

IN THE HIGH COURT OF ORISSA, CUTTACK
W.P(C) No. /2460 OF 2003.

Code No 219900

Orissa Consumer's Association & Another Petitioner.

Vs.

State of Orissa & Others Opp-Parties.

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VAKALATNAMA

Cuttack
Dt. 28.11.03

Petitioner through his
Advocate

IN THE HIGH COURT OF ORISSA, CUTTACK
W.P(C) No. /2460 OF 2003.

Code No 219900

In the matter of :-

An application under article 226 & 227 and article 19 of Constitution of India.

AND

In the matter of :-

Freedom of Information Act, 2002

AND

In the matter of :-

1. Orissa Consumers Association, registered Society represented through its Asst. Secretary, At – Biswanath Lane, P.S – Purighat, Dist. – Cuttack.
2. Miss Tapaswini Sinha aged about 34 yrs, D/o K.N. Sinha, At/Po – Rausapatna, Dist – Cuttack.

..... PETITIONERS.

VRS

1. State of Orissa represented through its Chief Secretary, At/Po – Bhubaneswar, Dist. Khurda.
2. Union of India represented through its Secretary, Dept. of Public Grievance & Personnel, New Delhi.
3. Grid Corporation of Orissa Ltd represented through its Chairman AT-Janpath, Po – Bhubaneswar and Dist – Khurda.
4. Orissa Electricity Regulatory Commission, Bidyut Niyamak Bhawan, Unit-VIII, Bhubaneswar-751012.

..... Opp. Parties

The matter out of which this writ petition arises was never before this Hon'ble Court.

To,

The Hon'ble Sri Sujit Burman Roy, B.A, L.L.B Chief Justice of Orissa High Court and his Companion Justices of the said Hon'ble Court.

The humble petition of the Petitioners named above

Most Respectfully Sheweth :-

1. That, this writ application is filed as because the Opp-Party No. 1 & 2 failed to discharge their statutory and constitutional obligation & duty to fulfill the aim, object, purpose of "THE FREEDOM OF INFORMATION ACT-2002" and mandate of the constitution, which receive the assent of the President of India and came into force on 7.1.03, here after called as Act. The aforesaid Act so enacted is to achieve the following object.

“It is in accord with both article 19 of the constitution as well as article 19 of the Universal Declaration of Human Rights. In our present democratic frame work free flow of information for the citizens and Non-Government institutions suffers from several bottlenecks including the legal frame work, lack of infrastructure at the grass root levels & an attitude of secrecy within the civil service as the result of old frameworks of rules. The Govt. proposes to deal with all these aspects in aforesaid manner so that Freedom of Information Act became a reality consistent with the objective of having a stable, honest, transparent & efficient Government. It will enable the citizens to have an access to information on a statutory basis, with a view to further this objective. This Act specifies that subject to the provisions of this Act, every citizen shall have right to freedom of information. Obligation is cast upon every public authority to provide information and maintain all records consistent with its operational requirements duly catalogued, indexed and published at such intervals as may be prescribed by the appropriate Government or the competent authority.”

2. That, the Petitioner No. 1 is a society registered under “THE SOCIETIES OF REGISTRATION ACT-1860” and working over years to promote and to protect the rights and interest of the consumers / citizens of the country and to seek remedy, justice for them and for the advancement of the consumer movement in the country and make endeavour for building of a democratic civil society, free from exploitation and injustice. Federation of Consumer Organisations is the Federating body of the Consumer Organisations and other voluntary organizations and further working to coordinate the activities of the consumer organizations of the country and disseminating the informations & interacting with them regularly for advancement of consumer movement.

Petitioner No. 2 is a citizen of India & cause of action of this writ application arises within the jurisdiction this court.

