

9  
22/12



GOVERNMENT OF KERALA

Abstract

LAW DEPARTMENT—RECOMMENDATION OF THE 13TH FINANCE COMMISSION—  
FORMULATION OF STATE LITIGATION POLICY—APPROVED—ORDERS ISSUED

---

---

LAW (INSPECTION WING) DEPARTMENT

G. O. (P) No. 12/2011/LAW. Dated, Thiruvananthapuram, 3rd December, 2011.

---

---

*Read:*—13th Finance Commission report.

ORDER

The 13th Finance Commission has recommended the formulation of a State Litigation Policy based on the National Litigation Policy as it is a condition precedent for the release of financial assistance from the Government of India for the implementation of the various components in the 13th Finance Commission Award. Its aim is to ensure the conduct of responsible litigation with a view to reduce Government litigation in courts and to reduce the average pendency time from fifteen years to three years and to manage and conduct litigation in a cohesive, co-ordinated and time bound manner and to ensure that good cases are won and bad cases are not needlessly preserved with.

As recommended by the 13th Finance Commission, a draft State Litigation Policy was prepared based on the National Litigation Policy.

Government have examined the matter in detail and are pleased to approve the State Litigation Policy appended to this Government Order.

By order of the Governor,

C. P. RAMARAJA PREMA PRASAD,  
*Law Secretary.*

To

1. The Registrar General, High Court of Kerala, Ernakulam.
2. The Principal Accountant General (Audit), Kerala, Thiruvananthapuram.
3. The Accountant General (A&E), Kerala, Thiruvananthapuram.
4. The Advocate General, Kerala, Ernakulam.
5. The Director General of Prosecutions, Ernakulam.
6. The Secretary, Kerala Legislative Assembly, Thiruvananthapuram.
7. ✓ The Director of Information and Public Relations Department.
8. PS to Chief Minister.
9. PS to Minister (Finance, Law and Housing).
10. PA to Law Secretary.
11. All Departments in the Secretariat.
12. All District Collectors.
13. The G.A. (SC) Department (vide item No. 297 dated 10-8-2011).
14. Stock File/Office Copy.

## GOVERNMENT OF KERALA

## STATE LITIGATION POLICY

WHEREAS, at the National Consultation for strengthening the Judiciary Towards Reducing Pendency and Delay held on the 24th and the 25th October, 2009, the Union Minister for Law and Justice, presented resolution which was adopted by the entire conference unanimously.

And wherein the said resolution acknowledged the initiative undertaken by the Government of India to frame a National Litigation Policy with a view to ensure the conduct of responsible litigation by the Central Government and every State Government to evolve similar policies.

Its aim is to ensure the conduct of responsible litigation with a view to reduce Government litigation in courts and to reduce average pendency time from fifteen years to three years and to manage and conduct litigation in a cohesive, co-ordinated and time bound manner and ensure that good cases are won and bad cases are not needlessly preserved with. It is emphasized that Government is not an ordinary litigant and that a litigation doesn't have to be won at any cost.

In responding to the request of the Government of India for taking necessary steps to implement the said Policy in letter and spirit, the Government of Kerala hereby announce its State Litigation Policy *mutatis mutandis* in line with the National Litigation Policy with a view to ensure the conduct of responsible, effective and efficient litigation by the State Government so as to reduce Government litigation in courts and average pendency time from fifteen years to three years by 2012 by means of various innovative strategies, initiatives and definitive action plans and urges every statutory bodies, Public Sector Undertakings including Local Self Government to implement this policy in letter and spirit.

## THE STATE LITIGATION POLICY

## 1. The Vision/Mission

1. The State Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in Courts and Tribunals in the Country. Its aim is to transform the Government into an efficient and responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of the citizens to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle.

## 2. Definitions

(i) "Efficient litigant" means:

- Focusing on the core issues involved in the litigation and addressing them squarely,
- Managing and conducting litigation in cohesive, co-ordinated and time bound manner,
- Ensuring that good cases are won and bad cases are not needlessly persevered with,
- A litigant who is represented by competent and sensitive legal persons; competent in their skills and sensitive to the fact that Government is not an ordinary litigant and that a litigation does not have to be won at any cost.

(ii) "Responsible Litigant" means:

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

(iii) "Head of Department" means the administrative person ultimately responsible for the working of the Department or Agency as the case may be.

3. Government must cease to be a compulsive litigant. The philosophy that matters should be left to the courts for ultimate decision has to be discarded. The easy approach, "Let the Court decide," must be eschewed and condemned.
4. The purpose underlying this policy is also to reduce Government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the National Legal Mission to reduce average pendency time from fifteen years to three years. Litigations on behalf of the Government have to keep in mind the principles incorporated in the National Mission for Judicial Reforms which include identifying bottlenecks which the Government and its agencies may be

concerned with and also removing unnecessary Government cases. Prioritization in litigation has to be achieved giving particular emphasis on welfare legislation, social reforms, weaker sections and senior citizens and other categories requiring assistance.

