

CHAPTER : 20 – LITIGATION

(20.1)

Government of Nagaland Department of Justice and Law

OFFCE MEMORANDUM

NO.LIT-924/87

Dated, Kohima, the 12th June '1990.

Sub:- GOVERNMENT LITIGATIONS.

It has been experienced that for the Government litigations the Department and its functionaries are found not responsive to take timely action. Notices issued by Courts remain unattended without realizing that the proceedings in the Court can go by default. Without proper instructions, the Government Counsels are found handicapped in presenting the case of Government. Under the present legal and constitutional system, litigations are unavoidable and it is absolutely necessary to take due interest in all Government litigations as part of the functioning of the Government.

Government litigations are in different levels of Courts. However, special mention may be made in respect of Government litigation in the High Court. It must be recognized that apart from the ordinary civil and criminal appellate and revisional powers, the High Court has also extraordinary powers to scrutinize the executive action of the Government or for that matter even the legislative action of the State Government on the ground want of legislative competence or as being ultra vires of the provisions of the Constitution. The High Court being the highest Court in the State, we have to realize the consequences that may follow from the inaction of the Government in government litigations.

The urgency in attending Government litigations is felt with the establishment of permanent bench of the Gauhati High Court at Kohima to deal with all the cases arising in the State. By reason of proximity of the High Court to the seat of the Government, and bringing access to justice closer to the people, it has become all the more necessary to gear up the functionaries of the government to take timely action in the Government litigations. On the one hand it will become easier to approach the High Court and obtain interim relief against the Government, on the other hand, for obvious reasons less time would be made available to the functionaries of the Government to file returns or to take steps in the cases. Having been seized of the reality of the situation, it is considered necessary to adopt general guidelines for the functionaries of the State Government to deal with litigations. After careful examination, all Government Department to take following steps.

- (i) all litigations be treated as time-bound matters .
- (ii) litigations call be created in the Department and be put under the charge of a responsible Nodal Officer who should be made responsible and answerable for the progress of litigation (this is necessary for proper documentation of the litigation records as there may not be a continuity in the personnel manning the Department looking after the litigations).
- (iii) officer in charge of litigation should liaise personally with the Law Department or the Government Advocate depending upon the stage of litigation. Personal discussion should be preferred over lengthy correspondence.
- (iv) Whenever considered necessary, immediate steps be taken in the event of receipt of interim order before a formal notice is received from the Court.

- (v) The Heads of Administrative Departments shall ensure that timely action is taken for given proper instruction to the Government counsels.
- (vi) The Departments shall keep necessary funds for meeting expenses of prosecution of litigations.
- (vii) The litigation shall be reflected in the administrative report of the respective department.
- (viii) When the cases are taken up by the High Court, the Nodal Officer should be present in the court to give further information/advice to the counsels.
- (ix) Each Administrative Department should intimate the name, designation, telephone number of the officer to Law Department for further action.
- (x) 'Court case' priority be assigned to all litigation matter.

Sd/- T.C.K.LOTHA
Chief Secretary to the Govt. of Nagaland.

(20.2)

Government of Nagaland
Department of Justice and Law

OFFICE MEMORANDUM

NO.LIT/MISC/58/90

Dated, Kohima, the 12th July' 1990.

Sub:- GOVERNMENT LITIGATIONS.

It is reported that Government officer(s) deputed to Guwahati for filling writ appeal affidavit are sometimes found to be not conversant with the facts and circumstances of the case and is unable to give proper instructions/guidance to the Government advocates. It is also often the case that the relevant files and documents including certified true copies of the judgment and other connected court papers concerning the particular case are not made available to the Government Advocates. Accordingly, the Government Advocates are found handicapped in taking timely steps effectively by the way of filing Writ Appeal/Affidavit etc. It is also experienced by the Government Advocates that time steps are not taken by the Government departments in filing Writ Appeal and consequently to face the experience of finding the court reluctant to pass interim stay order since there is a procedural requirement of issuing notice on the condonation application that may be filed in case of delay. Needless to mention that a casual attitude on the part of the Department and officers is affecting the Government cases adversely.

