

The Bihar Saw Mills (Regulation) Act, 1990

(Act 19 of 1990)

bh264

Published in Bihar Gazette (Extra-Ordinary) dated 7.12.1990.

An Act to make provision for regulating in the public interest the establishment and operation of Saw Mills and Saw Pits and trade of sawing for the protection and conservation of forest and the environment.

Be it enacted by the Legislature of the State of Bihar in the Forty-first year of the Republic of India for the purpose hereinafter appearing as follows:-

1. Short title, extent and commencement. - (1) This Act may be called the Bihar Saw Mills (Regulation) Act, 1990.

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

(3) It shall be deemed to have come into force with effect from the 1st May, 1990.

2. Definitions. - In this Act unless there is anything repugnant in the subject or context-

- (a) "*appointed day*" means a date appointed under sub-section (3) of Section 1;
- (b) "*licence*" means a licence granted under Section 7 of this part;
- (c) "*licensee*" means any person to whom a licence is granted under Section 7;
- (d) "*licensing officer*" means a licensing officer appointed under subsection (1) of Section 3;
- (e) "*prescribed authority*" means a prescribed authority appointed under Section 4;
- (f) "*notified order*" means an order notified in the Official Gazette;
- (g) ["*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. it shall also include veneer plywood manufacturing unit.]
- (h) "*saw pit*" means a place where wood is sawn by manually-operated saws;
- (i) "*sawing*" with its grammatical variations and cognate expressions means operations 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 manually-operated saws;
- (j) "*Vehicle*" means a mechanically propelled vehicle or any vehicle drawn by human being or animals and includes truck, tractor, trolley, motor vehicle, boat and carts;
- (k) "*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;

(l) words and expressions used but not defined in this Act and defined in the Indian Forest Act, 1927 (XVI of 1927), shall have the meaning respectively assigned to them in that Act.

3. Appointment of Licensing Officer. - The State Government may, by notification-

- (1) appoint an officer not below the rank of Divisional Forest Officer to be Licensing Officer for the purpose of this Act;
- (2) define the local limits within which a Licensing Officer shall exercise the powers conferred and perform the duties imposed on him by or under this Act.

4. Appointment of prescribed authority. - The State Government, may by notification-

- (1) appoint an officer not below the rank of a Conservator of Forests to be prescribed authority, for the purpose of this Act;
- (2) define the local limits within which a prescribed authority shall exercise the powers conferred and perform the duties imposed on him by or under this Act.

5. Application for licence. - On and from the appointed day:-

- (1) no person shall establish a saw mill or a saw pit except under the authority and subject to the conditions of a licence granted in that behalf under this Act;
- (2) no person shall operate a saw mill or a saw pit in existence on the said date, unless he is granted a licence in that behalf under this Act on an application made by such person within a period of thirty days from such date:

Provided that for the period of thirty days and thereafter the period during which the application is pending for consideration, it shall be deemed as if such person was granted a licence under this Act and he was operating the saw mill or saw pit accordingly.

6. Declaration of prohibited area. - (1) The State Government may, by notification, for reasons to be prescribed therein, declare any area to be a prohibited area for such period not exceeding three years at a time, as may be specified therein.

(2) During the period any area is declared to be a prohibited area under subsection (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 during that period;
- (c) a saw mill or saw pit situated in that area shall cease to operate and keep its sawing operation closed;
- (d) no claim on account of damages because of closure shall be entertained nor any damages shall be payable.

7. Grant, renewal, revocation or suspension of licence. - (1) An application for licence under Section 5 shall be in such form and shall be accompanied by such application fee and such security deposit for due observance of the conditions of the licence, as may be prescribed.

(2) On receipt of the application under sub-section (1), the Licensing Officer may after making such enquiry, as it may deem fit:-

- (i) grant the licence; or

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

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

(3) A licence granted under sub-section (2) 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 it in this behalf or otherwise, that-

(a) the licensee has parted, in whole or in part with his control over the saw mill or saw pit or has otherwise ceased to operate or own such 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 made thereunder; 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 Section 10.

Then without prejudice to any other penalty to which 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 the licence has been granted.

(6) A copy of every order issued under sub-section (5) shall be given to the licensee.

8. Power of entry, inspection, search, seizures, etc. - (1) For the purpose of ascertaining the position of, examining the working of, any saw mill or saw pit or with a view to secure compliance of the provisions of this Act and the Rules made thereunder, the Licensing Officer or any other person authorised 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 document, book, register 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 Rules made thereunder and may stop any vehicle or person for this purpose;

(d) seize any wood, plants and machinery, tools, vehicle and any other article which he suspects is already involved or used or is about to be involved or used in contravening the provisions of this Act or Rules made thereunder.

(2) The provisions of Section 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall so far as may apply to searches and seizure 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 officers and on such dates as may be prescribed.

10. Keeping of account of stock of wood in saw mill and saw pit. - All wood whether sawn or not, found in or brought to the saw mill or saw pit or at the site of sawing at any time or during any period by any person in any manner or by any means for purpose of sawing or for any other purpose shall always be properly accounted for and 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, it shall be presumed in respect of the stock of wood which is not accounted for satisfactorily that the same has been obtained unlawfully and the stock of wood shall be liable for confiscation.

11. Prohibition of electric connection etc., in unlicensed saw mill. - (1) On and from the appointed day and 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 in this Act and such electric connection shall be continued so long as the saw mill operates under a valid licence granted or deemed to be granted under this Act.