## 5. The Stakeholders

- (i) In ensuring the success of this policy, all stakeholders such as the Law Department, Heads of various Departments, Heads of every Statutory Bodies, Public Sector Undertakings including the Local Self Governments, Government Law Officers, Government Counsel and individual officers connected with the litigation concerned will have to play their parts. The success of this policy depends on its strict implementation. Nodal Officers will be appointed by Heads of Department.

## 6. Law Officer (Nodal Officer)

- (i) The appointment of Nodal Officers must be done carefully. The Nodal Officer has a crucial and important role to play in the overall and specific implementation of this policy including but not limited, to the references made hereinafter. Every Heads of Departments including Heads of every Statutory Bodies/Local Self Governments, Public Sector Undertakings etc. must be mindful of the responsibility to appoint proper Nodal Officers who have legal back grounds and expertise. 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. Nodal Officers must also be subjected to training so that they are in a position to understand what is expected of them under the National and the State Litigation Policies.
- (ii) Accountability is the touch stone of this policy. Accountability will be at various levels at the level of the officers in charge of the litigation, those responsible for defending the cases, all the Law Officers concerned and the 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 and subjected to detailed scrutiny to fix the responsibility. Upon fixing responsibility, suitable action will have to be taken. Complacency must be eliminated and replaced by commitment.
- (iii) All arrangements for the training to the concerned shall be made by the Law (Nodal) Department with the help of the Institute of Management/ the Judicial Academy.

- (iv) The Law Officers presently working in the offices of the Heads of Departments shall be the Nodal Officers for the purpose of the implementation of the State Litigation Policy. Where no Law Officer is presently working in a Head of Department, Government shall nominate one competent officer and notify persons as Nodal Officers of the Department either from the Government or from the Department.
- (v) Apart from the above, every Head of Statutory Bodies including the Local Self Governments and the Public Sector Undertakings shall take necessary steps to nominate Nodal Officer for the purpose of the implementation of the State Litigation Policy in their institution in consultation with the Law Department.

#### 7. Duties and functions of the Law Officer (Nodal Officer)

The duties and the functions of the Law (Nodal) Officer appointed in the office of the Head of the Department for the purpose of the implementation of the State Litigation Policy shall be as follows:

- (i) The Law Officer (Nodal Officer) shall co-ordinate the conduct of Government Litigation in various courts, for and on behalf of the Head of the Departments.
- (ii) It shall also be his responsibility to monitor the progress of litigation, particularly to identify cases in which repeated adjournments are taken.
- (iii) Each Head of Department shall be required to call for details of cases filed on behalf of the Department and shall maintain a record of cases which have been dismissed. The Law (Nodal) Officer must submit a report in every individual case to the Government/Head of Department, as the case may be, explaining the reasons for delay in filing appeal and identifying the persons responsible for causing such delay.
- (iv) It shall be the duty of the Law (Nodal) Officer to monitor the conduct of all cases in the High Court in which Government/Head of Department is a party so as to protect the interest of Government and to minimize the expenses and losses to the Government.
- (v) Any draft statement of facts prepared by the section shall be examined by the officers concerned from the administrative point of view before submitting it to the Law Department/Law (Nodal) Officer for vetting the legal aspects involved in the case and they shall examine the same in terms of circular Nos. 7812/B3/2009/Law dated 22-6-2009 and

192/B3/2010/Law dated 24-4-2010 and shall ensure that the approved statement of facts are furnished to the Government Pleader concerned or the Advocate General and necessary affidavit/statement filed before the court in time.

