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The Orissa Saw Mills and Saw Pits (Control) Act, 1991

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THE ORISSA SAW MILLS AND SAW PITS (CONTROL) ACT, 1991
(ACT NO. 27 OF 1991)¹

An Act to provide for the Regulation of Establishment and operation of Saw Mills and Saw Pits and Trade of Sawing for the protection and conservation of forests and the environment and for the matters incidental thereto or connected therewith.

Be it enacted by the Legislature of the State of Orissa in the Forty-second Year of the Republic of India, as follows—

1. Short title, extent and commencement.—(1) This Act may be called the Orissa Saw Mills and Saw Pits (Control) Act, 1991.

(2) It shall extend 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, and different dates may be appointed for different areas of the State and any reference in this Act to the commencement of this Act shall in relation to an area, be construed as a reference to the coming into force of this Act in that area.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) "appointed day" means the date of commencement of this act;
- (b) "forest area" includes all lands notified as forest under any law or administered as forest, whether State owned or private and whether wooded or maintained as a potential forest land;
- (c) "licence" means a licence granted under Sec. 7;
- (d) "licensee" means any person to whom a licence is granted under Sec. 7;
- (e) "licensing officer" means a licensing officer appointed under Sec. 3;
- (f) "prescribed" means prescribed by rules;
- (g) "Rules" means Rules made by the State Government under this Act;
- (h) "*saw mill*" means the plant and machinery with which and the premises including the precincts thereof in which or in any part of which sawing is carried on with the aid of electrical or mechanical power;
- (i) "*saw pit*" means a place where wood is sawn by manually operated saws;
- (j) "sawing" with its grammatical variations and cognate expressions means operation of sawing, cutting; converting, fashioning or seasoning wood and includes preservation and treatment thereof either by mechanical process with the aid of electrical or mechanical power or by manually operated saws;
- (k) "vehicle" includes truck, tractor, trolley, motor vehicle, boat and cart;
- (l) "wood" includes trees when they have fallen or have been felled and all wood of any species whether cut, converted, fashioned sawn or hollowed out for any purpose or not; and
- (m) words and expressions used but not defined and defined in the Orissa Forest Act, (14 of 1972), shall have the meanings respectively assigned to them in that Act.

3. Appointment of licensing officer.—The State Government may, by notification—

- (a) appoint any officer not below the rank of Divisional Forest Officer to be licensing officer for the purposes of this Act; and

¹ Published in the Orissa Gazette, Extraordinary, dated 13th December, 1991.

(b) define the local limits within which a licensing officer shall exercise powers conferred, and perform the duties imposed, on a licensing officer by or under this Act.

4. Establishment and operation of saw mill and saw pit.—(1) On and after the appointed day, no person shall establish or operate a saw mill or saw pit except under the authority and subject to the conditions of a licence granted under this Act:

Provided that no person shall establish or operate any saw mill or saw pit within a reserved forest, protected forest or any forest area or within ten kilometers from the boundary or any such forest or forest area.

(2) Notwithstanding anything contained in sub-section (1),—

- (i) a saw mill or saw pit, established by the Orissa Forest Development Corporation Limited or by any other agency of the Government prior to the appointed day, may continue to be operated by such Corporation or agency, as the case may be, and in such case, the Corporation or agency, as the case may be shall be, deemed to be a licensee for the purposes of this Act,
- (ii) a saw mill or saw pit other than one referred to in Cl. (i) and established prior to the appointed day, may continue to be operated, and shall be deemed to be a saw mill, or saw pit, as the case may be, licensed under this Act, —
 - (a) for a period of three months from the appointed day; or
 - (b) if an application made in accordance with Sec. 6 for a licence is pending on the expiry of the period specified in Cl. (a), till the disposal of such application under sub-section (2) of Sec. 7.

5. Declaration of prohibited area. — (1) Notwithstanding anything contained in this Act, the State Government may, by notification, for reasons to be specified in such notification.

(2) During the period any area is declared to be a prohibited area under sub-section (1) the following consequences shall ensue, namely —

- (a) no licence shall be granted for establishment of a saw mill or saw pit in that area;
- (b) no licence shall be renewed in relation to the area during that period;
- (c) a saw mill or saw pit situated in that area shall cease to operate and keep its sawing operations closed

Provided that the licensing officer may permit sawing of wood in deposit in the saw mill or a saw a saw pit subject to such conditions and restrictions as it may deem fit to impose; and

- (d) no claim on account of damages because of closure shall be entertained nor any damages shall be payable.

