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LAW DEPARTMENT

NOTIFICATION

The 30th May, 2011

No.5259-ILR-23/11/L.,—Whereas Resolution presented by Union Ministry of Law & Justice in National Consultation for strengthening the judiciary towards reducing the pending litigations and also preventing inflow of unnecessary litigations in future which was held on 24th & 25th October, 2009 acknowledged the initiative undertaken by GOI to frame **NATIONAL LITIGATION POLICY** with a view to stand and conduct as a responsible litigant. Every State Government was accordingly urged upon to evolve similar policy in the line of the National Litigation Policy launched by Government of India in the Ministry of Law & Justice in the context of the scenario of State litigations in respective State and the practice, procedure etc..

And whereas, the 13th Finance Commission has made it a conditionality for every State to have its **STATE LITIGATION POLICY** to be put in place.

And whereas, the very purpose underlying this State Litigation Policy is to reduce Government litigations in Court so that valuable time of the Court be spent in adjudicating cases involving important issues in qualitative manner. The goal set out is to see that State stand as a responsive litigant rather than a compulsive litigant.

Now, therefore, the State Government keeping in view the socio, economic conditions of people and geographical situation of State, the National Litigation Policy and further viewing the nature of litigations etc., have formulated the State Litigation Policy (Orissa) to achieve the above objective which is annexed herewith as ANNEXURE-1.

By order of Governor

D. DASH

Principal Secretary to Government

Annexure- I

INTRODUCTION

In view of the conditions imposed by the 13th Finance Commission in its award to lay down a litigation policy for State of Orissa based on the National Litigation Policy to ensure conduct of litigation by State Government as a responsible litigant aiming toward reducing pendency and delays in finality of litigation, the policies have been evolved as guideline to be observed and followed.

2. With the increasing development, industrialization, expectations have also increased resulting increase of grievances against the State. When a citizen has his grievances whether against any individual or the State its redressal as per law is also the duty of the State. Litigation is not the only possible way to resolve the grievance and therefore grievance redressal mechanism is required to be strengthened to meet the challenge of increase of number of litigations by/against State.

3. The litigations by & against Govt. are to be categorized as under for addressing the issue for their unnecessary continuance as a matter of course.

1. Cases pending in different courts & tribunals.

2. Cases to come up in future in different courts & tribunals of the State.

4. Majority of the State litigations arise out of inaction or delay in taking action and those out number the grievance leading to litigation against decision of the Govt. If actions are, therefore, taken within a reasonable time most of the pending litigations can be disposed of and future litigations will be confined to grievance against decision. Each department and the offices of the department shall prepare a list of litigations against inaction and take early steps for decision. With this most of pending litigations would be reduced. So far as litigations against the decisions they are either challenged being unjust/improper/contrary to law or non-implementation. If the decisions taken are implemented with a reasonable time another set of litigations can also be avoided. So far as correctness of decisions, a Committee of the Administrative Department can re-examine and on recommendation of said Committee, the Empowered Committee under the Chairmanship of Chief Secretary, will take a final view for Govt. decision. As regards pending litigations in different Courts/Tribunals citizen will also be given the liberty to come forward for just settlement and decision will be taken giving a fresh look into it taking an overall view.

The State or Orissa adopts its litigation policy as follows:—

I. Vision/Mission

1. State Government and its agencies are said to be standing as the main litigants in Courts and Tribunals in the State and the National adjudicating Tribunals. Aim of the policy made is to create feeling among the people by demonstrating that State is an efficient and responsible litigant, reasonable in its approach in respect of grievance of a person. This will create confidence of the public that State Government discharges its responsibility to protect rights of citizen in respect of fundamental rights and welfare for their security and ultimately to have good governance. Guidance will help people to accept those in charge of the conduct of Government litigation who do not forget the basic principle.

To become efficient litigant, persons involved are to—

(I) Focus their attention on the core issues involved in the litigation to address them squarely and more importantly in time;

(II) Manage and conduct the litigation in a cohesive, co-ordinated and timebound manner;

(III) Ensure that good cases are conducted in a manner to become successful and not to pursue needlessly the bad cases ; and

(IV) Take steps for representation by competent and sensitive legal persons competent in their skills and sensitive to the facts that government is not an ordinary litigant shunning the attitude being result oriented.

