

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

¹ORISSA ACT 28 OF 1961

(Assented to by the Governor on the 23rd December, 1961)

An Act to Provide 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. Short title, Extent and Commencement- (1) This Act may be called the Orissa Kendu Leaves (Control of Trade) Act, 1961.

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

(3) It shall come into ²force in any district on such date as Government may, by notification, appoint.

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

- (a) **Agent** means an agent appointed under Section 8;
- (b) **Government** means the State Government of Orissa;
- (c) **Grama Panchayat** means a Grama Panchayat constituted under the Orissa Grama Panchayat Act, 1964 (Orissa Act 1 of 1965);
- (d) **Grower of Kendu Leaves** means any person who owns lands under a lease or otherwise;
- ³[(e) **Samiti** means a Samiti constituted under the Orissa Panchayat Samiti Act, 1959 (Orissa Act 7 of 1960);
- (f) **Prescribed** means prescribed by Rules under this Act;
- (g) **Permit** means a permit issued under Section 3; and
- ⁴[(g-1) **Registered Grower** means a permit grower of Kendu Leaves who has registered himself under Section 9];
- (h) **Unit** means a unit constituted under Section 5.

* Legislative Papers-For Statement of Objects and Reasons, see Orissa Gazette, Ext. Dt 4.10.1961 (No. 682)

1. O.Exty. Gazette No.- D/3.1.1962 Notification No. 19, Legis D/3.1.1962

2. Came in to force w.e.f. 5.1.1962 vide Notfn. No. 330. C.P. Dt. 4.1.1962 published in Orissa Gazette, Ext. Dt. 6.1.1962 (No. 5)

3. Substituted by the Orissa Kendu Leaves (Control of Trade) (Amendment) Act 6 of 1969

4. Inserted by Orissa Kendu Leaves, (Control of Trade) (Amendment) Act 6 of 1969

3. Restriction on Purchase - 1. No Person other than-

- a) the Government;
- b) an officer of Government authorized 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 the Act.

2. Notwithstanding anything contained in Sub-section (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; [***].

[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 authorized to purchase the same from him; and]

- (b) leaves purchased fro Government or any officer or agent specified in the said Sub-section 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 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.

CASE LAW: Sections 2 (2) (a), 8 (1) (as amended in 1969) and Rule 5-B (6), (7), (8), (9) and (16), Rule 6 (3) and Rule 7 (1) framed under the Act are not violative of Articles 14, 15, 19 (1) of the Constitution. No legitimate grievance against the amendment of the Act and promulgation of new rules- They are all necessary to enable the Government to control the business in Kendu leaves effectively- Provisions in form G for the appointment of agents and form I for the appointment of additional agents did not work against the interest of the Government working a monopoly business – The provision for appointment of additional agents and additional purchasers are not per se bad- the exigency of business will require such appointments- The fact that some of the agents were nominees of relations of the purchasers does not affect the scheme of State

monopoly- Appointment of State Forest Corporation as additional agent can in no way detract from Government monopoly : **AIR 1971 SC 733.**

Provisions of law creating monopoly are protected by letter part of Article 19 (6) – Validity of incidental provisions to be judged by first part of Article 19 (6)-Effect of such law on other rights under Article 19 (1) – Law directly controlling right under Article 19 (1) (g) and only incidentally under other causes of Article 9 (1) (g)- Validity to be tested under Article 19,(6)- See Constitution of India, Article 19 (6) (as amended by Constitution (First Amendment) Act, 1951: **AIR 1963 SC 1047.**

Rules under Rule 7 (5)- Under agreement entered into by person with Government all loss to be borne by the agent-Agreement held inconsistent with requirements of Section 3 (1)(c) of the Act-See Constitution of India, Article 19 (6) (ii)[as amended by Constitution (First Amendment) Act, 1951: **AIR 1963 SC 1047.**]

Monopoly trade and scheme of disposal-if the scheme of disposal creates a class of middle-men who would purchase from the Government Kendu Leaves at concessional rates and would earn large profits disproportionate to the nature of service rendered or duly performed by them, it cannot claim the protection of Article 19 (6) (ii): **ILR Cutt 841:35 (1969) CLT 479 (SC).**

4. Sale Price- (1) The Government shall, after consultation 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.

(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.

CASELAWS: Section 4 (i) and Section 7 (i)-proviso-Fit for purpose of manufactures of Bidies-Meaning of-The fire factors as stated in section do not indicate that cost of processing would constitute an element for determination of the price of the leaves-This furnishes the clue to the intention of the legislature that only price of raw leaves was to be fixed and not that of processed leaves: **33 (1967) CLT 135.**

Basic provisions of law creating monopoly are protected by latter part of Article 19 (6)-Validity of incidental provisions to be judged by first part of Article 19 (6)-Effect of such law on other rights under Article 19 (1)- Law directly controlling right under Article 19 (1) (g) and only incidentally under other clauses of Article 19 (1) (g)- Validity to be tested under Article 19 (6)-Sections 4, 3 and 8 are valid-See Constitution of India- Article 19 (6) [as amended by Constitution (First Amendment) Act, 1951]: **AIR 1963 SC 1047.**

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

6. Opening of Depots and Publication of Price-Lists, etc. at the Depot – 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.

