

JHARKHAND STATE

LITIGATION
POLICY

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INTRODUCTION

Whereas at the Regional meeting for **a prospective plan in the light of 13th Finance Commission** held under the Chairmanship of Dr. M. Veerappa Moily, Minister of Law & Justice, Government of India attended by, among others, Hon'ble the Acting Chief Justice, Jharkhand High Court and Patron-in-Chief of Jharkhand State Legal Services Authority and Judicial Academy, Jharkhand, a Resolution was arrived at to formulate, *inter alia*, State Litigation Policy in each State in consonance with the National Litigation Policy framed by the Government of India.

And whereas the State of Jharkhand and its various agencies being the pre-dominant litigants in courts and tribunals, it was considered necessary to frame State Litigation Policy to ensure conduct of responsible litigation by the State Government with a view to addressing various areas of minimizing litigations and taking effective steps to bring litigations to a logical conclusion efficiently, efficaciously and speedily in a result-oriented manner, while ensuring justice to all.

This State Litigation Policy is being constituted and adopted by the State of Jharkhand.

I. The Vision / Mission

- Formulation of State Litigation Policy in tune with National Litigation Policy which has been announced by Hon'ble Dr. M. Veerappa Moily, Minister of Law & Justice, Government of India.
- The State Litigation Policy is based on recognition that Government and its various agencies are the pre-dominant litigants in Courts and Tribunals in the State. The purpose underlying this policy is to reduce Government Litigations in Courts and Tribunals so that valuable Court time would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency time from 15 years preferably to 3 years.
- The State Government, in its role as 'efficient and responsible litigant' shall focus on :-
 - i. Core issues involved in the litigation.
 - ii. Managing and conducting litigations in cohesive, coordinated and responsible manner ensuring that unnecessary cases are not pursued and the emphasis should be on winning viable and good cases, besides curbing the instinct that the litigation, even not worth pursuit, has to be won at any cost.
 - iii. Ensuring that false pleas and points will never be taken; nothing will be suppressed from the court; and no attempt will be made to mislead it.
 - iv. Reducing average litigation pendency time from 15 years to 3 years, identifying bottlenecks and prioritizing issues relating to welfare legislation, social reforms, weaker sections, senior citizens and other like classes.

II. Litigation Maintenance and Review Agencies:-

- The vital agencies to ensure responsible, effective and successful implementation of the State Litigation Policy are, as follow :-
 1. **Nodal Officers**
 2. **Heads of the Department**
 3. **State and District Level Empowered Committees**
 4. **Screening Committee for appointment of Panel Lawyers.**

(a) Appointment of Nodal Officers and their functions:-

- Each Department of the State Government and its agencies shall have a Nodal Officer preferably with legal background and expertise, not below the rank of Deputy Secretary, who shall be so designated by the Head of Department/Competent Authority of the concerned department/agency in consultation with the Chief Secretary of the State.
- The role and responsibility of the Nodal Officers would be to:-
 - (a) ensure collection of all the relevant data regarding the litigations against the said department and placing the same before the Law Department in a cohesive and coordinated manner.
 - (b) monitor the progress of litigations, particularly to identify the cases in which repeated adjournments are taken, and to apprise the Head of the Department about the repeated and unjustified adjournments.
 - (c) constant monitoring of cases particularly to examine whether cases have gone “Off Track” or have been unnecessarily delayed.
- As the Nodal Officers would be in a position to pro-actively manage litigations, while making such appointments care must be taken to see that there is continuity in the incumbents holding office, and preferably Nodal Officers should not be changed or shifted at rapid interval and/or on flimsy grounds. The Nodal Officers must also be subjected to training so that they are in a position to understand what is expected of them under the State Litigation Policy.
- There must be critical appreciation of conduct and monitoring of the litigations by the Nodal Officers and, in case they are found to have acted detrimental to the interest of the State and the litigation, suitable action would be taken against them after fixing responsibility.
- There shall be a Nodal Agency at the level of the High Court consisting of a high ranking officer having background of law and sufficient experience of attending court matters, assisted by sufficient number of Assistants being law graduates.

In the alternative, service of notices/summonses/copies of petitions shall be effected through courier services of repute.