- (vi) The Law (Nodal) Officer shall be in alert in the conduct of all cases with special care in the matter of L.A.R. cases, K.L.C., Land Assignment cases/R.R. cases, among others, in terms of the above circular. The Law (Nodal) Officer shall ensure that the statement of facts is prepared accurately and without any delay. Efforts shall be taken by the Law (Nodal) Officer for filing applications for obtaining court order in time (examination of cases under section 28A of the Land Acquisition Act, 1894 by the Head of the Department) and for the timely deposit of the decretal amount in L.A.R. cases against which appeals are not referred to avoid EPs as far as possible.
- (vii) The Law (Nodal) Officer shall follow up all contempt of court cases to ensure timely necessary action.
- (viii) In case where the Head of Department or Subordinate Officer requires legal advice from the Advocate General for filing appeal before the High Court/the Supreme Court, the Law (Nodal) Officer shall ensure that appropriate decision is taken by the Head of Department or the Administrative Department in the Secretariat as per the instructions issued in Circular No. 19266/B3/2008/Law dated 29-11-2008.
- (ix) The Law (Nodal) Officer shall ensure that delay in filing appeals and Special Leave Petitions is avoided as instructed in the Government Circular No. 22148/B3/2009/Law dated 15-1-2010. Periodic inspection shall be conducted by the Law (Nodal) Officer in the section concerned of the Head Office and the Subordinate Offices and submit his inspection report to the Head of Department for necessary action under intimation to the Government.
- (x) A Register of Suit Notice as shown in Appendix V of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978, shall be maintained by the Head of Department.
- (xi) A Register of Contempt of Court Cases/Court Order Implementation shall be maintained in the office of the Head of Department in order to watch the implementation of court directions. Such Register shall be periodically inspected by the Law (Nodal) Officer. The Head of Department shall watch the prompt maintenance of the Register and take necessary action, if any lapse is noted in this regard.

- (xii) The Law (Nodal) Officer shall see that regular follow up action is taken in all pending cases including R.R., L.A.R., E.P. cases etc. and the stage of each case is ascertained by contacting the Government Pleader concerned or the Advocate General. A separate list of cases involving the realization of large amount of revenue to the State exchequer shall be kept for monitoring by the Law (Nodal) Officer. He shall call for monthly statement showing the latest position of cases from the Government Pleaders concerned to enable him to update the Registers concerned.
- (xiii) Quarterly review meeting of the Government Pleaders and the Officers concerned shall be convened under the Chairmanship of the Head of Department, with the Law (Nodal) Officer as Convener for monitoring the progress of each and every court case in which the Government/ Head of Department is a party.
- (xiv) The Law (Nodal) Officer will be responsible for active case management. This will involve constant monitoring of cases particularly the examination of cases which have gone "off track" or have been unnecessarily delayed. He shall ensure that all relevant data is sent to the Empowered Committees for its effective functioning.
- (xv) It shall be the responsibility of the Law (Nodal) Officer to report cases of repeated and unnecessary adjournments to the Head of Department and it shall be open to call for reason for the adjournment. The Head of Department shall ensure that the Records of the case reflect reasons for adjournment. The Law (Nodal) Officer shall take necessary remedial action if frequent and unnecessary adjournments are resorted to by the Government Law Officers and the officials concerned.
- (xvi) When a notice under Section 80 of the Code of Civil Procedure is received by the Head of Department, the same shall be handed over to the Law (Nodal) Officer for suggesting any remedial action. He shall ensure that the litigant has first resorted to all modes of Alternative Disputes Resolution Mechanisms including Mediation, Arbitration etc. While preparing arbitration agreement, it shall not be against the interest of the State/Head of Department.

## 8. Empowered Committees

There will be Empowered Committees to monitor the implementation of this policy and accountability. The Nodal Officers and the Head of Department shall ensure that all relevant data is sent to the Empowered Committee.



## CONSTITUTION OF THE EMPOWERED COMMITTEES

<i>Sl. No.</i>	<i>Constitution of Empowered Committees</i>	<i>Members</i>	<i>Duties</i>
(1)	(2)	(3)	(4)
1	<p><b>State Level Empowered Committee</b></p> <p>It shall be chaired by the Advocate General and such other members not exceeding six in number as may be nominated by the Law Department with a Special Secretary (Law) to be Member Secretary.</p>	<p>1. Advocate General—Chairman.</p> <p>2. Secretary—Special Secretary (Law)—nominated by the Law Secretary.</p> <p>3. Head of the Administrative Department in the Secretariat.</p> <p>4. Head of the Department.</p> <p>5. Liaison Officer, High Court of Kerala.</p> <p>6. The law (Nodal) Officer, High Court of Kerala (to be appointed for the purpose of the implementation of the State Litigation Policy).</p>	<p>(i) It shall be the responsibility of the Empowered Committee to receive and deal with suggestions and complaints including from litigants and Government Departments and take appropriate measures in connection therewith.</p> <p>(ii) The Taluk Level Empowered Committee shall submit monthly report to District Level Empowered Committee which in turn submits comprehensive report to the State Level Empowered Committee, which shall give a consolidated report to the Law Secretary for taking necessary action.</p> <p>(iii) Complaints that certain Government Law Officer are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee.</p> <p>(iv) If concessions are made on issues of fact or law and it is found that</p>

(1)

(2)

(3)

(4)

such concessions were not justified, the matter will be reported to the Empowered Committees and remedial action shall follow.

