

THE KERALA FOREST PRODUCE (FIXATION OF SELLING PRICE) ACT, 1978

HISTORY AND OBJECT OF THE LEGISLATION

Till the year 1978 there were no statutory rules or procedures for fixing the selling price of forest produce in the state. In this circumstance, the Government considered it necessary to fix the selling price of certain important forest produce and to utilize the income therefrom for the regeneration and protection of forests in the state.

The Statement of Objects and Reasons of the Act reads as follows:

ACT 29 OF 1978

[Published in K.G. Ext. No. 478 dt. 19/07/1978]

“At present there is no rule or procedure to fix the selling price of forest produce. It is considered necessary that Government should fix the selling price of certain important forest produce every year so that they are sold at reasonable rates and proceeds thereof are utilised for the proper regeneration and maintenance forests in the State.

2. The Bill is intended to achieve the above object.”

THE KERALA FOREST PRODUCE (FIXATION OF SELLING PRICE) ACT, 1978

[ACT 29 OF 1978]

An Act to provide for the fixation of the selling price of certain important Forest Produce, for the prohibition of the sale of such Forest Produce at less than the price so fixed and for matters incidental or ancillary thereto.

Preamble.— WHEREAS it is necessary to safeguard the forest wealth of the State to the maximum extent possible;

AND WHEREAS the proper regeneration and maintenance of the forest in the State is not possible unless the forest produce is sold at reasonable rates and the proceeds thereof are utilized for such purposes;

* The English version of the Act was published vide Notification No. 9832-Leg (B1)/78/Law dated 26-9-1978 published in the Kerala Gazette No.40 dated 3-10-1978.

AND WHEREAS the very existence of the forest depends on the proper regeneration and maintenance thereof;

AND WHEREAS forest produce particularly timber including bamboo and soft wood like eucalyptus is being sold at unreasonably low rates;

AND WHEREAS it is necessary for the conservation of the forests to provide for the fixation of the selling price of certain important forest produce, for the prohibition of the sale of such produce at less the price so fixed and for matters incidental or ancillary thereto;

BE it enacted in the Twenty-ninth Year of the Republic of India as follows:

1. Short title, extent and commencement.— (1) This Act may be called the Kerala Forest Produce (Fixation of Selling Price) Act, 1978.

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

(3) It shall come into force at once.

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

(a) "committee" means the expert committee constituted under Section 4;

(b) "forest" means any reserved forest within the meaning of the Kerala Forest Act, 1961 (4 of 1962) and includes any forest vested in the Government under Section 3 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (26 of 1971);

(c) "forest produce" means bamboos, reeds, eucalyptus, vateria indica (vellapine), dipterocarpus species (kalpine), calophyllum species (punna), cedrelatoona (chandana vembu), palaquim ellipticum (pali), ailanthus malabaricum (matty), bombax malabaricum (elavu), evodia roxburgiana (kambli), dyscylum malabaricum (vellakil), adina cordifolia (kadambu), anogeissus latifolia (vekkalee), kyida calycina (benda), macaranga peltata (uppathy or vatta), alstonia scholaris (pala) and terminalia bellerica (thanni);

(d) "prescribed" means prescribed by rules made under the Act;

(e) "selling price" with reference to any forest produce means the price of that forest produce fixed by the Government under S.3;

(f) "State" means the State of Kerala;

(g) words and expressions used but not defined in this Act and defined in the Kerala Forest Act, 1961 (4 of 1962), shall have the meanings respectively assigned to them in that Act.

3. Government to notify selling price of forest produce.— (1) The Government shall, before the end of each financial year, by notification published in the Gazette, fix the selling price of every forest produce for the following financial year.

(2) Notwithstanding anything contained in sub-section (1), the Government shall, as soon as may be after the commencement of this Act, by notification published in the Gazette, fix the selling price of every forest produce for the period commencing on the date of publication of such notification and ending with the 31st day of March, 1979.

