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LAW DEPARTMENT

Resolution  
31st March 2011

**Subject :- Regarding Bihar State Litigation Policy, 2011.**

In the light of the recommendations of 13th Finance Commission it is necessary for the State to formulate a State Litigation Policy. In absence of a clear State Litigation Policy and its monitoring system the stand/defence of the Government was not being placed properly and constantly at various stages as a result whereof State Government had to suffer adversity. Some times in cases of similar nature due to different views being placed by the Departments Judgments of the courts varied ultimately giving rise to complicated problems instead of the same being solved and thereby multiplying litigation.

The State Litigation Policy is to minimise the number of cases in the courts and to place the uniform stand of the State Government timely. For this the views of the State Law Commission were sought. To enforce proper State Litigation Policy in the State after high level consideration of the draft/views on litigation policy received from the State Law Commission, The Bihar State Litigation Policy, 2011 has been finally formulated which is as follows:-

#### **BIHAR STATE LITIGATION POLICY, 2011**

##### **I. OBJECTIVE**

- 1.1 In consonance with the National Litigation Policy, the Bihar State Litigation Policy reflects the aim of the State Government to evolve a comprehensive mechanism and effective strategies to bring about a durable improvement in the manner litigation is managed and conducted by the State Government and to transform the State Government into an efficient and responsible litigant.
- 1.1 (a) Efficient litigant means:

- a. Focusing on the core issues involved in the litigation and addressing them squarely.
  - b. Managing and conducting litigation in a cohesive, coordinated and time-bound manner.
  - c. Ensuring that good cases are won and bad cases are not needlessly persevered with.
  - d. 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 case does not have to be won at any cost.
  - e. Recognising that Government is a respondent in a majority of cases, many of which are filed for genuine grievances while others are frivolous. While genuine grievances should be resolved quickly, Government and its advocates should strongly place the government case before the courts in frivolous cases so that such litigants are deterred from misusing the forum of the Courts.
- 1.1 (b) Responsible litigant means:
- a. That litigation will not be resorted to for the sake of litigating.
  - b. That false pleas and hyper-technical points will not be taken and shall be discouraged.
  - c. Ensuring that the correct facts and all relevant documents are placed before the court.
  - d. That nothing shall be suppressed from the court and there will be no attempt to mislead any court or Tribunal.
- 1.2 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 that those in charge of the conduct of Government litigation should never forget these basic principles.
- 1.3 The twin underlying objective of this Policy is to reduce pressure on the overloaded judiciary and expedite dispensation of justice. Litigators for and on behalf of the Government are required to keep in mind the principles incorporated in the National mission for judicial reforms which inevitably would include identification of bottlenecks which the Government and its agencies may be concerned with and promote reduction of or even weeding out unnecessary and avoidable Government cases which would also lead to saving of costs on unproductive Government induced litigation.
- 1.4 This Policy shall apply to any claim and litigation involving the State or its agencies including litigation before Courts, Tribunals, inquiries and in arbitration and other alternative dispute resolution processes.
- 1.5 It shall be mandatory for all Government, State Public Sector Undertaking and Statutory Body personnel who directly or indirectly are associated with litigation, to follow provisions of this Policy.
- 1.6 The Policy shall serve as the main authoritative reference point for all questions of procedure, norm, and interpretation.
- 1.7 The Policy shall have the force of an administrative regulation.

## **II. THE STAKE HOLDERS**

- 2.1 All stake holders will have to play their part in successfully implementing this Policy - the Department of Law, Heads of various Departments, Law Officers and Government Counsels, and individual officers connected with the concerned litigation. The success of this Policy will depend on its strict implementation. Nodal Officers are to be appointed by Heads of Departments for regular monitoring and effective management of Government litigation in the Supreme Court, High Courts and Subordinate Courts, including Tribunals, Inquiries, Arbitration and other alternative dispute resolution processes.

## Explanation:

"Head of Department" for the purposes of this Policy means the administrative person ultimately responsible for the working of the Department, Directorate or Agency, as the case may be."

