

**DEFENCE OF GOVERNMENT SERVANTS IN LEGAL PROCEEDINGS  
INSTRUCTIONS**

Serial No.	Reference No.	Date	Subject
(1)	(2)	(3)	(4)

**(A) DEFENCE OF GOVERNMENT SERVANTS -**

- |    |                                          |            |                                                                                                                                          |
|----|------------------------------------------|------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <a href="#">Circular No. 28222/Gen.</a>  | 12-10-1990 | Non-implementation of the orders of the SAT resulting to initiation of contempt Proceeding.                                              |
| 2. | <a href="#">Circular No. 42863/Gen.</a>  | 06-12-2000 | Contempt Proceedings against officers and employees of the State Government – their defence at expense of Government, if possible.       |
| 3  | <a href="#">Resolution No.26574/Gen.</a> | 05-10-2005 | Defence of officers and employees of the State Government impleaded in Contempt of Court proceedings, by Law Officers of the High Court. |

**(B) PROCEDURE OF DEALING WITH COURT JUDGEMENTS -**

- |    |                                                   |            |                                                                 |
|----|---------------------------------------------------|------------|-----------------------------------------------------------------|
| 1. | <a href="#">Law Department Circular No. 8013.</a> | 17-06-1993 | ..                                                              |
| 2. | <a href="#">D. O. No. 13544</a>                   | 12-04-2001 | Regarding filing of first Appeal before the Hon'ble High Court. |

**(A) DEFENCE OF GOVERNMENT SERVANTS**

**Letter No. 28222-Gen.**, dated 12th October 1990 from G.A. Department, Orissa, Bhubaneswar addressed to all Heads of Departments and others.

Subject - Non-implementation of the orders of the State Administrative Tribunal resulting to initiation of contempt proceeding.

It has come to the notice of Government that due to non-implementation of the orders/direction of the State Administrative Tribunal contempt proceeding are being started against the Secretaries to Government. There are cases where the date line fixed by the Tribunal for implementation of the orders or direction is already over and the aggrieved party has moved the Tribunal for contempt,

2. After careful consideration, it has been decided that in each Department an Officer not below the rank of Deputy Secretary and in each Heads of Department an Officer not below the rank of Deputy Director should be entrusted with the responsibility of monitoring the implementation of Court orders, All the cases where specific directions has been given by the Court should be sent to this Officer for perusal and for making a gist of the orders and the date by which it is to be implemented, He will maintain a diary of such cases and appraise the Secretary/Heads of Departments every month about progress of implementation. The cases where the order is not implemented by the fixed date should be brought to the notice of Secretary/Heads of Department by this Officer.

3. This Officer will also be responsible for getting stay order vacated as and when necessary. It has to be ensured that the arrangement does not dilute the responsibility of the Branch Officer and the Heads of Department for ensuring implementation of the orders of the Court. It should be responsibility of the Branch Officer to see that

conditional orders if any passed by the Court (for example, promotion being given subject to out come of the case i.e., *Sub judice* are implemented at the appropriate time, It should also be the responsibility of the Branch Officer and Heads of Departments to ensure submission of detailed Parawise comments in each case and to ensure preparation of counter by liaison with the Government Advocate.

4. The Government Advocate is being requested to distribute the cases among the different counsel department-wise so as to enable the Department to know with whom they are to keep contact.

Sd/-

**Special Secretary to Government**

**GENERAL ADMINISTRATION DEPARTMENT**

**No. 42863-SC-6-33/98**

From

Shri D. P. BAGCHI  
Chief Secretary and Chief Development,  
Commissioner, Orissa, Bhubaneswar.

To

All Secretaries to Government/  
All Heads of Departments/  
All Collectors.

Subject - Contempt proceedings against Officers and employees of the State Government- Their defence at the expense of Government – if permissible.

