

## ORISSA ORDINANCE No. 5 OF 1986

**THE ORISSA ELECTRIC SUPPLY-LINE MATERIAL (UNLAWFUL POSSESSION) ORDINANCE, 1986**

*[Promulgated by the Governor of Orissa on the 12th November 1986, first published in an extraordinary issue of the Orissa Gazette, dated the 14th November 1986]*

AN  
ORDINANCE

To provide for prevention of theft and unlawful possession of Electric Supply-line material and matters connected therewith

WHEREAS the Legislature of the State of Orissa is not in session;

AND WHEREAS, the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to provide for prevention of theft and for seizure and confiscation of electric supply-line material and matters connected therewith;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India the Governor of Orissa is pleased to make and promulgate the following Ordinance in the Thirty-Seventh year of the Republic of India.

Short title,  
extent and  
commence-  
ment.

1. (1) This Ordinance may be called the Orissa Electric Supply-Line Material (Unlawful Possession) Ordinance, 1986.

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

(3) It shall come into force at once.

Definitions

2. In this Ordinance, unless the context otherwise requires,—

(a) "Authorised Officer" means an Officer of the Orissa State Electricity Board not below the rank of an Executive Engineer (Electrical) who has been authorised by the Government by notification issued in this behalf to exercise the powers of confiscation under this Ordinance for a particular area;

(b) "Board" means the Orissa State Electricity Board constituted by the <sup>54</sup> of 1948 Government under section 5 of the Electricity (Supply) Act, 1948;

(c) "Electric Supply-Line material" means wire, conductor or other means used for conveying, transmitting or distributing energy (whether by over-head line or underground cable), together with any casing, covering, coating, tube-pipe or insulator enclosing, surrounding or supporting the same or any part thereof or any apparatus connected therewith for the purpose of so conveying transmitting or distributing such energy, any support, cross arm, stay, strut or safety device erected or set up for that purpose and includes electric transformer, belonging to Government of Orissa or Orissa State Electricity Board:

Provided that "Electric Supply-Line material" shall not include cables and wire for 230 to 400V and other indoor installations :

(d) "Government" means the State Government of Orissa;

(e) "Prescribed" means prescribed by rules made under this Ordinance; and

- (f) Words and expressions used but not defined in this Ordinance and defined in the Indian Electricity Act, 1910 shall have the same meaning as assigned to them under that Act.

Penalty for unlawful possession of electric supply-line material.

3. Whoever is found to have been in possession of any electric supply-line material reasonably suspected of having been stolen or unlawfully obtained or retained shall, unless he proves that he was in lawful possession of such materials, shall be punishable.

- (a) for the first offence, with imprisonment of either description for a term which may extend to three years and with fine and in the absence of special and adequate reasons to be recorded in the judgement of the Court, such imprisonment shall not be less than two years and such fine shall not be less than one thousand rupees;
- (b) for the second or subsequent offence with imprisonment of either description for a term which may extend to five years and also with fine and in the absence of special and adequate reasons to be mentioned in the judgement of the Court, such imprisonment shall not be less than three years and such fine shall not be less than two thousand rupees.

Non-production of the material before Court.

4. In any trial for an offence under section 3 of this Ordinance.—

- (a) the burden of proof that the accused was in lawful possession of the electric supply-line material shall be on him;
- (b) it shall not be necessary to produce the seized materials in the Court for the purpose of identification. The production of the seizure list duly countersigned by the Authorised Officer of the area or the Investigating Officer, as the case may be, shall be conclusive proof of such identification.

Search of place suspected to contain electric supply-line material.

5. (1) If any place including an enclosure, tank, well, reservoir or any premises is suspected to be used for the deposit of stolen electric supply-line material any officer of the Board, not below the rank of a Section Officer (Electrical) may enter such place for the purpose of search and may take the assistance of such subordinates, Assistants or other employees of the Board as may be considered reasonable and necessary for conducting the search and to make arrangements for guarding the place until arrangement is made for the seizure and removal of the electric supply-line material to some place of safety.

(2) All persons in possession or occupation of the place, premises, tank, reservoir or well, on disclosure of the identity of the Officer conducting the search, shall allow him free ingress thereto and afford all reasonable facilities for a search therein.

(3) Before making a search under this section, the Officer about to make it shall call upon one or more respectable persons of the locality in which the place is situate or of any other locality if no such inhabitant of the said locality is available or is willing to attend and witness the search and the search shall be made in the presence of such witness.

(4) Any person obstructing the search conducted by an officer of the Board shall be punishable with imprisonment which may extend to six months and fine.

Seizure of electric supply-line materials.

