

Twelfth Kerala Legislative Assembly

Bill No. 200

**THE KERALA FOREST (AMENDMENT)
BILL, 2008**

541/2008.

THE KERALA FOREST (AMENDMENT) BILL, 2008

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BILL

further to amend the Kerala Forest Act, 1961

Preamble.—WHEREAS, it is expedient to amend the Kerala Forest Act, 1961 for the purposes hereinafter appearing;

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

1. *Short title and commencement.*—(1) This Act may be called the Kerala Forest (Amendment) Act, 2008.

(2) It shall come into force at once.

2. *Insertion of new Chapter VIA.*— In the Kerala Forest Act, 1961 (4 of 1962), after Chapter VI, the following chapter shall be inserted, namely:—

“CHAPTER VIA

PROVISIONS RELATING TO SANDAL WOOD

47A. *Definitions.*— In this Chapter, unless the context otherwise requires,—

- (a) “sandalwood” means any portion of sandal (*santalum album*) tree and includes bark, leaves and roots thereof, whether containing heartwood or not and whether in the form of roots, billets, pieces (sawn or otherwise) chips, (whether coloured or not and whether mixed with other ingredients or not) sawdust, spent wood, flakes or pulp;
- (b) “authorised officer” means the Principal Chief Conservator of Forests or any other officer authorised by the Government for the purpose of this Chapter;
- (c) “prescribed” means prescribed by rules made under this Act.

47B. *Restriction on cutting and sale of sandal trees.*— (1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court, no owner of any land, including a plantation and no person claiming under him or any other person shall, without previous permission in writing of the authorised officer, cut, uproot, remove or sell any sandal tree in the land in his possession or ownership.

(2) The permission under sub-section (1) shall not be refused if the tree is dead or wind fallen or constitutes a danger to life or property or such cutting is to enable the owner of the land in which the tree stands to use the area cleared for the construction of a building for his own use.

(3) Where the owner of the sandal tree which is dead or in respect of which permission under sub-section (1) is obtained, makes a request in writing, the authorised officer shall cause to cut, remove and sell such tree in such manner as may be prescribed.

47C. Prohibition of possession and transport of sandalwood and sandal wood oil.—(1) Notwithstanding anything contained in any law for the time being in force or in any Judgment, decree, or order of any court, no person shall,—

(i) possess any quantity of sandal wood in excess of one kilogram; or

(ii) possess any quantity of sandal wood oil in excess of one hundred grams :

“Provided that the authorised officer may issue licence for the possession or transport of a sandalwood in excess of one kilogram to religious institutions, artisans, licensed manufacturers and registered practitioners of indigenous medicines or any corporation or society owned or controlled by the Government for their *bona fide* purposes, on payment of such fees, in such manner and subject to such restrictions and conditions as may be prescribed:

Provided further that the authorised officer may issue licence for the possession or transport of sandal wood oil in excess of one hundred grams to the manufacturers of cosmetics, drugs and other material in which sandalwood oil is an essential ingredient, for their *bona fide* purposes, on payment of such fees, in such manner and subject to such restrictions and conditions as may be prescribed.

(2) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court, no person except the Government shall disintegrate or attempt to disintegrate sandalwood in mills or by other contrivance, manufacture or distil, or attempt to manufacture or distil oil from sandal wood or re-distil, refine or sell oil extracted from sandalwood.

(3) The authorised officer may cancel or suspend any licence granted under sub-section (1), if he is satisfied, after giving an opportunity to the holder thereof being heard, that the licensee has contravened, or failed to comply with any of the provisions of this Chapter or the rules made thereunder or any of the terms and conditions of the licence.

(4) Any person aggrieved by the decision of the authorised officer refusing to grant or renew a licence or cancelling or suspending such a licence under this section may, within such time, as may be prescribed appeal to the Government and the Government may make such order as they may think fit.

47D. Declaration of stock etc. of sandalwood and sandalwood oil.—Every person having possession of a quantity of sandalwood in excess of one kilogram or sandalwood oil in excess of one hundred grams on the date of commencement of this Act, shall, within thirty days from such date, declare and surrender such quantity of sandalwood and sandalwood oil to the authorised officer in the manner as may be prescribed:

Provided that the authorised officer may, after such enquiry as he may deem fit, grant license for possession of sandalwood or sandalwood oil to such persons subject to the provisions in sub-section (1) of section 47C.

47E. Price to be paid by the authorized officer.—Where any quantity of sandalwood is offered under section 47B or any quantity of sandalwood or sandalwood oil surrendered under section 47D, the authorised officer shall pay the price thereof at the rates, as may be fixed by the Government from time to time.

47F. Restriction on purchase, sale etc. of sandalwood and sandalwood oil.— (1) No person shall purchase, receive or acquire sandalwood or sandalwood oil otherwise than from the Government or the authorised officer.

(2) No licensee under this Chapter, shall keep in his control, custody or possession or acquire, receive, sell or offer for sale or process or transport sandalwood or sandalwood oil except in accordance with the conditions of the licence granted.

47G. Penalty for offences in regard to sandalwood.—(1) In any case of forest offence having reference to the cutting, uprooting or removal of a sandal tree or any part of sandal tree, the offender on conviction, shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and with fine which shall not be less than ten thousand rupees but may extend to twenty five thousand rupees:

Provided that in case of a second or subsequent offence, the term of imprisonment shall not be less than five years and the amount of fine shall not be less than twenty thousand rupees.

