

KARNATAKA STATE LITIGATION POLICY

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INTRODUCTION

Whereas, our State Government has always been a supporting hand in minimizing the litigations and making less expensive and also in litigants getting quick justice. The policy of the Government is to render speedy justice, accessible and affordable justice. That apart, the aim is to create a litigation free society. In achieving this, not only the seekers of Law and Justice but also the persons engaged in the administration of Justice have to have a concern in putting an end to the litigation. Themes adopted "Quickening the pace of justice" "Justice for all speedy and real", infact worked well and yielded positive results.

Impressions given to the concerned, with regard to "Time Management", "Case Management" and "Court Management", infact yielded fast and better results. The process of dispensation of Justice, should not be static. It should move along with the need of the people as and when there would be a change in the circumstances.

Government of India has taken initiative in framing National Litigation Policy, with a view to ensure conduct of responsible litigation and has urged every State Government to evolve similar policies.

The State Litigation Policy is as follows:

I) THE VISION / MISSION:

1) The Government and its various Agencies are the pre-dominant litigants in courts and tribunals. Aim of the Government is to transform into an Efficient and Responsible Litigant. It is the responsibility of the Government to see that the seeker of Law and Justice, gets relief in accordance with law, which shall be speedy, accessible and affordable justice.

“Efficient Litigant” means

- 1) Focusing on the core issues involved in the litigation and addressing them squarely.
- 2) Managing and conducting litigation in a cohesive, coordinated and time-bound manner.
- 3) Ensuring that good cases are properly represented and defended and cases are not needlessly persevered with.
- 4) Government is not an ordinary litigant and would see that the litigation would reach to its logical end on merits.
- 5) Safeguarding public interest.

“Responsible Litigant” means

- 1) That, litigation will not be resorted to for the sake of litigating.
- 2) That, false pleas and technical points would be discouraged.
- 3) Ensuring that the correct facts and all relevant documents will be placed before the court.
- 4) Ensuring that, nothing will be suppressed from the court and there will be no attempt to mislead any court or tribunal.

2) Government would ensure that it would strive to minimize litigation. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. Approach, “Let the court decide,” must be eschewed.

3) The purpose is to reduce the Government litigation so that valuable court time would be spent in resolving other pending cases. To identify bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases. Prioritization in litigation to be achieved. Welfare legislation, Social Reforms, Weaker Sections, Senior Citizens and other categories specially to be kept in mind while

providing assistance and to recognize their rights as and where possible under the directive principles of State Policy.

4) Stake holders.

- 1) The responsible officers of the respective administrative departments will have to play their part, punctually and would render themselves responsible and accountable, in case of miss-falls.
- 2) Law Secretary, in the Department of Law, Justice and Human Rights, would be an Officer, who has a crucial and important role to play in the overall and specific implementation of the policy. Additional Law Secretary would be a Nodal Officer. Care is to be taken that the post of Nodal Officer at no time shall fall vacant. There shall be a continuity of an incumbent in holding said office. Each major department would have a Nodal Officer.
- 3) Nodal Officer would be a Reporting Officer to all the Law Officers, Government Counsels and individual officers who are all connected with the concerned litigation in the State. Each one of them must be mindful of the responsibility and shall be in a position to pro-actively manage litigation.
- 4) Nodal officer, would monitor every litigation, in which the State has a stake, who's endure to put an end to the respective litigation.
- 5) Accountability of the Officers connected with the concerned litigation at various levels could be watched by the Law Secretary through Nodal Officer. There would be a critical appreciation not only on the conduct of the cases but also on the officer conducting the cases. As and where good cases lost in the law courts must be renewed and subjected to detailed scrutiny in asserting the responsibility. Taking suitable action there under would be made inevitable.
- 6) Nodal officer to ensure that all relevant data is received from the Head of the department or from the Head of the office as the case may be and would forward them to litigation officers without loss of time.
- 7) Law Secretary to submit monthly reports to the Ministry of Law. It shall be the responsibility of the Nodal officer to receive and deal with the suggestions and complaints including from litigants and Government departments and take appropriate measures in connection therewith.

