

The Jammu and Kashmir Fruit Nurseries (Licensing) Act, 1987

JAMMU & KASHMIR

India

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Act 22 of 1987

- Published on 29 December 1987
- Commenced on 29 December 1987
- [This is the version of this document from 29 December 1987.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Fruit Nurseries (Licensing) Act, 1987(Act No. 22 of 1987)[Received the assent of the Governor on 29th December, 1987 and published in Government Gazette dated 4th January, 1988].An Act to provide for the licensing and regulation of fruit nurseries in the State of Jammu and Kashmir.Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-eighth Year of the Republic of India as follows :-

1. Short title, extent and commencement.

- This Act may be called the Jammu and Kashmir Fruit Nurseries (Licensing) Act, 1987.(2)It extends to the whole of the State of Jammu and Kashmir.(3)[It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.] [The Act has been enforced in the State vide SRO-339, dated 27-10-1988 w.e.f. 1-10-1988.]

2. Definitions.

- In this Act, unless the context otherwise requires -(a)"Competent Authority" means competent authority appointed under section 3.(b)"Fruit Nursery" means any place where fruit plants are in the regular course of business propagated and sold for transplantation, but does not include a fruit nursery belonging to or managed by the Government.(c)"Fruit Plant" means any plant which can produce edible fruits or nuts and includes budwood, seedlings, grafts, layers, seed bulbs, suckers, rhizomes and cuttings of any such plant.(d)"Owner" in relation to a fruit nursery, means the person who has the ultimate control over the affairs of such fruit nursery' and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent shall be deemed to be the owner of the fruit nursery.(e)"Prescribed" means prescribed by rules made under this Act.(f)"Root Stock" means a fruit plant or part thereof on which any portion of a fruit plant has been grafted or budded.(g)"Scion" means a portion of a fruit plant

which is grafted or budded on to rootstock.

3. Appointment of competent authorities.

- The Government may, by notification in the Government Gazette-(a)appoint any person, being Gazetted Officer of the Horticulture Department not below the rank of District Horticulture Officer to be the authority for the purpose of this Act;(b)define the limits within which a competent authority shall exercise the powers conferred and perform the duties imposed on it by or under this Act.

4. Owner of every fruit nursery to obtain licence.

- No owner shall, after the expiry of six months from the date of commencement of this Act or from the date on which he first becomes owner of such nursery, whichever is later, conduct or carry on the business of the fruit nursery except under and in accordance with a licence obtained by him under the provisions of this Act and the rules made thereunder.Explanation. - Where an owner has more than one fruit nursery, whether in the same town or village or in different towns or villages he shall obtain a separate licence in respect of each such fruit nursery.

5. Application for grant and renewal of licence.

(1)Any owner desiring to obtain a licence referred to in the last preceding section shall make an application in writing to the competent authority in such form and manner, and accompanied by such licence fee, not exceeding rupees fifty as may be prescribed.(2)On the receipt of such application, the competent authority shall make such inquiry as it considers necessary. If the competent authority is satisfied,-(a)that the fruit nursery as per soil test and other prescribed conditions is suitable for the proper propagation of the fruit plants in respect of which the licence has been applied for;(b)that the applicant is competent to conduct such a fruit nursery;(c)that the applicant has paid the prescribed licence fee ; and(d)that the applicant fulfils or undertakes to fulfil such other conditions as may be prescribed, being conditions for ensuring the quality of plants to be propagated, and their sale at a reasonable price fixed by the Government;the competent authority shall grant the licence to the applicant. If the competent authority is not so satisfied it may, after giving a reasonable opportunity to the applicant of being heard and after recording a brief statement of the reasons for refusal, refuse to grant the licence and furnish a copy of such statement to the applicant and refund to him the licence fee, which may have been paid to him.(3)Every licence granted under this section shall in the first instance be valid for a period of two years and may, on an application made to it, be renewed by the competent authority for such period and on payment of such fee, and on such conditions, as may be prescribed. Where the competent authority refuses to renew a licence it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant:Provided that, no order refusing to renew a licence shall be made unless the applicant is given a reasonable opportunity of being heard.

6. Duties of the holder of a licence.

- Every holder of a licence under this Act shall-(a)undertake to employ only such varieties of the fruit plants specified in the licence in respect of scion or rootstock, for propagation and sale, as may be directed by the competent authority ;(b)keep a complete record of the origin of source of every rootstock and every scion showing-(i)local and English name of rootstock as well as scion wood ;(ii)the botanical name together with the local name, if any, of the scion used in raising the fruit plants ;(c)keep a layout plan showing the position of every rootstock and scion tree employed in raising the fruit plant;(d)keep the nursery plots as well as the parent trees used for the propagation of fruit plants, free from insect pests and plant diseases ;(e)specify in a conspicuous manner on a label the name of every variety of fruit plant enclosed in any package intended for sale and the name of the rootstock together with that of the scion of every such fruit plant;(f)undertake to release for sale or distribute only such fruit plants as are completely free from any kind of insect pest or plant disease ;(g)maintain a register in the form as may be prescribed showing the name of the fruit plant sold to any person, the name of the rootstock and scion and the name and address of person purchasing it;(h)take such measures as the competent authority may direct to ensure proper health/disease free growth of cultivators of known pedigree.

7. Power of the Government to regulate or prohibit import, export or transport of certain fruit plants.

- The Government may, for the purpose of maintaining the quality of any fruit plants grown in any part of the State and to protect them from injurious insect pests or plant diseases, by notification in the Government Gazette, regulate or prohibit, subject to such restriction and conditions as it may impose, the bringing into, or taking out of the State or any part thereof, otherwise than across customs frontiers as defined by the Parliament, or transport within the State, of any fruit plants of unknown pedigree or affected by any infectious or contagious pests or diseases.