7. Government and their Officer or Agent bound to Purchase – (1) The Government or their authorized 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 on 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 bidies.

(2) Any person aggrieved by the rejection of his leaves by the Government or by an authorized 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 authorized 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 (4), the Divisional Forest Officer or such other officer, as the case may be, shall hold an enquiry on the spot or at the headquarters in the prescribed manner and after hearing the parties concerned or their authorized agent shall pass such order as he deems fit and in the case if 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 bidies, direct Government of the authorized 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 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 bidies, direct the Government or their authorized 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 it.,

[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 correctness of the allegations made in the reference he may direct the Government or their authorized 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 it.

(3) Nothing in this section shall be construed so as to debar the appropriation of leaves offered for sale if Government or their authorized officer, or agents 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.

8. Appointment of Agents – (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 agent may be appointed in respect of more than one unit:

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.

CASE LAW: Basic provisions of law creating monopoly are protected by latter part of Article 19 (6)- Validity of incidental provisions to be judged by first part of Article 19 (6)-Effect of such law on other rights under Article 19 (1)-Law directly

controlling right under 19 (1)- (g)- Validity to be tested under Article 19 (6)-Section 3, 4 and 9 are valid See Constitution of India-Article 19 (6) [as amended by Constitution (First Amendment) Act, 1951] : **AIR 1963 SC 1047.**

9. Registration – Every grower of Kendu leaves shall, if the quantity of leaves grown by him during a year is likely to exceed [three (hundred and fifty kilograms) get himself registered in the prescribed manner [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]].

CASE LAW: Section 9- Right conferred- The section only creates obligation to be discharged by the growers and confers no right of storage- The basic- assumption that a right of storage has been conferred and, such right becomes illusory unless price fixed for the processed leaves is with foundations: **33 (1967) CLT 135.**

10. Disposal of Leaves – 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.

CASE LAW : Section 10-Meaning of-Government cannot create monopoly in favour of third parties from their own monopoly – Validity of the scheme adopted by the Govt. of Orissa for sale of Kendu leaves must be adjudged in the light of Article 19 (1) (g) and Article 14- Exclusive persons other than of previous licensees is arbitrary: **ILR 1969 Cutt. 841: 35 (1969) CLT 479.**

Section 10 – Action of the State Government in entering into, private regulations for sale of Kendu leaves purports to act under Section 10- Article 14 of the Constitution not violated: **AIR 1968 Ori. 189: 34 (1968) CLT 605: ILR 1968 Cutt. 167.**

Section 10-Government inviting offers for advance purchase only from purchasers of last years- Validity-The State Government of Orissa in exercise of the powers conferred by Section 10 decided to invite offers for advance purchase of Kendu leaves only from persons who purchased these leaves from individual units during the previous years and who acted as purchasers without default and to the satisfaction of Government and the method of sale by open competition was given up-The Government also turned down an offer made by the petitioner.

Held, that the action of the Government was not valid in law and the petitioners fundamental rights were violated – **AIR 1968 Ori. 189 Reversed: AIR 1969 SC 1081.**

11. Application of Net Profits – (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 Samities and Grama Panchayats as aforesaid shall be as Government may determine from time to time.

(3) Subject to such conditions as may be prescribed the sums so paid to the Samities and Grama Panchayats shall be utilized in accordance with the provisions of the Orissa Panchayat Samiti Act, 1964 (Orissa Grama Panchayat Act 1 of 1965) respectively.

12. Delegation of Powers – 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 subject to such conditions and restrictions as Government may specify in the Order.

13. Power of Entry, Search , Seizures etc. – (1) Any Police Officer not below the rank of an Assistant Sub-inspector and any other person authorized 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-

- (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 or is being or is about to be contravened with the receptacle containing such, leaves or the vehicle or boats used in carrying such leaves.

(2) The provisions of Sections 102 and 103 of the Code of Criminal Procedure, (5 of 1898)* relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

14. 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 shall extend to one year or with fine which may extend to five hundred rupees or with both;
- (b) that Kendu leaves in respect of which such contravention has 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 leaves, it may, for reasons to be recorded, refrain from doing so.

15. 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.

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

17. Savings in Respect of Act 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 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.