6. Application for licence.—(1) Every person who continues to operate on the appointed day a saw mill or saw pit shall, if the said person intends to continue the operation of the saw mill or saw pit, as the case may be, after the expiry of the period referred to in Cl. (b) of sub-section (2) of Sec. 6, make, at least one month before the expiry of such period, an application to the licensing officer for the grant of a licence.

(2) A person, who intends to establish or operate, after the appointed day, a saw mill or saw pit, shall make an application to the licencing officer for the grant of a licence.

(3) Every application under sub-section (1) or sub-section (2) shall be in such form and be accompanied by such fee and such security deposit for due observance of the conditions of the licence, as may be prescribed.

7. Grant, renewal, revocation or suspension of licence— (1) On receipt of the application under sub-section (1) of Sec.6. the licensing officer may, after making such enquiry as it may deem fit, —

(i) grant the licence; or

(ii) by order in writing, for reasons to be stated therein, refuse to grant the licence:

Provided that no order refusing to grant the licence shall be passed, unless the application has been given a reasonable opportunity of being heard.

(2) Every application received under sub-section (1) of Sec. 6 shall be disposed of by the licensing officer within a period of three months from the date of its receipt.

(3) A licence granted under sub-section (1) shall be subject to the provisions of this Act and to such conditions as may be prescribed.

(4) The provisions of this section shall apply to renewal of licence as they apply to grant of licence or refusal to grant a licence.

(5) If the licensing officer is satisfied, either on a reference made to in this behalf or otherwise, that—

(a) the licensee has parted, in whole or in part with his control over the saw pit or has otherwise ceased to operate on own such saw mill or saw pit; or

(b) the licensee has, without reasonable cause failed to comply with any of the conditions of the licence or any direction lawfully given by the licensing officer or has contravened any of the provisions of this Act or the rules; or

(c) the licensee has in the premises of the saw mill or saw pit, wood which he is not able to account for satisfactorily and consequently which is liable for confiscation under sub-section (2) of Sec.10, then without prejudice to any other penalty to which the licensee may be liable under this Act, the licensing officer may after giving the licensee an opportunity of showing cause, revoke or suspend the licence and forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which licence has been granted.

8. Power of entry, search and seizure.—(1) For the purpose of ascertaining the position or examining the working of any saw mill or saw pit or with a view to securing compliance of the provisions of this Act and the rules, the licensing officer or any other person authorized by the licensing officer in this behalf may,—

(a) enter and inspect any saw mill and saw pit;

(b) examine and, for this purpose order the production of any documents, books, registers or records in the possession or power of any person having the control of or employed in connection with, any saw mill and saw pit;

(c) search any person or search any premises, vehicle, machine, tools and equipments used or intended to be used in contravention of the provisions of this Act and the rules and may stop any vehicle or person for the purpose; and

(d) seize any document, wood, plants and machinery, tool, implement equipment, vehicle and any other article which, he suspects, is already involved or used or is about to be involved or used in contravention of provisions of this Act or the rules.

(2) The provisions of Sec. 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, so far as may be, apply to searches and seizures under this section.

9. Submission of returns.- Every licensee shall submit such returns relating to the business of the saw mill or saw pit, as the case may be, and in such forms and to such officer and on such dates as may be prescribed.

10. Keeping of account of stock of wood in saw mill and saw pit.—(1) All wood, whether sawn or not, found in are brought to the saw mill or saw pit or at the site or sawing at any time or during any period by any person in any manner or by any means for the purpose of sawing or for any other purpose shall always be properly accounted for all relevant evidence, documents, receipts, order and certificate as are necessary to show that the wood is legally obtained shall be maintained and made available at the time of inspection.

(2) The stock or wood which is not accounted for satisfactorily shall be presumed to have been obtained unlawfully and shall be liable for confiscation by the licensing officer following the procedure provided in the sub-section (2) of Sec. 13.