- 2.2.(a) The Nodal Officer has a crucial and important role to play in the implementation of the Policy. Nodal Officers are to be appointed by the State Government/ Departments as per the procedure to be prescribed for regular monitoring and effective management of government litigation in the Supreme Court, High Court and District Courts. Every Department must be mindful of the responsibility to appoint and post proper full time Nodal Officers. There shall be a separate cadre of such Nodal Officers and the criteria for selection and appointment including the terms and conditions shall be prescribed by the State Government by bringing suitable Rules/ Regulations/ Instructions. While making such appointments care must be taken to see that there is continuity in the incumbents holding office and frequent changes in persons holding the position must be avoided. Nodal Officers must also be given training periodically so that they are in a position to understand what is expected of them under the State Litigation Policy.
- 2.2.(b) A post of Additional Secretary-cum-Additional Legal Remembrancer with supporting office staff will be created in Delhi. Additional LR will be given powers and responsibilities, as prescribed by the Government, for regular and effective management of Government litigation in the Supreme Court as also for payment of fees to Government Counsels, etc.
- 2.3 Accountability is the touchstone of this Policy. This accountability will be at various levels: at the level of (i) officers in charge of litigation, (ii) those responsible for defending cases, (iii) all the lawyers concerned and (iv) Nodal Officers. As part of accountability, there must be critical appreciation of the conduct of cases. Good cases which have been lost must be reviewed and subjected to detailed scrutiny to ascertain responsibility and take action accordingly.
- 2.4 (a) There shall be a State Level Empowered Committee under the Chief Secretary of the State with up to six members, as may be nominated by the Chief Secretary in consultation with the Law Department. The Secretary, Department of Law, shall be the *ex-officio* Member Secretary. The Advocate General of the State shall be a special invitee to all the meetings of the Committee. The said Committee may as required invite any other Department or expert to participate in the deliberations. The Committee shall aim to streamline the litigation and grievance redressal systems. The Committee shall take the required decisions which shall be implemented directly by the concerned Department. However, in cases of decisions involving major policy changes, its recommendations shall be referred to the Government. It shall be the duty of the Committee to identify the major causes of litigation and recommend suitable measures to minimize/reduce litigation. It shall be the responsibility of the Committee to receive and deal with complaints and suggestions and take appropriate measures in connection therewith. It shall enforce accountability at all stages of the litigation process.
- 2.4 (b) There shall be a Department Level Empowered Committee under the Principal Secretary/ Secretary of the Department. The Committee shall monitor and review all litigation concerning the Department every month. The Committee shall have power to take decision in respect of cases with no major administrative ramifications or where financial implications are not very high. In other cases it shall refer the matter to the State Level Committee along with its recommendations.
- 2.4 (c) There shall be a District Level Empowered Committee in each District of the State to be chaired by the District Magistrate of the District concerned and shall include the Public Prosecutor and Government Pleader of the District and consist of the Departmental heads. The Member Secretary of the Committee shall be the Secretary of the District Legal Services Authority. The Committee shall meet at least once a month and shall monitor and

- review all cases in the same manner as the State Level Empowered Committee. The Committee shall receive and deal with complaints and suggestions and take appropriate measures. In matters not within its purview or those requiring policy clarifications, the Committee shall make a reference to the Department Level Empowered Committee.
- 2.4 (d) There shall be a similar committee in each Sub-Division of the State to be chaired by the Sub-Divisional Officer and consist of such members, not exceeding ten in number, to be nominated by the Law Department, to review and monitor all cases at the Sub-Divisional level in the same way as the State Level Empowered Committee. The Committee shall receive and deal with complaints and suggestions and take appropriate measures. In matters not within its purview or those requiring Policy clarifications, the Committee may make a reference to the Department Level Empowered Committee through the District Magistrate.
- 2.4 (e) Effective monitoring of litigation is vital to the proper management of cases. All departments, directorates and agencies and their government advocates in the High Court, District Court, Advocate General's office, Public Prosecutors and Government Pleaders should be computerised with web-enabled management information systems to track cases and their progress. Currently, the Government of Bihar is implementing a web-enabled Integrated Workflow and Document Management System which also has a court case module.

