

H.P. State Litigation Policy

No. Home(Prosecution)(F)1-1/2010
Government of Himachal Pradesh
Home (Prosecution) Department.

From

The Principal Secretary (Home) to the
Government of Himachal Pradesh.

To

1. All the Principal Secretaries/Secretaries to the Government of Himachal Pradesh, Shimla-171002.
2. All the Head of Departments in Himachal Pradesh.
3. Divisional Commissioner Shimla/Mandi/Kangra, H.P.
4. All Deputy Commissioners, in Himachal Pradesh.

Dated Shimla-171002, the 7 March, 2011.

Subject: H.P. State Litigation Policy.

Sir,


I am directed to inform you that the State Government has approved the Litigation Policy of Himachal Pradesh. The Policy can be seen/uploaded from the Prosecution Department website link of the Home Department website www.himachal.nic.in/home.

The Policy outlines the broad guidelines on litigation strategies to be followed by the State Government or its agencies with a view to reduce litigation to save avoidable costs on unproductive litigation thus helping to reduce avoidable load on the Courts with respect to government induced litigation.

This Policy is expected to guide all claims and litigation involving the State or its agencies including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes. You are requested to take necessary steps in accordance with this Litigation Policy.

You are also requested to take steps to immediately set up the Departmental Litigation Monitoring Committee in your department and also appoint Nodal Officers so as to monitor the pendency and future litigation being faced by the department in terms of Para 2.1 of this Policy.

Yours faithfully,


Special Secretary (Home) to the
Government of Himachal Pradesh

Endst. No. As above. Dated Shimla-171002, the 7 March, 2011.

HP STATE LITIGATION POLICY

1. Introduction :

1.1 Litigation is generally believed to be an unproductive investment both in time and money. Government has to conserve the resources, determine priorities of expenditure by a judicious approach so that unproductive litigation does not eat away a large chunk of the scarce resources. In the absence of any effective grievance-resolution mechanism, the employees of the Government and its instrumentalities freely resort to litigation. The officer who initiates litigation is so much involved into it that his work as an employee suffers. A lack of credibility about the actions taken by the Government and its instrumentalities also contributes to the litigation explosion. Existence of wide discretionary power opens up a potential area either of its likely abuse or misuse. The only limitation is that its exercise be controlled by effective regulatory and control machinery. Till today, no concerted effort has been made to devise and lay down a litigation policy. "The dictum should be don't litigate, if necessary, arbitrate." An attempt needs to be made to find any alternative method for resolution of disputes involving Government and its agencies.

Echoing this very sentiment, National Litigation Policy pointed out that the State is no ordinary party, for the State's interest is to meet honest claims, vindicate a substantial defence and not to score a technical victory, to avoid just liability and not to take an unfair advantage. Avoidable litigation pursued relentlessly, discloses managerial failure. A litigation policy for the State should aim at settlement of governmental disputes with parties/citizens in a sense of conciliation rather than in a conflict mode.

Now therefore, State Government hereby lays down the State Litigation Policy as follows:-

1.2 Objective:

The Policy outlines the broad guidelines on litigation strategies to be followed by the State Government or its agencies with a view to reduce

litigation, saving avoidable costs on unproductive litigation, reducing avoidable load on judiciary with respect to government induced litigation and thus realising the promise of Article 39A of the Constitution, which obligates the State to promote equal justice and provide free legal aid.

1.3 Applicability

This Policy shall apply to any claim and litigation involving the State or its agencies including litigation before courts, tribunals, inquiries and in arbitration and other alternative dispute resolution processes.

