Kendu leaves.

(Secs. 5—7)

(3) It shall be the duty of the aforesaid Committee to advise Government on such matters as may be referred to it by Government.

(4) The business of the Committee shall be conducted in such manner and the members shall be entitled to such allowances, if any, as may be prescribed.

Constitution of units.

5. The Government may divide each district into such number of units as they deem fit.

Opening of depots and publication of price list, etc. at the depot.

6. In each unit there shall be such number of depots as Government may direct to be set up at such places as may be convenient for the transaction of business and the price list of Kendu leaves and the hours of business shall be prominently displayed on the notice board kept for the purpose at every such depot.

Government and their officer or agent bound to purchase.

7. (1) The Government or their authorised officer or agent shall be bound to purchase at the price fixed under section 4 Kendu leaves which are offered to them for sale at the depot during the hours of business :

Provided that it shall be open to Government or any officer or agent not to purchase any leaves which in their opinion are not fit for the purpose of manufacture of bidis.

¹ [(2) Any person aggrieved by the rejection of his leaves by the Government or by an authorised officer or agent under the proviso to sub-section (1), may, within fifteen days therefrom, refer the matter to the Divisional Forest Officer, or such other officer as may be empowered by Government in this behalf, having jurisdiction over the unit in which the leaves have grown.

(2-a) Any person, to whom price is paid at a rate lower than the rate fixed under section 4 for Kendu leaves sold by him to the Government or their authorised officer or agent, may refer the matter to the aforesaid officer within fifteen days from the date of such payment.

(2-b) 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 on the spot or

1. Substituted by the Orissa Kendu Leaves (Control of Trade) Amendment) Act, 1969 (Or. Act 6 of 1969), s. 4.

(Sec. 7—contd.)

at the headquarters in the prescribed manner and after hearing the parties concerned or their authorised agent shall pass such orders as he deems fit and in case he finds the rejection of the leaves to be improper, he may:—

- (i) if he considers the leaves in question still suitable for the manufacture of bidis, direct the Government or the authorised officer or agent, as the case may be, to purchase the same and also to pay to the person aggrieved, such further compensation not exceeding twenty per centum of the price of the leaves payable to him, as he may deem fit ;
- (ii) if he considers that the leaves in question have since become unsuitable for manufacture of bidis, direct the Government or their authorised officer or agent, as the case may be, to pay to the person aggrieved an amount equal to the price of such leaves payable under sub-section (1) and such further compensation not exceeding twenty per centum of such price as he may deem fit.

(2-c) On receipt of a reference under sub-section (2-a), the said officer shall hold an enquiry in the manner as aforesaid and if he is satisfied about the correctness of the allegations made in the reference he may direct the Government or their authorised officer or agent, as the case may be, to pay to the person making the reference so much of the price as has not been paid to him and such further compensation not exceeding twenty per centum of the amount so directed to be paid as he may deem fit.]

(3) Nothing in this section shall be construed so as to debar the appropriation of leaves offered for sale if Government or their authorised officer, or agent have reason to believe that the leaves appertain to forests or lands belonging to Government and paying only such collection charges, if any, as Government may from time to time determine :

Provided that in 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 therein.

(Secs. 8—11)

Appointment
of agents.

8. (1) The Government may, for the purpose of purchase of and trade in Kendu leaves on their behalf, appoint agents in respect of different units and any such agent may be appointed in respect of more than one unit:

¹[Provided that the Government may for the purpose of purchase of leaves from the registered growers, appoint an additional agent in respect of one or more units].

(2) The procedure for appointment of agents shall be as may be prescribed.

Registration

9. Every grower of Kendu leaves shall, if the quantity of leaves grown by him during a year is likely to exceed ²[three hundred and fifty kilogrammes], get himself registered in the prescribed manner ³[on payment of such fees as may be prescribed and shall be liable to maintain accounts and submit returns in such form and manner as may be prescribed].

Disposal of
leaves.

10. Kendu leaves purchased by Government or by their officers or agents under this Act shall be sold or otherwise disposed of in such manner as Government may direct.

Application
of net profits.

11. (1) Out of the net profits derived by Government, from the trade in Kendu leaves under this Act an amount not being less than fifty per centum thereof shall be paid to the Samitis and Grama Panchayats.

(2) The allocation of the said amount among the different Samitis and Grama Panchayats as aforesaid shall be as Government may determine from time to time.

⁴[(3) Subject to such conditions as may be prescribed the sums so paid to the Samitis and Grama Panchayats shall be utilised in accordance with the provisions of the Orissa Panchayat Samiti Act, 1959 and the Orissa Grama Panchayat Act, 1964, respectively.]

Orissa Act
1 of 1960.Orissa Act
7 of 1965.

1. Inserted by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act, 1969 (Or. Act 6 of 1969), s. 5.

2. Substituted by *ibid.*, s. 6 for "ten standard maunds".

3. Added by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act, 1963 (Or. Act. 17 of 1963), s. 2.

4. Substituted by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act, 1969 (Or. Act 6 of 1969), s. 7.

(Secs. 12—14)

12. The Government may, by order, delegate any of their powers or functions under this Act or the rules made thereunder to any officer or authority who shall exercise or perform the same subject to such conditions and restrictions as Government may specify in the order.

Delegation
of powers.

13. (1) Any police officer not below the rank of an assistant sub-inspector and any other person authorised by Government may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or to satisfying himself that the said provisions have been complied with—

Power of
entry, search
seizure, etc.

