

CHHATTISGARH GOVERNMENT'S LITIGATION POLICY

Table of Contents

	Page No.
INTRODUCTION – The State Litigation Policy	1
I. The Vision/Mission	2
II. Government Representation	4
III. Adjournments	6
IV. Pleadings/Counters	7
V. Filing of Appeals	8
VI. Limitation : Delayed Appeals	10
VII. Alternative Dispute Resolution – Arbitration and Mediation	11
VIII. Specialized Litigation	13
IX. Review of Pending Cases	14

**

*

INTRODUCTION

Whereas at the National Consultation for Strengthening the Judiciary toward Reducing Pendency and Delays held on the 24th and 25th October, 2009 the Union Minister for Law and Justice, presented resolutions which were adopted by the entire Conference unanimously.

And Wherein the said Resolution acknowledged the initiative undertaken by the Government of India to frame a National Litigation Policy with a view to ensure conduct of responsible litigation by the Central Government and urges every State Government to evolve similar policies.

To implement the said resolution, Government of India have launched "National Litigation Policy" on 23rd June, 2010.

Therefore, It is incumbent upon the Government of Chhattisgarh to evolve similar policy to deal with Litigation at the State Level. Hence, the Government of Chhattisgarh has formulated State Litigation Policy, in consonance with National Litigation Policy.

Litigation Policy of the Government of Chhattisgarh:-

I. THE VISION/MISSION

1. The State Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in Courts and Tribunals in the State. Its aim is to transform Government into an "Efficient" and "Responsible" litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and that those in charge of the conduct of Government litigation should never forget this basic principle.

"EFFICIENT LITIGANT" MEANS

- Focusing on the core issues involved in litigation and addressing them squarely.
- Managing and conducting litigation in a cohesive, coordinated and time-bound manner.
- Ensuring that good cases are won and bad cases are not needlessly persevered with.
- A litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the facts that Government is not an ordinary litigant and that a litigation does not have to be won at any cost.

"RESPONSIBLE LITIGANT" MEANS

- That litigation will not be resorted to for the sake of litigating.
- That false pleas and technical points will not be taken and shall be discouraged so that justice prevails.
- Ensuring that the correct facts and all relevant documents will be placed before the court.
- That nothing will be suppressed from the court and there will be no attempt to mislead any court or Tribunal.

2. Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the court decide," must be avoided.

3. The purpose underlying this policy is also that the Government should play a pro-active role to reduce Government litigation in courts 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 to 3 years. Litigators on behalf of Government have to keep in mind the principles incorporated in the National mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections, women and children, senior citizens and other categories requiring assistance must be given utmost priority.

4. The Stakeholders:

A) In ensuring the success of this policy, all stake holders will have to play their part – the Department of Law, Heads of various Departments, Law Officers and Government Counsel, and individual officers all connected with the concerned litigation. The success of this policy will depend on its strict implementation. A Nodal Officer will be appointed by every Head of Department.

“Head of Department” means the administrative person ultimately responsible for the working of the Department or Agency, as the case may be.

B) The appointment of Nodal Officers must be done carefully. The Nodal Officer has a crucial and important role to play in the overall and specific implementation of this Policy, including but not limited to the references made hereinafter. Every department of Government must be mindful of the responsibility to appoint proper Nodal Officers who have legal background and expertise. They must be in a position to pro-actively manage litigation. Whilst making such appointments, care must be taken to see that there is continuity in the incumbents holding office. Frequent changes in persons holding the position must be avoided. 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.

- C) Accountability is the touch-stone of this Policy. Accountability will be at various levels; at the level of officers in charge of litigation, those responsible for defending cases, all the lawyers concerned and Nodal Officers. As part of accountability, there must be critical appreciation on the conduct of cases. Good cases which have been lost must be examined and subjected to detailed scrutiny to ascertain responsibility. Upon ascertainment of responsibility, suitable action will have to be taken.
- D) There will be a State level Empowered Committee. The Empowered Committee shall be chaired by the Advocate General of Chhattisgarh and shall have the following members:-
1. Law Secretary or his representative not below the rank of Additional Secretary,
 2. Principal Secretary/Secretary, Home Department,
 3. Principal Secretary/Secretary, School Education Department,
 4. Secretary, General Administration Department,
 5. Secretary, Revenue Department.

With an Additional Secretary, Law to be the Member- Secretary.

The Empowered Committee shall monitor the implementation of this policy and accountability of all concerned. All Nodal Officers and their Heads of Department will ensure that all relevant information is sent to the Empowered Committee. It shall be the responsibility of the Empowered Committee to receive and deal with suggestions and complaints including from litigants and Government Departments and take appropriate measures in connection therewith.