6. (1) When it is reasonably suspected that an offence under this Ordinance has been committed in respect of electric supply-line material, such supply-line material together with all tools, ropes, chains and any vehicles, vessels or other

modes of conveyance used for transport of such supply-line material, may be seized by any Officer of the Board, not below the rank of a Section Officer (Electrical).

(2) Every Officer seizing any electric supply-line material or tools, chains, vehicles or other modes of conveyance under sub-section (1) shall, within seventy-two hours from the time of seizure, produce the property seized before the Authorised Officer of the area. All Officers of the Board including the Authorised Officer, when they seize any electric supply-line material shall lodge information with the Police along with a copy of the seizure list duly countersigned by the Authorised Officer without producing the seized material.

(3) Every Police Officer seizing electric supply-line material in connection with an offence suspected to have been committed under this Ordinance shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 forward a copy of the seizure list to the Authorised Officer within seventy-two hours from the time of seizure and shall make over to the said Authorised Officer the seized property including the tools, chains, ropes, vehicles, vessels and other conveyances seized, for purpose of initiating confiscation proceeding under this Ordinance. 2 of 1974

(4) The seizure list prepared of the materials or the tools, chains, vehicles and other modes of conveyance seized in course of search, shall be signed by the Officer making the seizure and the witness present. A report of seizure along with a copy of the seizure list so made shall be sent to the nearest Magistrate having jurisdiction to try any offence under this Ordinance.

Confiscation  
of seized  
articles.

7. (1) Where an Authorised Officer seizes any electric supply-line material or where any such electric supply-line material is produced before him or is made over to him by the Police, he shall, if he is satisfied that an offence under this Ordinance has been committed in respect thereof, order the confiscation of the electric supply-line material together with all tools, ropes, chains, vehicles, vessels and other conveyances used in committing such offence:

Provided that no order confiscating any electric supply-line material or any tools, ropes, chains, vehicles or other conveyances used in committing the offence shall be made, unless the person from whom the property is seized is given—

- (a) a notice in writing informing him of the grounds on which it is proposed to confiscate such property, tools, ropes, chains and vehicles, vessels and other conveyances;
- (b) an opportunity of making representation in writing within such reasonable time as were specified in the notice against the grounds of confiscation and
- (c) a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any vehicle, vessel, or other conveyance shall be made, if the owner of such vehicle, vessel, or other conveyance proves to the satisfaction of the Authorised Officer that it was used in carrying the electric supply-line material without the knowledge or connivance of the owner himself, and his agent, if any, and the person in charge of the vehicle, vessel or other conveyance had taken all reasonable and necessary precautions against such use.

Appeal

8. (1) Any person aggrieved by an order of confiscation made under section 7 may within one month from the date of communication to him of such order, appeal to the Superintending Engineer (Electrical) having jurisdiction over the area and the appellate authority after giving an opportunity to the appellant to be heard, may pass such order as he may think fit, confirming, modifying, or annulling the order appealed against.

(2) The appellate order shall be final and notwithstanding the result of the criminal case, if any the confiscation as confirmed by the appellate authority shall not be questioned in any Civil or Criminal Court of law.

Vesting of property.

9. (7) Where an order of confiscation of any materials, tools and conveyance has become final, such materials or a portion thereof, including the tools, vehicles, vessels and other conveyances, as the case may be, shall vest in the Board free from all encumbrances and the Board, after fixing a reasonable valuation of the property, may dispose of the same in such manner as it deems proper.

(2) Where in a prosecution under section 3 of this Ordinance, the person concerned is acquitted on a finding that he was in lawful possession of the seized property, he will be entitled to be refunded the value or price fixed under sub-section (1) or the actual disposal price, whichever is higher, from the Board.

Confiscation to be no bar to imposition of other penalty.

10. An order of confiscation made under section 7 shall not act as a bar to the imposition of any other penalty to which the offender is liable under this Ordinance.

Offence cognizable.

11. An offence under this Ordinance shall be cognizable and non-bailable

Presumption as to orders.

12. Where an order purports to have been made and signed by the authority in exercise of any power conferred by or under this Ordinance, the Court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872. 10 of 1872

Protection of action taken under the Ordinance.

13. No suit, prosecution or any legal proceeding shall lie against any person for anything done in good faith or intended to be done in pursuance of the provisions of this Ordinance.

Protection of the Board.

14. No suit or legal proceeding shall lie against the Board for any damage caused or likely to be caused by any officer of the Board which is in good faith done or intended to be done in pursuance of the provisions of this Ordinance.

Ordinance to override other laws.

15. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

B. N. PANDE

Dated the 12th November 1986

GOVERNOR OF ORISSA