Sir,

Detailed instructions of the defence of Government servants in legal proceedings have been issued by the General Administration Department vide letter No. 14537-Gen., dated 26-5-1992 (copy enclosed) on the procedure to be followed for defending Government servants in legal proceedings. Para. 11 of the letter referred above, deals with the defence of Government servants on whom the contempt of court charges have been served. It has been provided in this paragraph that the Government servant concerned may be defended at Government cost, if the Administrative Department after careful consideration, have satisfied themselves that the Government servant was not personally responsible for non-implementation of the Court orders. It has been further provided therein that where the Administrative Department are not satisfied as above, on the basis of the facts available with them the defence of the Government servant should be left to himself.

2. The Hon'ble Supreme Court of India in Civil Appeal No. 8588-89 of 1997 in the case of Commissioner, Agra and others Vs. Rohtas Singh and others reported in AIR 1998, SC : 685 have laid down the following principles of law :-

- (i) It is open to the State to nominate its Advocates to appear for its officials in contempt proceedings.
- (ii) The State is entitled to authorise a Law Officer to appear in cases where the contempt consists of disobedience of an order of the Court by an Officer or employee of the State.
- (iii) Where the conduct of the concerned official is contumacious, the Court can direct him to pay costs personally.

3. In view of the above principles laid down by the Hon'ble Supreme Court at Serials (i) and (ii) of Para. 2 above, the State Government after careful consideration have now decided that the Administrative Department/Heads of Departments may request the Government Advocates and Standing Counsels for the State to appear and defend the Government officials against whom the notices for contempt of courts have been issued for any alleged act of omission or commission while performing their duties in their official capacities. It has also been further decided that in such cases the legal expenses will be borne by the concerned Administrative Department/Head of Department/Head of Office.

4. But, in view of the principles of law enunciated by the Supreme Court at Serial (iii) of Para. 2 above, Government have also decided that if on conclusion of the contempt proceedings, the Administrative Department/Head of the Department finds that Officer concerned had intentionally and knowingly committed the contempt of Court or has been held guilty of contempt charges by the Court/Tribunal, as the case may be, the fees paid to the Government Advocate or Standing Counsel who appear for the concerned Government employee in the contempt proceedings and other legal expenses incurred for the case shall be recovered from his salary provided further that such recovery will be initiated only if the contempt is considered to be intentional or based on any unauthorised action. Furthermore such recovery may be made only after the order under the Contempt of Courts Act attains its finality.

5. This Circular letter supersedes paragraph 11 of the G. A. Department Resolution No. 14537-Gen., dated the 26th May 1992 referred to above.

The above instructions may kindly be communicated to all the Subordinate Offices for their information and guidance. This issues with the concurrence of the Law Department communicated in their U.O.R. No. 1965, dated the 24th September 1998.

**Yours faithfully,**  
**D. P. BAGCHI**  
**Chief Secretary**

**GENERAL ADMINISTRATION DEPARTMENT**

No. 14537-Gen.

From

Shri R. K. Rath, I.A.S.,  
Chief Secretary to Government.

To

All Secretaries to Government/  
All Heads of Departments/  
All Collectors.

Dated Bhubaneswar the 26th May 1992

Subject - Defence of Government Servants in Legal Proceedings.

Sir,

I am directed to say that instructions on defence of Government servants in legal proceedings were issued in the erstwhile P. & S. Department Memo Nos. 13984 (89)-Gen., dated the 14th November 1959 and 9284 (140)-Gen., dated 23rd June 1973. It has been considered necessary to consolidate and update these instructions. I am desired to say that, henceforward, the following instructions shall in supersession of all previous instructions, govern the defence of Government servants in legal proceedings.

(a) Proceedings initiated by Government against a Government servant in respect of matters connected with his official duties or position.

2. Normally, no assistance will be provided in such cases by Government to the Government servant for his defence. If, however, the proceedings conclude in his favour and Government are satisfied from the circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, they will consider whether the whole or any reasonable proportion of the expenses incurred by him in connection with his defence should be reimbursed to him. The decision shall be taken by the Administrative Department concerned.

(b) Proceedings in respect of matters not connected with official duties or position of the Government servant.