(3) Before fixing the selling price of any forest produce under subsection (1) or sub-section (2), the Government shall consult the committee and consider its recommendations.

(4) Notwithstanding anything contained in the foregoing provisions of this section, the Government may, if they decide that it is necessary so to do, refix the selling price of any forest produce during the course of a financial year:

Provided that before refixing the selling price under this sub-section, the Government shall consult the Committee and consider its recommendations.

EDITOR'S NOTE

In Section 2(c) eighteen kinds of trees and plants are brought under the definition of 'forest produce' for the purpose of the Act. They are bamboos, reeds, eucalyptus, vella pine, kalpine, punna, chandana vembu, pali, matty, elavu, kambli, vellakil, kadambu, vekkalee, benda, uppathy or vatta, pala and thanni. The selling prices of these forest produce are fixed by the Government by notification in the gazette as provided in subsection (1) of section 3. The selling prices for the following financial year have to be notified before the end of the current financial year. Before fixing the price the Government shall consult the committee constituted under section 4 and shall consider its recommendations. S.3(4) empowers the government to refix the selling price of any forest produce during the course of a financial year, after consulting the committee and considering its recommendations.

CASE NOTE

No bar to Govt. fixing higher price: It is clear from the provisions of Secs. 3, 4, 5 and 7 that this Act is only for the purpose of preventing the authorised officers of the Government from selling forest produce at a price which is below the price notified under S.3(2) of the Act. This does not prevent the Government or its authorised officers from fixing a higher price and realising the same. [*Ismail Match Works Vs. D.F.O. 1982 KLT SN.9*]

4. Constitution of expert Committee.— (1) The Government shall as soon as may be after commencement of this Act, by notification in the Gazette, constitute an expert committee for the purpose of recommending to the Government a fair and reasonable selling price for each forest produce.

(2) The Committee shall consist of the following members, namely:

(a) the Agricultural Production Commissioner, *ex-officio*: who shall be the Chairman of the Committee;

(b) the Chief Conservator of Forests, *ex-officio*;

(c) the Secretary to Government, Industries Department, *ex-officio*;

(d) the Secretary to Government, Finance Department, *ex-officio*;

(e) the Director of Statistics, *ex-officio*;

(f) the Director, Kerala Forest Research Institute, *ex-officio*;

(g) the Joint Secretary to Government in charge of Forests, *ex-officio*, who shall be the Secretary of the Committee.

(3) The Committee shall, in making its recommendations, have regard *inter alia* to the following matters, namely:

(a) the market price of the forest produce;

(b) the cost of regenerating and maintaining the forest produce in cases where regeneration is necessary after selling the forest produce; and

(c) such other matters as may be prescribed.

(4) The Committee shall follow such procedure as may be prescribed.

EDITOR'S NOTE

S.4 provides for the constitution of the expert committee to advise the Government in fixing the selling price of each forest produce enumerated in S.2(c). Sub-section (2) of Section 4 of enlists the members of the Committee (all ex-officio). Subsection (3) of Section 4 stipulates that the committee shall, inter alia, consider the market price of the forest produce and the cost of regenerating and maintaining the forest produce.

CASE NOTES

Matters to be considered by the expert committee- In its judgment in O.P.No. 1935 of 1979 filed by the Gwalior Rayons Company the Hon'ble High Court of Kerala held that "the committee should apply its mind to the matters specified in Section 4(3) and Rule 4 and on assessment of such matters recommend the selling price. The Govt. is not given an arbitrary power to fix the selling price. The committee has not looked in to the relevant matter for recommending the selling price of eucalyptus. When that commodity has no market and the produce is not available in the market in fixing the price the compounded average cost of the plantation up to the stage of harvest is a necessary ingredient to be taken into account. That is not seen done by the committee. In respect of eucalyptus the price fixed in the notification is illegal and to that extent the notification has to be quashed".