3. That, after long persuasions, having and holding various workshops and meeting & thereby building public opinion over 10 years, the Union of India (Opp-Party No. 2) has enacted “THE FREEDOM OF INFORMATION ACT-2002” to achieve the aforesaid purpose and object.
4. That, although the Act came into force on 7.1.03, but it remains ineffective and not been implemented to achieve the aim, objective purpose for which such legislation has been enacted because of the deliberate negligent action/inaction of the State and Central Govt and its administrative machinery and they are going to frustrate the object and purpose of such revolutionary, social enactment and there by have deprived the citizens, in getting free flow of information and have prevented the citizens to have information in absence of which corruption, manipulation, harassment are rampant and suffering of the common men and citizens of the country are increasing manifolds.
5. That, after the said Act came into force the Petitioner wrote letter to Chief Secretary of the State Govt. (Opp-Party No.1) requesting him to take necessary steps to frame the Rules, Regulation u/s 18 and 19 of the Act to carry out the provision of Act. A true copy of the said letter is annexed herewith as Annexure-1, but till today the State Govt. have not framed any rules and regulations and has also not appointed Public Information Officers u/s 5 of the Act for the implementation of the various provisions of the Act and there by made the Act ineffective, redundant and deprived and denied the statutory rights and remedies to the citizens of the country.

6. That, the Federation of Consumer Organisations Orissa has also written a letter on 21.8.03 to the Prime Minister and Deputy Prime Minister of India requesting them for framing of rules u/s 17 of the "FREEDOM OF INFORMATION ACT-2002" which is required to be framed by the Central Govt. but till today the Central Govt. has not framed any Rules under the Act although about one year is going to be elapsed and there by the Central Govt. (Opp-Party No.2) has made this beneficial social legislation redundant and ineffective & has deprived and denied the citizens to exercise their statutory and fundamental right. A true copy of the said letter dt. 21.8.03 is annexed here on to as Annexure-2.
7. That, u/s 19 of the Act, it is mandatory that the Competent Authorities as defined u/s 2 of the Act are to make rule to carry out the provisions of the Act, but Petitioner understand that no Competent Authorities have framed any rule u/s-19 of the Act & there by have deprived and denied the citizens of the country of their rights and remedies.
8. That, the aforesaid fact would, shows how the executive/administration in the country are acting callously, negligently and dealing with the matter in casual fashion to frustrate the aim, object and purpose of the Act there by reaping the undue advantage and personal benefit making the system and its functioning cumber sum, confusing and manipulating the things to their advantage / benefit as long as they can manage to do that. Taking advantages of such situation the public authority are keeping quite and refusing to discharge their obligation u/s 4 and 5 of the Act and also refusing to furnish information sought for.
9. That, petitioners are stating here under some instances to substantiate the said averments of the Petitioner, who have filed this writ application on behalf of the unorganized, helpless and poor citizens of the country to seek justice and remedy. Because of lack of accountability, transparency in the administration, the functionaries / public servants are working arbitrarily, whimsically with oblique motive & malafide object for which people who can afford, are filing case in courts overburdening the judicial system and has led it to crumble down.
10. That, the petitioner No. 1 being the intervener petitioner, in O.J.C No 6751 of 2001 has challenged the enhancement of tariff of the Regulatory Commission (Opp-Party No. 3). This Hon'ble court in the said case passed an interim order dt. 3.2.2003 directing the Regulatory Commission to hear the affected parties on the question of tariff and dispose of the same.
11. That against the said order, Opp-Party No. 2 and 3 have filed six special leave petitions each (12 nos) before the Hon'ble Supreme Court spending huge public money without any justified reason, which is to be paid by the consumers in form of tariff ultimately.

To get the information how much money has been spent for filing S.L petitions and the expenses incurred till now for the said purpose, the petitioner No 1 wrote to the Opp-Party No. 3 and 4 by letter dated 11.5.03, true copy filed as Annexure 3 & 4 seeking information u/s 6 of the Act but till today they are sitting over the same as such denied/deprived the petitioners from their rights. True copy of the said letter as annexed herewith as Annexure – 4 & 5.

12. That, the petitioners have left with no remedy against the inaction and negligent action of the opp parties for which, this writ application is filed for justice / remedy.

