

Orissa Fruit Nurseries (Regulation) Act, 1997**[01 March 2000]**

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Orissa Fruit Nurseries (Regulation) Act, 1997**[01 March 2000]**

AN ACT TO PROVIDE FOR THE LICENSING AND REGULATION OF FRUIT NURSERIES IN THE STATE The following Act of the Orissa Legislative Assembly having been assented to by the Governor on 9th February, 1998 is hereby published for general information. Be it enacted by the Legislature of the State of Orissa in the Forty-eighth Year of the Republic of India as follows :-Published vide Orissa Gazette Extraordinary No. 405 dated 1.3.2000.

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Orissa Fruit Nurseries (Regulation) Act, 1997.
- (2) It extends to the whole of the State of Orissa.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,-

- (a) "competent authority" means any person appointed under Section 4;
- (b) "Director" means the Director of Horticulture, Orissa;
- (c) "fruit nursery" means any place where fruit plants are, in the regular course of business, propagated or sold for transplantation;
- (d) "Government" means the State Government of Orissa;
- (e) "nurseryman" means any person engaged in production and sale of fruit plants;
- (f) "plant material" means any material used for propagation and raising of fruit plants and includes bud wood, scion, root stock, suckers, roots, seeds and cuttings;
- (g) "prescribed" means prescribed by rules;
- (h) "root stock" means the fruit plant or part thereof on which any fruit plant has been grafted or budded;
- (i) "rules" means rules made by the Government under this Act;
- (j) "scion" or "bud wood" means the part of the plant which is used for grafting or budding a root-stock or tree.

3. Fruit Nurseries Not To Be Established Or Maintained Without Registration And Licence :-

- (1) On and after the commencement of this Act, no person shall establish or conduct a fruit nursery, without being registered with the competent authority and without obtaining a licence under the provisions of this Act.
- (2) Notwithstanding anything in Sub-section (1), a nurseryman who owns and possesses a fruit nursery immediately before the commencement of this Act may continue to conduct the fruit nursery -
 - (a) for a period of three months from the date of commencement of this Act; or
 - (b) if an application for registration and licence is made to the

competent authority within the period specified in Clause (a) in accordance with the Sec. 5, till the disposal of such application.

(3) Where any person, or a nurseryman who owns and possesses a fruit nursery, intends to establish or, as the case may be, conduct more than one fruit nursery, he shall have to obtain a separate licence in respect of each fruit nursery.

4. Appointment Of Competent Authority :-

The Government may, by notification, -

(a) appoint any officer, not below the rank of a Class-I Officer of the Government in horticultural discipline, to be the competent authority for the purpose of this Act; and

(b) define the local limits within which the competent authority shall exercise the powers conferred and perform the duties imposed on him by or under this Act.

5. Application For Registration And Licence :-

Every application for registration and licence under Sec. 3 shall be made to the competent authority in such form and accompanied by such fee as may be prescribed.

6. Grant And Refusal Of Licence :-

(1) Subject to such conditions and restrictions as may be prescribed, if the competent authority is satisfied that-

(a) the fruit nursery is suitable for the proper propagation of the fruit plants in respect of which licence has been applied for;

(b) the applicant is competent to conduct or establish any such fruit nursery;

(c) the applicant fulfils or undertakes to fulfil such other conditions, as may be notified by the competent authority in this behalf, being conditions for ensuring the quality of plants to be propagated and their sale at a reasonable price; and

(d) the applicant has paid the fee prescribed for the licence and has also furnished the security prescribed, if any, such authority may grant a licence to the applicant for conducting or establishing a fruit nursery in accordance with the terms of the licence and the provisions of this Act and the rules.

(2) Every licence granted under this section shall remain valid for a period of three years from the date of its issue and it may be renewed from time to time on payment of such fee, in such manner

and on fulfilment of such conditions as may be prescribed.-

(3) If the competent authority refuses the grant or renew a licence under this section, he shall record the reasons for such refusal in writing and communicate a copy of his order to the applicant.