3. No assistance will be provided to a Government servant and no claim for reimbursement of expenses incurred by him will be entertained in respect of such proceedings, irrespective of whether the proceedings were initiated by a private party against a Government servant or *vice versa*.

(c) Proceedings initiated by a private party against a Government servant in respect of matters connected with his official duties or position.

4. Where a civil or criminal proceedings is taken out against a Government servant by a private party, Government will undertake his defence, whether or not they are impleaded as a party, if they are satisfied that the action of the Government servant has been *bona fide* and that there is, or would be, no conflict between his interest and the interest of Government. The Government servant should submit a report on facts of the case and should clearly certify that he has not exceeded the limits of his official duties and responsibilities towards the public or towards the complainant, and that he bears no personal malice against the complainant. He should further furnish a certificate which should read as follows or should be to the same effect;

“The Government of Orissa having pleased to undertake my defence in the above proceedings (the description of which should be given above the certificate), I hereby agree to render such assistance to Government as may be required for my defence and further agree that I shall not hold Government in any way responsible if the proceedings end in a decision adverse to me”.

The report and the certificate should be sent through his official superior who will record his views. In cases they deem proper, Government may conduct an enquiry in such manner as they think fit in order to decide whether they should undertake the defence of the Government servant.

5. In such proceedings, a Government servant may himself undertake his defence. Reimbursement of reasonable costs incurred by him may be considered in case the proceedings conclude in his favour. In determining the amount of costs to be so reimbursed, Government will consider how far the court has vindicated the case of the Government servant. The amount to be reimbursed will be decided in consultation with the Law Department unless the amount is equal to or less than the amount paid, in consultation with the Law Department, in any other similar case.

6. Where a Government servant undertakes his defence, an interest-free advance not exceeding Rs. 2,000 or up to three times his substantive pay, whichever is greater, may be granted. He may also be granted an advance from his Provident Fund not exceeding three months' pay or half of the balance outstanding at his credit, whichever is less.

7. The decision on whether Government should undertake the defence of the Government servant concerned will be taken by the Administrative Department without reference to the Law Department.

(d) Where a Government servant is permitted by Government to vindicate his conduct in a court of law.

8. Where a Government servant who has ought, in pursuance of rule 22 of the Orissa Government Servant's Conduct Rules, 1959, Government's sanction to vindicate his official conduct in any court and has obtained such sanction, he will be entitled to the advance referred to in paragraph 6 above. The question of reimbursement will be considered on the basis of the result of the proceedings and in the manner referred to in paragraph 5 above. This paragraph will also govern cases in which a Government servant is required by Government to vindicate his official conduct in a court of law.

The provisions of sub-sections (2) to (5) of Section 199 of the Code of Criminal Procedure, 1973 will be followed in cases in which Government decide to initiate criminal proceedings themselves against any person for an offence under Chapter XXI of the Indian Penal Code. Their decision in such cases will be based on the facts of each case.

### CONTEMPT PROCEEDINGS

10. Situations in which orders of Courts are flouted clearly militate against the rule of law and therefore, Government are determined that such situations should be obviated and the authority and dignity of the courts upheld. Lately, however, there has been a significant increase in the number of cases in which private parties have alleged contempt of court against individual Government servants. In a number of such cases, the Government servant may have had no personal responsibility. For example, a Government servant against whom contempt is alleged may not have the power to implement the court's orders without obtaining the approval or sanction of higher authorities which may not have been received in time. There may, again, be case where the question of filing an appeal against the order passed by the court may be under the consideration of Government. In order that Government servants who have not acted either arbitrarily or with *mala fide* are provided with reasonable and timely assistance, it has been decided that the Administrative Department should after examining the case on merits, decide whether or not the Government servant should be defended by Government, Where the proceedings are directed against the Secretary of the Department, orders of Government should be taken through the Chief Secretary.