2. In order to create a feeling that State Government is a responsible litigant, persons connected with State litigations are to demonstrate that–

(i) the litigations has not been resorted to for the sake of litigation only;

(ii) pleas taken in the litigation either to establish or defend should not be either false or technical which should also be discouraged and those be not pitted against genuine claims;

(iii) correct facts and circumstances have been ensured to be placed before the adjudicating forum and all relevant documents have been ensured to be placed; and

(iv) nothing has been suppressed and no attempt has been made to suppress and mislead the adjudicating forum.

3. Grievance or complaint of a person is to be carefully examined and all endeavor should be made to satisfy the person aggrieved by redressing his grievance or by explaining him the difficulties in redressal of his grievance as per his claim and those connected with the litigation should not leave the matter to the adjudicating forum to decide with an attitude that "LET IT BE DECIDED BY THE COURTS". Any such attitude coming to the notice has to be seriously viewed. It should give a feeling not only that grievance is redressed but it must be shown to have been redressed within the frame work of law in a just possible manner.

4. For ensuring success of this policy, Departments of the Government, Heads of Department, Heads of Offices, Field Officers, Law Officers of the State Government and its agencies who are in any manner connected with the grievance/litigation are to co-ordinate with each other individually and collectively. In each office a Nodal Officer will be the co-ordinating officer who will be responsible for collection of facts, documents, and discussion amongst each others.

5. Nodal officer's roles are crucial for successful implementation of the policy. Grievance of people arise generally in the matters of implementation of laws, plans and schemes to be implemented by the office of which he is the nodal officer. He should have knowledge of the departments and their working with rules or other offices who are connected with the implementation so that a grievance can be attended to within a short time and aggrieved person is not required to knock at different doors for redressal of his grievance. Inspite of all endeavours to attend to the grievance if a litigation becomes inevitable, the nodal officers should remain in charge of the litigation for taking steps for its early disposal.

6. All Public servants should develop the attitude of being accountable where grievance is made by individual in respect of their actions or inactions or abuse of position in any matter. Whenever notice in a case is received it should first be initiated from the Nodal Officer for further action. The mindset should be that if a person has a claim tenable in the eye of law let him not be unnecessarily driven to the court as his ultimate success costs dearer to the State in many respect sending a wrong message and signal affecting the Governance.

7. Empowered Committee as referred to in fourth Para of Introduction chapter shall be constituted which shall have some powers and functions as outlined in National Litigation Policy. In other words, Advocate General and other members not exceeding six in number to be nominated by Law Department with approval of the Chief Secretary will constitute the Empowered Committee. One of the Addl. Secretaries of Law Department shall be the Member Secretary.

There shall be District Empowered Committee for each of the Revenue District. It shall be chaired by the Collector of the District with Government Pleader of the District who is the senior-most among them in legal profession as the Vice-Chairman and ADM as Member –Convener. Every other Government Pleader and Public Prosecutor of the District shall be Members with connected officials of the District maximum of two as co-opted members .District Committee shall submit monthly reports to the State Empowered Committee which shall in turn submit comprehensive reports to Govt. in Law Department. Nodal Officers and Heads of Offices will ensure that all relevant data is sent to the Empowered Committees.

Each Department is required to prepare a list of litigation pending in different Court and Tribunal with short indication of the subject. It should be reviewed by the Empowered Committee to be constituted by the Chief Secretary. Where a grievance is continuing for a long period, the Committee shall suggest ways how the grievance can be redressed and where for any reason it is not possible the lawyer representing the State in the Court and Tribunal shall be requested to take step to expedite the final disposal. Attempt may be taken by the Empowered Committee at its discretion to see that in appropriate cases safeguarding the interest of the State & looking at its impact , the same if can be disposed by compromise without standing as a precedent.

II. GOVERNMENT REPRESENTATION

(A) While it is recognized that Government Panels are a broad based opportunity for a cross section of lawyers, Government Panels should be vehicles for competent and efficient persons. Persons who recommend names for inclusion on the Panel are to be careful in making such recommendations and to take care to check the credentials of those recommended with particular reference to legal knowledge and integrity.

(B) Selection will be taking into account the skills and capabilities of people who are desirous of being on Government Panels with emphasis on areas of core competence, domain expertise and areas of specialization.

(C) Government advocates must be well equipped and provided with adequate infrastructure. Efforts will be made to provide the agencies which conduct Government litigation with modern technology such as computers, internet links, etc. and other basic facilities.

(D) Training programs, seminars, workshops and refresher courses for Government advocates will be encouraged. There will be continuing legal education for Government lawyers with particular emphasis on identifying and improving areas of specialization. Law Department will be in consultation with experts and all concerned prepare special courses for training of Government lawyers with particular emphasis on identifying and improving areas of specialization. Most importantly, there shall be an effort to cultivate and instill values required for effective Government representation. The training programme will be conducted at regular interval / as and when required and for this all necessary Co-operation and help will be rendered by all other Department whenever needed.

