

WEST BENGAL

State Litigation Policy

INTRODUCTION

National Litigation Policy has been announced by the Central Government. Every State Government has been urged to evolve similar policy. The State Government has also felt the necessity of formulating a 'State Litigation Policy' to ensure conduct of responsible litigation by it in a uniform way so that any deviation therefrom may be brought to its notice to rectify its stand in future.

State Litigation Policy

1. Aims / Objection :

The state policy is based on two premises :

- i) That the State Government and its functionaries discharging official duties are the major litigants in courts and tribunals; and that the State Government in the federal structure owes the responsibility to protect the legal and constitutional right of every citizen. Its aim is to transform the Government into an Efficient and Responsible Litigant.

Efficient Litigant means

- Focusing on the core issues involved in the litigation and addressing them squarely.
- Managing and conducting litigation in a cohesive, comprehensive manner with utmost promptitude.
- Ensuring that good cases are won and bad cases are given up.
- Legal person representing the state must not only be competent and skilled but also be sensitive to the facts that Government is not an ordinary litigant and that a litigation is to be won by any means and cost.

"Responsible Litigant" means :

- That litigation will not be resorted to for the sake of litigation.
- That false pleas and technical points will not be taken and shall be discouraged.
- Ensuring that the correct facts and all relevant fact.
- That nothing will be suppressed from the Court and there will be no attempt to mislead any Court or Tribunal.

2. The underlying objection of 'The State Litigation Policy are :

- i) reduction of backlog of litigation in Courts and Tribunals
- ii) prevention of explosion of litigation. The principles incorporation 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 Case are to borne in mind. Prioritization in litigation has to be achieved with particular emphasis on welfare legislation, social reforms, weaker section, senior citizens and other categories requiring assistance must be given utmost priority.

A. Reduction of Backlog of Cases

1. Creation of Court

- Priority is to be given to increase number of Courts particularly in the districts where there are cases most than the national average of 1700.
- Emphasis is laid on the periodic joint survey by the High Court and the government to identify the districts and sub-divisions demanding creation of more Courts and or reallocation of cases among the existing Courts.
- More family Courts will be set up in other cities and towns where population exceeds more than one million.
- More CBI Courts and Special Courts for adjudication of the Cases arising out of Forest Act, Wild Life Protection Act, N.I. Act etc. are to be set up.
- In order to take Justice Delivery System at the grass root level the State Government is keen on introducing Gram Nayalayas at intermediate level in each district depending on availability of Central assistance in the line of 'Fast Track Courts' Scheme.

2. Adjournments :

- Accepting that frequent adjournments are restored to by government lawyers, unnecessary and frequent adjournments will be frowned upon and infractions dealt with seriously.
- In fresh litigations where government is a defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instruction are made available and communicated before the next date of hearing.
- In Appellate Courts .if the paper books are complete
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.
- Cases in which costs are awarded against the Government as a condition of grant of adjournments will be viewed seriously. The names of the persons responsible for the default entailing the imposition of costs will be identified and suitable action must be taken against such erring person.

3. Pleadings / Counters

- Suits or other proceedings initiated by on or 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
- Appeals will be drafted with particulars attention to the synopsis and list of dates which will be carefully crystalise the facts in dispute and the issues involved. Slipshod and loose drafting will be taken serious note of Defaulting advocates may be suspending / removed from the panels.

- 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 seriously viewed.
- In preparing memorandum of appeal the government advocate must abide by the instruction contained in High Court Original Side Rules / High Court Appellate Side Rules / Civil Rules and Order / Criminal Rules & Orders.
- Counter Affidavit in important cases will not be filed unless the same are shown to and vetted by the Government Pleader / Public Prosecutor as the case may be.