(b) Formation of State Empowered Committee and its functions :-

- There will be a State Empowered Committee to monitor the implementation of State Litigation Policy and to fix the accountability. The State Empowered Committee will be chaired by the Advocate General of which the Director, Prosecution would be the Vice-Chairman, besides having such other members not exceeding five in number to be nominated by the Department of Law. Such members shall include an Additional Legal Remembrancer / Joint Secretary / Deputy Legal Remembrancer of Law Department as the Member Secretary of the State Empowered Committee.
- All the Nodal Officers and the Heads of the Department will ensure that all relevant data regarding pendency of cases against the Government be sent to the State Empowered Committee. It shall be the responsibility of State Empowered Committee to receive and deal with suggestions and complaints including those from litigants and Government Departments and take appropriate measures in connection therewith.
- The State Empowered Committee shall submit its monthly report to the Department of Law and would also place all the relevant papers / details with the suggestion / recommendation for suitable action, if any, proposed against any person found to have acted *mala fide* and detrimental to the interest of the State.

(c) District Empowered Committee :-

- On the lines of the State Empowered Committee there shall also be an Empowered Committee at the district level known as District Empowered Committee which shall be chaired by the Deputy Commissioner of the district or an officer, not below the rank of an Additional Collector, so nominated by him to be the Chairman. The other members of the committee would be the Government Pleader, the Public Prosecutor and an officer not below the rank of Deputy Superintendent of Police so nominated by the Superintendent of Police. The Committee shall have the Deputy Collector, Incharge Legal Section as its Member Secretary.
- The District Empowered Committee shall be the counter-part of the State Empowered Committee at the district level with all the similar functions and powers of the latter exercisable at the district level. The District Empowered Committee will also monitor the proper conduct of investigation of cases by the police officers entrusted with the investigation of cases, and in case any deliberate fault is found on the part of the IOs, it shall be the duty of the Committee to make report to the controlling authority for suitable action.

- It shall be the responsibility of the District Empowered Committee to submit monthly report to the State Empowered Committee which shall, in turn, submit its monthly comprehensive report to the Department of Law. Such reports shall also be accompanied by all the relevant papers / details with the suggestion / recommendation for suitable action, if any, proposed against any person found to have acted *mala fide* and detrimental to the interest of the State.

(d) Formation of Screening Committee and its function :-

- The State Government will also constitute a Screening Committee for constitution of a government panel of lawyers to conduct the government cases. The Screening Committee will make their recommendations to the Department of Law with an emphasis on identifying lawyers having area of core competence, domain expertise and areas of specialization to be panel lawyers.

III. Government Representation :-

(a) Conducting litigations at the level of Supreme Court of India

- There is already a system of retaining a Standing on a monthly retainer fee and other applicable fees and Advocates-on Record before the Supreme Court. The Advocates-on-Record are responsible for filing of cases and their maintenance.
- The Standing Counsel would be an advocate of proven competence and skill and must have the capacity to keep a watch on and control of the other Counsels and Advocates-on-Record, and he would be reporting to the State's Law Secretary and would suggest regarding distribution of work among other Advocates-on-Record and engagement of Senior Advocates to the Law Secretary.
- There shall also be one or more Additional Advocate General who shall supervise and monitor the cases of the State Government and shall also render their services as Senior Advocates. The State Government may have one or more Additional Standing Counsel as per the requirement to aid and assist Standing Counsel and also to render their services as arguing counsel.
- The Department of Law of the State Government will keep regular watch on the conduct of cases and would also from time to time monitor the progress of cases being in close touch with the conducting advocates, who shall be required to submit periodical reports to the Law Department in the format to be supplied to them.

- In case any counter-affidavit or application / petition has to be submitted before the Hon'ble Apex Court, then information must be given well in advance to the Law Department, besides informing the concerned department, so that the same could be made available promptly and effectively.
- Depending on the nature of cases and the stakes involved therein such Advocates will be engaged for arguing the cases as would be required for proper conduct and defence of cases. The Law Department shall also prepare a panel of such Senior Advocates by discussing with them scales of fees applicable for certain period during which there will be no escalation of fees, and in case of urgent necessity such other Senior Advocates will also be engaged whose presence would be essential for proper defence of the case. Such other Senior Advocates, not in the panel, can be engaged only with the prior approval of Law Department.

In addition to the team of Senior Advocates, a panel of such young and bright arguing advocates shall also be prepared who would be available for arguments at quite nominal fees.

- The conducting Advocates (including Advocates-on-Record) must inform the Law Department well in advance for engagement of a Senior Advocate, if his engagement in the case is essential, for approval of his engagement. If such Senior Advocate is not one from the panel of Senior Advocates finalized by the department, it shall be the duty of the conducting Advocates that proposal of the name of the Senior Advocate and the fee to be charged by him must be informed to the Law Department well in advance, so that the engagement and the fee of such Senior Advocate could be approved in time so as to avoid any future complications and for availability of sufficient time for the Senior Advocate to get ready in the matter.