In *Geetha Timbers Vs. State* reported in 1990(1) KLJ 538 it has been held that an agreement for salvaging timber lying at the bottom of a reservoir submerged in water, on rates fixed is more like a works contract. If teak and rosewood trees are found, the same has to be surrendered to Government. Intention of Government was to clear the reservoir of all wood materials. Such contract cannot be characterised as a contract for sale of forest produce and the Act will not apply.

5. Forest produce to be sold at price not less than the selling price.— (1) After the date of the publication of the notification under sub-section (2) of sections no forest produce shall be sold by the Government or any forest officer at a price which is less than the selling price of that forest produce.

(2) The sale of any forest produce in contravention of sub-section (1) shall be null and void and shall not be enforceable in a court of law.

EDITOR'S NOTE

Sec.5 prohibits the Govt. from selling any forest produce at a price less than the notified price. But Section 6 empowers the Govt. to exempt Government companies and co-operative societies (if sale to the society does not exceed ten cubic metres) from the provisions of Section 5, by means of gazette notification.

5A. Additional Price to be paid by industrial establishments.— (1) Any industrial establishment which purchases bamboos, reeds or eucalyptus from the Government as raw materials, in pursuance of a contract executed by it with the Government, shall pay in addition to the price payable by it for such bamboos, reeds or eucalyptus, an additional price at the rate of twenty five rupees per tonne of such bamboos, reeds or eucalyptus.

(2) The amount obtained by the imposition of additional price under sub-section (1) shall, subject to such rules as may be made by the Government in this behalf, be set apart for being utilized for the regeneration of bamboos, reeds and eucalyptus.

EDITOR'S NOTE

Sec.5A was inserted by section 8 of the Kerala Finance Act, 1983 (Act 19 of 1983), The section imposes an additional liability on industrial establishments which purchase bamboos, reeds or eucalyptus as raw materials from the Government, to pay an additional price at the rate of Rs. 25 per tonne over and above the price fixed under the purchase contract with Government. Subsection (2) of the section stipulates that the additional price so obtained shall be utilized for regeneration of bamboos, reeds and eucalyptus.

6. Exemption.— The Government may, in the public interest, by notification in the Gazette, exempt the sale of any forest produce—

(a) to any company owned by the Central Government or the Government of Kerala,

(b) not exceeding ten cubic meters, to any co-operative society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969), from the provisions of Section 5, subject to such conditions and restrictions as may be specified in the notification.

CASE NOTES

Preference to Govt. companies whether sustainable : In OP No. 1345 of 1979 filed by the Gwalior Rayons company and other connected OPs, the Kerala High Court had held that if the Govt. is given a power to sell the produce at a rate lower than the notified rate to the Govt. companies it will enable the Govt. to cripple or eliminate all other consumers from the field and such conferment of power to discriminate is unreasonable and hence S.6 violates Article 14 of the Constitution. S.6 of the Act and the notification exempting the Govt. companies are unconstitutional and invalid. But in the case *Hindustan Paper Corporation Vs. State of Kerala AIR 1986 SC 1541*, it has been held that preference shown to Govt. companies cannot be considered to be discriminatory as they stand in a different class altogether and the classification made between Govt. Companies and others is a valid one.

6A. Sections 5 and 5-A not to apply to sale of forest produce to certain Industrial establishments.— Nothing contained in Section 5 or Section 5-A shall apply to the sale of forest produce as raw material by the Government to any industrial establishment in pursuance of a contract executed by it with the Government where—

(a) the total quantity of the forest produce to be sold to that industrial establishment per year under such contract exceeds fifty thousand tonnes;

(b) such forest produce is used as raw material for that industrial establishment; and

(c) the number of persons employed in or, under such industrial establishment is not less than one thousand workers:

Provided that the above provision shall not apply to the sale of the forest produce as raw materials to any industrial establishment the price of which raw materials has been fixed at a rate less than Rs. 250 per tonne, including sales tax and additional sales tax.