(2) The State Government may make Rules for carrying out the purpose of this Section.

12. Appeal. - (1) Any person aggrieved by the order of refusal of a Licensing Officer to grant or renew a licence or by the order of 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 prescribed authority, who shall decide the appeal after giving the appellant and the Licensing Officer an opportunity of being heard. The decision of the prescribed authority shall be binding on the Licensing Officer.

(2) The order of the Licensing Officer shall, unless the prescribed authority, conditionally or unconditionally directs, otherwise, remain in force pending the disposal of an appeal under sub-section (1).

13. Confiscation of saw mills etc. - (1) Save as provided in clause (b) of Section 5-

- (a) where a saw mill or saw pit is established or operated in an area declared to be a prohibited area under sub-section (1) of Section 6; or
- (b) where a saw mill or saw pit is established or operated without a licence or without renewal of licence under sub-sections (2) and (4) respectively of Section 7; or
- (c) where the saw mill or saw pit is operated after suspension or revocation of a licence under sub-section (5) of Section 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 sub-section (1) of Section 11; or
- (e) unaccounted wood is stored in the saw mill or saw pit, the Licensing Officer may order confiscation of the stock of wood unlawfully stored together with whole or portion of the plants and machinery, implements and equipments which have been used in 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 in the case the owner of such property is known, such person is given-

- (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) an opportunity of making a representation in writing within such reasonable time as may 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 a 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 subsection (1), either *suo motu* or on application call for and examine the records of that order and may make such enquiry or 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 he may think fit and the order of the District Judge so passed shall be final. Where an order of confiscation of any property passed under sub-section (1) or sub-section (3) 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.

(5) An order of confiscation under sub-section (1) or sub-section (3) or subsection (4) shall not be deemed to bar the imposition of any such 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 Rules made thereunder he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to *ten thousand* rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to *two hundred* rupees for every day during which such contravention continues after conviction for the first such contravention:

Provided that 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 where such contravention, attempt or abetment relates to Section 6 or when unlawful wood involved in the contravention is more than 5 cubic metres in volume.

(2) 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 be punishable with imprisonment for a term which may extend to *six* months or with fine which may extend to *three thousand* rupees, or with both.

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 exercises 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 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 any body corporate, and includes a firm or other association of individuals;

(b) "director" in relation to firm, means a 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 exists in accordance with the provisions of this Act or the rules made thereunder, it shall be presumed that saw mill or saw pit was in operation until the contrary is proved, the burden of proving the same shall lie on the accused.

(2) Where, in any prosecution for an offence against this Act or rules made thereunder, 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 be presumed such person has contravened the provisions of this Act or rules, made thereunder until the contrary is proved, the burden of proving the same shall lie on the accused.

17. Cognizance of offence. - 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 authorised by the State Government or the Licensing Officer in this behalf.

18. Jurisdiction of court. - No court inferior to that of a Judicial Magistrate of the first class, shall try offence punishable under this Act.

19. Composition of offence. - (1) Forest Officer empowered by the State Government in this behalf may-

(a) accept from any person whose licence is liable to be revoked or suspended under sub-section (5) of Section 7 or who is reasonably suspected of having committed for the first time of an offence relating to non-submission of return under Section 9 or of non-maintenance of account of wood under Section 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 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;

(b) in any case in which any property has been seized as liable to confiscation under this Act at any time before an order of confiscation is passed by the appropriate authority under this Act release the same on payment of the value thereof as estimated by the Forest Officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be to the forest officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceeding shall be taken against such person in or in relation to such property.

20. Licensing Officer or authorised person to be public servant. - The Licensing Officer and every person duly authorised to discharge any duties imposed on him or under this Act shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (XLV 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 which is done in good faith or intended to be done in pursuance of the provisions of this Act or any Rules or 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 Rules made thereunder.

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 purpose 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) of Section 7 and the fee and security deposit which shall accompany such application;
- (b) conditions subject to which licence may be granted under sub-section (3) of Section 7;
- (c) the period for which, the fee on the payment of which and the condition subject to which the licence may be renewed under sub-section (4) of Section 7;
- (d) the form in which the officer to whom and the dates on which returns shall be submitted under Section 9;
- (e) for installation of electric connection, etc. under sub-section (2) of Section 11;
- (f) the authority to which appeal may be preferred under Section 12;
- (g) any other matter which is required 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 each house of the State Legislature 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 expiry of the session in which it is so laid or the session immediately following both the Houses agree in making any modification in the Rule or both the Houses agree 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 that Rule.

24. Other Acts and laws not to apply to saw mill or saw pit. - Nothing contained in any other Act, or Law, Rule, Order or any other thing having a force of law in any area 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.

25. Saving. - The provisions of this Act or the Rules made thereunder shall not apply to-

- (a) the ordinary operations of carpentry not involving saw mill or saw pit operations;
- (b) any saw mill or saw pit owned by the State Government.

26. Power to remove difficulty. - If any difficulty arises in giving effect to the provisions of this Act the State Government may, by order, do anything not inconsistent with the provisions of this Act which appear to it to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

27. Repeal and Saving. - (1) The Bihar Saw mills (Regulation) Ordinance, 1987 (Bihar Ordinance No. 3, 1990) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act, as if the Act, were in force on the date on which such thing or action was done or taken.