(E) Conferences of Government advocates will be organized so that matters of common difficulties and its eradication can be discussed and problems are sorted out.

(F) Government Advocates must play a meaningful role in Government litigations. They cannot continue to be merely responsible for filing appearances in Court. A system of motivation has to be worked out for Government advocates under which initiative and hard work will be recognized and extraordinary work will be rewarded.

(G) It will be the responsibility of all Law Officers to train their fellow panel lawyers and to explain to them what is expected of them in the discharge of their functions. They shall have also to show the output and for that mechanism will be separately developed for constant monitoring and evaluation.

(H) Panels will be drawn up of willing, energetic and competent lawyers to develop special skills in drafting pleadings on behalf of Government. Such panels shall be flexible so that more and more advocates must be encouraged to get on to such panels by demonstrating keenness, knowledge and interest.

(I) Nodal Officers will be responsible for active case management. This will involve constant monitoring of cases particularly to examine whether cases have gone "off tract" or have been unnecessarily delayed.

(J) Incomplete briefs are frequently given to Government Counsel. This must be avoided.

(K) There should be equitable distribution of briefs as far as possible and practicable so that there will be broad based representation of Government. The Advocate General, Govt. Pleader and Public Prosecutors will look into it and take special care as deemed proper.

(L) Government lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to Government. If concessions are made on issues of fact or law, land it is found that such concessions were not justified, the matter will be reported to the Empowered Committee and remedial/punitive action would follow.

(M) While Government cannot pay fees which private litigants are in a position to pay, the fees payable to Government Lawyers will be suitably revised from time to time to make it duly remunerative. Optimum utilization of available resources and elimination of wastage will itself provide for adequate resources for revision of fees. It should be ensured that the fees stipulated as per the Schedule of Fees should be paid within a reasonable lime. Deficiencies in relation to release of payments must be eliminated as far as possible.

III. ADJOURNMENTS

(A) Accepting that frequent adjournments are resorted to by Govt. lawyers, unnecessary and frequent adjournments will be frowned upon and infractions will be dealt with seriously.

(B) In fresh litigations where the Govt. is a Defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. If instructions are not forthcoming, the matter must be reported to the Nodal Officer and if necessary to the Head of the Department.

C) One of the functions of the Nodal Officers will be to coordinate the conduct of litigation. It will also be their responsibility to monitor the progress of litigation from time to time particularly in identifying the cases in which repeated adjournments are taken. It will be the responsibility of the Nodal Officer to report cases of repeated and unjustified adjournments to the Head of the Department and it shall be open to him to call for reasons for the adjournment. Serious note will be taken of cases of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the advocates are at fault, action against them may also entail serious consequences such as removal of their names from Govt. Panels.

(D) Cases in which costs are awarded against the Govt. as a condition of grant of adjournment will be viewed very seriously. In all such cases the Head of Department must give a report to the Empowered Committee of the reasons why such costs were awarded. The names of the persons responsible for the default entailing the imposition of the costs will be identified. Suitable action must be taken against them.

IV. PLEADINGS/COUNTERS

(A) Suits or other proceedings initiated by or on behalf of Government have to be drafted with precision and clarity. There should be no repetition either in narration of facts or in the grounds by highlighting those on which the case of States is based.

(B) Appeals will be drafted with particular attention to the Synopsis and List of Dates which will carefully crystallize the facts in dispute and the issues involved with reference to legal position. Slipshod and loose drafting will be taken serious note of. Defaulting advocates in this regard may be removed from the panels. Pleas/ grounds which do not touch the substratum of the lis be avoided.

(C) care must be taken to include all necessary and relevant documents in the record. If it is found that any such documents are not annexed and this entails an adjournment or if the court adversely comments on this, the matter will be enquired into by the Nodal Officer and reported to the Head of Department for suitable action.

(D) It is noticed that Govt. documentation in court is untidy, haphazard and incomplete, full of typing errors and blanks and those be avoided.

(E) Counter Affidavits in important cases will be filed in time and on proper scrutiny.

V. FILING OF APPEALS

(A) Appeals may not be filed against *ex parte* and interim orders unless of course in extreme cases where situation so demands. Attempt must first be to have the order vacated. An appeal may only be filed against an order only if the order is not vacated and the continuation of such order causes serious prejudice and where time to be spent for vacation would frustrate the object and then if such filing is permissible in Law.