(2) Whoever contravenes the provisions of sub-section (1) and sub-section (2) of section 47C, shall on conviction, be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and with fine which shall not be less than twenty-five thousand rupees but may extend to rupees one lakh:

Provided that in case of second or subsequent offence, the term of imprisonment shall not be less than five years and the amount of fine shall not be less than fifty thousand rupees.

(3) Whoever contravenes the provisions of section 47D and section 47F shall on conviction be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and with fine which shall not be less than twenty five thousand rupees but may extend to rupees one lakh:

Provided that in case of a second or subsequent offence, the term of imprisonment shall not be less than five years and the amount of fine shall not be less than fifty thousand rupees.

47 H. Seizure of sandalwood, sandalwood oil etc. and confiscation thereon.—Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court, where an offence is believed to have been committed in respect of any sandalwood, the sandalwood, the sandalwood oil, mill, distilling unit, boiler-plant, tools, ropes, chains, boats, vehicles or any other contrivance used in the manufacture or distillation of sandalwood oil, or in the process of sale of sandalwood or sandalwood oil shall be liable to be seized under section 52 and the provisions contained in sections 61A, 61B, 61C, 61D, 61E and 61F shall *mutatis mutandis* apply to the seizure and confiscation thereof’.

STATEMENT OF OBJECTS AND REASONS

Sandalwood tree is one of the most precious trees of our country. It occupies an important place in the ecological, cultural and spiritual heritage of India. The sandalwood tree is mainly exploited for its heartwood from the bole and roots which yield fragrant sandal oil. India accounts for nearly 99% of sandalwood oil production the world. .

In Kerala sandalwood grows in a small tract of 63 sq.km. in Marayoor in Idukki district. Only 15 sq. km. of this tract is notified as sandal reserve Sandalwood is an extremely rare and precious resource which is fast depleting in our state due to smuggling. The sandalwood is a very handy commodity for being smuggled in view of its physical maneuverability, to carry it in various forms. Sandalwood oil is in very high demand in the international market. The smuggling of sandalwood in the state during 2001-2004 has increased by leaps and bounds and has threatened the very existence of the species besides resulting in socio-economic evils. Till February, 2005, 23 illicit Sandalwood factories were functioning in the state, which were ordered to be closed by the Government as per G.O. (Ms.) No.17/2005/F &WLD dated 9-2-2005. The existence of the unlicensed sandal oil factories contributed to the sandal smuggling substantially in the state. Government therefore felt it to be of utmost urgency to protect the endangered sandal resources and conserve the sandalwood for future.

At present , the Kerala Forest Act, 1961 (4 of 1962) has no special provision for the protection of sandalwood. In fact, sandalwood has the same status as any other timber or even firewood and penal provisions are also the same as for timber/ firewood. Further there are no restrictions as far as, possession, trade or distilling of sandalwood is concerned. It is therefore felt necessary to amend the Kerala Forest Act, 1961 by incorporating severe penal provisions for offences related to smuggling, storage and transport of sandalwood.

The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

As per sub clause (3) of clause 47 B, where the owner of the sandalwood tree which is dead or in respect of which permission under sub-clause (1) is obtained, makes a request in writing to the authorised officer, he shall cause to cut, remove and sell such tree and make the payment of the price thereof as prescribed in Section 47 E. The anticipated expenditure on account of the above is Rs. 50 lakhs per year.

As per clause 47 E, the authorised officer has to pay the price of the excess sandalwood/sandalwood oil than the permitted quantities surrendered under clause 47 D. The approximate anticipated expenditure on account of the above is a non recurring expenditure of Rs. 50 lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (b) of clause 47 A seeks to empower the Government to appoint any officer as authorised officer.

Sub-clause (c) of clause 47 A seeks to empower the Government to make rules, for carrying out the purposes of the Act.

Sub-clause (3) of clause 47 B seeks to empower the Government to make rules prescribing the manner of cutting, removing and selling of sandal trees which is dead or in respect of which permission under sub-clause (1) is obtained.

Sub-clause (1) of clause 47 C seeks to empower the Government to make rules on the fee payable, restrictions and conditions to be imposed, in case of licenses granted by the authorised officer for the possession or transport of sandalwood in excess of one kilogram in certain permitted cases and in cases of licenses for possession or transport of sandalwood oil in excess of one hundred gram to the manufactures of cosmetics, drugs etc.

Sub-clause (4) of clause 47 C seeks to empower the government to make orders prescribing the time for filing appeal by any person aggrieved by the decision of the authorized officer and to pass orders thereon.

Clause 47 D seeks to empower the Government to make rules as to the manner in which persons having possession, of excess quantity of sandalwood or sandalwood oil, than the prescribed limit, shall declare and surrender such quantities.

Clause 47 E seeks to empower the Government to fix the prices of sandalwood and sandalwood oil surrendered under clause 47 B or 47 D before the authorized officer.

All matters in respect of which notifications or orders may be issued or rules may be made are matters of procedure and are of routine or administrative in nature. Further, the rules after they are made are subject to scrutiny by the Legislative Assembly. The delegation of legislative power is therefore, of a normal character.

BINOY VISWAM.

EXTRACT FROM THE KERALA FOREST ACT, 1961
(4 OF 1962)

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CHAPTER VI

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER

42.	**	**	**	**	**	**	**
43.	**	**	**	**	**	**	**
44.	**	**	**	**	**	**	**
45.	**	**	**	**	**	**	**
46.	**	**	**	**	**	**	**

47. *Power to make rules and prescribe penalties.*— (1) The Government may, from time to time make rules to regulate the following matters, namely:—

- (a) the salving, collection and disposal of all timber mentioned;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber ;
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

(2) The Government may prescribe, as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

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