(4) Every application made under Sec. 5 shall be disposed of within a period of three months from the date it is made.

7. Duties Of Licence Holder :-

Every person, who holds a licence under this Act, shall -

(a) keep a complete record of the origin or source of every root stock and scion used for vegetative propagation showing their botanical name, alongwith local name or common name, if any;

(b) utilise only such plant materials in respect of root stock and scion for propagation, as may recommended by the Director from time to time;

(c) show full particulars of the variety or varieties, if imported or evolved by the nurseryman at his own estate, intended for propagation, to the Director or a Gazetted Officer authorised by the Director in his behalf and shall obtain his approval before sale of such varieties, as the case may be, under a distinct or separate name;

(d) utilise such plant materials as are required to be used in accordance with the licence granted;

(e) maintain a map register depicting the plots of the fruit nursery in respect of each kind and variety of plants;

(f) maintain a register in the prescribed form and manner showing the progeny and performance of each mother plant to be utilised for production of plant material;

(g) keep the nursery plots as well as the parent trees used for propagation of fruit plants free from insects, pests and diseases;

(h) prepare the fruit plants in such manner as may be directed by the competent authority from time to time;

(i) use the seed material of known and genuine progeny being approved by the Director in case of seedling or sapling;

(j) not procure stock for sale from any outside source other than a licensed fruit nursery, research institute or Government institute, and where stock is procured from any of the said three sources, inform the competent authority the source, quantity and type of material so procured, before sale of such stock.

8. Suspension Or Cancellation Of Licence :-

- (1) The competent authority may suspend or cancel any licence granted or renewed under this Act, if the licensee -
- (a) has applied to be adjudicated, or been adjudicated, an insolvent; or
 - (b) has parted, in whole or in part, with his control over the fruit nursery; or
 - (c) has ceased to conduct or possess such fruit nursery; or
 - (d) in the opinion of the competent authority, has become incompetent to conduct or possess such fruit nursery; or
 - (e) has contravened, or failed to comply with, any of the terms of the licence or any of the provisions of this Act or the rules; or
 - (f) has refused to surrender or produce his licence or to produce the registers and other records required to be maintained under this Act or the rules, to the competent authority or any person authorised by it; or
 - (g) becomes subjected to any other ground as may be prescribed.
- (2) Before passing an order Sub-sec. (1) the competent authority shall intimate to the licensee the grounds on which it is proposed to pass such order and give him a reasonable opportunity of showing cause against it.
- (3) The competent authority may suspend the licence pending the passing of a cancellation order in respect thereof under Sub-sec. (1).
- (4) A copy of every order passed under Sub-sec. (1) or Sub-sec. (3) shall be communicated to the licensee.

9. Return Of Licence :-

On the expiry of the period of validity of the licence or on the receipt of an order of suspension or cancellation thereof, the licensee shall return the licence to the competent authority:

Provided that the competent authority may, after such expiration, suspension or cancellation, give such reasonable time as it thinks fit to the nurseryman to enable him to wind up his fruit nursery.

10. Issue Of Duplicate Licence :-

If a licence granted or renewed under this Act 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 the competent authority passed under Sec. 6 or 8 may, within a period of thirty days from the date of the order, prefer an appeal to such authority and in such form and manner, as may be, prescribed :

Provided that the appellate authority may admit an appeal after the prescribed period, if sufficient cause is shown.

(2) The appellate authority may, after hearing the appellant, pass such orders as he thinks fit.

(3) Subject to the provision of Sec. 12, any order passed under this section shall be final.

12. Revision :-

(1) The Government may, on the application of any person aggrieved by an order passed under this Act, within a period of ninety days from the date of the order, for the purpose of satisfying it as to the legality or propriety of such order, call for and examine the records of the case, and may pass such orders as it may deem fit :

Provided that the Government shall not exercise the powers under this section in respect of an order against which an appeal preferred under Sec. 11 is pending or in case an appeal has not been preferred, before the expiry of the time-limit thereof.

