

The Orissa (Scheduled Areas) Debt Relief Regulation, 1967

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The Orissa (Scheduled Areas) Debt Relief Regulation, 1967Orissa Regulation 1 of 1968Published in the O.G.E. Dated 8th April, 1968.[Received the assent of the President on 19th February, 1968]A Regulation to provide for relief from indebtedness to the Scheduled Tribes in the Scheduled Areas of the State of OrissaWhereas it is expedient to provide for relief from indebtedness to the Scheduled Tribes in the Scheduled Areas of the State of Orissa;Now, therefore, in exercise of the powers conferred by sub-paragraph (2) of paragraph 5 of the Fifth Schedule to the Constitution of India, the Governor of Orissa is pleased to promulgate the following Regulation made by him in the Eighteenth Year of the Republic of India.

1. Short title, extent and commencement.

(1)This Regulation may be called the Orissa (Scheduled Areas) Debt Relief Regulation, 1967.(2)It extends to all the Scheduled Areas of the State of Orissa.(3)This section shall come into force at once and the remaining provisions of this Regulation shall come into force on such [date] [The remaining provisions of the Regulation were endorsed from the 15th November, 1969, vide Notification No. 20868-Law-2/69, dated the 31st October, 1969, Published in the O.G.E.No. 1600, dated 1.11.1969.] as the State Government may by notification appoint in that behalf.

2. Definitions.

- In this Regulation, unless the context otherwise requires-(1)"appointed date" means the date appointed by notification under Sub-section (3) of Section 1;(2)"bank" means a banking company as defined in Section 5 of the Banking Regulation Act, 1949 (10 of 1949) and includes the State Bank of India constituted by the State Bank of India Act, 1955 (23 of 1955) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (33 of 1959) and any other financial institution notified in this behalf by the State Government;(3)"creditor" means a person to whom a debt is

owing and "debtor" means a member of a Scheduled Tribe by whom such debt is owed;(4)"debt" includes -(i)all liabilities owing to a creditor in cash or in kind, secured or unsecured, payable under a decree or order of a Civil Court or otherwise, whether due or not due;(ii)arrears of wages or salary;(5)"interest" includes the return to be made over and above the principal, whether the same is charged or sought to be recovered specifically by way of interest or otherwise and whether or not such interest is capitalised.(6)"principal" means actual advance made to a debtor whether in cash or in kind;(7)"secured debt" means a debt subsisting on the appointed date whether due or not due and secured by mortgage of or a charge on any immovable property or by pawn or pledge of any movable property of the debtor;(8)words and expressions used in this Regulation but not defined herein shall have the same meaning as has been respectively assigned to them in the Code of Civil Procedure, 1908 (5 of 1908).

3. Establishment of Debt Relief Courts.

(1)The State Government may by notification, establish one or more Debt Relief Courts in any Scheduled Area.(2)The State Government shall appoint an Officer not below the rank of a Subordinate Judge or a Deputy Collector to be the Presiding Officer of a Debt Relief Court.(3)The Debt Relief Court shall have such local jurisdiction as may be specified in the notification under Sub-Section (1).

4. Inapplicability of the Regulation in certain cases.

- The provisions of this Regulation shall not apply to the claims due in respect of -(a)any liability in respect of any sum due to any Co-operative Society registered or deemed to be registered under the Orissa Co-operative Societies Act, 1962 (Orissa Act 2 of 1963);(b)land revenue or any sum recoverable as an arrear of land revenue or any loan advanced by any Government;(c)tax, toll, rate, cess, fees or any other duty payable to Government or a local authority under any law for the time being in force;(d)such amount as may be found due to an assignee or proprietary rights or a tenant on account of rent rates approved by the State Government;(e)any liability arising out of a breach of trust;(f)any liability due to a bank;(g)any liability of a guardian arising out of misapplication or misappropriation of the property of his ward;(h)any liability in respect of any sum due on account of any commercial transaction;(i)any liability in respect of maintenance whether under the decree of a Court or otherwise; and(j)any money for the recovery of which a suit is barred by limitation.