- 8) Nodal Officer shall get the names, addresses, mobile numbers of litigation conducting officers (LCO) from various administrative departments and monitor their actions.
- 9) Nodal Officer would monitor the cases in the High Courts and the cases in the Supreme Court through Litigation Conducting Officers.
- 10) Nodal officer, who is not below the rank of Deputy Secretary with the approval of the Head of the Dept. take necessary steps for the effective conduct of the Litigation. He is to be entrusted with the job of briefing the Government Advocates.
- 11) Records should be made available to the courts through Govt. advocates by an officer with sufficient knowledge of the facts of the case. He is answerable and accountable to the Nodal officer.
- 12) Law Secretary would monitor and watch the cases and report the same to the administrative heads of the department.
- 13) There shall be a "system of evaluation". Secretaries of Departments would give an Annual Report to the Law Department about the performance of Advocates who have handled their respective cases. The contract of Advocates shall be extended only if their reports are satisfactory.
- 14) Any litigation between two departments of the government or between Government Undertakings or between Government Department on the one hand and Government Undertaking on the other is to be resolved by the Empowered Committee.

II) STATUTORY NOTICES AND RESPONSES FROM THE GOVERNMENT

As and where Government offices were to receive a Statutory notice (For example a Statutory notice U/S.80 CPC):

- 1) Steps should be taken immediately and promptly, within the time prescribed in replying to the legal notice.
- 2) Efforts should be made to attend to the requests made in the notice if it is genuine/reasonable/needed/necessary.

- 3) As far as possible, on receipt of the notice every attempt would be made for settling the matter if it is genuine claim, through Lok Adalat under the heading "Pre Litigation Settlement".
- 4) The Head of the Department shall be made responsible for not settling the undisputed legal claims if were to be genuine at the time of replying to the Statutory Notice.

III) GOVERNMENT REPRESENTATION:

- 1) Competent, Efficient and Eligible persons in the Legal fraternity would only be appointed as Government Advocates. It is impressed on the concerned persons who recommend names for inclusion on the Panel are requested 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. The procedure for appointment of Government Advocates would be laid down.
- 2) Screening Committee for constitution of Panels will be introduced at every level to assess the skills and capabilities of people who are desirous of being on Government Panels before their inclusion on the Panel. The Ministry of Law shall ensure that the constitution of Screening Committee will include Advocate General and representative of the Law department. The Screening Committee will make their recommendations to the Ministry of Law. Emphasis will be on identifying areas of core competence, domain expertise and areas of specialization.
- 3) Government advocates must be well equipped and provided with adequate infrastructure.
- 4) Training programmes, Seminars, Workshops and Refresher Courses for Government advocates could be held with particular emphasis on identifying and improving the area of specialization. Efforts would be made in instilling values required for effective Government representation.
- 5) Conference of Government advocates and the Law officers of the Department will be organized so that the matters of mutual interest can be discussed and problems analysed.

- 6) 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 appreciated.
- 7) Advocate General to train Panel lawyers and to explain to them what is expected of them in the discharge of their functions.
- 8) Panels will be drawn up of willing, energetic and competent lawyers to develop special skills in drafting pleadings on behalf of Government.
- 9) Nodal Officer will be responsible for active case management.
- 10) Incomplete briefs should not be given to the Government counsel. The litigation conducting officers will be held responsible if incomplete briefs are given to Government Advocates.

There shall be a Central Agency for each department, headed by Principal Secretary or Secretary wherever the post of Principal Secretary is not there. The Central Agency shall 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.

- 11) There should be a proper distribution of briefs depending upon the knowledge and caliber of the Government Advocate in that particular field, so that there will be a broad based representation of Government.
- 12) Government lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to Government.
- 13) Fees payable to Government lawyers will be suitably revised to make it remunerative. Fees should be paid within a reasonable time.
- 14) Government Advocates who do not conduct the Government cases properly, would be recalled.

IV) PLEADING / COUNTERS

- 1) There shall be a committee consisting of Advocate General or Senior Government Counsel, nominated by the Advocate General; Principal

Secretary of the concerned department and if there is no Principal Secretary then the Secretary of that department and thirdly a representative of the law department, in the cadre of Additional Secretary, to draft pleadings, counters, appeal memos and objections to be filed in sensitive and in matters of public importance.