EDITOR'S NOTE

Sec.6 A was inserted by Act 9 of 1989. It came into force with effect from 24th October, 1988, the date of publication of the Kerala Forest Laws Amendment Ordinance 1988 (18 of 1988). This section lays down that the provisions contained in sections 5 and 5A are not applicable to sale of forest produce as raw material to industrial establishments which purchase forest produce from the Government, under contract, if the total quantity of annual purchase is above fifty thousand tonnes and the forest produce is used as raw material for the industry and the industrial establishment has at least 1000 employees working in or under it. The proviso to the section stipulates that the provisions in the section shall not be applicable if the price fixed for the raw material is below Rs. 250 per tonne.

7. Ten percent of selling price to be utilised for forest development.— Ten percent of the amount obtained by the sale of forest produce after the commencement of this Act shall, subject to such rules as may be made under this Act, be set apart for being utilised for the development of forest.

EDITOR'S NOTE

Sec.7 lays down that 10% of the amount obtained by selling forest produce as defined in S.2(c) shall be utilized for the development of forests. (The said amount of ten per cent has to be administered as provided in the Kerala Forest Resources Development Fund Rules, 1989).

8. Power to make rules.— (1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions 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) all matters expressly required or allowed by this Act to be prescribed.

(b) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly 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 or the session immediately following, the Legislative Assembly makes any modification in the rule or decides 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 the rule.

NOTIFICATIONS

S.R.O. No. 311/79.- In exercise of the powers conferred by sub-section (2) of Section 3 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (29 of 1978) the Government of Kerala after having consulting the expert committee constituted under Section 4 of the said Act and having considered the recommendations made by it hereby fix the selling price of Forest Produces as specified in the Schedule below for the period commencing from the date of this notification and ending with 31st March, 1979.

[SCHEDULE

x x x]

[Published as G.O. (Ms) No. 98/79/AD dt. Tvm., 9/3/1979 in K.G. dt. 12/03/1979]

S.R.O. No. 313/79.- In exercise of the powers conferred by Section 6 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (29 of 1978) the Government of Kerala being satisfied that it is necessary so to do in the public interest hereby exempt the sale of any forest produce to the Kerala Newsprint Project under the Hindustan Paper Corporation, the Kerala State Bamboo Corporation and the Travancore Plywood Industries Punalur from the provisions of Section 5 of the said Act.

[Published as G.O.(Ms) 100/79/AD dt. Tvm., 9/3/1979 in K.G. dt. 12/03/1979]

S.R.O. No. 274/2003.- In exercise of the powers conferred by subsection (1) of section 3 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (29 of 1978), the Government of Kerala, after consulting the Expert Committee constituted under Section 4 of the said Act and considering its recommendations hereby fix the selling price of the forest produce as specified in the Schedule hereto, for the financial year 2003-2004, namely:-

[SCHEDULE

x x x]

By order of the Governor,

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport).

The Government of Kerala have constituted an Expert Committee under section 4 of the Kerala Forest Produce (Fixation of Selling price) Act, 1978 as per notification published as S.R.O. No. 1218/78 dated the 26th December 1978, for recommending the Government the selling price of the Forest Produces. Government have to notify the selling price of the forest produce in the Gazette after considering the views of the Committee, for fixation of selling price for the year 2003-2004. Accordingly the Government have decided to fix the selling price of forest produce. This notification is intended for the said purpose.

[Published as G.O.(MS) No.17/2003/F & WLD. Dt., Tvm. 27/03/2003]

G.O.(Ms.) No.17/2007/F&WLD.