(v) Serious note will be taken on cases of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee.

(vi) The cases in which costs are awarded against the Government as condition of grant of adjournments will be viewed very seriously. In all such cases, the Head of Department must give report to the Empowered Committee stating the reason 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.

(vii) The Empowered Committee shall also be responsible for reviewing all pending

(1)	(2)	(3)	(4)
			cases and filtering frivolous and vexatious matters from the meritorious one. The Taluk Level Empowered Committee shall submit such reports to the Law Department with a recommendation to settle such matter imperiously whether through Lok Adalat or Alternative Disputes Resolution mechanisms.
			(viii) The Empowered Committee shall be convened at least once in a month.
2	<b>District Level Empowered Committee</b>	<ol style="list-style-type: none"> <li>1. District Collector Chairman.</li> <li>2. Law (Nodal) Officer, Collectorate/District Law Officer [Deputy Secretary (Law)] concerned—Secretary.</li> <li>3. District Government Pleader and Public Prosecutor.</li> <li>4. Administrative Officer O/o. The D.G.P. and P.P.</li> <li>5. Law (Nodal) Officer, O/o the D.G.P. and P.P.</li> <li>6. The District Level Officer of the Department concerned.</li> </ol>	Same as that of the State Level Empowered Committee except their Jurisdiction is restricted within the District
	It shall be chaired by the District Collector with such other members not exceeding six in number as may be nominated by the Law Secretary with a District Law Officer [Deputy Secretary (Law), Law] (Nodal) Officer, Collectorate to be the Member Secretary.		

(1)

(2)

(3)

(4)

3

**Taluk Level Empowered Committee**

Taluk Level Empowered Committee shall be chaired by the Tahsildar of the Taluk and such other members not exceeding six in number as may be nominated by the Law Secretary with a Law (Nodal) Officer appointed in the office of the Additional Government Pleader and Additional Public Prosecutor for the purpose of the implementation of the State Litigation Policy to be the Member Secretary. And such other members not exceeding six in numbers as may be nominated by the Law Secretary with a Legal Assistant appointed in the Office of the District Government Pleader and Public Prosecutor to be the member Secretary. The other members may be nominated by the Law Secretary to the Taluk Level Empowered Committee.

1. Tahsildar, Taluk Office of the Taluk concerned where in the Office of the Additional Government Pleader and Additional Public Prosecutor is situated—Chairman.
2. Law (Nodal) Officer (Administrative Officer) appointed in the office of the Additional Government Pleader and Additional Public Prosecutor for the purpose of the implementation of the state Litigation Policy—Secretary.
3. Additional Government Pleader and Additional Public Prosecutor of the Sub Court Centre/ Government Law Officer concerned/ Associate Government Pleader.
4. Legal Assistant appointed in the office of the District Government Pleader and Public Prosecutor.
5. An officer not below the rank of a Section Officer nominated by the Head of the Department concerned.
6. Junior Superintendent, Suit Section, Taluk Office.

## 9. Screening Committees

(i) There shall be Screening Committees at the State and the District Levels for the preparation/constitution of Panel of Advocates to assess the skills and capabilities of people who are desirous of being on Government Panel before their inclusion in the post. Advocates who are willing, energetic and competent and who have special skills in drafting pleadings shall be included in the panel. Such panel shall be flexible. More and more Advocates must be encouraged to get into such panels by demonstrating keenness, knowledge and interest.

### CONSTITUTION OF THE SCREENING COMMITTEES

<i>Sl. No.</i>	<i>Constitution of Screening Committees</i>	<i>Members</i>	<i>Duties</i>
(1)	(2)	(3)	(4)
1	<p><b>State Level Screening Committee.</b></p> <p>It shall be chaired by the Advocate General and such other members not exceeding four in number as may be nominated by the Law Department with the Special Secretary (Law) to be the Member Secretary. Other members may be nominated by the Law Secretary.</p>	<p>1. Advocate General—Chairman.</p> <p>2. Special Secretary (Law)—Secretary.</p> <p>3. President, High Court Bar Association.</p> <p>4. Law Officer (Nodal Officer) appointed in the office of the Advocate General for the purpose of the implementation of the State Litigation Policy.</p>	<p>(1) Preparation of panel of names of Advocates for being considered for the appointment of Government Law Officer in the High Court, Supreme Court, other Tribunals having Jurisdiction spread all over the State.</p> <p>(2) The State Level Screening Committee may invite applications from Advocates desirous of being considered for appointment to the post of Government Law Officer in the High Court. They may conduct interviews for assessing the skills and capabilities of Advocates who are desirous of being included on the Government Panel.</p>

(1)

(2)

(3)

(4)

(3) Emphasis will be on identifying the areas of core competence, domain expertise and areas of specialization. While preparing the panel, it shall not be assumed that all lawyers are capable of conducting every form of litigation.