11. Prohibition of electric connection, in unlicensed saw mills.—Notwithstanding anything contained in any enactment relating to electricity for the time being in force, no electric energy shall be consumed and no electric connection shall be installed for the purpose of a saw mill or continued for that purpose unless such saw mill is duly licensed or deemed to be licensed in accordance with the provisions of this Act and the rules, and such electric connection shall be disconnected if a saw mill operates without a valid licence granted or deemed to be granted under this Act.

12. Appeal.—(1) Any person aggrieved by the refusal of the licensing officer to grant or renew a licence or by the suspension or revocation of a licence may, within thirty days of the service on him of the order of such refusal or suspension or revocation, appeal to the Conservator of Forests who shall decide the appeal after giving the appelland and the licensing officer an opportunity of being heard. The decision of the Conservator of Forests shall be binding on the licensing officer.

(2) The order of the licensing officer shall, unless the Conservator of Forests as referred to in sub-section (1) conditionally or unconditionally directs otherwise, remain in force pending the disposal of the appeal under sub-section (1).

13. Confiscation of saw mill etc.—(1) The licensing officer may,—

- (a) where a saw mill or saw pit is established or operated, after the appointed day, in an area declared to be prohibited area under sub-section (1) of Sec. 5; or
- (b) where a saw mill or saw pit is established or operated, save as provided in sub-section (2) of Sec. 4, without a valid licence; or
- (c) where a saw mill or saw pit is operated after suspension or revocation of a licence under sub-section (4) of Sec.7; or
- (d) where the saw mill or saw pit is operated with the aid of electrical energy or electrical installation in contravention of the provision of Sec. 11,

order confiscation of the whole or the portion of the plants and machinery implements and equipments which have been used I n the commission of the offence.

(2) No order confiscating any property shall be made under sub-section (1) unless the person from whom the property is seized and, where the owner of such property is known, such owner, are given —

- (a) a notice in writing informing of the grounds on which it is proposed to confiscate such property;
- (b) an opportunity of making a representation in writing within the prescribed time

which shall be specified in the notice against the grounds for confiscation; and
(c) a reasonable opportunity of being heard in the matter

(3) Any Forest Officer not below the rank of Conservator of Forests empowered by the State Government in this behalf by notification, may within thirty days from the date of order of confiscation by the licensing officer under sub-section (1) either *suo motu* or on application, call for and examine the records of that order and may make such enquiry of cause such enquiry to be made and pass such orders as he may think fit :

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

(4) Any person aggrieved by an order passed under sub-section (3) may, within thirty days from the date of communication to him of such order, appeal to the District Judge having jurisdiction over the area in which the property has been seized and the District Judge shall, after giving an opportunity to the parties to be heard, pass such order as it may think fit and the order of the District Judge so passed shall be final.

(5) Where an order of confiscation or any property passed under sub-section (1) or sub-section or sub-section (4) has become final in respect of the whole or any portion of such property, such property or the portion thereof, as the case may be, shall vest in the State Government free from all encumbrances.

(6) An order of confiscation under sub-section (1) or sub-section (3) or sub-section (4) shall not be deemed to bar the imposition of any other penalty to which the person from whom the property is seized is liable under this Act.

14. 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 year and with fine which may extend to ten thousand rupees:

Provided that—

(i) where such contravention, attempt or abetment relates to Sec. 4; or

(ii) when unlawful wood involved in the contravention is more than five cubic metres in volume, for the second or subsequent offence,

the minimum imprisonment in either case shall be three months and minimum fine in either case shall be three thousand rupees.

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

(3) If any person,—

(i) when required by this Act or by any Order under this Act to make any statement or furnish any information makes such statement or furnishes such information which is false in any material particular and which he knows or has reason to believe to be false or does not believe to be true; or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required to maintain or furnish under this Act, he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, and with fine which may extend to three thousand rupees.

15. 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 and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-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 exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of or is attributable to any neglect on the part of the 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 any body corporate, and includes a firm or other association of individuals;

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

16. Burden of proof.—(1) Where wood whether sawn or unsawn is recovered from a saw mill or saw pit for which no valid licence exist in accordance with the provisions of this Act or the rules, it shall, until the contrary is proved, be presumed that the saw mill or saw pit was in operation, and the burden of so proving the contrary shall lie on the accused.

