

The Bihar Kendu Leaves (Control of Trade) Act, 1973

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Act 5 of 1974

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The Bihar Kendu Leaves (Control of Trade) Act, 1973 (Bihar Act 5 of 1974) Published in Bihar Gazette (extraordinary) dated 21.5.1975. An Act to provide for the control of Trade of Kendu Leaves grown in the State of Bihar Be it enacted by the Legislature of the State of Bihar in the twenty-fourth year of the Republic of India as follows:-

1. Short title, extent and commencement.

(1) This Act may be called the Bihar Kendu Leaves (Control of Trade) Act, 1973. (2) It extends to the whole of the State of Bihar. (3) It shall come into force in such areas and on such date or dates as the State Government may, by notification in the Official Gazette appoint.

2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context -(a) "Agent" means an agent appointed under Section 4; (b) "Grower" means a grower who holds lands on which kendu plants grow or who is in possession of such lands under a lease or otherwise, and includes the State Government; (c) "Committee" means an Advisory Committee constituted under subsection (1) of Section 6; (d) "Kendu Leaves" means leaves of the plant known as "kendu"; (e) "Manufacturer of bidi" means any person who manufactures by himself or through any other person or agency but does not include a person who purchases kendu leaves in retail for making bidis for his own domestic use; (f) "Prescribed" means prescribed by Rules made under this Act; (g) "Specified area" means an area declared to be specified area in a notification issued under Section 3; (h) "Unit" means a subdivision of a specified area constituted under Section 3; and (i) Words and expressions used but not defined in this Act, and defined in the Indian Forest Act, 1927 (Act XVI of 1927) shall have the same meanings respectively assigned to them in that Act.

3. Declaration of specified area and constitution of Units.

- The State Government may, by notification in the Official Gazette, declare any area to be a specified area for the purposes of the Act and divide every such specified area into such number of units as it may deem fit.

4. Appointment of Agent.

(1)The State Government may for the purpose of purchase and sale of kendu leaves in its behalf, appoint agents, in respect of different units and any such agent may be appointed in respect of more than one unit but not more than three units.(2)The terms, conditions and the procedure for appointment of agents shall be such as may be prescribed.

5. Restriction on purchase or transport of kendu leaves.

(1)On the declaration of a specified area under Section 3, no person other than -(a)the State Government,(b)an Officer of State Government authorised in writing in that behalf, or(c)an agent in respect of the unit in which the kendu leaves have grown, shall purchase kendu leaves from the grower in that area or transport the same.Explanation I. - Purchase of kendu leaves from the State Government or its authorised officer or agent shall not be deemed to be a purchase in contravention of the provisions of this Act.Explanation II. - A person holding 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 sub-section (1) -(a)Kendu leaves grown within a unit may be transported by grower from one place to another within the unit for purposes of collection, storage and sale, and(b)Kendu leaves purchased from the State Government or any officer or agent authorised in his behalf may be transported by the purchaser outside the units or the specified area in accordance with the terms and conditions mentioned in the permit to be issued by such authority as may be prescribed.(3)A grower other than the State Government shall sell kendu leaves at any depot specially set up for this purpose within a unit.

6. Constitution of Advisory Committee.

(1)The State Government may; by a notification in the Official Gazette, for each year commencing on the 1st July and ending on the 30th June, next following constitute an Advisory Committee (hereinafter referred to as Committee) for any of the Divisions of Bhagalpur, [South Chotanagpur, North Chotanagpur] [Substituted by Act 19 of 1974.], Patna and Tirhut to advise the State Government in fixing the price at which kendu leaves may be purchased from a grower by the State Government or its authorised officer or agent which shall consist of not more than nine members and shall submit its report to the State Government within such time as may be specified therein.(2)One of the members of the Committee shall be from amongst the traders of kendu leaves, three from amongst the growers other than the State Government out of which two shall be from amongst the Scheduled Tribes and one representative of Bidi manufacturers.(3)The Committee shall

also advise the State Government on such other matters as may be referred to it by the State Government.(4)The business of the Committee shall be conducted in such manner as may be prescribed.(5)The members of the Committee shall be allowed such allowance as may be prescribed.