### **III. GOVERNMENT REPRESENTATION**

- 3.1 While it is recognized that appointments to Government Panels are a broadbased opportunity for a cross section of lawyers, it cannot be a vehicle for sustaining incompetent and inefficient persons. Persons who recommend names for inclusion on the Panel are requested to be careful in making such recommendations and to take care to check the credentials of those recommended with particular reference to legal knowledge and integrity.
- 3.2 Screening Committees for constitution of Panels for appointment of the Law Officers in the Supreme Court and High Court will be introduced to assess the skills and capabilities of people who are desirous of being on Government Panels before their inclusion on the panel. The Screening Committee will include the Law Minister as Chairman of the Screening Committee, with the Advocate General and Law Secretary as members. Similarly a Screening Committee will be constituted for appointment of Government Pleaders and Public Prosecutors including Additional Government Pleader and Additional Public Prosecutor in the District as per the procedure laid down in the relevant law, i.e., Practice and Procedure (P.P.) Manual and Cr.P.C. The Screening Committees will make their recommendations to the Law Department.
- 3.3 Government Lawyers must be well equipped and provided with adequate infrastructure. Efforts will be made to provide the agencies which conduct Government litigation with modern technology such as computers, internet links, etc. Common research facilities must be made available for Government lawyers as well as equipment for producing compilations of cases.
- 3.4 Training programs, seminars, workshops and refresher courses for Government Lawyers must be encouraged. There must be continuing legal education for Government Lawyers with particular emphasis on identifying and improving areas of specialization. Law schools will be associated in preparing special courses for training of Government Lawyers with particular emphasis on identifying and improving areas of specialization. Most importantly, there must be an effort to cultivate and instil values required for effective Government representation.
- 3.5 Government Lawyers must play a meaningful role in Government litigation. They cannot continue to be merely responsible for filing appearances in Court. A system of motivation has to be worked out for them under which initiative and hard work will be recognized and extraordinary work will be rewarded.

- 3.6 It will be the responsibility of the Law Department to train Government Lawyers and to explain to them what is expected of them in the discharge of their functions.
- 3.7 Panels will be drawn up from amongst willing, energetic and competent lawyers to develop special skills in drafting pleadings on behalf of Government. Such Panels shall be flexible. More and more advocates must be encouraged to get on to such Panels by demonstrating keenness, knowledge and interest.
- 3.8 Incomplete briefs are frequently given to Government Lawyers. This must be rectified. It is the responsibility of the person in charge of the Department/ Agency concerned to ensure that proper records are kept of cases filed and that copies retained by the Department/ Agency are complete and tally with what has been filed in Court. If any Department or Agency has a complaint in this regard it can complain to the Empowered Committee concerned.
- 3.9 There should be, as far as practicable, equitable distribution of briefs so that there will be broad based representation of Government. Complaints that certain Government Lawyers are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee concerned.
- 3.10 Government lawyers are expected to discharge their obligations with a sense of responsibility towards the court as well as to the Government.
- 3.11 While the Government cannot pay fees which private litigants are in a position to pay, the fees payable to Government Lawyers and their Juniors will be suitably revised to make it remunerative. Optimum utilization of available resources and elimination of wastage will itself provide for adequate resources for revision of fees. It should be ensured that the fees stipulated as per the Schedule of Fees should be paid within a reasonable time preferably through electronic transfers. Malpractice in relation to release of payments must be eliminated.