II. GOVERNMENT REPRESENTATION

- A) While it is recognized that Government Panels provide an opportunity for a cross section of lawyers, Government Panels cannot be vehicles for sustaining incompetent and inefficient persons. Persons who recommend names for inclusion on the Panel should be careful in making such recommendations and should check the credentials of those recommended with particular reference to their legal knowledge and integrity.
- B) There will be a State level Screening Committee consisting of:
- (i) One Additional Secretary from Department of Law : Member
 - (ii) One officer not below the rank of Deputy Advocate General to be nominated by the Advocate General : Member
 - (iii) One officer not below the rank of Joint Secretary from General Administration Department of the Government : Member
 - (iv) One officer not below the rank of Joint Secretary from Finance Department of the Government : Member
 - (v) One officer not below the rank of Joint Secretary from Revenue Department of the Government : Member

(The meetings of the Committee shall be presided over by the Additional Secretary, Law)

The task of the Screening Committee would include constitution of Panels to assess the skills and capabilities of people who are desirous of being on Government Panels before their inclusion on the Panel for Advocate General Office. The Screening Committee will make its recommendations to the Department of Law. Emphasis will be on competence, domain expertise and areas of specialisation. It can not be assumed that all lawyers are capable of conducting every form of litigation.

- 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. Common research facilities must be made available for Government lawyers as well as equipment for producing compilations of cases.
- D) Training programs, seminars, workshops and refresher courses for Government advocates must be encouraged. There must be continuing legal education for Government lawyers with particular emphasis on identifying and improving areas of specialization. Most importantly, there must be an effort to cultivate and instill values required for effective Government representation.
- E) State level and regional conferences of Government advocates will be organized so that matters of mutual interest can be discussed and problems analysed.
- F) Law Officers 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 recognised and extraordinary work will be rewarded. This could be in the form of promotions or out of turn increments.
- G) It will be the responsibility of all Law Officers to train Panel lawyers and to explain to them what is expected of them in the discharge of their functions.
- 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. 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 track" or have been unnecessarily delayed. It shall be duty of the Nodal Officer to see that within 7 days of the receipt of notice or summons of a case the officer-in-charge is appointed mentioning designation of the post and not by name so that the successor-in-office may continue with the progress of the case. Whenever officer-in-charge of a case is transferred it would be the duty of the Nodal Officer to intimate the change to the Law Officer handling the case.
- J) Quite often incomplete briefs are given to Government Counsels. This must not happen. The Law Officers will be held responsible if incomplete briefs are given. It is the responsibility of the person in charge of the Department/Agency concerned, to ensure that proper records are kept of cases filed and that copies retained by the Department are complete and tally with what has been filed in Court.
- K) As far as possible distribution of briefs should be made in such manner as to ensure broad based representation of Government. Advocate General should exercise effective control with regard to distribution of briefs amongst Law Officers in his office.
- 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, and it is found that such concessions were not justified, the matter will be reported to the Empowered Committee and remedial 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. Optimum utilisation 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 time.

III. ADJOURNMENTS

- A) Frequent adjournments should be avoided. Unnecessary and frequent adjournments will be frowned upon and infractions dealt with seriously.

- B) In fresh litigations where the Government 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) In Appellate Courts, if the paper books are complete, then adjournments must not be sought in routine course. The matter must be dealt with at the first hearing itself. In such cases, adjournments should be applied for only if a specific query from the court is required to be answered and for this, instructions have to be obtained.
- D) 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, particularly to identify 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 Department and it shall be open to him to call for reasons for the adjournment. The Head of the Department/Agency shall ensure that the Records of the case reflect reasons for adjournment, if these are repeated adjournments. 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 entail suspension/removal of their names from Government Panels.
- E) Cases in which costs are awarded against the Government 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 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.

- B) Appeals will be drafted with particular attention to the Synopsis and List of Dates which will carefully crystallise the facts in dispute and the issues involved. Slipshod and loose drafting will be taken serious note of. Defaulting advocates may be suspended/ removed from the Panels.
- C) Care must be taken to include all necessary and relevant documents in the appeal paper book. 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 Government documentation in court is untidy, haphazard and incomplete, full of typing errors and blanks. Advocate General will ensure that all Appeals, Writ Petitions, Special Leave Petitions and Counter Affidavits are being filed in the court in prescribed proforma. Where proforma is not prescribed he may do so by way of guidance and instructions. This will include not only contents but also the format, design, font size, quality of paper, printing, binding and presentation. It is the joint responsibility of the Drafting Counsel and the Advocate General or Law Officer authorised by him to ensure compliance.
- E) Counter Affidavits in important cases will not be filed unless the same are shown to and vetted by Law Officers. This should, however, not delay the filing of counters.

V. FILING OF APPEALS

- A) In the case of ex-parte, ad-interim orders attempt must first be to have the order vacated. An appeal must be filed against an order only if the order is not vacated and the continuation of such order causes prejudice.
- B) Appeals must be filed intra court in the first instance. Direct appeals to the Supreme Court must not be resorted to except in extraordinary cases.
- C) Given that Tribunalisation is meant to remove the loads from Courts, challenge to orders of Tribunals should be an exception and not a matter of routine.