11. When contempt charges are served on the Officer, the Law Officers of Government attached either to the High Court or to the Administrative Tribunal have to assist the High Court or the Tribunal in prosecution. They cannot obviously be engaged for the defence of the Government servant. It will be for the Administrative Department to decide whether some other counsel should be engaged for the purpose. Such decisions should be taken very carefully and after full satisfaction that the Government servant was personally not responsible for non-implementation of the order. Where available facts do not provide indubitable satisfaction or where the Government servant himself so desires, his defence maybe left to himself. He should be allowed the advance referred to in paragraph 6 above and the cost of defence may be reimbursed if the proceedings conclude in his favour. The amount to be reimbursed will be decided in consultation with the Law Department unless the fees are equal to or less than (a) what has been paid, on the advice of the Law Department, to any other such counsel of comparable experience and reputation in any other similar case or (b) the amount admissible to a Law Officer of Government.

12. These instruction may be communicated to all subordinate officers.

**Yours faithfully,**

**R. K. RATH**

**Chief Secretary to Government**

### GENERAL ADMINISTRATION DEPARTMENT RESOLUTION

No. 26574 / GA, Bhubaneswar, dated the 05.10.2005

Sub: Defence of officers and employees of the State Government impleaded in Contempt of Court proceedings, by Law Officers of the High Court.

In consonance with the principles of law enunciated by the Supreme Court of India in Civil Appeal No. 8588-89 of 1997 in the case of Commissioner, Agra and others –vs.- Rohtas Singh and others reported in AIR 1998 SC 685, it has been stipulated vide Chief Secretary's Letter No. 42863 dated. 6<sup>th</sup> December 2000 that the Government Advocates and Standing Counsels for the state shall appear and defend the Government officials against whom the notices for contempt of court have been issued for any alleged act of omission or commission while performing their duties in the official capacities if requested by the Administrative Departments / Heads of Departments to which the contemnor belongs. But as per provisions laid down under clause (d) of rule 7 of the Law Officers of the High Court (Recruitment, Remuneration and Duties) Rules, 1974, the Law officers of the High Court shall be precluded from appearing at any of the contempt proceedings in favour of the contemnor without sanction of the State government. As a result of which the Law officers of the High Court have not been authorised to defend the contemnor without specific sanction of the State Government.

Instances have come to the notice of Government that individual sanction of Government in each case is not only time consuming but also results in neglecting the defence of the contemnor by the Law Officers attached to the High Court. It has therefore, been decided by the Government that any request for defence of the contemnor as per circular of General Administration Department referred to above shall be deemed to have been accorded with the sanction of Government as a prerequisite under clause (d) of rule 7 of the Law Officers of the High Court (Recruitment, Remuneration and Duties) Rules, 1974 and shall be defended by the Law officers attached to the High Court. Accordingly in partial modification of Chief Secretary's Letter No. 42863 dated.06.12.2000, the following sub-para may be added to para 3 of the said letter :

"The request for appearance of the Government Advocates or Standing Counsels, as the case may be, in such contempt cases shall be deemed to have the sanction of the State Government as required under clause (d) of rule 7 of the Law Officers of the High Court (Recruitment, Remuneration and Duties) Rules, 1974"

This has been concurred in by the Law Department in their UOR. No. 1229/L dated. 12.06.2005.

By Order of Governor  
Sd/-  
Special Secretary to Government

## **(B) PROCEDURE OF DEALING WITH COURT JUDGEMENT**

### **LAW DEPARTMENT**

**No. 8013-L.**

The 17th June 1993

From

Shri R. N. Das, I.A.S.,  
Chief Secretary, Orissa

To

All Secretaries to Government (by name)

Sir,

Instances have come to notice of Government where certain Departments of Government were found to have taken steps for carrying out the directions contained in the Judgements of the Hon'ble High Court of Orissa or the Central/State Administrative Tribunal even though a decision had been taken in the Law Department to file Special leave Petition in the Supreme Court against the same judgement. Such anomalous situations have arisen primarily because –

The Administrative Department concerned had decided to implement the judgement without seeking advice of Law Department on the question of advisability of filing Appeal in the Supreme Court and

The Law Department had examined the judgement and decided to file Special Leave Petition, without a reference from the Administrative Department concerned, on the basis of a copy of the judgement received directly by it in that Department from the Office of the Advocate-General or the Government Advocate.