5. Consequence which shall cause on coming into force of the Regulation.

(1)On and with effect from the appointed date the following consequences shall ensue, namely ;(i)no Civil Court shall entertain any suit or proceeding against a debtor for the recovery of his debt;(ii)all proceedings in execution of any decree for money and all proceedings for making final any preliminary decree for foreclosure of sale of proceedings in execution of any final decree for sale against a debtor for the recovery of his debt shall stand withdrawn and all property of a debtor under attachment in any such proceedings shall forthwith be released; and(iii)every debtor in detention in a civil prison in execution of any decree for money passed against him by a Civil Court in respect of a debt shall forthwith be released.(2)If on the appointed date any suit or proceeding of

the nature specified in Clause (i) of Sub-Section (1) is pending before any Civil Court, it shall issue a direction to the plaintiff to submit the claim in respect of such debt before the Debt Relief Court having jurisdiction within such period not exceeding sixty days as may be specified in such direction.(3)If the plaintiff fails to comply with the direction of the Court issued under Sub-section (2) within the period specified by it the suit or proceeding, as the case may be, shall stand dismissed and every claim contained therein shall be deemed, for all purposes, to have been discharged as against the debtor :Provided that if the plaintiff files a statement of claim within thirty days after the expiry of the said period and satisfies the Court that he was for good and sufficient cause unable to submit the same within that period the Court may, on such terms and conditions as it may deem fit, revive the claim.

6. Application by creditor to Debt Relief Court.

(1)Every creditor shall file an application in respect of each of his debtors for determination of the debts due to him along with three spare copies thereof before such Debt Relief Court, as may be specified by the State Government, by notification in that behalf.(2)The application under Sub-section (1) shall contain the particulars specified in Sub-section (4) and may be filed in person or by a duly authorised agent or may be sent to the Court by registered post with acknowledgement due.(3)Every such application shall be filed or, as the case may be, sent by post within sixty days of the establishment of the said Court, which the claim of the creditor shall, for all purposes, be deemed to have been discharged against the debtor :Provided that if the creditor files an application within thirty days after the expiry of the aforesaid period and satisfies the Debt Relief Court that he was for good and sufficient cause unable to file the same within that period the Court may on such terms and conditions as it may deem fit revive the claim.(4)Every application to be submitted to a Debt Relief Court under Sub-section (1) shall contain the following particulars and shall be signed and verified by the creditor in accordance with Order VI, Rule 15 of the Code of Civil Procedure, 1908 (5 of 1908)-(a)a statement that the debtor is member of a Scheduled Tribe.(b)the place where he and the debtor own land, ordinarily reside or earn their livelihood and carry on business or personally work for gain;(c)a statement of all claims outstanding against the debtor including the claims, if any, as specified in Section 4 as nearly as may be ascertainable;(d)such other particulars as may be prescribed.

7. Consolidation of claims.

- On the expiry of ninety days after the establishment of the Debt Relief Court the receiving the applications under Section 6 shall consolidate all the claims against a particular debtor in one case and if such debtor owns land, ordinarily resides or earns his livelihood within its local jurisdiction, shall proceed with the case, otherwise it shall transfer the same to the Debt Relief Court within the local jurisdiction of which the debtor ordinarily resides.

8. Procedure of Debt Relief Court, dealing with claim.

- The Debt Relief Court dealing with the claim under Section 6 shall -(i)pass an order fixing a date of hearing;(ii)cause notice of the date of hearing together with a copy of the application to be served on

all the creditor of the debtor and the debtor; and(iii)cause copies of such notice and application to be affixed to the Court house.

9. Application of Code of Civil Procedure, 1908 to Debt Relief Court.

(1)In respect of proceedings under this Regulation the Debt Relief Court shall, so far as is practicable, have the same powers and shall follow the same procedure as if it were a Court of original civil jurisdiction and subject to the provisions of this Regulation shall have the same powers as are vested in Civil Courts under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit and in particular in respect of the following matters namely :(a)joining any necessary or proper parties;(b)summoning and enforcing the attendance of any person and examining him on oath;(c)completing the production of documents;(d)issuing commission for the examination of witnesses; and(e)proof of facts by affidavits or oral evidence.(2)Subject to the provisions of this section, the Debt Relief Court may inspect any site or examine any witness on commission.