7. State Government to fix prices, etc. in consultation with the Committee.

(1)The State Government shall, after considering the report of the Committee constituted under Section 6, fix the price at which kendu leaves shall be purchased by it or by any of its authorised officer or agent during the year for which the Committee is constituted under sub-section (1) of Section 6 and shall publish the same in the Official Gazette and in such other manner as may be prescribed not later than the thirty first day of December, and the price so fixed shall not be altered during the year to which they relate:Provided that if the Committee fails to submit its report within the time specified under sub-section (1) of Section 6 or within such further time, not exceeding fifteen days, as the State Government may allow, the State Government may proceed to fix the price without the report of the Committee.(2)Different prices may be fixed for different units, and in so doing regard shall be had, amongst other things, to -(a)prices of kendu leaves obtained or fixed under this Act, or any other enactment 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)cost of transport; and(e)general level of wage for unskilled labour prevalent in the unit.

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

- There shall be set up in each unit such number of depots and at such places as the Forest Officer in charge of the Division may, taking into consideration the convenience of the growers, direct and a price list of kendu leaves fixed by the State Government under Section 7; and the hours of business shall be prominently displayed on the notice board kept for the purpose at every such depot.

9. State Government or agent to purchase kendu leaves.

(1)The State Government or its authorised officer or agent shall purchase kendu leaves offered for sale and delivered at the depot during the business hours at the rates fixed under Section 7:Provided that it shall be open to the State Government or its authorised officer or agent, for reasons to be communicated in writing to refuse to purchase or accept delivery of any kendu leaves which, in their opinion, are not fit for the purpose of manufacture of Bidis.(2)Any person aggrieved by the refusal to purchase or accept delivery of his kendu leaves by an authorised officer or agent under proviso to sub-section (1) may, within fifteen days from the date of such refusal, complain in writing to the Divisional Forest Officer, or any other officer empowered by the State Government in this behalf having jurisdiction over the unit in which the kendu leaves have grown.(3)On receipt of a complaint under sub-section (2) the Divisional Forest Officer or any other officer empowered shall hold an enquiry and after hearing the parties concerned or their authorised agent, pass such orders as he may deem fit and in case he holds the refusal to purchase or accept delivery of kendu leaves to be improper he may -(a)if he considers the kendu leaves in question still suitable for the manufacture of Bidis, direct the authorised officer or agent, as the case may be, to purchase or accept delivery of the same and may also award to the person aggrieved such further compensation not exceeding

twenty percent of the price of the leaves payable to him as he may deem fit;(b)if he considers that the leaves in question have since become unsuitable for manufacture of Bidis, direct the payment to the person aggrieved of any amount not less than the price of such leaves payable to him under sub-section (1) and such further compensation not exceeding twenty percent of such prices as he may deem fit by way of damages for the loss suffered by such person.(4)Nothing in this section shall be construed so as to debar the appropriation of kendu leaves offered for sale, if the State Government or its authorised officer or agent has reason to believe that the leaves appertain to forest or lands belonging to the State Government, paying only such collection charges, if any, as the State Government may from time to time determine:Provided that in case of any dispute in this behalf, the Divisional Forest Officer or such other officer empowered under sub-section (2), shall hear and dispose of the same in the manner provided therein.

10. Registration.

(1)Every grower other than the State Government who intends to harvest kendu leaves grown on his land by himself or through any other person or agency shall get himself registered within such, period and in such manner as may be prescribed and shall be liable to maintain accounts and submit returns in such form and manner as may be prescribed.(2)Notwithstanding anything contained in sub-section (1), the State Government may by Notification in the Official Gazette, exempt from registration such growers as are not likely to grow kendu leaves during the year exceeding such quantity as may be fixed by the State Government from time to time.

11. Registration of manufacturer of bidis.

(1)Every manufacturer of Bidis within the State shall get himself registered within such period, on payment of such fee and in such manner as may be prescribed.(2)Every manufacturer of Bidis within the State registered under sub-section (1) shall furnish a declaration in such Form, by such date and in such manner as may be prescribed.

12. Disposal of leaves.

- Kendu leaves purchased by the State Government or by its authorised officer or agent, under this Act, shall be sold or otherwise disposed of in such manner as the State Government may direct.

13. Delegation of power.

- The State Government may by Notification in the Official Gazette, delegate any of its powers or function under this Act to any officer not below the rank of an Assistant Conservator of Forests who shall exercise or perform the same, subject to such conditions and restrictions, if any, as the State Government may specify in the notification.