(4) The panel prepared by the State Level Screening Committee shall be in accordance with the relevant rules and the panel shall not contain incompetent and inefficient Advocates.

(5) The Screening Committee shall request persons who recommend names of Advocates for inclusion in the panel to be careful in making such recommendation and to take care to check the credentials of those recommended with particular reference to legal knowledge and integrity.

(6) The panel shall contain at least three names of Advocates for every post of Government Law Officers.

(7) The panel prepared by the Screening Committee shall contain the relevant details of the Advocates included

(1)	(2)	(3)	(4)
			in the panel such as the date of birth, photograph, residential address, telephone number, copies of certificate proving age, educational qualification, bar experience etc. The Character and the antecedents of all the persons included in the panel shall be got verified through the Superintendent of Police concerned by the Secretary, Advocate General. The prepared panel shall be forwarded to the Law Secretary without any delay for further necessary action.
2	<p><b>District Level Screening Committee</b></p> <p>It shall be chaired by the District Collector and such other members, not exceeding four in number as may be nominated by the Law Department with District Law Officer (Deputy Secretary (Law), suit Cell to be the Member Secretary.</p>	<p>(1) District Collector—Chairman</p> <p>(2) District law Officer [Deputy Secretary (Law)] Suit Cell who is also be the Nodal Officer—Secretary</p> <p>(3) President of the Bar Association concerned.</p> <p>(4) Secretary to the District Government Pleader and Public Prosecutor.</p>	<p>(1) Preparation of panel of names of Advocates for being considered for appointment of Government Law Officer in the Courts subordinate to the High Court, other tribunals, quasi judicial forum having jurisdiction limited in the District.</p> <p>(2) Other functions are same as that of the State Level Screening Committee <i>mutais mutandis</i>.</p>

**10. Facilities to be given to the Government Law Officers**

- (i) Government Advocates shall be well equipped and provided with adequate infrastructure.
- (ii) Efforts shall be made to provide modern technology such as Computers, Internet link etc. to the office of the Government Law Officers by the Law (Nodal) Department.

**11. In service Training to the Government Law Officers**

- (i) Common research facilities shall be made available to the Government Lawyers as well as equipment for producing compilation of cases.
- (ii) Training programmes, seminars, workshop and refresher courses for Government Law Officers shall be conducted by the Law (Nodal) Department with the help of the I. M. G./the Judicial Academy.
- (iii) There must be continuing legal education for Government Law Officers with particular emphasis on identifying and improving the areas of specialization, such as Evidence Act, Medical Evidence, Forensic Science, Cyber Crimes, Information Technology Act, Human Rights Issues, Consumer Acts, Latest Legislation, Apex Court decisions etc.
- (iv) Law School will be associated in offering special courses for the training of the Government Law Officers with particular emphasis on identifying and improving areas of specialization.
- (v) Most importantly, there must be an effort to cultivate and instill values required for effective (Government representation) and efficient conduct of Government cases.
- (vi) National and regional conference of Government Law Officers and Law (Nodal) Officers will be organized so that matters of mutual interest can be discussed and the problem analyzed.
- (vii) Service of former reputed Government Law Officers may be utilized for training the newly appointed Government Law Officers on what is expected of them in discharging their functions.



## 12. Duties and functions of the Government Law Officers

- (i) Government Law Officers shall play a meaningful role in Government Litigation. They are responsible for not only in filing Government cases and appearances in court, but also in taking a leading role in Government litigation.
- (ii) The Government Law Officers shall ensure that incomplete briefs are not forwarded from the office of the Head of Department. The matter shall be reported to the Head of Department. It is the responsibility of the Head of Departments to ensure that proper records are kept in the cases filed and that copies retained by the Department are complete and tally with what have been filed in Court. If the Head of Department has a complaint in this regard, it can complain to the Empowered Committee.
- (iii) The Government Lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to Government. If unjustifiable concessions are made on issues of facts or law without proper instruction and authorization, the matter will be reported to the Empowered Committee and remedial action would follow.
- (iv) The Advocate General and the Government Law Officers in charge of the administrative matters shall ensure that there shall be equitable distribution of briefs, so that there will be broad based representation of Government cases. Complaints that certain Government Law Officers are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee.
- (v) The office of the Advocate General and the office of other Government Law Officers shall also be responsible for reviewing all pending cases and filtering the frivolous and vexatious matters from the meritorious ones.
- (vi) 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 such grouping will also be attempted. To facilitate this

process, standard forms may be devised which the Government Law Officers have to fill up at the time of filing the cases. Panels will be set up to implement categorization to review such cases to identify the cases which can be withdrawn. These include cases which are covered by decisions of courts and cases which are found to be without merit and they shall be withdrawn. This must be done in a time bound manner.