10. Appearance before Debt Relief Court.

(1)No legal practitioner shall appear, plead or act, on behalf of any party, in any proceedings before the Debt Relief Court.(2)The parties to any proceedings before the Debt Relief Court shall appear either personally or with the permission of the Court, through any other person who shall be a relative, partner, or a servant of such party and duly authorised by it in writing in this behalf.

11. Creditor to produce documents and statement of accounts.

- On the date on which the case is fixed for hearing under Section 8, the creditor shall produce the documents-in his possession or control on which he relies for establishing his claim and a full and true statement of accounts of all previous transactions between him and his debtor leading to the claim and his account books or copies thereof, if any, in his possession or control. If such documents and statements are not produced at such hearing or at any adjourned hearing, fixed for this purpose by the Debt Relief Court, the Court may declare such claim to be discharged for all purposes against such debtor or debtors :Provided that if the Debt Relief Court is satisfied that any creditor was, for good and sufficient cause, unable to produce such documents or statements it may require them to be produced on any further date fixed for the purpose and may on such terms and conditions as it may deem fit revive the claim.

12. Power of Debt Relief Court to require proof of validity and subsisting character of debts.

- On the day fixed for the hearing of the case or any subsequent day to which the hearing may be adjourned, the Debt Relief Court shall require proof of the validity and subsisting character of the debt.

13. Calculation of interest and reduction of principal in all transactions.

(1) The Debt Relief Court shall, notwithstanding anything contained in any other law for the time being in force re-open all transactions made 20 years before the last transaction or before the 1st January, 1962, whichever is earlier and, as far as may be, ascertain in respect of each debt the date on which it was originally advanced. It shall, notwithstanding the provisions of any agreement or law to the contrary, calculate the interest due in accordance with the rate specified in the First Schedule or such lower rate of interest as may have been agreed upon between the parties. It shall also determine the amount of principal, if any, of each debt which would have remained unpaid, if the calculation of interest had been made as herein provided ; Provided that where it is found that the debtor has paid any amount in excess of the amount which would have been due to the creditor in accordance with the calculation of principal and interest in the aforesaid manners, the Debt Relief Court shall determine such excess amount and pass an order directing the creditor to pay to the debtor the excess amount so determined within such period as he may specify in the order; and any amount remaining unpaid by the expiry of such period shall be recoverable from the creditor as if a decree had been passed by a Civil Court ; Provided further that where any sum is payable under a labour agreement or service bond, the Debt Relief Court shall after equitable adjustment of the remuneration of the labour rendered by the debtor from the date of the agreement or bond, determine the debt due by the debtor. Explanation. - (a) "Labour agreement" or "Service Bond" means an agreement in writing or otherwise wherein performance or manual labour for a continuous period of one month by a person is included as a consideration for the advance and includes an advance exceeding the equivalent of one month's fair and equitable remuneration made or to be made to such person or at his request to someone else and the interest, if any, on such advance. (b) "Fair and equitable remuneration" means such amount as the State Government may from time to time, by notification, fix or where the amount has not been so fixed, twenty rupees a month where the labourer is not fed by the employer or ten rupee a month where the labourer is fed by the employer. (2) Notwithstanding anything contained in any other enactment for the time being in force no Debt Relief Court shall recognise any labour agreement or service bond entered into by a debtor after the appointed date. (3) Where the principal was borrowed in such with an agreement to repay it in kind, the Debt Relief Court shall, notwithstanding such agreement, agree to the debtor repaying the debt in cash, after deducting the value of all payments made by the debtor in kind at the rate, if any, stipulated in such agreement, or at the market rate prevailing at the time of each payment, whichever is higher. (4) If the Debt Relief Court finds that the loan was originally advanced prior to the 1st January, 1962, then it shall reduce the principal determined under Sub-section (1) in accordance with the Second Schedule. (5) Notwithstanding anything contained in any law for the time being in force, no Debt Relief Court shall, in respect of any debt to which this Regulation applies, award of account of arrears of interest a sum greater than the principal of the loan as determined under Sub-section (1). (6) Where any debtor has paid to any credit twice the amount of principal whether by way of principal or interest or both, such debt including the principal shall be deemed to have been wholly discharged. (7) If the Debt Relief Court finds that nothing is due to the creditor, it shall pass an order discharging the debt with costs.