(B) Given that Tribunalisation is meant to remove the loads from Courts, challenge to orders of Tribunals should be on careful scrutiny and not a matter of routine.

(C) In service matters, filing of appeal will be avoided in cases where:—

(a) the matter pertains to an individual grievance without any major repercussion.

(b) the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications except where a long-standing settled position is going to be unsettled likely to give rise to huge burden leading to complication.

(D) Further, proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Appeals will not be filed to espouse the cause of one section of employees against another.

(E) Proceedings will be filed challenging orders of Administrative Tribunals only if—

(a) There is a clear error of record in recording the finding against the Govt.

(b) The judgement of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.

(c) The judgement would affect the working of the administration in terms of moral of the service, the Govt. is compelled to file a petition; or

(d) If the judgement will have recurring implications upon other cadres or if the judgement involves huge financial claims being made.

(F) Appeals will not be filed in the Supreme Court unless:—

(a) the case involves a question of law;

(b) If it is a question of fact, the conclusion of the fact is such that opinion cannot rest at that conclusion ;

(c) Where public finances are adversely affected ;

(d) Where there is substantial interference with public justice;

(e) Where there is a question of law arising under the Constitution;

(f) Where the High Court has exceeded its jurisdiction;

(g) Where a statutory provision has been struck down as ultra vires;

(h) Where the interpretation is plainly erroneous.

(G) In each case, there will be a proper certification of the need to file an appeal. Such certification will contain brief and cogent reasons in support. At the same time, reasons will also be recorded as to why it was not considered fit or proper to file an appeal.

VI. LIMITATION : DELAYED APPEALS

(A) It is recognized that good cases are being lost because appeals are filed much beyond the period of limitation and without any proper explanation for the delay or without a proper application for condonation of delay. It is recognized that such delays are not always bonafide particularly in cases where high stakes of revenue are involved.

(B) Each Head of Department will be required to call for details of cases filed on behalf of the Department and to maintain a record of cases which have been dismissed on the ground of delay. The Nodal Officers must submit a report in every individual case to the Head of Department explaining all the reasons for such delay and identifying the persons/causes responsible. Every such case will be investigated and if it is found that the delay was not bonafide, appropriate action must be taken. Action will be such that it operates as a deterrent for

unsatisfactory work and malpractices in the conduct of Govt. litigation. For this purpose, obtaining of the data and fixing of responsibility will play a vital role. Data must be obtained on a regular basis annually, bi-annually.

(C) Applications for condonation of delay are presently drafted in routine terms without application of mind. This practice must be shunned. It is the responsibility of the drafting counsel to carefully draft an application for condonation of delay, identifying the areas of delay and identifying the causes with particularity. The Administrative Department must provide detail datas for the said drafting.

(D) Every attempt must be made to reduce delays in filing appeals/applications. It shall be responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.

(E) The question of limitation and delay must be approached on the premise that every court is strict and rigid with regard to condonation of delay and accordingly there have to be the ground work and preparation.

(F) The Legal Cell of all the Departments of Government shall be activated and it will be ensured that the Cell is fully dedicated to the Management of the litigations & if there would be any shortage of staff, the same shall be sorted out immediately by processing files for that as per practice. Any notice relating to any litigation received either from the citizen or Hon'ble Court/Tribunals or any other quasi-judicial authority will be marked to the Legal Cell immediately who in their turn will coordinate with the concerned section and in cases of need will refer to Law Department for opinion. This marking and co-ordination exercise should possibly be completed within 10 days. The Law Department on receipt of any such reference will immediately act and examine the merit or otherwise of the case in going ahead with an Appeal/Writ/SLP. The decision of the Govt. in Law Department will be communicated to the A/D preferably within 15 days. In case any delay at some level is noticed, such delay shall have to be explained for consideration of the authority. If at any point any deliberate action in causing delay in order to extend undue advantage to the adversary of the case is found out, the authority will take appropriate action against the erring officer. The interest of State shall in that event be of paramount consideration.

VII. ALTERNATIVE DISPUTE RESOLUTION

ARBITRATION

(A) It is found that when a party raising a dispute, proper steps for Arbitration where a clause to that effect remains is not being taken and resultantly the party is moving the Court. This must be stopped and timely step in that regard must be taken. More and more Government Departments and PSUs should resort to Arbitration particularly in matters of contracts etc. careful drafting of commercial contracts, including arbitration agreements must be given utmost priority.