18. Power to make Rules – (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 following matters, namely:

- (a) Publication of the price-lists of the Kendu leaves;
- (b) manner of holding enquiries under this Act;
- (c) Procedure to be followed in making appointment of agents;
- (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 9 [and the fees therefore;]
- (e-1) 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 Gram Panchayats shall be utilized;
- (g) the forms in which applications shall be made, permits shall be issued; and
- (h) any other matter which is either expressly or impliedly required to be prescribed under this Act.

CASE LAW: Section 18 and Rule 7 (5) is bad in that it leaves it to the sweet will of officer concerned to fix terms and conditions of agreement on ad hoc basis-See Constitution of India- Article 19 (6)(ii) [as amended by Constitution (First Amendment) Act, 1951] : **AIR 1963 SC 1047.**

19. Repeal – On the coming into force of this Act in any district, the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act, 7 of 1955 shall, in so far as it relates to Kendu Leaves, stand repealed in respect of such district.

20. Power to remove Doubts and Difficulties – 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 there under which appears to them necessary for purpose of removing the doubt or difficulty.

**OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF
FORESTS: ORISSA**

**Memo No. 4054 (86) 2F (G) - 374/91
Dated Bhubaneswar the 29th Feb., 1996**

To

All divisional Forest Officer (T/NT & KL)
All Dy. Directors, Social Forestry Project

SUB: Delegation of Powers to A.C.Fs.

In modification of this Office Memo No. 2851 dt. 9.2.96, it is decided that the senior-most A.C.F. in the Divisional Office will exercise the powers as delegated by Government in G.F. & A.H. Deptt. O.O. No. 7873/FFAH dt. 3.4.89 where there are more than one A.C.F. in the Divisional Office. As regards the A.C.Fs. posted outside the Divisional Office and those who are independently in charge of certain jurisdiction, they will exercise their powers as delegated by Government in F.F. & A.H. Deptt. O.O. No. . 7873/FFAH dt. 3.4.89. Please implement the above order forthwith and report compliance.

Principal Chief Conservator
of Forests, Orissa

**OFFICE OF THE PRINCIPALCHIEF CONSERVATOR OF
FORESTS: ORISSA**

**Memo No. 2851 (86) 2F (G) 374/91
Dated BBSR, the 9th Feb., 1996**

To

All Divisional Forest Officers (T, NT & KL)
All Deputy Directors, Social Forestry Project

SUB: Delegation of Powers to Asst. Conservator of Forests.

I would inform you that Government in Forest, Fisheries and Animal Husbandry department O.O. No. 7873/FFAH dt. 3.4.89 have been pleased the delegate certain powers to the A.C.Fs attached to different offices in their Memo No. 7877 dt. 3.4.89. it has now been alleged by the members of Orissa Forest Service Association that the A.C.Fs are being deprived of their rights to such powers as they are not being allowed to exercise them. Further Government have also decided that in the first stage the Seviar most A.C.F., Headquarters will be allowed to exercise powers delegated to them by Government in the above order forthwith and report compliance.

Principal Chief Conservator of Forests, Orissa

**Copy of notification received from government of Orissa Forest and
A.H. Department dated 19th January, 1973**

No. 7F-25/73, 1019/FAH, In exercise of the powers conferred by Section 16 of the Oriss Kendu Leaves (Control of Trade) Act, 1961 (Orissa Act 28 of 1961), the State Government do hereby authorize all Deputy Conservator of Forests in charge of Kendu Leaves Divisions, all Assistant Conservator of Forests (Kendu Leaves) and all Forest Range Officers (Kendu Leaves) to submit written reports of offence punishable under the said Act to the Court.

By order of the Governor

**Copy of notification received from government of Orissa Forest and
A.H. Department dated 19th February, 1973**

No. 7F-25/73, 1024/FAH, In exercise of the powers conferred by Sub-section (1) of Section 15 of the Orissa Kendu Leaves (Control of Trade) Act, 1961 (Orissa Act 28 of 1961), the State Government do hereby authorize all Dy. Conservator of Forests in charge of Kendu Leaves Divisional and all other Forest Officers not below the rank of Forest working under their administrative control to exercise all or any of the powers enumerated in the said Section.

By order of the Governor

**Copy of notification received from government of Orissa Forest and
A.H. Department dated 24th February, 1973**

No. KL (N) 35/72 2596/FAH, In pursuance of Section 10 of Oriss Kendu Leaves (Control of Trade) Act, 1961 read with Rule 5-B (9) of the Oriss Kendu Leaves (Control of Trade) Act, 1962, the State Government direct that the Kendu Leaves collected by Government through their officers and employees shall be sold through the Orissa Forest Corporation Ltd., in accordance with the terms and conditions of the Agreement to be entered into between the State Government Orissa Forest Corporation Ltd., from time to time.

By order of the Governor