

DEOGARH PRESSURE GROUP

(A Network of civil society groups in Deogarh district)

At- Mahuladipa Sahi, PO/Dist- Deogarh, Pin: 768108, PH: 9437688877

To

Shri Rameswar Thakur, Governor, Orissa
Raj Bhavan, Bhubaneswar

SUB: Request for a drastic revision of Orissa RTI Rules 2005 in keeping with the letter and spirit of RTI Act 2005.

Ref: Notification in the Gazette of Orissa S.R.O. No. 477/2005 I&PR dated 1st October 2005

Sir,

For your kind information, we the following signatories belonging to DPG (Deogarh Pressure Group), a network of civil society groups (WORD, SAHAJOG, JANA VIKASH, AWARD and YAVARD) which works for the poor, disadvantaged and displaced people of the district organised a 3-day Camp during 23-25 September 2006 in its office premises at Deogarh to understand and analyse the provisions of both RTI Act 2005 and Orissa RTI Rules including the Amendment of 2006 and Appeal Procedure Rules of 2006 made under the Act.

In course of the discussion, it came to our notice that you are the authority who gave the order to notify all the above mentioned documents under Orissa Rules in the Gazette of Orissa on various dates starting with the notification dated 1st of October 2005. But we were surprised to see that though the Government of Orissa brought out an Amendment of Orissa RTI Rules vide notification dated 29 May 2006, the omissions and commissions inherent in the first set of Rules remain still glaringly present as ever before, except of course the rate of certain fees which was thankfully reduced by the Amendment. It was further felt, if the existing loopholes are not removed through a fresh and drastic amendment of the Rules, the countrymen in general and the common people of Orissa in particular shall continue to be deprived of their legitimate access to information from the public authorities functioning under the State of Orissa as is the situation today.

In view of the above, we like to present below a Memorandum listing out those provisions of Orissa RTI Rules, which are not only ultra vires the parent law, but also unworkable by the public authorities and uncongenial for the users, the public at large. And hopefully, you being the head of the State, the supreme office, under whose authority the Orissa RTI Rules have been framed and notified shall take appropriate measures at the earliest to cleanse the existing Orissa RTI Rules of all trash, make it conform to the letter and spirit of RTI Act 2005 and render it as citizen-friendly as possible.

Memorandum

- 1) The RTI Act in its Section-7(5) has categorically said that no fee shall be charged from the BPL persons towards application fee [under Section 6(1)], cost of providing the information [under Section 7(1)] and cost of the print or electronic medium [under Section 7(5)]. **But the Orissa Rules have allowed the exemption of application fee only {vide Rule-4(1)}, while depriving the BPL families of their lawful right to avail the exemption of the other two fees.**
- 2) The Sections 27 and 28 of RTI Act have categorically specified the four kinds of fees only, beyond which no appropriate Government or competent authority can impose any other. **But the Orissa Rules have made an ultra vires provision in prescribing such extraneous fees like the fees for 1st and 2nd appeals (Vide Schedule on Fees).**
- 3) The Section 6(2) of the RTI Act categorically says that an applicant 'shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.' **But under the Orissa Rules an applicant is compelled to disclose the personal details like name of father and spouse along with submission of a copy of voter card or passport in support of his/her identity as a citizen to the satisfaction of the concerned PIO [Vide Rule 2(1e) and Rule 4(2)],**

failing which his/her application shall stand rejected [vide Column 3 of Form C], and the application fee forfeited.

4) The Sections 19(5) and 20(1) of RTI Act categorically say that in any appeal proceedings the burden of proof shall lie on the Public Information Officer against whom a complaint or an appeal is made by the applicant. **As against this clear provision of the Act, the Orissa Rule-12 provides for the 'Deposit of Expenditure' to be made by the complainant/appellant concerned before the Information Commission to meet the costs required for production of evidence and witness.**

5) The RTI Act in its Section 19(8b) provides for compensation to be paid by a public authority as and when the citizens suffer any loss or detriment in the process of seeking information. **But the Orissa Rule-10 compels a citizen applying for a sample under the Act to pay the entire cost of damage, if any, caused during the process of sample collection by the PIO.**

6) There is no provision for any penalty or damage to be paid by a citizen-applicant anywhere under the RTI Act. **But the Orissa Rules-13, which is the most draconian of all, provides for realization of penalty, damage or any sum payable under the Act from the applicant citizen by way of confiscation of his/her landed property, if he/she doesn't pay up the said dues voluntarily within 30 days of the notice for such payment.**

7) The Section 7(3) of the RTI Act provides for the PIO to mention a detail break-up of the amount payable by the applicant along with particulars of the appellate authority before whom the applicant can petition for reviewing the decision of the PIO on the amount of fees so charged or form of access so allowed. **But the Form B under Orissa Rules (Letter of Intimation) provides for mentioning only the total cost payable by the applicant, and keeps no space for informing the applicant either about the detail break-up of the payable amount or about his/her right to question the PIO's decision on amount of fees or form of access.**

8) **As per the Schedule on Costs and Fees under Orissa RTI Rules, an applicant has to submit the various fees required against the cost of providing information through the single medium of cash only.** As such a citizen is compelled to physically come to the concerned public office, only for paying the required fees. **Such a provision for payment through cash only is simply absurd and unworkable.**