14. Preparation of a scheme for repayment of the Debt.

(1) When the amount due has been determined under Section 13, the Debt Relief Court shall, after taking into account the liability of the debtor in respect of claims referred to in Section 4 prepare a scheme of repayment of the debt. (2) If the debtor has transferable property which he is willing to transfer to enable him to repay the whole or any part of his debt, the Debt Relief Court may, subject to the provisions of Sub-section (3), sanction such transfer on such conditions as it may think necessary to impose in order to safeguard the rights of the creditors including those to whom any amount in respect of claims referred to in Section 4 is due and may grant such reasonable time as is necessary for the debtor to transfer such property : Provided that when there is any mortgage, lien or charge upon the property, such sanction shall only be given upon terms which will ensure that such mortgage, lien or charge shall subsist to such extent as is sufficient to safeguard the interest of the mortgagee or of the holder of the lien or charge : Provided further that when a transfer has been agreed to before the Debt Relief Court by the parties to the proceedings, and either party fails to complete the transaction within a period of sixty days, the Court may take action, as far as may be, under Order XXI, Rule 32 of the Code of Civil Procedure, 1908 (5 of 1908). (3) The Debt Relief Court shall not sanction the transfer of any property which is exempt from attachment by virtue of the provisions contained in Section 60 of the Code of Civil Procedure, 1908 (5 of 1908) and in the case of immovable property unless the transfer is sought to be made in favour of a person belonging to a Scheduled Tribe or in favour of the State Land Mortgage Bank or a Land Mortgage Bank as defined in the Orissa Co-operative Societies Act, 1962 (O.A. 2 of 1963). (4) If after transfer of property, if any, under Sub-section (2) any portion of the debt as determined under Section 13 remains unpaid the Debt Relief Court shall fix instalments for the repayment of such portion in such manner, as may be prescribed and may in case of default order payment of simple interest at a rate not exceeding four per cent, if the debt is unsecured and three per cent, if it is secured : Provided that in fixing instalments, the Debt Relief Court shall have regard to the extent of the transferable property in the possession of the debtor, and his paying capacity to be determined in accordance with the rules made in this behalf.

15. Provisions governing payment of instalments.

- Every instalment shall be payable on or before the date fixed in that behalf by the Debt Relief Court and shall be paid to the Collector in the prescribed manner.

16. Provisions when default is made in payment of instalment.

(1) If any instalment or part thereof becomes irrecoverable the Collector shall certify accordingly. (2) If an instalment or part thereof is certified as irrecoverable under Sub-section (1) or if two consecutive instalments remain in arrears, the Collector, on the application of the creditor, shall pass an order that the order of the Debt Relief Court fixing instalments shall cease to have effect, and he may fix such smaller instalments for the remaining debt and in such manner as he thinks fit : Provided that if an instalment so fixed by the Collector or any part therefor or if two consecutive instalments, so fixed by the Collector again remain in arrears the balance remaining due shall be recoverable as if a decree and in case of a mortgage lien or charge as if a final decree, had

been passed by a Civil Court.

17. Invalidity of transfer made by debtor in certain circumstances.

- No transfer of immovable property shall be valid, if made by a debtor, in respect of whose debts proceedings are pending under Section 6 unless made with the sanction of the Debt Relief Court.

18. Application of Sections 49, 50 and Order XXII of the Code of Civil Procedure, 1908.

- If, during the period for which the same prepared under Section 14 is in force, the debtor or the creditor dies, the provisions contained in Sections. 49 and 50 and Order XXII of the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply.