- (vii) Following guidelines shall be followed by all the concerned for the effective implementation of the State Litigation Policy.
1. All Government Law Officers shall comply with Rule 22 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978. The staff attached to the office of the Government Law Officer shall except as regards the court work, follow the procedure prescribed in the Manual of Office Procedure. All are directed to follow the provisions contained in Rule 79 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978. The Government Law Officer shall strictly adhere to the provisions contained in Rules 77 to 84 of the Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978. He shall ensure that the staff are discharging their duties efficiently and that all registers are being maintained properly in the proper formats.
  2. The authority concerned shall provide necessary infrastructure to the office of the District Government Pleader.
  3. The Officials concerned shall ensure that the salaries of the Government Pleaders are disbursed in time.
  4. In cases, where appeals are to be preferred, the matter shall be brought to the notice of the District Administration by the District Government Pleader and steps shall be taken for filing appeals.
  5. Whenever attachment petitions are filed, Government Pleader shall report the same to the District Collector immediately for depositing the amount. The Government Pleader shall make effective representation and shall avoid orders of attachment as far as possible.

6. The District Administration shall ensure that the statement of facts and the counter affidavits to be filed are prepared and filed in time. While giving legal opinion regarding the scope for appeal, the Government Law Officers shall state reasons for substantiating their views. They are directed to comply with the Government Circular Nos. 22921/B3/2008/Law dated 23-12-2008 and 7812/B3/2009/Law dated 22-6-2009 in this regard.
7. Steps shall be taken by the concerned to conduct more adalats for settling long pending L. A. R. cases and L. A. R. Execution Petitions.
8. Copy of the receipt of the deposit of decretal amount shall be given to the Government Pleader and the parties concerned.
9. Steps shall be taken to record full satisfaction in E.Ps where the entire decretal amount has been deposited by the Judgment Debtor.
10. The Government Law Officer shall ensure that the 'amounts due under the Land Acquisition Awards are deposited in court to satisfy the award. He shall take necessary steps to find out as to whether any excess amount has been deposited by the Government based on wrong calculation statement in any L.A.R. (E.P) Cases pending before the Court and to take steps to get the excess deposits refunded. He shall also take steps to reconcile the calculation statement filed by the Decree Holder and the Judgment Debtor in this regard. Steps shall be taken to record full satisfaction in the E.Ps where the entire decree amount has been deposited by the Judgment Debtor. Further, he shall scrutinize all decrees and judgments received from the Court and take necessary action for filing application for correcting the decree and judgment, if required, forthwith.
11. All essential documents shall be made available in the case bundles of Criminal Appeal urgently.
12. The District Collector shall take urgent steps to collect the loose parts of the periodicals and keep the same in bound volumes.
13. Necessary stationery shall be allotted from the office concerned from time to time for the use of the offices of the Government Pleaders in the District.

14. The District Collector shall take steps to allot adequate office space to the office of the Government Law Officers.
15. The overall responsibility for the conduct of Government cases is vested with the Government Law Officer concerned. The District Government Pleader and Public Prosecutor, shall distribute case files to the Additional Government Pleaders and Additional Public Prosecutors attached to his office after making entries with acknowledgment from them in the Distribution Register thereof.
16. The staff in the office of the District Government Pleader and Public Prosecutor, shall act under the supervision and guidance of the District Government Pleader and Public Prosecutor and shall comply with and carry out the instructions given by him from time to time.

### 13. Remuneration to Government Law Officers

- (i) A system of motivation has to be worked out for Government Law Officer under which initiative and hard work will be recognized and extraordinary work will be rewarded.
- (ii) While Government cannot pay fees which private litigants are in a position to pay, the fees payable to Government Lawyers will be suitably revised to make it remunerative.
- (iii) It shall be ensured that fees stipulated as per the schedule of fees should be paid within a reasonable time. Malpractice in relation to release of payment must be eliminated.

### 14. Restructuring the office of the Advocate General

At present, the staff structure of the office of the Advocate General is in tune with the staff structure of the office of the High Court. The present staff structure in the office of the Advocate General has the following drawbacks.

- (i) Various sections in the office of the Advocate General are working in tune with the office of the High Court. This make the former less accountable to the requirements of the various departments in Government. Owing to this, the Government Departments find it difficult to manage the conduct of Government cases by the office of the Advocate General is found out, it is not possible to fix liability on a

particular Government Pleader or any staff. Therefore, it is high time to restructure the offices of the Advocate General and the Government Law Officers for making them more accountable and responsible. The same is one of the aims of the State Litigation Policy.