8. Power to cancel or suspend licences.

(1)The competent authority may suspend or cancel any licence granted or renewed under this Act on any one or more of the following grounds, namely:-(a)that the owner has parted, in whole or in part, with his control over the fruit nursery, or has otherwise ceased to conduct or hold such fruit nursery;(b)that where the maximum rate or price for any variety of any fruit plants has been fixed by the Government, by notification in the Government Gazette, the owner has sold any such fruit plant at a higher rate or price ;(c)that the owner has, without reasonable cause, failed to comply with any of the terms and conditions of the licence or any direction lawfully given by the competent authority or has contravened any of the provisions of this Act or the rules made thereunder ;(d)on any other ground as may be prescribed.(2)The competent authority may suspend the licence pending the passing of a cancellation order in respect thereof under sub-section (1).(3)Every order under sub-section (1) shall be in writing and shall contain the reasons in support thereof and every such order shall be communicated to the licensee concerned :Provided that before making any such order the competent authority shall give to the licensee a reasonable opportunity of being

heard.(4)A copy of every order passed under sub-section (1) or (2) shall be communicated to the licensee forthwith.

9. Return of licence.

- On the expiry of the period of validity specified in the licence or on receipt of an order suspending or cancelling a licence, the licensee shall return the licence to the competent authority :Provided that such authority may, after such expiration, suspension or cancellation, as the case may be, give such reasonable time as it deems fit, to the owner to enable him to wind up his fruit nursery.

10. Duplicate licence.

- If a licence granted to an owner is lost, destroyed, mutilated or damaged the competent authority shall, on application and on payment of the prescribed fee, issue a duplicate licence.

11. Appeal.

(1)Any person aggrieved by an order of a competent authority refusing to grant or renew a licence or suspending or cancelling a licence, may appeal in such form and manner, within such period and to such authority, as may be prescribed :Provided that the appellate authority may entertain the appeal after expiry of the prescribed period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.(2)On receipt of an appeal under sub-section (1) the appellate authority shall after giving the appellant an opportunity of being heard, pass such order on the appeal as it deems fit.(3)An order passed under this section shall, subject to the provisions of section 12 be final.

12. Revision.

(1)The Government may at any time, suo moto or on an application made to it in this behalf, examine the record of any case for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it deems fit:Provided that the Government shall not call for the record in any case which is pending before the appellate authority or in respect of which period of limitation for filing appeal has not expired :Provided further that the Government shall not pass any order under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.(2)An order passed under this section shall be final.

13. Power of entry and inspection.

(1)For the purpose of ascertaining the position, or examining the working of any fruit nursery or for other purposes mentioned in this Act or the rules made thereunder, the competent authority or any person authorised by it or by the Government in this behalf shall have the right at all reasonable hours with or without assistance,-(a)to enter into any fruit nursery and to inspect or examine the

fruit plants therein;(b)to order the production of any account book, register record or other document relating to such nursery and take or cause to be taken extracts from, or copies of, such documents;(c)to ask all necessary and relevant questions and examine any person having control of, or employed in connection with such nursery.(2)The licensee and all persons employed in connection with the nursery shall afford the competent authority or the authorised person all facilities for the purposes of sub-section (1) and shall be bound to answer all questions to the best of their knowledge and belief, to produce documents in their possession and to furnish such other information in relation to the fruit nursery as may be required by such authority or person.

14. Penalties.

- If any person-(a)contravenes any of the provisions of this Act or the rules made thereunder; or(b)obstructs any officer or person in the exercise of any power conferred, or in the performance of any duty imposed, on him by or under this Act;shall be liable to be punished with fine which may extend to one thousand rupees.

15. Offence by Companies.

- If the person committing any offence under the Act is a company, the company as well as every person incharge of and responsible to the company for the conduct of its business at the time of the commission of the offence 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 section shall render any such, person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.Explanation. - For the purposes of this section, "Company" means any body corporate and includes a firm or other association of individuals.

16. Cognizance of offence.

- No court shall take cognizance of any offence punishable under this Act except on the report in writing of the facts constituting such offence made by competent authority or any officer authorised by the Government in this behalf.

17. Jurisdiction of court.

- Notwithstanding anything contained in the Code of Criminal Procedure, Samvat 1989, no court inferior to that of Judicial Magistrate of the First Class, shall try any offence punishable under this Act.

18. Officers and persons exercising powers under this Act to be public servants.

- All officers appointed under this Act and every person authorised to exercise any power conferred, or to perform any duties imposed, on him by or under this Act shall be deemed to be public servants within the meaning of section 21 of the State Ranbir Penal Code.

19. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the Government or any officer or person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

20. Power to delegate.

- The Government may, by notification in the Government Gazette, direct that any power except the power to make rules shall, in such circumstances and subject to such conditions, if any, as may be specified in the notification, be exercised also by any officer or authority subordinate to it.

21. Power to make rules.

(1)The Government may, by notification in the Government Gazette, and subject to the condition of previous publication, make rules to carry out 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)the form and the manner of making an application for a licence, the fee for such licence and renewal thereof, the period for which, the conditions subject to' which and the form in which a licence may be granted, under section 5 ;(b)the other grounds, the contravention of which by the licensee shall entail suspension or cancellation of the licence under section 8 ;(c)the fee payable in respect of a duplicate licence under section 10;(d)the form and manner in which, the period within which and the authority to which, an appeal may be made under section 11 and the procedure to be followed by the appellate authority in disposing of the appeal ;(e)any other matter which is required or may be required under this Act to be prescribed.(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.