



Government of Rajasthan

State Litigation Policy

2011

Law & Legal Affairs Department

State Litigation Policy

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STATE LITIGATION POLICY-2011

The Constitution of India guarantees to secure to all its citizens **JUSTICE**, social, economic and political. State of Rajasthan honours the rights of all citizens and endeavors to protect them. Speedy, time bound justice at all level is the policy and priority of the State.

In the prevailing system litigation once initiated culminates to conclusion in decades. Sometimes it takes generations to reap the fruits of litigation. What so ever may be the reason for the delay but fact remains that pendency is huge and ever increasing.

Number of courts established in our country is not adequately proportionate to the population in comparison to the developed countries. Establishment of courts is a regular process and requires time to achieve the targeted ratio. Fewer courts for larger population result in over burdening of the courts and average time of disposal increases. The State shall endeavor to increase the number of courts to achieve the targeted ratio in phased manner.

The statistics of the litigation reveal that the State is the pre-dominant litigant in the courts contributing the major share of the pending litigation. The Litigation Policy is an endeavor to manage the State Litigation in an efficient and responsible manner to minimize the State contribution to pendency so that Honourable Courts may get more time for other pending cases.

Government of India has launched National Litigation Policy on 23rd June 2010 and the States are expected to fall in line and frame their own State Litigation Policy.

Law and Legal Affairs Department, State of Rajasthan for smooth and efficient management kept issuing circulars as and when the occasion arose. All such prevailing circulars issued in the past relating to State Litigation were consolidated, reviewed and revised to cater the present need and then published in March 2010 in the form of a booklet to make it known to all concerned official. This was the stepping stone for further streamlining the State litigation and laying the foundation for the State Litigation Policy.

The consolidated circular booklet, based on circulars in force since long, primarily addresses vivid aspect of the State Litigation with due reference to land mark judgments of the Honourable Courts. In this backdrop, vivid aspects of State Litigation in consonance with the spirit of the National Litigation Policy are further taken care of in the State litigation Policy.

The consolidated circulars shall remain in force to the extent this document is silent and shall be followed in the spirit of this policy.

CHAPTER I

Pre Litigation Monitoring

Prior to initiation of litigation against the State either notice as a statutory requirement or for demand of justice is served. This is an opportunity for the State to redress the genuine grievance and avoid unnecessary litigation.

Notices need to be considered with a view that every claim against the State is not illegal and it is not always necessary to resist the same. The Administrative Department shall take decision on the notice with this spirit instead of avoiding the decision and leave the matter for the courts to decide.

Notices when received shall be entered in a separate register by the receipt clerk and shall be immediately placed before the nodal officer.

The nodal officer shall forward the same within 7 days to the Law Department along with the relevant record for legal opinion. Simultaneously the nodal officer shall inform the concerned person that his notice is under consideration and he will be apprised of the ultimate decision.

Special cell comprising of retired District Judges and required supporting staff shall be created in the Law Department to examine and opine on the points raised in the notice. Reasoned opinion shall be communicated to the Administrative Department on file within five working days for further necessary action.

Special cell shall act as the Grievance Redressal Cell for the employees and while examining the case for opinion on the notices regarding service matters, shall be at liberty to call for the relevant service record for verifying the correctness of facts averred and relief sought in the notice. Special cell shall examine and opine on the points raised in the notice, thereafter communicate well reasoned opinion to the Administrative Department for further necessary action.

Nodal officer of the Administrative Department / Member Secretary shall place the opinion of special cell along with entire record for final decision before the standing committee comprising of:

- | | |
|--|------------------|
| a. Principal Secretary/ Secretary
of the Administrative Department | Chairperson |
| b. Jt.L.R. nominated by Pr. Secretary Law | Member |
| c. Dy. Secretary DOP (in service matters) | Member |
| d. Dy. Secretary Finance
(in matters having financial implications) | Member |
| e. Dy. Secretary /Nodal officer of the Administrative
Department | Member Secretary |

➤ The standing committee shall:

- examine thoroughly every case on merit and shall pass speaking order after due consideration of legal opinion, relevant rules, notifications, circulars, Act, precedence and other relevant material;
- consider genuineness of the claim keeping in mind principles of natural justice ;
- consider accepting the claim partially to the extent found genuine while refusing the rest;
- take a decision within the time stipulated by the governing laws:

➤ The member secretary shall ensure:

- availability of opinion of special cell and all relevant material to the members at least 5 days in advance;
- to place on record reference of all cases decided earlier on the same point with reference to any other party / same party and also the cases pending in Courts on the point in issue;
- that meeting is convened at the earliest but not later than 10 days from the receipt of opinion of special cell.