- (ii) The Advocate General, Kerala is not coming under the purview of the term "Government Law Officer." *Since he is a constitutional authority, his position should be above that of Government Law Officers. His precious time shall not be dragged to for conducting routine cases. Government Law Officers are expected to conduct routine cases.* The services of the Advocate General shall be utilized only in very important matters which require interpretation of the Constitution and other important matters which affect the policy of the Government. On the specific request of the Government, the Advocate General shall appear in any case before the High Court or the Apex Tribunal.

The staff structure of the office of the Advocate General shall be constituted as follows for ensuring accountability and efficiency.

The present office of the Advocate General shall be bifurcated into two, viz.

- (A) Office of the Advocate General and the Additional Advocate Generals.
- (B) Office of the Director of Government Law Officers in the High Court.

#### **A. Restructuring the office of the Advocate General**

The office of the Advocate General shall be given independent authority and status apart from Government. The duties, functions and remuneration of the Advocate General may be fully compatible with constitutional provisions. He shall be given a Secretary and other Ministerial Staff for the smooth functioning of the office. Separate budget Head of Account may be allotted to the office of the Advocate General.

#### **15. Guidelines for the effective implementation of the State Litigation Policy**

For the effective implementation of the State Litigation Policy, following guidelines shall be strictly followed by the concerned:—

## 1. Adjournments

(A) Frequent and unnecessary adjournments shall not be resorted to and any infraction to this shall be dealt with seriously.

(B) In fresh litigations where the Government is a defendant or a respondent in the first instance, reasonable adjournment may be sought 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 Law (Nodal) Officer and if necessary to the Head of the Department.

(C) In Appellate Courts, if the paper books are complete, then adjournment must not be sought in routine course. The matter must be dealt with at the first hearing itself. In such cases, adjournment 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.

(D) One of the functions of the Nodal Officers will be to co-ordinate the conduct of litigation. It will also be the responsibility to monitor the progress of litigation particularly to identify cases in which repeated adjournments are resorted to. 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 him to call for reasons for the adjournment. The Head of the Department shall ensure that the records of the case reflect the reasons for the adjournments, if there are repeated adjournments. Serious note will be taken of case of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the Government Law Officers are at fault, action against them may entail suspension/removal of their names from Government panels, termination with or without a bar in future appointment.

(E) Cases in which costs are awarded against the Government as condition of grant of adjournment will be viewed seriously. In all such cases the Head of Department must give a report to the Empowered Committee stating the 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 will be taken against them.

## II. Pleadings/Counter Affidavits

(A) Suits or other proceedings initiated by or on behalf of Government have to be reject with precision and clarity. There shall not be any repetition either in narration of facts or in the grounds.

(B) Appeals will be drafted with particular attention to the Synopsis and list of dates which will carefully crystalise the facts in dispute and the issue involved. Slipshod and loose drafting, will be taken serious note of (Defaulting Government Law Officers may be suspended/removed from the Panels) and further action taken.

(C) It is directed not to file legal opinion in printed format or in a mechanical way. While preparing written statement, counter affidavit, objection, calculation statement and legal opinion they shall take into account the peculiarity of each case and comply with the Government circulars issued from time to time. They are directed to comply with the Government Circular Nos. 22921/B3/2008/Law dated 23-12-2008 and 7812/B3/2009/Law dated 22-6-2009 in this regard.

(D) 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 enquired into by the Nodal Officer and reported to the Head of Department for suitable action.

(E) It is noticed that Government documentation in court is untidy, haphazard and incomplete, full of typing errors and blanks. Special formats for Civil Appeals, Special Leave Petitions, Counter Affidavit etc. will be formulated and circulated by way of Guidance and instruction as Kerala Government Law Officers (Appointment and Conditions of Service) and Conduct of Cases Rules, 1978. This will include not only contents but also the format, design, font size, quality of paper, printing, binding and presentation. It is in the joint responsibility of the Government Law Officer and the officials concerned to ensure compliance.

(F) Counter Affidavit in important cases will not be filed unless the same are shown to and vetted by the Law Officer concerned. This shall, however, not delay the filing of counters.

### III. Filing of Appeals

(A) Appeals shall 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 continuation of such order causes prejudice.

(B) Given that Tribunalisation is meant to remove the load from courts, challenge to orders of tribunals should be an exception and not a matter of routine.

(C) In service matters, no appeals will be filed in cases, where:

(a) the matters pertain to 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 implications.

(D) Further, 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.

(E) Proceedings will be filed challenging orders of Administrative Tribunals only if:

(a) There is a clear error of record and the finding has been entered against the Government.