PRAYER

It is therefore prayed that this Hon'ble Court may be pleased to issue writ (s) / order and directions & more particularly :-

1. Writ of mandamus directing the Central Govt. Opp-Party No. 2 to frame Rules u/s 17 of the Act and appoint public information officers as required under law within a short time.
2. Writ of mandamus directing the State Govt. to frame Rules and Regulations u/s 18 and 19 of the Act and direct to appoint public information officers and to notify the same within a specified time.
3. Writ of mandamus directing the Opp-Party No. 3 and 4 to furnish the information to the Petitioner No. 1 as sought for vide Annexure 3 and 4.
4. Allow this application with cost and pass any other order (s) as this Hon'ble Court deem fit and proper.

By the Petitioner through their

Advocate

AFFIDAVIT

I, Miss Tapaswini Sinha, aged about 34 yrs, D/o K.N. Sinha working as Asst. Secretary of Orissa Consumers Association at Biswanath Lane, P.S. Purighat, Dist. Cuttack – 753002 do hereby solemnly affirm and state as follows :-

That I am the Asst Secretary of Orissa Consumer Association and Petitioner No. 2 in this application duly authorized by other petitioners to swear this affidavit.

That the facts stated in this petition are true and correct, which are also based on records, which I believe, by me to be true.

Identified by

Advocate

DEPONENT

CERTIFICATE

Due to non-availability of Cartridge paper this petition is filed on blue paper.

Advocate

ORISSA CONSUMER'S ASSOCIATION

STATUS

Member

C.C.P.C (Ex)

F.O.C.O

S.C.P.C

Z.R.U.C.C

T.R.A

(A Registered Society)

DEBAJYOTI UPOVOKTA KALYAN BHAWAN

BISWANATH LANE, CUTTACK-753002

ORISSA, Ph : 0671 2617597

{Recipient of National Award in the field of Consumer Protection}

Email : upovoktaodisa_ctc@yahoo.com

Ad. Com.S.I.S.I (Sector) and Chetana Samman Award From State Govt.

Dt. 17.03.03

Sri Pratap Kumar Mohanty
Chief Secretary to Govt. of Orissa
Bhubaneswar.

Sub :- Implementation of the provisions of Freedom of Information Act 2002 and bring out transparency and accountability in the system of Administration for good governance and welfare of the people.

Sir,

Your political executive promised and assured to the people to enact a law to provide information to public and to make the administration / governance / transparent and accountable to the people for their welfare. Federation of Consumer Organisations, Orissa wrote to our Hon'ble Chief Minister on 18.9.02 and Sri D.P. Bagchi, Ex-Chief Secretary on 2.10.02 in this regard. {Copy enclosed for your ready reference}.

In the meantime Central Govt has enacted Freedom of Information Act and enforced the same. As we find from Newspaper report that our good self has issued instruction to all Secretaries of Departments to implement the same.

Under sections 18,19 of the said Act, State Govt. has to frame Rules and Regulations to carry out the provisions of the Act.

We request you to take initiative and personal interest in the matter in framing of Rules and Regulations to implement / enforce the Act and to fulfill the object and purpose of the Act in simplified, in expansive, easy procedure and to make public information officers personally liable, if delay is caused to give information in time because of their inaction / negligence. If you so require our assistance and expertise and knowledge, we are ready to extend the same. Suggestions may kindly be invited from public on the draft Rule & Regulation before finalization. We may kindly be informed.

With regards,

Yours faithfully,

{K.N. Jena}
President

<u>STATUS</u> Member Central Consumer Protection Council, State Consumer Protection Council, Member, Consumer Coordination Council, New Delhi	Federation of Consumer Organisations, Orissa (REGISTERED UNDER SOCIETY REGISTRATION ACT 1860) BRANCH OFFICE : DEBAJYOTI UPOVOKTA KALYAN BHAWAN, BISWANATH LANE, CUTTACK - 753002 ORISSA, Ph : 0671 2617597 Email :- upovoktaodisa_ctc@yahoo.com	Regd. Office: Plot No. 39, Budha Nagar, Kalpana Square, Bhubaneswar – 754014, Orissa Phone : 0674-2321964 Regd. No. 3784-459/91-92 Email : victor@dte.vsnl.net.in
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Dt. 21.8.03

1. Sri Atal Bihari Vajpayee
Hon'ble Prime Minister India
New Delhi.
2. Sri L.K. Advani
Hon'ble Minister of Ministry of Personnel Public Grievances
And Pension Govt. of India.