Members from DOP & Finance shall examine and seek approval up to appropriate level prior to meeting, regarding the department's stand and should be prepared to express authenticated opinion.

The reasoned decision taken on the notice shall be communicated to the concerned person without delay and in all eventualities prior to the expiry of the notice period.

The Administrative Department shall ensure quick compliance of accepted claims.

Administrative Department shall maintain the record, on the prescribed format, of every notice so received, meetings held, decision taken and communication of the result to the person concerned.

The nodal officer shall be responsible for immediate necessary action on the notice received.

Every in-action or delay by an official in dealing with notices shall attract disciplinary action under the rules applicable to him.

The State shall consider compensating the concerned person for the inconvenience caused to him because of compulsive litigation for want of due, effective and timely consideration of notice, if he finally succeeds in getting relief, sought in the notice, from the court. The compensation so paid shall be recoverable from the defaulting official in the disciplinary proceedings.

CHAPTER II

Pre Appeal Monitoring

After almost every decision by the Court the course of appeal or revision or review is available to the State. The final decision regarding appeal / no appeal in Honourable Supreme Court or in division bench of Honourable High Court; writ / no writ against judgment of service tribunal is taken by the Law Department. Prior to sending the file to Law Department every such matter will be placed before the standing committee constituted for the purpose and comprising of the following:

- | | |
|---|------------------|
| a. Principal Secretary/ Secretary
(of the Administrative Department) | Chairperson |
| b. Jt.L.R. nominated by Pr. Secretary Law | Member |
| c. Dy. Secretary DOP (in service matters) | Member |
| d. Dy. Secretary Finance
(in matters having financial implications) | Member |
| e. Dy. Secretary /Nodal officer
(of the Administrative Department) | Member Secretary |

➤ The standing committee shall:

- examine thoroughly every case on merit and shall pass speaking order after duly considering relevant rules, notifications, circulars, Act, precedence and all other relevant material;
- take and convey the decision at least 15 days prior to expiry of the limitation period stipulated by the governing laws to the Law Department on file along with the relevant records, on the prescribed format, for final decision;
- not recommend appeal only for the reason that:
 - (i) it will cast heavy financial burden on the exchequer,
 - (ii) it is safer to take the verdict of the appellate Court,

(iii) it will affect other similar cases pending in the courts, though otherwise not fit for agitating in appeal,

- examine the case considering that:
 - a. against ex-parte orders instead of preferring appeal efforts to get the ex-parte order vacated should be preferred;
 - b. against order of the service tribunal higher court should be moved only where (i) the order is contrary to Service Rules and /or in violation of settled principles of law or (ii) there is apparent error of facts or (iii) the order will have impact on other cadres and create huge financial burden or (iv) the order will adversely affect the discipline in the services or lower down the morale of the services;
 - c. against order of the service tribunal higher court should not be moved in routine where case of an individual employee does not have any major repercussions and does not set a precedent, only on the ground that it has financial implications;
 - d. instead of approaching Apex Court in the first instance intra-court appeal should be preferred;
 - e. appeals to Supreme Court should be preferred only where: (i) important law point is involved or (ii) judgment adversely affects the public finances or public conscience at large or (iii) the High Court exceeds its jurisdiction, declares any enactment ultra-virus or takes an erroneous interpretation of statute;
 - f. in case of concurrent and reasoned findings of two courts appeal should be preferred exceptionally on sound reasoning only;
 - g. In revenue matters appeals will not be filed (i) where the stakes are not high and are within the limits fixed by the competent revenue authority (ii) where the case is covered by settled principles of law.

➤ The member secretary shall ensure:

- availability of all relevant material to the members at least 5 days prior to the time fixed for the meeting in the prescribed format;
- that meeting is convened within 10 days from the date of receipt of certified copy in the office.

Members from DOP & Finance shall examine and seek approval up to appropriate level prior to meeting, regarding the department's stand and should be prepared to express authenticated opinion.

The learned advocate appearing on behalf of the State shall ensure to apply for and obtain certified copy of the judgment promptly.

The nodal officer shall be responsible for immediate procurement and submission of the certified copy of the decision.

The Law Department shall ensure to take a decision within 7days of the receipt of the proposal in Law Department.

The decision of appeal or no appeal once taken shall be final and shall not be re-opened except on discovery of new facts or there is an error apparent on the face of the record.