#### IV. PREVENTION/CONTROL OF AVOIDABLE LITIGATION

##### A

#### 4.A Setting up Grievance Redressal System

- 4.A(1). Very often the major causes of litigation involving the State Government are from arbitrariness in decision making or non application of mind or non-response/ improper response to representations made by employees, including retired employees/ parties. It is seen that in most cases in respect of service matters the cause of action arises out of relief not being given as per the Rules, Government instructions or policy decisions as are in force. It is also seen that in most cases before the matter reaches the Court the affected party undeservedly spends a lot of his time and effort over redressal of his grievance through normal administrative channels. In this situation all Departments of the State Government shall set up effective Grievance Redressal Committees in order to pre-empt a large number of avoidable litigation.
- 4.A(2). It shall be mandatory for employees, including those retired, to seek redressal, at the first instance, through this system before approaching the Courts.
- 4.A(3). A time limit of eight weeks or so may be fixed for deciding such representations.
- 4.A(4). Such Grievance Redressal Committees shall be set up in each Department at the State Level, District Level and Sub-Divisional Level and each of them shall have a Grievance Cell. All cases and issues at the request of the aggrieved party shall be reviewed to redress genuine grievances.
4. A(5) The Department Level Grievance Committee shall be headed by the Principal Secretary/ Secretary of the Department concerned and shall meet once a month to review the efficiency of the Grievance Redressal System in the Department. Similarly at the District and Sub-Divisional Level, the Committee shall be headed by the District Magistrate or Sub Divisional Officer, as the case may be. The District Sub Divisional Level Grievance Redressal Committees shall meet once every month on the first Tuesday of each month;

if this is a holiday, the Committee will meet on the next working day excluding "Janata ka Darbar" days, i.e., Mondays and Thursdays. Where it is found that certain Government instructions require to be reviewed, it shall refer the same to the State Level Empowered Committee. As seniority matters are a major source of litigation these shall be resolved expeditiously by the Department and seniority lists should be updated, printed and published regularly.

## B

### **4.B. Quick Action on Representations/ Legal Notices**

- 4.B(1). A legal notice is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Nowadays such notices have become a formality. When such a legal notice is served upon any Department asking for the relief the same should be decided expeditiously in accordance with the prevalent Rules/ Instructions and by a detailed speaking order. Timely response would avoid waste of public money and promote expeditious work in Court in cases which deserve to be attended to.
- 4.B(2). While passing orders in original jurisdiction or in appeals in respect of disciplinary proceedings a detailed speaking order should be passed. It is the bounden duty of the enquiry officer to follow all the prescribed procedures for conducting the enquiry so that no lapse occurs in the procedural parts and orders are not set aside on that ground and the matter is remanded back for fresh decision. Officers should be trained periodically in these aspects.
- 4.B(3). While deciding cases relating to seniority of employees, the decision should be taken promptly and strictly in accordance with the Rules so that the interest of the employees is not jeopardized due to a delayed decision.

## C

### **4.C. Covered Matters**

- 4.C(1). A good number of cases are from the category of similar cases. Each Government Department will aim to consider and settle the claim of the representationist/ applicant-employee/ citizen, if the claim is found covered by any decision of the Court. Many service matters of this nature, can be disposed of at the level of the Department itself without compelling the litigant to come to the Court. In this manner, the Government Departments would be acting as efficient litigants.

## D

### **4.D. ADJOURNMENTS**

- 4.D(1). Unnecessary and frequent adjournments should be avoided or else they will be frowned upon and infractions dealt with seriously. The Registrar General may be requested to incorporate a provision in the High Court Rules that individual notices be issued and served to each respondent so that the notices are received quickly thereby enabling the respondent concerned to respond in time and effectively to litigation in the High Court. The Government Lawyers should also point out mis-joinder or non-joinder of parties so that officials not connected with the matter are not harassed unnecessarily.
- 4.D(2). In fresh litigation where the Government is a Defendant or a Respondent in the first instance, a reasonable adjournment may be applied for, for obtaining instructions. However, it must be ensured that such instructions are made available and communicated before the next date of hearing. Where instructions are not forthcoming, the matter must be reported to the Nodal Officer and, if necessary, to the Head of the Department concerned.
- 4.D(3). In Appellate Courts, if the paper books are complete, then unnecessary adjournments must not be sought in a routine manner. 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 which instructions are required to be obtained.
- 4.D(4). One of the functions of the Nodal Officers will be to coordinate the conduct of litigation. It will also be their responsibility to monitor the progress of litigation, particularly to identify cases in which repeated adjournments are taken for instructions or filing reply. It will be the responsibility of the Nodal Officers to report such cases of repeated and unjustified adjournments to the Heads of Departments and it shall be open to him to call for reasons for such adjournments. The Head of Department or Agency shall ensure that the Records of the case reflect reasons for adjournments, if these are repeated adjournments. Serious note will be taken of cases of negligence or default of the respondent concerned and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the advocates are at fault for taking unnecessary adjournments action against them may entail suspension/ removal of their names from the Panel.
- 4.D(5). Cases in which costs are awarded against the Government as a condition for grant of adjournment will be viewed very seriously. In all such cases the Head of Department must give a report to the Empowered Committee on 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 must be taken against them.