4. Filing of Appeals

- Appeals will not be filed against exparte 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 continuation of such order causes prejudice.
- 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.
- Challenge to orders of Tribunals should be an exception and not a matter of procedure.
- In service matters, no appeal will be filed in case 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 implication.
- Proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Appeals will not be filed to espouse the cause of one section of employees against another.
- Proceedings will be initiated challenging the orders of the Administrative Tribunals only if :
 - a) There is a clear error of record and the finding is prejudicial to the interest of the Government.
 - b) The judgement of the Tribunal is contrary to the service rules or its interpretation by a High Court or Supreme Court.
 - c) The judgement would impact the working of the administration in terms of movable of the service, the Government is compelled to file a petition.

d) If the judgement will have recurring implications under other cadres or if the judgement involves huge financial burden.

➤ 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 judgements of the Tribunals or of the High Courts which have held the filed and which have not been challenged in the Supreme Court;
- c) Where the assessee has acted in accordance with long standing trade practice ;
- d) Merely because of change of opinion on the part of the jurisdictional officers.

➤ 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 substantiate interference with public justice ;
- e) where there is a substantiate interference with public justice ;
- f) when the High Court has struck down a statutory provisions as ultra vires ;
- g) where the High Court has exceeded its jurisdiction ;
- h) when the interpretation of the High Court is plainly erroneous ;

Note : 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.

5. Limitation/Delayed Appeals

- hearing from the experience that good cases are being lost because appeals are filed beyond the period of limitation and without proper explanation for the delay or without proper application for condonation of delay, every attempt must be made to reduce delay in filing appeals/applications.
- Delay is mainly attributable to communication gap. Advocates representing the government or its functionaries must promptly communicate the orders/judgements with their views as to

whether appeal/revision should be filed and the resultant effect in cases appeal/revision is not filed. In the said report it must be spelt out as to what is the limitation period and the period spent in obtaining certified copy of the order/judgement and such other period as may be excluded from the computation of limitation period.

- Belated appeals filed beyond the limitation period 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 be 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.
- Applications for condonation of delay must be carefully drafted identifying the areas of delay and identifying the causes with particularity.
- Decision taking process in this regard must be accelerated. All involved in this process must act with utmost alacrity keeping in mind that each day's delay will have to be accounted for as reasonable and justified.

B. Prevention of Explosion of Litigation

- In the matter of decongestion of cases the State Government and its functionaries, being one of the parties in most of the cases, must be way in approaching the Courts or in contesting cases only if necessary and not just passing the buck only for 'contest for the sake of contesting'.
- In order to prevent successfully the explosion of litigation the State Government encourages Alternative Dispute Resolution (ADR) system at every level. This, however, entails the responsibility that such an arbitration will be cost effective, efficacious, expeditious and conducted with high rectitude.
- It is recognized that the conduct of arbitration at present leaves a lot to be desired. Arbitrations are needlessly dragged on various reasons. One of them is by repeatedly seeking adjournments. This practice must be deplored and stopped.
- 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. Service of retired judicial personnel having sound track records ^{Case of Manoj K. Sharma vs. L. S.} may be utilized in the process of such arbitration.
- Lack of precision in drafting arbitration agreement is a major cause of delay in arbitration proceedings. Care must be taken whilst drafting an arbitration agreement. It must correctly and clearly reflect the intention

of parties particularly if certain items are required to be left to the decision of named persons such engineers are not meant to be referred to arbitration.

- 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 the trained technical persons. The arbitrator must be chosen solely on the basis of knowledge, skill and integrity and not form extraneous reasons. It must be ascertained whether the arbitrator will be in a position to devote time for expeditious disposal of the reference.
- It is found that if an arbitration award goes against invariably challenged by way of objections filed in the 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 award.
- The State Government is in favour of ADR System in the matter of resolution of disputes at pre-litigation stage through the intervention of the State Legal Service Authorities.
- The State Government is also keen on preventing the explosion of litigation by setting up separate Lok Adalat in all the departments, directorates and public sector undertaking, in the line of Pension Adalats organized by the postal department to redress the grievances of the parties including the Government Servants and their legal representative before taking their disputes in the Court of Law for redressal.