The Government after careful consideration has, therefore, decided to bring to the notice of all the Government Department to bear in mind the following corrective measures.

- (a) An officer that may be deputed for taking steps to file Writ Appeal/Petition/Affidavit should be conversant with the facts and circumstances of the case and should also be an officer competent to take necessary steps on behalf of the State Government and he may also be advised to carry proper instructions including the relevant records of the Government and various connected court papers like writ petition and certified true copy of the Judgment that may be impugned etc.

- (b) All Government Departments should take steps at the earliest for the purpose of filing writ appeal/application etc. bearing in mind the limitation period that is made available for a particular form of legal remedy. Such prompt action would help to avoid complication that may arise out of delay.
- (c) Each department should appoint a nodal officer to pursue all cases in the Department. Such nodal officer shall be held responsible for any lapse.
- (d) What is mentioned above would in principle also apply to other types of Government litigations pending before the Kohima Bench of the High Court or other Subordinate Courts. The concerned authorities of the Government are also advised to refer to this department's memo even No. LIT-924/87 dated 8-1-96 and dated 12-6-90 and to take such appropriate action if not already taken.

Please acknowledge receipt of this Memo.

Sd/- T.C.K.LOTHA
Chief Secretary.

(20.3)

**Government of Nagaland
Department of Justice and Law**

OFFICE MEMORANDUM

Dated Kohima, the 30th June, 2003.

No. LAW/LA/1/2002: : In has come to the notice of the Government that many officers face contempt proceedings in various Government litigations pertaining to the interest of the State. There had been instances where the Government Advocates/Counsels have refused to appear before the Court to defend such officers facing contempt proceedings on the plea that the notice issued by the Hon'ble Courts are not directed against the Government agency or in official capacity. This issue was deliberated in the meeting held on 12/6/03 attended by the learned Advocates General Nagaland.

It is hereby clarified that the Govt. Advocates/Counsels shall enter appearance in contempt proceedings even when the officials is summoned by name and the Govt Advocates/Counsels shall continue to defend the interest of the officer or the Govt. unless the contempt proceedings are initiated against the officer in his individuals capacity not connected with officials matter.

Sd/-R.S. PANDEY
Chief Secretary, Nagaland, Kohima.

(20.4)
Government of Nagaland
Department of Justice and Law

NOTIFICATION

Dated Kohima, the 10th June 2009

No. LIT/MISC-7/2008 :: The Governor of Nagaland is pleased to designate all Public Prosecutors, Addl. Public Prosecutors and Asst. Public Prosecutor as Govt. pleaders in the State to enter appearance in all civil cases in the Courts including different Tribunal in which the Govt. of Nagaland or its agencies are party/parties.

Sd/- TEMJEN TOY
Commr. & Secretary to the Govt. of Nagaland

(20.5)
Government of Nagaland
Department of Justice and Law

OFFICE MEMORANDUM

NO.LIT/1172/2007

Dated Kohima the 28th May 2014

Sub:- Guidelines for taking measure of Supreme Court cases.

All petitions/ cases including Public Interest Litigation (PIL) in the Supreme Court addressed to the Chief Secretary of the State Government ultimately lands in the concerned Department without any endorsement to the State Government Counsel. When these petitions are taken up in the apex Court, the State Counsel is in awkward position due to absence of petition/papers in her/his possession.

Therefore, to avoid embarrassment and difficulties faced by the State Government Counsels in the Supreme Court it impressed upon all the Departments to be sensitive to the Court matters and requested to comply with the following guidelines on priority:

- 1) An Officer/staff in the Chief Secretary office may be given the responsibility to receive/ notice and case papers and maintain records.
- 2) The concerned officer/staff may make copies of the case papers and send 1(one) copy of the Legal Department and 1(one) to the concerned Department.
- 3) On receipt of the copy, the concerned department shall forward a copy of Vakalatnama along with the comments and case papers to the standing Counsel in the Supreme Court within the time limit prescribed.
- 4) Since all the Departments have e-mails address, the e-mail service may be utilized for transmission of the documents as the same do not get misplaced and also get stored digitally. In case of bulky documents, the same may be scanned and e-mailed.
- 5) The documents including the affidavit that are filed in the Supreme Court can also be scanned and e-mail to the concerned Department so that records are maintained digitally from both ends.