#### **V. PLEADINGS/ COUNTERS**

- 5.1. In view of the large number of cases in the High Court in which replies have not been filed by the Government as respondent, the High Court Registry and the Advocate General's office may be requested for a complete, department-wise list of such cases. These lists should be acted upon, reviewed in the department level empowered committees and compared periodically with the lists in the High Court Registry and the Advocate General's office.
- 5.2. Suits or other proceedings initiated by or on behalf of the Government have to be drafted with precision and clarity. There should be no repetition either in narration of facts or in the grounds.
- 5.3. Appeals will be drafted with particular attention to the Synopsis and List of Dates which will carefully crystallise the facts in dispute and the issues involved. The drafting of Memo of Appeal, petition etc. should be done carefully and full particulars should be given
- 5.4. Full 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.
- 5.5. 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 Affidavits will be formulated and circulated by way of guidance and instruction as a Government Advocates Manual, and will include not only contents but also the format, and presentation. It is the joint responsibility of the Drafting Counsel to ensure compliance.
- 5.6. Counter Affidavits in important cases will not be filed unless the same are shown to and vetted by Law Officers. This should, however, not delay the filing of counters.
- 5.7. Counter Affidavits shall be signed and filed by officers not below the rank of Under Secretary. The High Court may be requested to accept oath in District for filing pleadings, counter, show cause, etc. in High Court to speed up the process.
- 5.8. Where separate replies or submissions are filed on behalf of Government respondents, it shall be incumbent upon the Nodal Officer of the Department concerned to see that there is no conflict or contradiction amongst such replies/ submissions.

### VI. FILING OF APPEALS

- 6.1 Appeals will not be filed against *ex parte ad interim* orders. Attempt must first be to have the order vacated. An appeal must be filed against an order only if the order is not vacated and the continuation of such order causes prejudice especially in matters of vital public importance.
- 6.2 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.
- 6.3 Given that Tribunals are meant to remove the loads from Courts, challenge to orders of Tribunals should be an exception and not a matter of routine.
- 6.4 In Service Matters, appeals will generally not be filed in cases where:
- (i) The matter pertains to an individual grievance without any major repercussion;
  - (ii) The matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.
- 6.5 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.
- 6.6 Proceedings will be filed challenging orders of Administrative Tribunals only if:
- (i) There is a clear error of record and the finding has been recorded against the Government.
  - (ii) The judgment of the Tribunal is contrary to a service rule or its interpretation by a High Court or the Supreme Court.
  - (iii) The judgment would impact the working of the administration in terms of morale of the service, or there are adverse observations or strictures which may not be justified; or
  - (iv) If the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.
- 6.7 Appeals in Revenue matters will not be filed:
- (i) If the stakes are not high and are less than that amount to be fixed by the Revenue Authorities. This has already been done for Land Acquisition cases;
  - (ii) If the matter is covered by a series of judgments of the Tribunal or of the High Courts which have held the field and which have not been challenged in the Supreme Court;
  - (iii) Where the assessee has acted in accordance with long standing industry practice;
  - (iv) Merely because of change of opinion on the part of jurisdictional officers.
- 6.8 Appeals will not be filed in the Supreme Court unless:
- (i) The case involves a substantial question of law;
  - (ii) 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;
  - (iii) Where public finances are adversely affected;
  - (iv) Where there is substantial interference with public justice;
  - (v) Where there is a question of law arising under the Constitution;
  - (vi) Where the High Court has exceeded its jurisdiction;
  - (vii) Where the High Court has struck down a statutory provision as *ultra vires*;
  - (viii) Where the interpretation of the High Court is plainly erroneous.
- 6.9. In each case, there will be proper and quick certification of the need to file an appeal. Such certification will contain brief but cogent reasons in support thereof. At the same time, reasons will also have to be recorded as to why it was not considered fit or proper to file an appeal.
- 6.10. The offices of the Advocate General and Legal Remembrance, while giving their opinion for filing appeal/ further appeal shall mention the substantial question of law involved in the cases. Generally appeals before the High Court or Supreme Court lie only where substantial question of law is involved and not on facts.