- 2) 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.
- 3) 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.
- 4) The Government documentation in court is untidy, haphazard and incomplete, full of typing errors and blanks. It is the joint responsibility of the Counsel and the Advocate on Record to ensure compliance.

V) SETTLEMENT OF GOVERNMENT LITIGATION THROUGH LOK ADALTS.

- 1) Reasonable efforts will be made to explore possibility of settlement of cases and claims involved in the matters brought to law courts, in Lok Adalats.
- 2) Head of the Department would be authorized to take judicious decision while admitting reasonable claims, before Law Courts, who shall act as a man of ordinary prudence.
- 3) Judicious decision in admitting the claim before Lok Adalat in the matter of getting the Litigation settled would be taken.
- 4) Saving of valuable time, money and labour would be the criteria for settlement apart from being legally advantageous to the Government.
- 5) Head of the Department always would ensure that paramount interest of the Government in the litigation in all respect is safeguarded, while settling the matter on behalf of the Government in Lok Adalat.
- 6) As and where there is a need inter departmental consultations will be held and approval of the competent authority will be obtained for

settlement of cases and decisions be taken to participate in the Lok-Adalat.

VI) FILING OF APPEALS:

- 1) Appeals will not be filed against 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.
- 2) In Service Matters, no appeal will be filed in cases where the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent.
- 3) Appeals will not be filed to espouse the cause of one section of employees against another.
- 4) 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.
- 5) 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;
 - h) Where the interpretation of the High Court is plainly erroneous.
 - i) Where judgment/order is patently incorrect in view of Supreme Court ruling on the subject.
- 6) 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. At the same time, reasons will also be recorded as to why it was not considered fit or proper to file an appeal.

VII) LIMITATIONS / DELAYED APPEALS

- 1) 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.
- 2) 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 Officer 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 monthly.
- 3) 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. Advocates who fail to adhere to this may be removed from the Panel.
- 4) Every attempt must be made to reduce delays in filing appeals/applications. It shall be the responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.
- 5) The tendency on the part of Government counsel to expect leniency towards Government for condonation of delay must be discouraged.

VIII) ALTERNATIVE DISPUTE RESOLUTION – ARBITRATION:

- 1) More and more Government departments and PSUs are resorting to arbitration particularly in matters of contracts construction of highways, memorandum of understandings etc. Careful drafting of commercial contracts, including arbitration agreements must be given utmost priority.
- 2) The resort to arbitration/mediation as an alternative dispute resolution mechanism must be encouraged at every level, entails the responsibility that such an arbitration/mediation will be cost effective, efficacious, expeditious, and conducted with high rectitude.
- 3) The Head of Department will call for the data of pending arbitrations. Copies of the roznama, 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.
- 4) 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. Training to be given not only in the matter of art of drafting but also in the matter of such various agreements. 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.
- 5) 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. In technical matters, reference may be made to trained technical persons instead of retired judicial persons.
- 6) 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.

- 7) 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.
- 8) Alternative disputes resolutions (ADR) methods, as stated in Section 89 of the Code of Criminal Procedure 1908, would be resorted to, as and when there would be a necessity..

IX) SPECIALISED LITIGATIONS;

- 1) 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.

- 2) Cases involving vires, or statutes or rules and regulation.

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.

- 3) Public Interest Litigations (PILs)

1. 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.

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

4) 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 endeavor 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.

X) REVIEW OF PENDING CASES:

- 1) 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.
- 2) 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.

XI ADJOURNMENTS:

- 1) In fresh litigations where the Government is a Defendant or a Respondent in the first instance, however, 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.
- 2) In Appellate Courts, matter must be dealt with at the first hearing itself. Adjournments should be applied for only if a specific query from the court is required.
- 3) One of the functions of the Nodal Officers will be to co-ordinate 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 Nodal Officer to call for reasons for the adjournment. The Head of the Department 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. If the advocates are at fault, action against them may entail suspension/removal of their names from Government Panels.
- 4) Cases in which costs are awarded against the Government as a condition of grant of adjournment will be viewed very seriously. The concerned Government Advocate must give a report to the Nodal Officer, 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.

Secretary to Government
Dept. of Law, Justice & Human Rights.

Dated: 29-3-2011
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