9) **Again, as per Rule 4(1) and Schedule on Costs and Fees under Orissa RTI Rules, an applicant for information is required to pay his/her application fee either by cash or through treasury challan.** He or she can't pay it through any other medium like Cheque, DD, Money Order or Indian Postal Order etc. Under the circumstances, if somebody wants to pay it by cash, he or she has to personally visit the concerned office, no matter how far-off the latter might be located from the place of the applicant. Alternatively, if an applicant wants to submit it through treasury challan, then he or she has to go to a town or city where the treasury of the Government might be functioning, and in the process he or she has to spend quite some additional money and time just for getting a challan. **The above difficulties apart, it is a glaringly absurd provision too.** For instance, a person from Kerala wants to apply for information to a Government office in Orissa. Is it possible on his/her part to travel all the way from Kerala to Orissa just to pay an application fee of Rs.10/- only? Alternatively, if he/she, sitting in Kerala wants to send the application fee through treasury challan, the question arises, wherefrom he/she would get the treasury challan as acceptable to Government of Orissa? Will the treasury challan of Kerala Government be accepted in Orissa? **Thus Orissa RTI Rules by prescribing cash and treasury challan as the only two modes of payment disables by one stroke millions of citizens of the country who are unable to visit the concerned offices of Orissa physically or to avail a treasury challan for the sole reason of distance, from applying under the Act.**

10) As per the Section 7(9) of RTI Act 05, a public authority shall provide the applicant with information in the very form in which it has been sought, and as such the Central Govt. have also prescribed no written application format for the persons to apply under the Act. Moreover, as per Section 6(1b), a citizen if unable to write his/her application can make an oral request for information to the PIO and the latter shall reduce the said oral request into a written application. As against this mandate of the parent Act, the **Orissa RTI Rules have made compulsory a long, complex and over-demanding application form (The Form-A) consisting of 11 columns, each of which if not filled up correctly would result in the rejection of the application altogether with the application fee forfeited.**

11) The Section 7(1) of RTI Act categorically says that an application for information can be rejected only on the specific grounds covered under Sections 8 and 9 of the Act. **But the Form C (Rejection of the Application) under Orissa Rules provides for many more additional grounds, including any ground that the PIO might arbitrarily frame up, for rejecting an application [vide Column ix].**

12) In correspondence with Section 6(1) of RTI Act 05, the Rule 4(1) under Orissa RTI Rules 2005 has allowed for the mode of email through which the application for information can be submitted. But the said Rule didn't specify the mode through which an applicant using email can submit the application fee required to accompany the application. It merely said and that too in a casual manner, 'a citizen seeking information through electronic means has to submit evidence regarding deposit of prescribed application fee'. The Orissa RTI (Amendment) Rules 2006 in its Rule 3 has further provided that the provision of email shall be inserted within the entries made against the Items 5 and 6 of the application form (Form A). **But it still remains unclear how an applicant using email shall 'submit evidence regarding deposit of prescribed application fee'.** Thus the electronic mode of application for information and disclosure of information, which is very much recognized under RTI Act 05 remains still a non-starter in Orissa due to conspicuous absence of the provision regarding the mode of payment of application fee by an applicant.

Under the circumstances, you are requested to kindly do the needful for a drastic revision of the severely flaw-ridden, anti-people and ultra vires provisions of Orissa RTI Rules 2005 and take necessary steps for inviting public opinion as required under Section 24 of the Orissa General Clauses Act 1937 for formulation of an alternative, appropriate set of Rules as warranted under RTI Act 2005.

Yours faithfully,

ON BEHALF OF DPG (DEOGARH PRESSURE GROUP), dated 25 September 2006

At- Mahuladipa Sahi, PO/Dist- Deogarh, Pin: 768108, PH: 9437688877

- 1) Mr.Xavier Ekka, Coordinator DPG
- 2) WORD – Mr. Jagannath Panda
- 3) AWARD- Mr. Pratap Kumar Dehury
- 4) YAVARD- Ms.Sanjita Rath
- 5) Jana Vikash- Ms.Namita Mishra
- 6) Sahajog- Ms.Soudamini Patra

CC: 1) Mr.Navin Patnaik, Chief Minister Orissa, Bhubaneswar

- 2) Mr. D.N.Padhi, Chief Orissa Information Commissioner, State Guest House, Orissa, Bhubaneswar, *with reference to Commission's power under Section 25 of RTI Act 2005.*
- 3) Mr.C.B.Paliwal, Jt. Secy, Dept of Personnel and Training, Govt of India, New Delhi, *with reference to Section 30 of RTI Act 2005*
- 4) Shri Veerappa Moily, Chairman, Second Administrative Reforms Commission, 2nd Floor, Vigyan Bhavan Annexe, New Delhi-1 *with reference to Commission's mandate for reviewing implementation of RTI Act at Centre and in States.*
- 5) Mr.Wajahat Habibullah, Chief Central Information Commissioner, Old JNU Campus, New Delhi-67, *with a request to circulate and discuss the points raised in this Memorandum in the National Convention proposed to be held under the aegis of CIC at New Delhi during 13-15 October 2006.*