**VII. LIMITATION: TIMELY FILING OF APPEALS**

- 7.1 It is recognized that good cases are being lost because appeals are filed well beyond the period of limitation and without any proper explanation for the delay or without a proper application for condonation of delay. It is recognized that such delays are not always *bona fide* particularly in cases where high revenue stakes are involved.
- 7.2 The Law Department in consultation with the Advocate General will devise a procedure to ensure that copies of judgments are obtained quickly by the administrative department which will then speedily take a view on whether an appeal is to be filed. In cases where the administrative department feels an appeal should be filed, the department should make a proper reference with its opinion and the grounds for filing the appeal. Nodal officers and government advocates should track orders and judgments from court websites wherever available.
- 7.3 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 must submit a report in every individual case to the Head of Department explaining all the reasons for such delay and indentifying the persons/ causes responsible. Every such case will be investigated and if it is found that the delay was not *bona fide*, appropriate action must be taken. Action will be such that it operates as a deterrent for unsatisfactory work and malpractices in the conduct of Government litigation. For this purpose, obtaining the data and fixing responsibility will play a vital role.
- 7.4 Applications for condonation of delay are often drafted in a routine manner without application of mind. This practice must immediately stop. It is responsibility of the Drafting Counsels to carefully draft an application for condonation of delay, identifying the areas of delay and indentifying the causes with particularity.
- 7.5 Every attempt must be made to reduce delays in filing appeals/ applications. It shall be the responsibility of each Head of Department to work out an appropriate system for elimination of delays and ensure its implementation.

**VIII. ALTERNATIVE DISPUTE RESOLUTION (ARBITRATION)**

- 8.1 More and more Government Departments and PSUs 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 must be given utmost priority.
- 8.2 The resort to arbitration as an alternative dispute resolution mechanism must be encouraged at every level, but this entails 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 must be stopped.
- 8.3 Arbitrations are needlessly dragged on for various reasons. One of them is by repeatedly seeking adjournments. This practice must be deplored and stopped.
- 8.4 The Head of Department will call for the data of pending arbitrations. Copies of record of proceedings must be obtained to find out why arbitrations are delayed and ascertain who is responsible for adjournments. Advocates found to be conducting arbitrations lethargically and inefficiently must not only be removed from the conduct of such cases but also not engaged in future arbitrations. It shall be the responsibility of the Head of Department to call for regular review meetings to assess the status of pending arbitration cases.
- 8.5 Lack of precision in drafting arbitration agreements is a major cause of delay in arbitration proceedings. This leads to disputes about appointment of Arbitrators and arbitrability which results in prolonged litigation even before the start of arbitration. Care must be taken whilst drafting an arbitration agreement. It must correctly and clearly reflect the intention of the parties. Where certain items are required to be left to the decision of experts, such as engineers, such matters should not be referred to arbitration.