- D) In Service Matters, no appeal will be filed 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.
- E) If, the order of the Court/Tribunal affects a number of employees then proper care should be taken before filing appeal.
- F) Proceedings will be filed challenging orders of Court/Tribunal only if:
- a) There is a clear error of record and the finding has been entered against the Government.
 - b) The judgment is contrary to a service rule or its interpretation by High Court or the Supreme Court.
 - c) The judgment would impact the working of the administration in terms of morale of the service, the Government is compelled to file a petition; or
 - d) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.
- G) Appeals in Revenue matters will not be filed:
- a) if the stakes are not high and are less than that amount to be fixed by the Revenue Authorities;
 - b) If the matter is covered by a series of judgments of the Tribunal or of the High Courts which have held the field and which have not been challenged in the Supreme Court;
 - c) where the assessee has acted in accordance with long standing industry practice;
 - d) merely because of change of opinion on the part of jurisdictional officers.

- H) 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 so perverse that an honest judicial opinion could not have arrived 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 the High Court has struck down a statutory provision as ultra vires;
- I) In each case, there will be a proper certification of the need to file an appeal. Such certification will contain brief but cogent reasons in support.
- J) If, Department of Law is of the opinion that appeal should not be filed then reasons will also be recorded as to why it was not considered fit or proper to file an appeal.

VI. LIMITATION: DELAYED APPEALS

- A) As soon as any proposal reaches the Law Department through Collector/GP (Government Pleader) to file an appeal or revision, or the Law Officer attending the case is of the opinion that appeal/revision should be preferred against any order/ judgment, then he along with copy of said judgment send his proposal to the department concerned and Law Department so as to enable Law Department to scrutinize the matter and to opine or order for taking suitable legal action.

Law Department, after having received such appeal or proposal will examine the matter and take appropriate decision to avoid delay.

- B) It is recognized that good cases are being lost because appeals are filed well 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 revenue stakes are involved.

- C) 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 Government 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 and quarterly.
- D) Applications for condonation of delay are presently drafted in routine terms without application of mind and resorting to word processed "boiler plate." This practice must immediately stop. It is 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. Drafting advocates who fail to adhere to this may be suspended/removed from the Panel.
- E) 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.
- F) Belated appeals filed beyond the period of limitation cannot be approached merely from the point of view that courts have different approaches towards condonation of delay. Since some courts liberally grant condonation of delay, a general apathy seems to have taken over. The tendency on the part of Government counsel to expect leniency towards Government for condonation of delay must be discouraged. The question of limitation and delay must be approached on the premise that every court will be strict with regard to condonation of delay.

VII. ALTERNATIVE DISPUTE RESOLUTION ARBITRATION AND MEDIATION

- A) In every case filed by or against Government, the officer-in-charge of the case should examine the possibility of application of mediation or Alternate Dispute Resolution mechanisms/proceedings as prescribed under section 89 of Civil Procedure Code, 1908. So that the litigation can be carved out at the initial stage.

- B) More and more Government departments and PSUs are resorting to arbitration particularly in matters of drilling contracts, hire of ships, construction of highways, etc. Careful drafting of commercial contracts, including arbitration agreements must be given utmost priority. The Department of Law recognizes that it has a major role to play in this behalf.
- C) The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails the responsibility that such an arbitration will be cost effective, efficacious, expeditious, and conducted with high rectitude. In most cases arbitration has become a mirror of court litigation. This must be stopped.
- D) 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 deplored and stopped. Every arbitration agreement must contain a clause that arbitration proceedings should be concluded within six months from the date of appointment of Arbitrator.
- E) The Head of Department will call for the data of pending arbitrations. Copies of the proceedings/ordersheets etc. (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 Department to call for regular review meetings to assess the status of pending arbitration cases.
- F) 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.
- G) 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. Sole arbitrator may be preferred over a Panel of three Arbitrators.

- H) It is also found that certain persons are “preferred” as arbitrators by certain departments or corporations. The arbitrator must be chosen solely on the basis of knowledge, skill and integrity and 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.
- I) 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.

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 off as expeditiously as possible.
- B) Cases involving vires, or statutes or rules and regulations.
In all such cases, proper affidavits should be filed explaining the rationale 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 Government 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.

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

D) PSU LITIGATIONS

- Litigation between Public Sector Undertakings inter se between Government 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. It will be his responsibility to endeavour to see whether the litigation can be avoided. If litigation cannot be avoided, then alternative dispute resolution methods like mediation must be considered. Section 89 of the Code of Civil Procedure must be resorted to extensively.

IX. REVIEW OF PENDING CASES

- A) All pending cases involving Government will be reviewed. This Due Diligence process shall involve drawing upon statistics of all pending matters which shall be provided for by all Government departments (including PSUs). The Office of the Advocate General shall be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones.
- B) Cases will be grouped and categorized. The practice of grouping should be introduced whereby cases should be assigned a particular number of identity according to the subject and statute involved. In fact, further sub-grouping will also be attempted. To facilitate this process, standard forms must be devised which lawyers have to fill up at the time of filing of cases. Panels will be set up to implement categorization, review such cases to identify cases which can be withdrawn. These include cases which are covered by decisions of courts and cases which are found without merit withdrawn. This must be done in a time bound fashion by the office of the Advocate General.

**

*