(2) An order passed under this section shall be final.

13. Inspection Of Fruit Nursery And Records :-

(1) The competent authority, or any officer authorised by him or the Government, may enter into the premises of fruit nursery and inspect or examine the plant materials or the books of accounts, registers, records or other documents relating to the fruit nursery at all reasonable hours, for the purpose of satisfying him if that the requirement of this Act and the rules are being complied with.

(2) The nurseryman or his agent, or any person employed therein in connection with the fruit nursery, shall afford all reasonable access and facilities for the inspection and examination as may be required for the aforesaid purpose by the competent authority or the authorised officer, as the case may be, and shall be bound to furnish all information, books of accounts, registers, records and other documents in relation to the fruit nursery as may be required by such authority or officer, as the case may be.

(3) If the competent authority or the authorised officer is of the opinion that the use of any plant material or its mother trees, or

both, may not be in the interest of the fruit industry on account of -

- (a) poor quality of fruits,
 - (b) poor fruit bearing capacity,
 - (c) infestation of insects, pests and diseases of incurable nature, or
 - (d) such other reason as he may consider appropriate,
- he may declare such plant material and if so necessary its mother trees, as unfit for use and may direct the nurseryman in writing to remove and destroy the same within the prescribed period.
- (4) The nurseryman shall, on receipt of such direction, remove or destroy such plant material and trees within the prescribed period, failing which, the competent authority or, as the case may be, the authorised officer shall cause the same to be removed and destroyed and the expenditure incurred therefor shall be recovered from the nurseryman as an arrear of land revenue.

14. Packages And Their Labelling :-

- (1) A package or container containing plant or plants shall be distinctly labelled to designate the kind and variety sold.
- (2) In case the package or container contains plants of more than one kind and variety, each individual plant shall be labelled.
- (3) The name of root stock and the scion shall be mentioned on label.

15. Power Of Government To Prohibit Or Regulate The Bringing Into Or Taking Out Of The State Fruit Plants :-

The Government may, by notifications, prohibit or regulate, subject to such restrictions and conditions as it may impose the bringing into, or taking out of the State otherwise than across a customs frontier as defined by the Central Government, or the transport within the State, of any fruit plants of unknown pedigree or affected by any infectious or contagious disease or pest as declared by the competent authority.

16. Penalties :-

- (1) If any person contravenes, or attempts to contravene, or abets the contravention of any of the provisions of this Act or the rules he shall, on conviction, be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both.

(2) Whoever, after conviction under Sub-sec. (1), continues the contravention, he shall, on conviction, be punishable with fine which may extend to one hundred rupees for everyday, after the first day, during which such contravention is continued.

17. Offence By Companies :-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence 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 provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-sec. (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section, -

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means partner in the firm.

18. Cognizance Of Offence :-

No Court shall take cognizance of an offence punishable under this Act except on a complaint in writing made by the competent authority or any officer authorised by him in this behalf by general or special order.

19. Delegation Of Powers :-

The Government may, by notification, delegate to any officer or authority subordinate to it all or any of its powers under this Act except the power to make rules.

20. No Compensation For Suspension Or Cancellation Of Licences :-

Where any licence is suspended or cancelled under this Act, the nurseryman shall not be entitled to any compensation therefor nor shall be entitled to refund of any fee paid by him for the licence.

21. Competent Authority Or Certain Other Person To Be Public Servants :-

The competent authority and every person duly authorised to discharge any duty imposed on him by or under this Act shall be deemed to be public servants within the meaning Sec. 21 of the Indian Penal Code, 1860.

22. Protection Of Action Taken In Good Faith :-

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

23. Power To Make Rules :-

The Government may, by notification, make rules for carrying into effect the provisions of this Act.