1.4 Obligation under the Policy

The obligation shall require the State and its agencies, to act honestly and fairly in handling claims and litigation by:-

- a) dealing with claims promptly and not causing unnecessary delay in the handling of claims;
- b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clearly established that at least part of the claim is payable;
- c) acting consistently in the handling of claims and litigation;
- d) endeavoring to avoid litigation, wherever possible.
- e) where it is not possible to avoid litigation, keeping the costs of litigation to minimum, including by:
 - i) not requiring the other party to prove a matter which the State or an agency knows to be true; and
 - ii) not contesting clearly established liability if the State or an agency knows that the dispute is really about quantum;
- f) not taking advantage of a claimant who lacks the resources to agitate a legitimate claim before any competent Court;

- c) not relying on technical defences unless the interests of the State or a State agency would be prejudiced adversely
- h) not to file/ continue appeals /revisions etc unless the State or an agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, provided that a decision to file/continue the appeal is made as soon as practicable and to file second appeals only on substantial questions of law. Home department in consultation with law department will issue suitable guidelines in filing of appeals before higher courts, separately.
- 1.5 In particular, the obligation shall not prevent the State or an agency from:-
- a) enforcing costs orders or seeking to recover costs
 - b) relying on claims of legal professional privilege or other forms of privilege and claims for public interest immunity
 - c) pleading limitation periods
 - d) seeking security for costs
 - e) opposing unreasonable or oppressive claims
 - f) requiring opposing litigants to comply with procedural obligations

2. The Stakeholders :

Litigation Monitoring Committee :

2.1 Departmental Litigation Monitoring Committee shall be headed by Secretary and shall include such members as may be decided by the Chairperson provided the Head of Department shall always be a member of this Committee. Each Department shall also nominate one officer not below the rank of Deputy Director to be the Nodal Officer and this nodal officer shall also be the Member Secretary of the Departmental Litigation Monitoring Committee.

2.2 Said officers shall have a crucial and important role to play in the overall and specific implementation, in consultation with the Head of the

Department, of this Policy, including but not limited to the references made hereinafter. 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. Issues relating to compliance or non-compliance with this Policy are to be referred to the Nodal Officer of the Department concerned. The Nodal Officer of Department may issue guidelines relating to the interpretation and implementation of this Policy.

2.3 There shall be a State Empowered Committee at the State level to monitor the implementation of this Policy and accountability. The Nodal Officers and the Heads of Department will ensure that all relevant data is sent to the Empowered Committee. Said Committee shall be chaired by the Chief Secretary of the State and such other members not exceeding six in number, as may be nominated by the Chief Secretary in consultation with Home Department, with one of them to function as the Member Secretary. It shall be the responsibility of the Empowered Committee to receive and deal with suggestions from Government Departments and Departmental Litigation Monitoring Committee's and take appropriate measures in connection therewith including proposals of amendment in the Policy in a dynamic scenario in order to achieve the objective of the Policy.

2.4 The State litigation policy should be responsive to the changing requirements of the litigation system and its various constituents like judiciary, government and public. The State Level Empowered Committee shall consider reasonable suggestions/proposals for amendment to the policy as may be received from stakeholders in the litigation system at various levels with the objective of achievement of objective of the Policy more effectively. The Committee may recommend modification in the Policy as and when necessary, on its own motion also.

2.5 Advocate General HP shall be a special invitee to all meetings of the Committee.

2.6 Lack of accountability in the officer in whom the power vests to determine whether to initiate litigation or perpetuate the same by preferring appeals, is largely responsible for mounting litigation. Accountability shall 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 case and any officer sanctioning or initiating litigation contrary to the State Litigation Policy shall be accountable for the pending litigation.

2.7 Policy of selecting law officers needs to be streamlined. In addition to be initial induction of regular Law Officers/Public Prosecutors, regular in service training and periodic monitoring of the performance of the PP's shall be ensured by the Director Prosecution / District Magistrates/ Departmental Heads. In the matter of selection of lawyers for appearing on behalf of the Boards, Corporations' etc. panel should be drawn up with fixed fees, case wise and only those should be empanelled who are prepared to accept it on the prescribed terms.

2.8 In addition, all Government lawyers, whether in-house or private, are to be made aware of this Policy and its obligations.

3. Limitation : Delays in Appeals :

3.1 Good cases are often lost because appeals are filed well beyond the period of limitation and without any proposed explanation for the delay without a proper application for condonation of delay. It is recognised that such delays are not always bonafide particularly in case where high revenue stakes are involved.