With a view to obviating scope for such anomalous situations and conflicting decisions, it has been decided that on receipt of the judgement of the Hon'ble High Court of Orissa or of the Tribunals, the following procedure shall be followed :-

- (a) On the receipt of a judgement the Administrative Department shall examine the facts and circumstances of the case, the likely effects of the judgement as also its implications for the future and take a view as to whether it would be appropriate to file a Special Leave Petition in the Supreme Court. It shall thereafter refer the relevant file to Law Department for its opinion/concurrence.
- (b) If a copy of the judgement is received directly in the Law Department with or without the opinion of the Advocate-General/Government Advocate, the Law Department shall examine whether there are adequate grounds for filing a Special Leave Petition. It shall simultaneously inform the Administrative Department concerned that the question as to whether S.L.P. should be filed is being examined in the Law Department and request the Administrative Department to furnish its views on this question in the relevant file forthwith. Where views of the Administrative Department are not made available to Law Department within a reasonable time, the Law Department will examine the matter without waiting for the opinion of the Administrative Department.
- (c) After a reference has been made by the Administrative Department to Law Department in pursuance of sub-para (a) or an intimation has been received by the Administrative Department from the Law Department in pursuance of sub-para (b) above, the Administrative Department will take steps to implement the judgement only after receipt of opinion of the Law Department.
- (d) The decision as to whether a Special Leave Petition shall or shall not be filed shall be communicated by the Law Department to the concerned Administrative Department well before the expiry of the date within which the directions contained in the judgement are required to be implemented so that the Administrative Department have adequate time to comply with the directions in case it is decided not to file S.L.P. and to take appropriate steps for filing S.L.P. if it is so decided.

**Yours faithfully,**

**R. N. DAS**

**Chief Secretary to Government**

**Copy of D. O. No. 13544/WE, dated the 17th April 2001 of Shovesh Roy, Advocate-General Orissa addressed to the Legal Remembrancer, Law Department**

Subject – Regarding filing of First Appeals before the Hon'ble High Court.

This is to inform you that at present the proposals to file First Appeals and other appeals are being dealt with direct by the Law Department without seeking opinion of the Advocate-General. Thereafter appeals are filed in the Hon'ble High Court as per the orders of the Government in the Law Department. But it is seen in almost all cases the sanction orders/proposals for such appeals are being received beyond the prescribed time limit. Moreover, the appeals are also filed with petitions under section 149 C.P.C. praying for time to file *ad valorem* Court fee. In many cases required amount for the purpose are also not received within the period as prayed for in such 149 petitions; as a result of which this office as well as Law Officers are facing embarrassment, you are aware that now-a-days, the Courts are very stiff in granting time to the State (Appellant) in such matters. In this connection there is a judgement of this Hon'ble High Court, which has been reported in 1987 (I) O.L.R. Page 35 may please be referred to for your appreciation.

In the above facts and circumstances, I request you to please instruct the Departments/Collectors to send in the proposals sufficiently before the expiry of the period of limitation and be in readiness to deposit the required amount with the office of the Advocate-General for legal expenses immediately after Government order is received to this effect to file appeal so as to avoid dismissal of the appeal.

This may be treated as VERY IMPORTANT.

**GOVERNMENT OF ORISSA**

**LAW DEPARTMENT**

No. 6984-ILR-72/96-L.

The 8th May, 2001

To

All Departments

Subject – Filing of first appeals before the Hon'ble High Court.

In communicating the order of the Chief Secretary it is intimated that Appeal proposals have been referred to the Law Department after the period of Limitation.

Some appeals have not been admitted due to non-satisfactory explanation of delay.

In this regard copy of D.O. Letter No. 13544/WE, dated the 17th April 2001 of the Advocate-General Orissa is enclosed herewith for reference.

It is thus requested to place Appeals proposals sufficiently before the expiry of the period of limitation and to be in readiness to deposit the required amount with the Office of the Advocate-General for legal expenses.

[ ILLEGIBLE ]

**Additional Legal Remembrancer**