Every in-action or delay by an official at any/every stage shall attract disciplinary action under the rules applicable to him.

CHAPTER III
SPECIALISED LITIGATION, PUBLIC INTEREST LITIGATION
AND
PUBLIC SECTOR UNDERTAKING LITIGATION

SPECIALISED LITIGATION

Proceeding seeking judicial review of contract and tenders shall be defended in view of good governance and Constitutional mandates. Where the progress of project is held up in judicial proceedings the case shall be taken up vigorously in public interest, however, in case where proceedings are founded on the allegation of breach of natural justice and there is substance in the allegation the case may not be proceeded, order may be set aside and reviewed after proper hearing.

PUBLIC INTEREST LITIGATION (PIL)

PILs must be seriously defended. Several PILs are filed for collateral reasons including publicity or for the individual benefit of third party; such litigation should be exposed as not bona-fide. In the PILs where projects are stayed by interim orders imposing condition to pay compensation in case the PIL is rejected, should be insisted.

PUBLIC SECTOR UNDERTAKING LITIGATION

All matters between different Departments of the State, between Government Department and Public Sector Undertaking and between Public Sector Undertakings shall be referred to a High Powered Committee consisting of:

- Chief Secretary
- ACS Finance or his representative not below the rank of Secretary
- Principal Secretary Law
- Principal Secretaries / Secretaries of the concerned Departments / Public Sector Undertakings
- AAG nominated by the Principal Secretary Law
- Director Litigation

No case shall be filed in court by any Department or Public Sector Undertaking without prior approval of the High Powered Committee. It shall be the duty of the Principal Secretaries / Secretaries of the concerned Departments / Public Sector Undertakings to refer the matter to the High Powered Committee.

CHAPTER IV

Management within Department

The State shall endeavor to minimize State litigation but shall diligently contest good cases on merit. Within department this need to be managed methodically.

CONTESTING CASES WITH PROPER AVAILABLE DEFENSE

The Administrative Departments shall in every case place complete facts before the standing committee and ensure that only such cases in which legally tenable defense is available are contested. The points on which law is settled and chances of success are feeble need not be contested. This will minimize unnecessary State litigation and attention will be focused on cases sound on facts and law.

CO-ORDINATION BETWEEN OFFICER IN CHARGE

AND

GOVERNMENT COUNSEL

The institution of Nodal Officer to bridge the gap between the officer in charge and the advocate for the State exists in the State. The Administrative Department shall ensure appointing an efficient officer, not below the rank of Dy. Secretary, capable of managing litigation as Nodal Officer. If the number of cases of an Administrative Department exceeds 250 the work of Nodal Officer shall be assigned to an officer independently.

Nodal Officer shall be provided adequate staff for keeping the records update and facility of internet and phone for proper communication and gathering necessary information.

The e-mail address and phone numbers of the Nodal Officer shall be available and accessible to the Advocates for the State and vice-versa. The Law Department shall also maintain record of all the nodal officers and Advocates for the State.

The Nodal Officer shall perform the duties as prescribed by the Law Department.

Director Litigation shall hold meetings of the nodal officers at least once in three months to get feedback on the status of state litigation, share the experiences of individuals, pin point the genuine difficulties and evolve ways and means for further improvements.

The Nodal Officer shall not be changed frequently.

Any reluctance in the discharge of duties shall be viewed seriously and shall be a valid reason for initiating disciplinary action against the delinquent official.

PROPER BRIEFING

The officer in charge plays a pivotal role in the State Litigation. The officer in charge is responsible for collecting the factual data, preparing a note and briefing the case accordingly to the advocate for the State. While appointing officer in charge it shall be kept in mind that the appointment of the officer in charge is not a formality but a well-considered decision because the success hinges on his performance.

The qualification, appointment and duties of the officer in charge shall be as prescribed by the Law Department.

Any reluctance in the discharge of duties shall be viewed seriously and shall be a valid reason for initiating disciplinary action against the delinquent official.

Many a times the law officers do not appear in Courts or appear without due preparation. This not only causes inconvenience to the Court but also adversely affects the State interest. The basic reason is incomplete record of pending litigation with the Administrative Department and improper briefing to advocate for the State.

The Nodal Officer shall on top priority maintain a record of the cases pending in courts and related to his department. The record shall be maintained court wise so that cases may be tracked conveniently.

The Nodal Officer shall get the web site of LITES updated regularly.

The Nodal Officer shall ensure that the updated record of the case is available with the Advocate concerned. The list of the cases of the department