- (i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of Kendu leaves ;
- (ii) enter and search any place ;
- (iii) seize Kendu leaves 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 receptacle containing such leaves, or the vehicles or boats used in carrying such leaves.

Act 5 of
1898.

(2) The provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898, relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

14. If any person contravenes any of the provisions of this Act or the rules made thereunder—

Penalty.

- (a) he shall be punishable with imprisonment which shall extend to one year or with fine which may extend to five hundred rupees or with both ;
- (b) the Kendu leaves in respect of which such contravention has been made or such part thereof as to the Court may seem 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 leaves, it may, for reasons to be recorded, refrain from doing so.

(Secs. 15—18)

Attempts
and abetment.

15. 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.

Cognizance
of Offences.

16. 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 any Forest Officer not below the rank of a Divisional Forest Officer or by any other officer authorised in that behalf by the Government.

Savings in
respect of
acts done in
good faith.

17. (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 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.

Power to
make rules.

18. (1) The Government may make rules* for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers they may make rules in respect of all or any of the following matters, namely :—

- (a) publication of the price lists of Kendu leaves ;
- (b) manner of holding enquiries under this Act ;
- (c) procedure to be followed in making appointment of agents ;

*For rules under s. 18 See Notification No. 358-CF, dated the 6th January 1962 published in Orissa Gazette, Extraordinary, dated the 9th January 1972 (No. 11).

(Secs. 19-20)

- (d) the authority by whom, the manner in which and the conditions subject to which permits may be issued ;
- (e) the manner of registration under section 9¹[and the fees therefor];
- ²[(ee) the forms and manner in which accounts shall be maintained and returns shall be submitted;]
- (f) the conditions subject to which sums allotted to Samitis and Grama Panchayats shall be utilised ;
- (g) the forms in which applications shall be made and permits shall be issued ; and
- (h) any other matter which is either expressly or impliedly required to be prescribed under this Act.

Orissa Act
7 of 1955.

19. On the coming into force of this Act in any district the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 1955 shall, in so far as it relates to Kendu leaves, stand repealed in respect of such district.

Repeal

20. If any doubt or difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order, do anything not inconsistent with the provisions of this Act, or the rules made thereunder, which appears to them necessary for purposes of removing the doubt or difficulty.

Power to
remov
doubts and
difficulties.

1. Added by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act, 1963 (Or. Act 17 of 1963), s. 3 (a).

2. Inserted by *ibid.* s. 3 (b).

THE ORISSA KENDU LEAVES [Or. Act 28 of 1961]
(CONTROL OF TRADE) ACT, 1961

ANNEXURE

PROVISION OF THE ORISSA KENDU LEAVES
(CONTROL OF TRADE) (AMENDMENT)
ACT, 1969 (OR. ACT 6 OF 1969)

	*	*	*	*	*	*
Repeal and savings.	8. (1)	*	*	*	*	*

(2) Notwithstanding such repeal, anything done, any action taken, any rules or orders made or any notice or notification issued in exercise of any power, conferred by or under the said Ordinance shall be deemed to have been done, taken, made or issued in exercise of the powers conferred by or under this Act, as if this Act had commenced on the 17th day of February, 1969.

**ORISSA ACT 10 OF 2004
THE ORISSA KENDU LEAVES (CONTROL OF TRADE) AMENDMENT ACT, 2004**

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ORISSA ACT 10 OF 2004

***THE ORISSA KENDU LEAVES (CONTROL OF TRADE)
AMENDMENT ACT, 2004**

[Received the assent of the Governor on the 9th October, 2004, first published in an Extraordinary issue of the *Orissa Gazette* dated the 19th October, 2004 (No. 1390)]

**AN ACT FURTHER TO AMEND THE ORISSA KENDU LEAVES
(CONTROL OF TRADE) ACT, 1961.**

BE it enacted by the Legislature of the State of Orissa in the Fifty-fifth Year of the Republic of India as follows :—

Short title
and
commencement

1. (1) This Act may be called the Orissa Kendu Leaves (Control of Trade) Amendment Act, 2004.

(2) It shall be deemed to have come into force on the 1st day of April 2004.

Amendment
of Section 2.

2. In Section 2 of the Orissa Kendu Leaves (Control of Trade) Act, 1961 (hereinafter referred to as the principal Act,—

Orissa Act
28 of 1961.

(i) in clause (g), the word "and" occurring at the end shall be omitted ;

(ii) in clause (h), for the full stop "." occurring at the end, the semicolon and word " ; and" shall be substituted ; and

(iii) after clause (h), the following clause shall be inserted, namely :—

'(i) "Zilla Parishad" means a Zilla Parishad constituted under the Orissa Zilla Parishad Act, 1991.'

Orissa Act
17 of 1991.

Amendment
of Section 11.

3. In Section 11 of the principal Act,—

(i) for the word "Samitis" wherever it occurs, the words "Zilla Parishads, Samitis" shall be substituted ; and

(ii) in sub-section (3), after the words "provisions of", the following words, commas and figure shall be inserted with the marginal reference mentioned against them, namely :—

"the Orissa Zilla Parishad Act, 1991,".

Orissa Act
17 of 1991.

Amendment of
Section 18.

4. In Section 18 of the principal Act, in clause (f), after the words "allotted to", the words and comma "Zilla Parishads," shall be inserted.