Dated, Thiruvananthapuram, 30th March, 2007

S.R.O. No. 321/2007.— In exercise of the powers conferred by sub-section (1) of Section 3 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 (29 of 1978), the Government of Kerala, after consulting the Expert Committee constituted under section 4 of the said Act and considering its recommendations as required by sub-section (3) of Section 3 thereof hereby fix the selling price of the forest produce, as specified in the Schedule hereto, for the financial year 2007-08, namely:-

SCHEDULE

| Sl. No. | Common name of the Forest Produce | Botanical name of the Forest produce | Unit | Price for standing timber at site (in Rs.) | Ex-depot price (in Rs.) | Whether with bark of without bark |
|---------|-----------------------------------|--|--------------------------------|--|-------------------------|-----------------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1(a) | Bamboos | Bamboosa species | Metric Tonne | 850 | — | Not Applicable |
| 1(b) | Flowered Bamboos | Bamboosa species | Metric Tonne | 550 | — | Not Applicable |
| 2 | Reeds | Ochlandra species | Metric Tonne | 1300 | — | Not Applicable |
| 3. | Eucalyptus | Eucalyptus hybrid and Edcalyptus grandis | Stacked Tonne (2 cubic meters) | 1850 | — | With bark |
| 4. | Vellapine | Vateri indica | Cubic Meter | 10915 | 12293 | Without bark |
| 5. | Kalpine | Depertro carpus species | Cubic Meter | 22615 | 23933 | Without bark |
| 6. | Punna | Calophyllum species | Cubic Meter | 10060 | 11438 | Without bark |
| 7. | Chandana vembu | Toona ciliate | Cubic Meter | 12210 | 13558 | Without bark |
| 8. | Pali | Palaquin ellipticum | Cubic Meter | 7280 | 8658 | Without bark |
| 9. | Matti | Ailanthus malabaricum | Cubic Meter | 3035 | 4413 | Without bark |
| 10. | Elavu (above 125 cm GBH) | Bombax malabaricum | Cubic Meter | 2500 | 3672 | Without bark |
| 11. | Kambili | Evoala roxburgiana | Cubic Meter | 4828 | 6000 | Without bark |
| 12. | Vellakil | Dysoxylum Malabaricum | Cubic Meter | 40935 | 42313 | Without bark |
| 13. | Manja-kadambu | Adina cordifolia | Cubic Meter | 23450 | 24828 | Without bark |
| 14. | Vekkalee | Anogessus latifolia | Cubic Meter | 6500 | 5838 | With bark |
| 15. | Benda | Kydia calycina | Cubic Meter | 2175 | 3553 | With bark |

| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
|-----|---------------|--|-------------|------|-------|-----------|
| 16. | Uppathy Vatta | Macaranga peltata (Macaranga roxburgiana) | Cubic Meter | 2395 | 3773 | With bark |
| 17. | Pala | Alstonia scholaris | Cubic Meter | 2395 | 3773 | With bark |
| 18. | Tanni | Terminalia bellerica | Cubic Meter | 8755 | 10113 | With bark |

Note:

1. The following formulae shall be adopted for correction of loss of weight after felling in the case of bamboos and reeds:-
 - (a) Weight recorded on or before the 30th day of felling shall be treated as such;
 - (b) Weight recorded after 30 (Thirty) days of felling but on or before 75 (Seventy Five) days of felling shall be multiplied by 10/6;
 - (c) Weight recorded after 75 (Seventy Five) days from the date of felling shall be doubled.
2. For the purpose of this notification, in the case of Eucalyptus, 2 cubic metre without bark shall be considered as 2.44 cubic metre with bark
3. The price of firewood in relation to all species shall be with bark per tonne, and the price shall be double the seigniorage rate, for firewood, unless otherwise specified.
4. The price shall apply to sound timber only. The reject timber and the 'Lops and Tops' shall be sold only by auction.

By order of the Governor,

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

The Government of Kerala have constituted an Expert Committee under section 4 of the Kerala Forest Produce (Fixation of Selling Price) Act, 1978 as per Notification published as S.R.O. No. 1218/78 dated the 26th December, 1978, for recommending the Government the selling price of the Forest Produces. Government have considered the recommendations of this Committee for fixation of price of Forest Produce and have fixed the selling price of Forest Produce for the Financial year 2007-2008 as required under sub-section (1) of section 3 of the above mentioned Act

This notification is intended for the said purpose.

[Published in K.G. Ext No. 663 dt 4/4/2007]