C.. Implementation Mechanism :

- The success of this policy will depend on its strict implementation. Heads of various departments, directorates, law officers, District Officials and other officers connected with the concerned litigation will have to play their part effectively. As a part of the state litigation policy the State Government has already introduced State Legal Services for the purpose of improving quality of legislation, imparting legal advice to the Government departments, conducting legal research, making judicial impact assessment and above all monitoring the cases pending before the courts at all levels.
- Each department / directorate / office of the District Magistrate / Govt. Teaching hospitals will have Nodal Officer(s) drafted from the members of the State Legal Service to proactively manage litigations of the department.
- Accountability is the touch-stone of the policy. Accountability will be at various levels; at the level of offices in charge of litigations, the responsible for defending the 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

reviewed, responsibility has to be fixed, suitable action will have to be taken. Complacency must be eliminated and replaced by commitment.

➤ There shall be an Empowered Committee at the State Level to monitor the implementation of this policy and the performance of the Public Prosecutor, Government Pleader and the Nodal Officer. It shall be the responsibility of the Empowered Committee to receive and deal with suggestion and complaint from litigation and Government Department and take appropriate measures in connection therewith.

➤ The State Empowered Committee shall be chaired by the Ld. Advocate General of the State. Chief Secretary, Home Secretary, Finance Secretary, Legal Remembrancer, Director of Prosecution shall be the other members of the said committee. An officer in the rank of Joint Secretary as may be nominated by the Chief Secretary shall act as the Member Secretary.

➤ At the District level there shall be such monitoring committee with District Magistrate as its Chairperson and the CMOH, Superintendent of Police, Executive Engineers, District Inspector of School Education as its other members to monitor the case management and over view the performance of the advocate engaged on behalf of the Govt. to conduct the case. The District Level Monitoring Committee shall submit its periodic report to the State Level Empowered Committee.

II. Government Representation :

➤ While it is recognized that Government Panel are a broad based opportunity for a cross section of lawyers, government panel cannot be vehicles for sustaining incompetent and inefficient persons. Persons who recommend names for inclusion in the panel must be careful in making such recommendation being unmindful of all extraneous considerations. While making the recommendation every case must be taken to check the credentials of those recommended with particular reference to legal knowledge and integrity.

➤ Public Prosecutors, Additional Public Prosecutors, Government Pleaders and Additional Government Pleaders and Panel Lawyers for conducting the cases in the subordinate courts are made by the District Administration in consultation with the District and Session Judge in a regular manner. Assistant Public Prosecutors are being recruited through Public Service Commission and appointed by the Judicial Department in a regular manner. There shall be a screening committee under the Judicial Department for preparation of panel of advocates for conducting cases in the High Court Calcutta on behalf of the government. In making recommendation the screening committee will lay emphasis on core competence, domain expertise and areas of specialization without taking it for granted that all lawyers are capable of conducting every form of litigation.

➤ Government advocates must be well equipped and provided with adequate infrastructure. Efforts will be made to produce the agencies which conduct government litigation with modern technology such as computers, internet links, etc.

➤ Training programme, seminars workshops and refresher courses for Government advocates must be encouraged. There must be continuous legal education for government lawyers with particular emphasis on identifying and improving the areas of specialization.

➤ State Level Empowered Committee under the Chairmanship of the Ld. Advocate General will organize Workshop, seminar at periodic intervals for better performance of the advocates on Government panel.

➤ To impart training to the Public Prosecutors through the Administrative Training Institute and also by the Regional Training Centers at district level, there shall be a panel of retired sessions judge, eminent lawyers in the field of criminal law, both retired and serving I.P.S. personnel, Forensic & Hand writing experts and eminent legal academicians.

➤ The performance of the prosecutor will be subject to periodic appraisal and the panel of Public Prosecutor will be revised according to their performance.