(B) The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails the responsibility that such arbitration will be cost effective, efficacious, expeditious and conducted with high rectitude. At the same time, when the party is raising just a dispute taking advantage of the clause, all efforts will be made to see that finally he is duly penalized for taking the chance where time and energy of all concerned are unnecessarily wasted.

(C) It is recognized that the conduct of arbitration at present leaves a lot to be desired. Arbitrations are needlessly dragged on for various reasons. One of them is by repeatedly seeking adjournments. This practice must be stopped.

(D) The Head of Department will call for the data of pending arbitrations. Copies of the (record of proceedings) must be obtained to find out why arbitrations are delayed and ascertain who is responsible for adjournments. Advocates found to be conducting arbitrations lethargically and inefficiently must not only be removed from the conduct of such cases but also not briefed in future arbitrations. It shall be the responsibility of the Head of the Department to call for regular review meetings to assess the status of pending arbitration cases.

(E) Lack of precision in drafting arbitration agreements is a major cause of delay in arbitration proceedings. This leads to disputes about appointment of arbitrators and arbitrability which results in prolonged litigation even before the start of arbitration. Care must be taken whilst drafting an arbitration agreement. It must correctly and clearly reflect the intention of the parties particularly if certain items are required to be left to the decision of named persons such as engineers are not meant to be referred to arbitration.

(F) Arbitration agreements are loosely and carelessly drafted when it comes to appointment of arbitrators. Arbitration agreements must reflect a well defined procedure for appointment of arbitrators. In technical matters preference for reference may be in favour of trained technical persons.

(G) The arbitrator must be chosen solely on the basis of knowledge, skill and integrity land not for extraneous reasons. It must be ascertained whether the arbitrator will be in a position to devote time for expeditious disposal of the reference.

(H) It is found that if an arbitration award goes against Government it is almost invariably challenged by way of objections filed in the arbitration. Very often these objections lack merit and the grounds do not fall within the purview of the scope of challenge before the courts. Routine challenge to arbitration awards must be discouraged. A clear formulation of the reasons to challenge Awards must precede the decision to file proceedings to challenge the Awards.

(I) It must be kept in mind that such proceedings are time bound and resort to it is for early resolution. Similarly challenges to award in such cases must be very timely decided.

VIII. SPECIALISED LITIGATION

(A) Proceedings seeking judicial review including in the matter of award of contracts or tenders.

Such matters should be defended keeping in mind Constitutional imperatives and good governance. If the proceedings are founded on an allegation of the breach of natural justice and it is found that there is substance in the allegations, the case shall not be proceeded with and the order may be set aside to provide for a proper hearing in the matter. Cases where projects may be held up have to be defended vigorously keeping in mind public interest. They must be dealt with and disposed of as expeditiously as possible.

(B) Cases involving vires of statutes or rules and regulations.

In all such cases, proper affidavits should be filed explaining the rational between the statute or regulation and also making appropriate averments with regard to legislative competence.

(C) PUBLIC INTEREST LITIGATIONS (PILS)

Public Interest Litigations must be approached in a balanced manner. On the one hand, PILs should not be taken as matters of convenience to let the courts do what Govt. finds inconvenient. It is recognized that the increase in PILs stems from a perception that there is governmental inaction. This perception must be changed. It must be recognized that several PILs are filed for collateral reasons including publicity and at the instance of third parties. Such litigation must be exposed as being not *bonafide* and that those are not public interest litigation.

PILs challenging public contracts must be seriously defended. If interim orders are passed stopping such projects then it must be urged before Courts for appropriate conditions to be insisted upon the Petitioners to pay compensation if the PIL is ultimately rejected.

(D) PSU LITIGATIONS

Litigation between Public Sector Undertakings *inter se* between Govt. Public Sector Undertakings is causing great concern. Every effort must be made to prevent such litigation. Before initiating such litigation, the matter must be placed before the highest authority in the public sector such as the CMD or MD as the case may be. It will be his responsibility and endeavour to see with utmost anxiety that the litigation avoided.

IX. REVIEW OF PENDING CASES

(A) All pending cases involving Government will be gradually reviewed. This Due Diligence process shall involve drawing up the statistics of all pending matters which shall be provided for by all Govt. Departments (including PSUs). The Office of the Advocate General shall also be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones.

Policy simply put in place only cannot achieve desired goal unless a well designed working plan for its effective implementation starts moving forward. Separate specialized machinery if found further necessary will be brought into existence to accelerate this policy vehicle to minimize litigation and to secure the objective.

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