- 8.6 Arbitration agreements are loosely and carelessly drafted when it comes to appointment of Arbitrators. Arbitration agreements must reflect a well defined procedure for appointment of Arbitrators. Sole Arbitrator may be preferred over a Panel of three Arbitrators. In technical matters, reference may be made to trained technical persons instead of retired judicial persons.
- 8.7 It is also found that certain persons are "preferred" as Arbitrators by certain Departments or Corporations. The Arbitrator must be chosen solely on the basis of knowledge, skill and integrity and not for extraneous reasons. It must be ascertained whether the Arbitrator will be in a position to devote time for expeditious disposal of the reference.
- 8.8 It is often found that if an arbitration award goes against Government it is almost invariably challenged by way of objections filed in the arbitration. 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.

#### **IX. SPECIALISED LITIGATION**

- 9.1 Proceedings seeking judicial review including in award of contracts or tenders should be defended keeping in mind constitutional imperatives and good governance. If the proceedings are founded on an allegation of the breach of natural justice and 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 should be disposed of as expeditiously as possible.
- 9.2 In cases involving vires, statutes or rules and regulations, proper affidavits should be filed explaining the rationale behind the statute or regulation and also making appropriate averments with regard to legislative competence.

#### **X. PUBLIC INTEREST LITIGATION (PIL)**

- 10.1 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 the increase in PILs stems from a perception that there is governmental inaction. This perception must be changed. It must be recognized that several PILs are filed for collateral reasons including publicity and at the instance of third parties. Such litigation must be exposed as being not *bona fide*.
- 10.2 PILs challenging public contracts must be defended seriously. If interim orders are passed stopping such projects then appropriate conditions must be insisted upon for the Petitioners to pay compensation if the PIL is ultimately rejected.
- 10.3 Several PILs are filed because of the failure of the authority concerned to perform its duty or complaints of wrongdoing in Government schemes such as MGNREGS, IAY, etc. Effective functioning of the departmental redressal system would reduce such cases.

#### **XI. P.S.U. LITIGATION**

- 11.1 Litigation between Public Sector Undertakings *inter se* between Government Public Sector Undertakings is causing great concern. All efforts should be made to prevent such litigation. Before initiating such litigation, the matter should be placed before the highest authority in the Public Sector. It will be his responsibility to endeavour to see whether the litigation can be avoided. If litigation cannot be avoided, the matter should be referred first to the High Level Committee under the Chief Secretary for resolving the dispute or permitting litigation. Only then should resort be taken to alternative dispute resolution methods. Section 89 of the Code of Civil Procedure must be resorted to extensively.
- 11.2 Public Sector Undertakings, Board, Corporation should also constitute a Screening Committee under the Chairmanship of the Organisation's Head for selection and appointment of its lawyers. The said committee will assess the skills and capabilities of such counsels who are inducted in the panel. The said committee should also fix the maximum number of the lawyers to be inducted in the panel. The Government will prescribe a transparent selection process and appointment.

**XI. MANAGEMENT OF LITIGATION****A**

- 11.A.(1) Each Department of the State Government and its Agencies shall have a full time Nodal Officer with legal background and expertise, who shall be appointed in accordance with the prescribed Rules/ Regulations/ Instructions to be prescribed by the State Government. The Nodal Officers are to be appointed on need-based basis for regular monitoring and effective management of Government litigation in the Supreme Court, High Court and Subordinate Courts.
- 11.A.(2) The role and responsibility of the Nodal Officers would be to:
- (a). ensure collection of all the relevant data regarding the litigation against the said department and placing the same before the Law Department in a cohesive and coordinated manner.
  - (b). monitor the progress of litigation, particularly to identify the cases in which repeated adjournments are taken, and to apprise the Head of the Department about the repeated and unjustified adjournments.
  - (c). constant monitoring of cases particularly to examine whether they have been delayed unnecessarily.
  - (d). any other functions which may be prescribed for effective management of Government litigation.
- 11.A.(3) A separate cadre of the Bihar Law Service comprising of Deputy Law Officer, Additional Law Officer and Law Officer, respectively, should be created by framing Bihar Law Officers (Recruitment and Conditions of Service) Rules. The Deputy Law Officers will function as Nodal Officers at the District level and State level respectively.
- 11.A.(4) As the Nodal Officers would be in a position to proactively manage litigation they must also participate in training and workshops periodically so that they are in a position to understand what is expected of them under the State Litigation Policy.
- 11.A.(5) There must be critical appreciation of conduct and monitoring of the litigation by the Nodal Officers. In case they are found to have acted in detriment to the interest of the State and the litigation, suitable action, including their removal, would be taken against them after fixing responsibility.