3.2 Applications for condonation of delay are presently drafted in routine terms without application of mind. This practice must immediately stop. It is the responsibility of the drafting counsel to carefully draft an application for condonation of delay, identifying the areas of delay and the causes with particularity.

3.3 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.

3.4 The question of limitation and delay must be approached on the premise that every court will be strict with regard to condonation of delay.

3.5 An application for condonation of delay shall not be filed except under signature of Secretary/Head of Department, in any case.

4. Litigation Strategies :

Under noted strategies also need to be put in practise to achieve the objective of the Policy:-

- (i) Intention behind service of notice contemplated by section 80 CPC should be realised consciously, which gives to the

concerned Government and public officers an opportunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation, thus preventing public money and time from being wasted on unnecessary and avoidable litigation.

- (ii) A mediator, by whatever name called, can be appointed/nominated by the government departments having large amount of litigation, to whom such disputes can be referred for amicable settlement, if possible. It is expected of all the departments, whenever such mediator is nominated to give due weightage to the recommendations / suggestions of the mediator.
- (iii) Litigation between government departments/agencies is to be avoided at all costs. For amicable settlement of disputes between departments, a suitable mechanism for resolution will be established under the Chairpersonship of the Chief Secretary who will settle these inter departmental issues/ disputes after hearing the concerned departments/agencies.
- (iv) Employees Grievance Redressal Mechanism with respect to grievances of the employees will be set up in every department which ensures that employees do not have to resort to litigation, as far as possible. The decisions of this mechanism shall be binding upon the government in so far as individual grievances, not having a larger implication for other employees of the department / other departments, are concerned.
- (v) To vigorously promote the use of alternative dispute resolution (ADR) methods under section 89 of the CPC wherein judge can direct parties in civil proceedings to resort to methods such as arbitration, conciliation, mediation and negotiation under circumstances where it is perceived that the dispute can be resolved in a cooperative and non-adversarial manner.
- (vi) To determine if there is a possibility of arriving at a settlement/compromise in a pending civil case by resorting to the provisions of Order 23 CPC.
- (vii) Provision of 'plea-bargaining' under Cr.P.C. should be put to optimum use and wide publicity of this provision shall be made, which allows persons accused of certain offences to avoid the

ordeal associated with lengthy criminal trial proceedings. In respect of minor offences, it gives the parties a chance to avoid adversarial litigation altogether. All accused in criminal cases will be informed of this provision of law and the public prosecutor will be under an obligation to so apprise every person accused of such offences. Similarly, withdrawal from prosecution in the administration of justice shall also help in reducing pendency of criminal litigation.

- (viii) A speedy trial is an integral part of the fundamental right of life, personal liberty, as envisaged in Article 21 of the Constitution. Therefore, government and all its agencies/ agents will ensure that the litigation process is not delayed by way of seeking adjournments or not producing evidence/ witnesses in time at first available opportunity. Frequent adjournments at the request of opposite party should also be discouraged/ opposed by government lawyers in order to expedite trial/ disposal of cases.
- (ix) E-filing and video-conferencing by dispensing with physical appearance to save precious time and resources, making justice more easily accessible and less expensive option shall be promoted in consultation with the Hon'ble High Court.
- (x) Ensuring effective functioning of Legal Aid Clinics to provide counseling and guidance to people living in rural areas especially as rural litigation forms a major part of instituted court cases.
- (xi) State shall actually promote and support holding of Lok Adalats and for this purpose shall strive to engage Civil Society Organizations/ Associations of Lawyers/ Bar etc. in this cause.
- (xii) Steps will be initiated for promotion of legal literacy, especially among the School/College children. Towards this end introduction of suitable content in curriculum shall be considered by the concerned agencies/ departments.
- (xiii) State shall strive to promote penetration of Information Technology in the Justice Administration System and shall provide suitable funding for this purpose to all departments and also the Judiciary.

- (xiv) The State Government shall ensure that whenever any proposed legislation or amendment of any existing law is proposed, its likely impact upon the Courts arising out of provisions of such laws shall be assessed and taken into
- (xv) consideration before the proposal for such legislation is taken forward.

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