19. Regulation inapplicable to debts payable by insolvents.

- Nothing contained in this Regulation shall apply to the debts payable by any person who has been adjudicated as an insolvent prior to the appointed date provided that adjudication has not been annulled before the said date.

20. Revision and finality of orders.

(1) Any person aggrieved by any order of a Debt Relief Court may within ninety days of such order apply to the District Court for revision of the order on all or any of the following grounds, namely : (a) that the order is contrary to law; (b) that the Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction vested in it by law; (c) that the instalments fixed under Sub-section (4) of Section 14 are inequitable. (2) All orders passed by the Debt Relief Court shall, subject to such orders as the District Court may pass on a revision be final.

21. Payment of court-fees by creditors in proceedings under this Regulation.

(1) The creditor shall be liable to pay one-fifth of such court-fees upon the amount determined as due under Section 13 as he would be liable to pay upon a plaint fixed for recovery of that sum and no further proceedings shall be taken under this Regulation until the court-fees have been paid : Provided that no court-fees shall be payable if Court-fees have already been paid in respect of the debt: Provided further that no court-fees shall be payable by any member of the Scheduled Tribes in respect of any proceedings under this Regulation. (2) If such court-fees are not paid within such time as the Debt Relief Court considers to be reasonable in each case, it may declare the claim to be discharged for all purposes.

22. Bar of suits and other legal proceedings.

- No suit or other legal proceedings shall be instituted against the State Government or the Collector in respect of anything done in dealing with any instalments paid by a debtor under Section 15, but nothing in this section shall prevent any creditor entitled to recover such instalment from recovering the same from any person to whom it might have been paid by the Collector.

23. Bar of jurisdiction of Courts in certain matters.

- Subject to the provisions of Section 19, the jurisdiction of Civil Courts and the Courts exercising jurisdiction under the Provincial Insolvency Act, 1920 (5 of 1920) shall be barred in respect of - (a) any matter pending before a Debt Relief Court; (b) the claim for any debt which has been discharged or deemed to have been discharged under this Regulation; (c) the recovery of any debt, which forms the subject-matter of any scheme prepared under Sub-section (1) of Section 14 or of any order of the Debt Relief Court made under Sub-section (2) of the said section: Provided that nothing herein contained shall prevent a Court which has stayed proceedings under the provisions of this Regulation from resuming them and passing such orders in regard to them as are not inconsistent with this Regulation.

24. Limitation.

- In calculating the period of limitation in respect of any suit filed in any Civil Court for the recovery of any debt which formed the subject-matter of any proceedings under this Regulation, the time during which such proceedings had continued shall be excluded.

25. Power to make rules.

(1) The State Government may, after previous publication, make rules to carry out the purposes of this Regulation. (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 amount of court-fees to be paid on applications made to Debt Relief Courts; (b) the scales of debt money and travelling allowances to be paid to witnesses; (c) the amount of court-fees to be charged for serving and executing processes issued by Debt Relief Courts; (d) the charges to be made by the Debt Relief Courts for anything done under this Regulation and the persons by whom and the manner in which such charges shall be paid; (e) the manner of payment of instalments; (f) the procedure to be followed by the Collector in dealing with the instalment amounts paid to him; (g) the records to be kept and the returns to be made by a Debt Relief Court; (h) determination of the paying capacity of a debtor; (i) the procedure for recording oral evidence in proceedings under this Regulation; (j) any other matter which is to be or may be prescribed under this Regulation. First Schedule [See Section 13(1)] Rate of interest Simple interest per cent per annum on

Secured debt	Unsecured debt
4 per cent	6 per cent

Second Schedule[See Section 13(4)]Rate of reductionIf the Debt was incurred before the 50 per cent - 31st December, 1950If the debt was incurred after the 40 per cent - 31st December 1950 but on or before the 31st December, 1958.If the debt was incurred after the 30 per cent - 31st December, 1958, but on or before the 31st December, 1961.