**B****BEFORE SUPREME COURT/ HIGH COURT**

- 11.B.(1) Any litigation at the national level shall be directly under the control and monitoring of the Advocate General. A Legal Cell should be created in Delhi for looking after the litigation before the Supreme Court and other statutory authorities at the national level. This Cell will function under the guidance of the Advocate General and administrative control of the Additional Secretary-cum-Additional Legal Remembrancer to be posted there as provided above.
- 11.B.(2) So far as control and monitoring of litigation in the High Court, the prevalent system shall be improved by adding a computerised MIS. However, selection of Panel Counsels should be work-capability oriented. The Nodal Officers for the High Court will be required to coordinate between the Law Officers and the Departments concerned.

**C****BEFORE DISTRICT COURT**

- 11.C(1) The State Government at the District Level litigation is a party mainly in criminal cases. There is need to streamline the system of defence of cases, production of records, evidence, witnesses etc. as also the need to monitor availability of official witnesses. It shall be the duty of the Nodal Officers appointed at the District Level and State Level to monitor availability of witnesses, specially official witnesses. If for any inevitable reason presence of witnesses cannot be secured, intimation must be given in

advance to the Court concerned and the revised date should immediately be intimated to the persons concerned.

11. C.(2) Judgment in criminal cases with comments or recommendations of the Public Prosecutor along with a copy of the judgment shall be submitted to the District Magistrate and Superintendent of Police for decision regarding filling of Appeals.
11. C.(3) Similar steps should be taken in respect of Civil Cases where the State Government is a party. However, in such matters the comments or recommendations of the Government Pleader along with a copy of the judgment shall be sent to the District Magistrate who shall be competent to take a decision in respect of filling of Appeals.

## **XII. REVIEW OF PENDING CASES**

12. All pending cases involving Government will be reviewed within a fixed time frame of preferably six months. This "Due Diligence Process" shall involve drawing upon statistics of all pending matters which shall be provided for by all Government Departments (including PSUs). The IWDMS or some similar computerised MIS should be used for this. The Office of the Advocate General and the Government Advocate as well as the Public Prosecutor and Government Pleaders of each district shall also be responsible for reviewing all pending cases and filtering frivolous and vexatious matters from the meritorious ones within the same time frame.

## **XIII Misc.**

13. The Legal Remembrancer Rules and the P.P. Manual should be updated by bringing suitable additions, substitutions and amendments. These Rules should be comprehensive, laying down the procedures for selection of Government Counsels for conducting cases before the Supreme Court, High Court, Tribunals, Board of Revenue, Authorities and Other Government Counsels including the Public Prosecutors, Government Pleaders in the District Courts as well as Additional Public Prosecutors and Additional Government Pleaders. Similarly their duties, numbers, etc. may be prescribed therein.
14. The Legislative Wing under the administrative control of the Legal Remembrancer should be strengthened by appointing persons having core competence and domain expertise in legislative drafting and areas of specialization. Such incumbents should be well equipped and provided with adequate infrastructure. The appointment of such persons may be made on regular basis or on deputation or on contract basis and may include retired personnel. The mode of selection, appointment and other service conditions may be prescribed by framing suitable Rules.
- It shall come into force at once.

**Order:-** Ordered that the copy of this resolution be published in the extra ordinary Bihar Gazatte.

By the order of the Governor of Bihar,  
**RAJENDRA KUMAR MISHRA,**  
*Secretary to the Government.*

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