The selection and engagement of an arguing advocate would be the sole prerogative of the Law Department in consultation with the Standing Counsel and / or the conducting Advocates. The heads of the different departments, to which the cases relate, would not be permitted to directly contact or engage an arguing or Senior Advocate.

However, if a Senior Advocate or any Advocate other than an Advocate on the panel of the Law Department, or not previously approved by the Law Department, is engaged at the sole discretion of a Departmental Head, fees of such Advocate shall be paid by such concerned Department alone and not by the Law Department.

- Failure on the part of the Standing Counsel / conducting Advocates to abide by the above requirements, as also regarding timely submission of counter-affidavits / applications / petitions shall be viewed very seriously, specially if such failure results in any adverse result of or development in the litigation.

(b) Appointment of Government Advocates at State Level

- The State has already got the system of appointing Advocate General as per the provisions of the Constitution of India, and the other Law Officers of different categories to represent the State at the level of the High Court, Tribunals, Commissions, Arbitrators etc., who are so nominated and appointed at the recommendation of the Advocate General. The State would ensure appointment of Advocates with proven integrity and abilities to man these positions.
- The State Law Department's resolution setting out the terms and conditions of appointment/engagement, conduct and fee structure of Government advocates, by whatever nomenclature and descriptions are they known, shall be strictly adhered to by them, and any deviation from the mandatory provisions thereof, including submission of monthly statements, by the Government advocates will entail serious repercussions, such as denial / withholding of fees to them and/or their removal from the panel of advocates etc.
- In case any counter-affidavit or application / petition has to be submitted before the Hon'ble High Court, the according information must be given well in advance to the Law Department, besides informing the concerned department, so that the same could be made available promptly and effectively.
- If a Government Advocate, by whatever nomenclature or designation he may be known, shall be amenable to suitable action under law, besides the above repercussions, if he is found to have committed deliberate laches / indulgence in *mala fide* manner and detrimental to the interest of the State while conducting litigation.

(c) Appointment of Government Advocates at District Level

- At the district level the Government Litigations on the criminal side are conducted by Public Prosecutors, Additional Public Prosecutors, Assistant Public Prosecutors Incharge and Assistant Public Prosecutors. On the civil side the litigations are conducted by Government Pleaders and Additional Government Pleaders. The Public Prosecutors and the Government Pleaders are responsible for control and monitoring of the work of the criminal prosecution and the civil litigations, respectively.

- Some more teeth is proposed to be given to the PPs and the GPs by framing rules whereunder they will be able to make directions to such government officials who are supposed to extend to them necessary feedback and support for the success of litigations in courts, as also to recommend suitable action against those acting in detriment to the State's interest.
- In case any application / petition has to be submitted before the concerned Courts at the district level, the according information must be given by the conducting Government Advocate well in advance to the concerned department, in case of need, so that the necessary factual feedback and information could be made available promptly and effectively.
- A Government Advocate, by whatever nomenclature or designation he may be known, shall be amenable to suitable action under law, besides the above repercussions, if he is found to have committed deliberate laches / indulgence in *mala fide* manner and detrimental to the interest of the State while conducting litigation.

(d) Training of Panel Lawyers :-

- The State Government will also organize training programmes, seminars, workshops and refresher courses for government advocates in the Judicial Academy Jharkhand in coordination with the premier law institutes, such as National Law University, Ranchi.
- Such training programmes, seminars, workshops and refresher courses shall be aimed at identifying and improving areas of specialization, instilling values required for effective government representation and motivational discourses.

(e) Conduct of Government litigations in District/Sub-divisional courts

- Government Pleaders and Public Prosecutors at district level shall conduct civil and criminal cases with the aid of their AGPs and APPs, respectively, in strict adherence to the Government Rules & Regulations formulated from time to time. The PPs shall, in particular, strictly adhere to the instructions/guidelines as contained in the PP Manual.
- AGPs and APPs will be amenable to the control/monitoring of the District Empowered Committee as mentioned above.

- The teams of Government Pleaders and Public Prosecutors along with their AGPs and APPs shall also receive periodical trainings and shall participate in various seminars and orientation courses from time to time in order to keep abreast with the changing scenario in the legal arena, as also to sharpen their skills for better results.