(b) The judgment of the Tribunals is contrary to a service rule or its interpretation by a High Court or the Supreme Court.

(c) The Judgment would impact the working of the administration in terms of morale of the service.

(d) The judgment will have recurring implications upon other cadres or if the judgment involves huge financial commitment.

(F) Appeal 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 Tribunals 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.
- (G) Appeal 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 not have arrived at that conclusion;
  - (c) Where public finances are adversely affected;
  - (d) Where there is substantial interferences 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.

(H) 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 fair or proper to file an appeal.

#### **IV. Limitation : Delayed Appeals**

(A) It is recognized that food 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. It is recognized that such delays are not always bonafide particularly in cases where high revenue stakes are involved.

(B) 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 Officers shall 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 shall be investigated and if it is found that the delay was not bonafide, appropriate action shall be taken. Action will be such that it operates as a deterrent for unsatisfactory work and malpractice 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 annually, bimonthly or quarterly.

(C) Applications for condonation of delay are presently drafted in routine terms without application of mind. Application shall not be prepared in printed form and in a mechanical way. This practice shall be immediately stopped. It is the responsibility of the Government Law Officer to draft an application for condonation of delay carefully, identifying the areas of delay and identifying the causes with particularity. Drafting advocates who fail to adhere to this may be suspended/removed from the Post.

(D) Every attempt shall be made to reduce delays and ensure its implementations. It shall be the responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.

(E) Belated appeals filed beyond the period of limitation 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 have taken over. The tendency on the part of Government counsel to expect leniency towards Government for condonation of delay must be approached on the premise that every court will be strict with regard to condonation to delay.

#### **V. Alternative Dispute Resolution and Arbitration**

(A) More and more Government Departments and Public Sector Undertakings are resorting to arbitration particularly in matters of drilling contracts, hire of ships, construction of highways, etc. Careful drafting of commercial contracts, including arbitration agreements shall be given utmost priority. The Law Department recognizes that it has a major role to play in this behalf.

(B) The resort to arbitration as an alternative dispute resolution mechanism shall be encouraged at every level, but this entail the responsibility that such an arbitration will be cost effective, efficacious, expeditious, and conducted with high rectitude. In most cases arbitration has become a mirror of court litigation. This practice shall be stopped.

(C) The Head of Department will call for the data of pending arbitrations. Copies of the record of proceedings shall be obtained to find out why arbitrations are delayed and delayed and ascertain who is responsible for adjournments. Government Law Officer found to be conducting arbitrations lethargically and inefficiently shall 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 meeting to assess the status of pending arbitration cases.

(D) 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 habitability which result in prolonged litigation even before the start of arbitration. Care shall be taken whilst drafting an arbitration agreement. It shall 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.

(E) 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 person instead of retired judicial persons.

(F) It is also found that certain persons are "preferred" as arbitrators by certain department or corporations. The Arbitrators shall be chosen solely on the basis of knowledge, skill and integrity and not for extraneous reasons. It shall be ascertained whether the arbitrator will be in a position to devote time for expeditious disposal of the reference.

(G) 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 those objections lack merit and grounds do not fall within the purview of the scope of challenge before the courts. Routine challenge to arbitration awards shall be discouraged. A clear formulation of the reasons to challenge Awards must precede the decision to file proceedings to challenge the Awards.

## VI. Specialized Litigation

### *(A) Proceedings seeking judicial review including in the matter of contracts or tenders*

Such matters shall 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.

*(B) Cases involving vires, statutes, rules and regulations*

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.

*(C) Public Interest Litigations (PIL)*

(i) Public Interest Litigation 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 increase in PILs stem from a perception that there is Government 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 litigations shall be exposed as being not bonafide.

(ii) PILs challenging public contracts shall be seriously defended. If interim orders are passed stopping as such projects then appropriate conditions must be insisted upon for the Petitioners to pay compensation if the PIL is ultimately rejected.

*(D) Public Sector Undertaking Litigation*

(i) 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 C.M.D or M.D. 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 shall be considered. Section 89 of the Code of Civil Procedure shall be resorted to extensively.

**VII. Review of Pending cases**

(A) 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 P.S.U.s.). The office of the Advocate General, Offices of Government Law Officers shall also be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones.

(B) Cases will be grouped and categorized. The practice of grouping shall 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 and to review such cases to identify cases which can be withdrawn. These includes cases which are covered by decisions of Court and cases which are found without merit and such cases shall be withdrawn. This shall be done in a time bound manner.

On the failure to comply with the above guidelines, the Empowered Committee shall report the matter to the authority concerned and recommend remedial action to be taken.

---