Sub : Framing of rules u/s 17 of Freedom of Information Act, 2002.

Sir,

We bring to your kind notice that after long persuasion and pressure and deliberation, Freedom of Information Act, 2002 has been enacted and got assent and published on 7.1.2003 with object to promote openness, transparency and accountability in administration and change the negative work culture in the system of administration for fast growth and development of our country and to provide a real democratic civic society.

It is frustrating for the people that although 8 months have now elapsed the Central Govt, has failed to frame Rules to implement and carry out the provisions of the Act and it is not known when it will be materialized. People's hope and expectation have now been belied and got frustrated.

Provision to section 18 of the Act provides that Central Govt. initially has to frame rules. In view of this provision the State Govt and Competent Authorities are not framing the rules and waiting for the Central Govt to frame rules, which resulted that it will take years for its enforcement, and giving the benefit of Act to the public / citizens.

Further more in this process time will elapse and the Central Govt will have no opportunity to find out difficulties which will arise in giving effect to the provision of the Act within two years of the commencement of the Act to remove the difficulties u/s 21 of the act.

We request your good self on behalf of millions of the people of the country to frame rules at the earliest & free the matter from the clauses of bureaucracy and publish / notify & do not prescribe any fees to obtain information for the same or else object and purpose of the act will be frustrated.

Yours faithfully,

(K.N. Jena)
President

ORISSA CONSUMER'S ASSOCIATION

STATUS

Member

C.C.P.C (Ex)

F.O.C.O

S.C.P.C

Z.R.U.C.C

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{Recipient of National Award in the field of Consumer Protection}

Email : upovoktaodisa_ctc@yahoo.com

Ad. Com.S.I.S.I (Sector) and Chetana Samman Award From State Govt.

Dt. 11.5.03

Chairman, O.E.R.C

Bidyut Niyamak Bhawan

Unit-8, Bhubaneswar – 751012

Sub : To supply Information U/s 6 of the Freedom of Information Act 2002.

Sir,

We understand that you have filed Special Leave petition No. 8481 to 8486 of 2003 before Hon'ble Supreme Court challenging order of Hon'ble Orissa High Court dated 3.2.2003 in Misc Case Nos. 7410 and 8953 of 2002 and 7.3.2003 in Misc. Case No. 419 of 2003 and dated 14.3.2003 in O.J.C No. 6751 and Misc. Case No. 414 and 580 of 2003.

Kindly inform us u/s 6 read with other provisions of the Freedom of Information Act, how much public money you have already spent and is going to spent on different heads in details for filing of such applications before the Hon'ble Supreme Court within the time stipulated in the said Act.

Yours faithfully,

(T.Sinha)
Asst. Secy

ORISSA CONSUMER'S ASSOCIATION

STATUS

Member

C.C.P.C (Ex)

F.O.C.O

S.C.P.C

Z.R.U.C.C

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{Recipient of National Award in the field of Consumer Protection}

Email : upovoktaodisa_ctc@yahoo.com

Ad. Com.S.I.S.I (Sector) and Chetana Samman Award From State Govt.

Dt. 11.5.03

Chairman, Grid Corporation of Orissa Ltd.

Janpath

Bhubaneswar – 751001.

Sub : To supply Information U/s 6 of the Freedom of Information Act 2002.

Sir,

We understand that you have filed Special Leave petition No. 8142 to 8145 of 2003 before Hon'ble Supreme Court challenging order of Hon'ble Orissa High Court dated 3.2.2003 in Misc Case Nos. 7410 and 8953 of 2002 and 7.3.2003 in Misc. Case No. 419 of 2003 and dated 14.3.2003 in O.J.C No.6751 and Misc. Case No. 414 and 580 of 2003.

Kindly inform us u/s 6 read with other provisions of the Freedom of Information Act, how much public money you have already spent and is going to spent on different heads in details for filing of such applications and perusing the same before the Hon'ble Supreme Court within the time stipulated in the said Act.

Yours faithfully,

(T.Sinha)
Asst. Secy