(2) Where in any prosecution for an offence against this Act or the rules, it is established that any wood declared unlawful was seized in the premises of a saw mill of a person, or at any site where sawing was being done it shall until the contrary is proved, be presumed that such person has contravened the provisions of the Act or the rules, and the burden of so proving the contrary shall lie on the accused.

17. Cognizance of offence.—(1) 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 the licensing officer or any person duly authorized by the State Government or the licensing officer in this behalf.

(2) Nothing in sub-section (1) shall prevent any person from making a complaint in writing to the licensing officer or any person authorized under the said sub-section alleging the commission of an offence under this Act, and where such a complaint is received, the licensing officer or the person so authorized, as the case may be, shall make a report to the Court as provided in the said sub-section within thirty days from the date of receipt of such complaint if he is satisfied, after due enquiry in the manner as may be prescribed, that there is sufficient reason to believe that an offence has been committed.

18. Jurisdiction of Court.—No Court inferior to that of Judicial Magistrate of the first class shall try any offence punishable under this Act.

19. Composition of offences.—(1) Any Forest Officer empowered by the State Government in this behalf may accept from any person whose licence is liable to be revoked or suspended under sub-section (5) of Sec. 7 or who is reasonably suspected of having committed, for the first time, an offence relating to non-submission of return under Sec. 9 or non-maintenance of account of wood under sub-section (1) of Sec. 10 or sawing of wood unlawfully obtained which is of less than half a cubic metre in volume, a sum not exceeding five thousand rupees in lieu of such revocation or suspension or by way of composition for each such offence, as the case may be, and may impose as a penalty a sum not exceeding five thousand rupees and shall order confiscation of

unlawfully obtained wood which was seized.

(2) On the payment of such sum of money to the Forest Officer, the accused person if in custody shall be discharged and no further proceedings shall be taken against such person.

20. Licensing officers, etc., to be public servants.—The licensing officers and every person duly authorised to discharge any duties imposed on him by or under this Act shall be deemed to be public servants within the meaning of Sec. 21 of the Indian Penal Code, (45 of 1860).

21. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the State Government or any officer or person or authority for anything, or for any damage caused or likely to be caused by anything, which is in good faith done or intended to be done in pursuance of this Act or the rules or any order made thereunder.

22. Rewards – The Court or the licensing officer, as the case may be, may by order, permit giving of reward in the shape of an amount which is not more than one-fourth of the amount of fine and/ or of the value of the property forfeited and/ or confiscated, to such person or persons whose information has indisputably led to the detection of the contravention of any of the provisions of this Act or the rules.

23. Power to make rules.—(1) The State Government may, by notification 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 in which application shall be made under sub-section (1) or sub-section (2) of Sec. 6 and the fee and security deposit which shall accompany such application;
- (b) conditions subject to which licence may be granted under sub-section (2) of Sec. 7;
- (c) the period for which, the fee on the payment of which and the conditions subject to which the licence may be renewed under sub-section (3) of Sec. 7;
- (d) the form in which, the officer to which and the dates on which returns shall be submitted under Sec. 9;
- (e) for installation of electric connection, etc., under Sec. 11;
- (f) the authority to which appeal may be preferred under Sec. 19;
- (g) any other matter which is required to be or may be prescribed.

24. Other Acts and laws not to apply to saw mill and saw pit.—Nothing contained in any other Act, or Law, Rules, Order or any other thing having the force of law in any areas of the State, shall apply to the saw mill and saw pit and sawing in respect of matters for which provisions are contained in this Act:

Provided that nothing in this section shall be construed as to bar the application of any such Act, or Law, Rule, Order or any other thing having the force of law for the purpose of institution, continuance or enforcement of any investigation, legal proceeding or remedy in respect of any right, obligation or liability acquired, accrued, or incurred thereunder prior to the appointed date unless there is anything otherwise specifically provided in this Act.

25. Saving.—The provisions of this Act or the rules shall not apply to the ordinary operations of carpentry not involving saw mill or saw pit operation.

26. Power to remove difficulty.—If any difficulty arises in giving effect to the provisions of this Act, the State Government may do anything not inconsistent with such provisions, which appears it to be necessary or expedient for the purposes of removing the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.