14. Power of entry, search, seizure, etc.

(1) Any Police Officer not below the rank of an Assistant Sub-Inspector or any Forest Officer or any other person authorised by the State Government may with a view to securing compliance of the provisions of this Act or the Rules made thereunder or satisfying himself that the said provisions have been complied with - (i) stop and search any person, boat, vehicle or receptacles used or intended to be used for transport of kendu leaves; (ii) enter and search any place & survey, demarcate and make a map of any land; (iii) seize kendu leaves in respect of which he suspects that any provision of this Act or the rules made thereunder had been, is being or is about to be contravened along with the receptacle containing such leaves, the vehicles or boats used in carrying such leaves; (iv) sell by public auction kendu leaves seized under clause (iii) and deposit the sale-proceeds thereof in Government treasury, if he is, satisfied that the said kendu leaves are subject to speedy and natural decay: Provided that the auction shall be conducted by a Forest Officer not below the rank of an Assistant Conservator of Forests. (2) The provisions of Sections 102 and 103 of the [Code of Criminal Procedure, 1898 (V of 1898)] [Now Code of Criminal Procedure, 1973 (No. 2 of 1974)] relating to search and seizure shall so far as may be, apply to search and seizure under this Section.

15. Forest Officer to hold enquiry.

(1) A Forest Officer not below the rank of a Ranger or such other officer as may be authorised by the State Government in this behalf hold an enquiry into offences relating to any contravention of any provision of this Act and in the course of such enquiry receive and record evidence. (2) Any evidence recorded under sub-section (1) shall be admissible in any subsequent trial before a Magistrate: Provided that such evidence has been recorded in the presence of the accused person.

16. Penalty.

(1) Any person who contravenes any of the provisions of this Act, shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. (2) The whole of kendu leaves in respect of which such contravention has been made or such part thereof as the court may deem fit or the sale-proceed thereof, as the case may be, shall be forfeited to the State Government: Provided that if the court is of the opinion that it is not necessary to direct forfeiture in respect of the whole, or part of the kendu leaves the sale-proceeds thereof, as the case may be, it may, for reasons to be recorded in writing direct the same to be made over to the person whom the court deems to be entitled to the same.

17. Compounding of offences.

(1) The State Government may, by Notification in the Official Gazette, empower a Forest Officer not below the rank of a Deputy Conservator of Forests. (a) to accept from any person against whom a reasonable suspicion exist that he has contravened any provision of this Act or the Rules made thereunder, a sum of money by way of compensation, for the offence which such person is suspected to have committed; and (b) when any property has been seized and is liable to forfeiture, to release

the same on payment of the value thereof as estimated by such officer.(2)On payment of such sum of money or such values, or both, as the case may be, to such officer, the property if any, seized shall be released, and no further proceedings shall be taken against such person or property.

18. Cognizance of offence.

- No court shall take cognizance of any offence punishable under this Act except on a complaint 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 by the State Government in this behalf.

19. Savings in respect of acts done in good faith.

- 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.

20. Power to make Rules.

(1)The State Government may subject to the conditions of previous publication make Rule consistent with the provisions of this Act to carry all or any the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such Rules may provide for all or any of the following matters, namely -(a)procedure to be followed in making appointments of agents;(b)publication of the price lists to be paid to pluckers;(c)the manner of holding enquiries under this Act;(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 10.(f)the manner of registration, the period within which such registration shall be made and the fee payable thereof under sub-section (1) of Section 11;(g)form of declaration, authority to whom, date by which and the manner in which the declaration shall be furnished under sub-section (2) of Section 11;(h)any other matter which is either expressly or impliedly required to be prescribed under this Act.(3)Every Rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid the session immediately following both the Houses agree that the Rule should not be made the Rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule.

21. Indian Forest Act, 1927 not to apply to kendu leaves for purposes covered under Act.

- Nothing contained in the Indian Forest Act, 1927 (No. 16 of 1927) shall apply to kendu leaves in respect of matters for which provisions are contained in this Act.

22. Removal of difficulties.

- If any difficulty arises in giving effect to the provisions of this Act the State Government may by order, do anything not inconsistent with the provisions of this Act which appears to it to be necessary or expedient for the purpose of removing the difficulty.

23. Repeal and Savings.

(1)The Bihar Kendu Leaves (Control of Trade) Second Ordinance, 1973 (Bihar Ordinance No. 119 of 1973) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of powers conferred by the Act or under this Act as if this Act were in force on the day on which such thing or action was done or taken.