Sd/- BANUO Z. JAMIR
Chief Secretary to the Govt. of Nagaland.

(20.6)
Government of Nagaland
Department of Justice & Law
Nagaland:: Kohima

CIRCULAR

Dated Kohima, the 6th Aug.2015

NO.LIT/MISC-3/07(Pt) :: The Court from time to time draws up contempt proceedings against the State Govt. functionaries. The proceedings are generally targeted against the alleged defaulting officials and such difficulties are expressed by the Govt. Advocates in defending such officials. The Court from time to time observed that the contempt proceedings are generally on individual capacity and such cases should to be defended by the private/individual lawyer.

The concerned officers faced difficulties as the alleged cause of action is not in the individual capacity and are of the view that the same should be handled by the Govt. Advocates. The pattern of payment to the Govt. Advocates have changed from case basis to a lump sum amount in a particular month and such if the Govt. Advocates have to be engaged by the State functionaries a separate Vakalatnama have to be filed and a separate fee is required to be paid to the Govt. Advocates for appearance in contempt proceedings.

The issue is examined and the Govt. has agreed to provide a lump sum amount of Rs. 10,000/- (Rupees Ten Thousand) only for conducting appearance in contempt proceeding in a particular case. This amount may be preferred by the individual Govt. Advocate for payment by the Law Department. This arrangement has the approval of the Finance Department concurred vide No. RFC/ESTT/4/9 dated 27.7.2015.

Sd/- K.N. CHISHI
Secretary to the Govt. of Nagaland

(20.7)
Government of Nagaland
Department of Information and Public Relations
Nagaland: Kohima

NOTIFICATION

Date Kohima, the 27th August 2015

No.IPR/MISC/3-1/2015: In pursuance of the case, Writ Petition (Civil) No. 13/2003 filed in the Supreme Court by Common Cause and Centre for Public Interest Litigation, regarding the use of public funds on Government advertisements, the Supreme court has exercised its power under Article 142 and has passed judgement on “**Guidelines on the content regulation of Government advertising**”, on 13th May 2015.

- In the guidelines issued, the Supreme Court has allowed the following advertisement as legitimate and permissible.
 - 1) Advertisements highlighting completion of a fixed period of Government’s tenure, by highlighting achievements of the Government, for e.g, supply of electricity to each and every village during the Government’s tenure.
 - 2) Advertisements announcing projects.
 - 3) Advertisements issued on the occasion of birth/death anniversaries of great personalities and such other events. However, only single advertisements by different departments on the same event should be avoided.
 - 4) Advertisement announcing policies and benefits for public.
 - 5) Advertisements on the eve of election are permitted, if Government advertisements adhere to the objectives and parameters mentioned in the guidelines.
- The Supreme Court has spelled out 5(five) principles to regulate the contents of the permissible advertisements mentioned above, namely,
 - i. Advertising campaigns are to be related to Governments responsibilities.
 - ii. Advertisement materials should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign.
 - iii. Not directed at promoting political interests of a party.
 - iv. Campaigns must be justified and undertaken in an efficient and cost-effective manner, and
 - v. Advertisements must comply with legal requirements and financial regulations and procedures.

- In addition, the Supreme Court has observed that only “the photographs of the President, the Prime Minister and the Chief Justice of the Country be displayed in Government advertisements,’ The Supreme Court has inter-alia, also directed that “Advertisement issued to commemorate the anniversaries of acknowledged personalities like Father of the Nation would of course carry the photograph of the departed leader”.
- The judgement is binding on the Union of India, State Government and union Territory Administrations and its agencies including all local bodies, Public Sector Undertakings (PSUs) and other Autonomous Bodies/Organizations established under a statute.
- These guidelines are applicable to all Governments advertisements other than classifieds, and in all medium of communication, such as print, electronic, outdoor and digital, inclusive of internet advertising.

Now therefore, all concerned are hereby directed to adhere/ comply strictly to the above given guidelines with immediate effect.

Sd/- Pankaj Kumar, IAS
Chief Secretary to the Govt. of Nagaland.