IV. Adjournments :-

- The State Government is also anxious over the frequent and unnecessary adjournments resorted to by the government lawyers. By the State Litigation Policy unnecessary and frequent adjournments will be frowned upon and infractions will be dealt with seriously. In a fresh litigation where the State Government is a defendant or 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 concerned Department.
- Cases in which costs are awarded against the Government as a condition of grant of adjournment, the same will be viewed very seriously. In all such cases the Head of the Department will have to give a report to the Empowered Committee of the reasons why such costs awarded. The names of persons responsible for the default entailing the imposition of the costs will be identified. Suitable action must be taken against them.
- The State Government is also serious to adopt the process that the cases or the Counter Affidavits must be filed with all necessary and relevant documents. If it is found that any such documents are not annexed and this entails adjournments, or if the court adversely comments on this, the matter will be enquired into by the Nodal Officer and reported to the Head of the Department for suitable action.

V. Pleadings / Counter Affidavits

- Suits or other proceedings by or on behalf of the Government must be drafted with precision and clarity, avoiding repetitions, misstatements and errors, besides ensuring that all necessary and relevant documents have been annexed to the pleadings/counter-affidavits. Those found not complying with these requirements would be dealt with seriously.

VI. Filing of Appeals :-

- Under the State Litigation Policy appeals will not be filed against Ex parte orders. Attempt must be made first to have the order set-aside. An appeal must be filed against an order only if the order is not set-aside and the continuation of such order causes prejudice. Usually, appeal must be filed intra court in the first instance. Direct appeal to the Supreme Court must not be resorted to except in extra-ordinary cases.

VII. Limitation: Delayed Appeals

- For curbing down the number of cases in which government could not file appeals well within the period of limitation, the State Government is considering to adopt the process that each Head of the 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 Officer must submit a report in every individual case to the Head of the Department explaining all the reasons for such delay and identifying the person / causes responsible. Where it is found that delay was not bonafide, appropriate action must be taken against the concerned person. It shall be the responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.

VIII. Alternative Disputes Resolution Mechanism :-

- The State Government would encourage resort to ADR mechanisms, such as Mediation, Conciliation, Arbitration and Lok-Adalats as essential prelude to litigation, as also an integral method of disputes resolution in appropriate cases. There would be more effort to resort to these alternatives where it is not viable or feasible for a successful end to the dispute.
- The State will ensure that all service related disputes are firstly dealt with by the in-house mechanism / forum by resorting to conciliation and mediation, and in case they fail to bring out a result at the departmental level, the same may be referred to higher administrative authorities. The nodal officer of each department will firstly suggest for reference of the matter to conciliation / mediation and only in such cases where a resolution does not appear feasible by such methods, or its nature is such that it can not be so referred to for such measures, then only the State Government shall enter into litigating the dispute in courts.

- The State Government is also considering that resort to arbitration as an A.D.R. 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. In most cases arbitration has mirror of court litigation which must stop.
- The Head of Department will call for the data of pending arbitrations. Copies of Roznama (record of proceedings) must be obtained to find out why arbitrations are delayed and to ascertain as to who is responsible for adjournments. The advocates found to be conducting arbitration lethargically and inefficiently must not only be removed from the conduct of such cases but also not briefed in future arbitration.
- If it is found that an arbitration award goes against government, it is almost invariably challenged by way of objection filed in the arbitration. Routine challenge to the arbitration award must be discouraged; a clear formulation of reasons to challenge the award must precede the decision to file such award challenging proceedings.

IX. Miscellaneous Provisions :-

- PILs challenging public contracts must be seriously defended. If interim orders are passed stopping such projects, then appropriate condition must be insisted upon for the petitioner to pay compensation if the PIL is ultimately rejected. In cases involving vires of statutes or rules and regulations proper affidavits should be filed.
- In litigations inter se between PSUs and Government Public Sector Undertakings, every effort must be made to prevent such litigations. Before initiating any litigation the matter must be placed before the Highest authority of the Public Sector, such as C.M.D. or M.D. It will be his responsibility to endeavour to see whether the litigation can be avoided. If litigations can not be avoided then A.D.R. methods like mediations and conciliations must be considered. Section 89 of the CPC must be resorted to extensively.

X. Review of Pending Cases :-

- All pending cases involving government will be reviewed. This due diligence process shall evolve drawing upon statistics of all pending matters which shall be provided for by all government departments (including PSUs). The office of Advocate General shall also be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones.

It is worth mention that the State Government is willing to adopt State Litigation Policy as per the provisions given in National Litigation Policy.