

**GOVERNMENT OF ANDHRA PRADESH**

**ABSTRACT**

**Court Cases** – Reduction of pendency – Guidelines to handle the court cases - Fixing the Responsibility for ineffective representation in courts -Orders - Issued.

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**PANCHAYAT RAJ AND RURAL DEVELOPMENT (Mandal.I) DEPARTMENT**

G.O.MS.No. 143

Dated:15.11.2014

Read the following:-

1. Govt Memo No. 7599/LSP/RL/L1/455/2000 dated 2.11.2000
2. G.O.Rt.No. 1646 Law (L) Dept Dated: 20.09.2012

**ORDER:**

There has been a steady rise in the number of court cases in Panchayat Raj Department. The easy approach of competent authorities “Let the court decide,” without any accountability have serious consequences on the administration. Normally, the cases are filed before courts, whenever the competent authority fails to discharge its duties according to the provisions of Acts and Rules or Petitioners may misrepresent the facts and provisions of rules to get undue advantage. The nature of each case in service matters range from charges framed and consequential denial of promotions, seniority issues, relaxation of service qualifications and regularization of services in different categories. In Panchayat Raj Institutions, the issues relate to levy of taxes, usufructs rights, site disputes for infrastructure constructions under different Schemes and election related disputes.

2. Government felt that a prompt and adequate response with the required reasons to the representations and legal notices received by the offices concerned will relieve the Government and its instrumentalities from defending avoidable litigation resulting in saving of valuable time of the Courts, functionaries of Government and funds of the public exchequer.

3. It is also noticed that the competent authority fails to exercise their jurisdiction as per the existing rules and regulations and also submits the proposals to higher authorities without any justification. While preparing the para-wise remarks instead of rejecting the unjustified pleas of the applicants, they simply mentioned in the counter affidavits that the proposal is pending with the Government and in fact most of the instances, these cases are not at all pending with Government. This tendency needs to be corrected with all seriousness and should be construed that they purposefully mention these irresponsible statements in counter affidavits to do undue favour to the applicants/ petitioners by suppressing the facts. In certain situations, the cases are disposed off without availing its option of effective representation before the Court by the competent authority. The lack of timely and appropriate response results in the cases disposed off *ex parte*; to the disadvantage of Government and local bodies.

4. The competent authorities should either implement the judgments of the Court or file an appeal petition in Higher Courts, if it is not acceptable to them. But they should not keep quiet on the pretext that its implementation will be in violation of rules or Government is alone competent authority to implement such orders. Sometimes the department is caught totally unaware till they get contempt notice. In some cases, personal appearance of higher officials is being ordered by the Courts. One of the important reasons for the pendency of court cases is the fact that timelines are not adhered to at various stages of court cases. There is also lack of effective coordination and monitoring system to deal with in an effective manner.

## **5. CAUSES OF PENDENCY:**

The major reasons for pendency which are identified as follows:

- a) Late receipt of petitioner's affidavit from the Court/Tribunal;
- b) Late submission of draft para-wise remarks to the Government Pleader by the main respondent and also not enclosing the supporting documents and material along with draft para-wise remarks;
- c) Delay in approving the para-wise remarks by the Government Pleader (GP) and prepare draft Counter Affidavit;
- d) The Competent authority is not able to devote enough time and attention to the details of case;
- e) Lower level staff being not fully competent in preparing para-wise remarks;
- f) Delays if Government Pleader office if approved and filing of counter affidavit;

## **6. GUIDELINES IN HANDLING THE COURT CASES:**

Government after careful examination of the entire issue, hereby direct that to follow the guidelines issued hereunder in order to handle the court cases effectively and to minimize the litigation in the department.

### **A. FILING THE COUNTERS WITHIN THE STIPULATED TIME:**

Most of the cases, Government is made first Respondent even though the matter is exclusively related to a particular Panchyat Raj Institution or other offices on a routine manner. Hence the officer concerned should see whether the petitioner challenged the Govt Order or orders of subordinate offices or Institutions.

If the government policy or direction is challenged, the officer concerned should submit his proposal explaining the factual information relating to the case to the Government so as to enable the Government to file the counter in the case.

If the orders of the Panchayat Raj Institutions or other office under the control of this department are challenged, then the respective office should file counter affidavit on behalf of the Government also without waiting instructions from the Government.

### **B. PREPARING PARAWISE REMARKS/ DRAFT COUNTERS:**

While preparing the draft counters the following points should be checked to ensure filing proper counter affidavit in the case:

- i. Check whether the WP/OA was filed within the limitation period as per the relevant rules prescribed by the High Court/Administrative Tribunal;
- ii. Check whether the doctrine of Res judicata i.e. whether the applicant has challenged the same identical issues before any court of law, applies in a given case;
- iii. Check whether the applicant availed of all the remedies available to him under the relevant Service Rules as to redressal of grievances. If not, mention the same in the counter affidavit that the petitioner/applicant has violated the A.P. C.S.(Conduct Rules) 1964;

- iv. Check whether the para-wise remarks are expressed in brevity and precise without repetition and prolonging with unnecessary things;
- v. Check whether the para-wise remarks focused on the core issues involved in the litigation and address them squarely;
- vi. Check when the prayer made by applicant is not in accordance with the rules; oppose unjustified prayer in draft counter affidavit duly explaining the rule position/relevant statute instead of giving routine reply that “the proposal is pending with Government”.
- vii. Each averment made by the petitioner/applicant should be traversed with reference to the provisions of the Statute, Rules, Regulations made there under;
- viii. Check whether the settled law is quoted in the draft counter wherever necessary;
- ix. Check whether all the support documents are enclosed along with the draft counter affidavit, before sending to concerned GP;

**C. STEPS FOR AVOIDING CONTEMPT PROCEEDINGS:**

- i. On receipt of the final judgment or interim orders, the competent authority shall examine the facts and circumstances of the case, the likely effects of the judgment and also its implication in future and take a view as to whether it would be appropriate to implement the order or file a review against the order.
- ii. Take all necessary steps to implement the same if it can be implemented as per rules within the time, as directed in the order;
- iii. Seek extension of time, before expiry of the time limit ordered, for implementation in cases where it can be implemented, but the time allowed is not sufficient;
- iv. Obtain clarification from the Law Officers or by filing a suitable petition for clarification before the appropriate forum wherever necessary, in cases of doubt, in consultation with the concerned Law Officers;
- v. File Vacate Stay Petition, whenever considered necessary along with the counter as expeditiously as possible;
- vi. File a review in appropriate cases where either mistake of fact or mistake of law is noticed within 30 days;
- vii. File an appeal wherever necessary before the appellate forum along with prayer for stay / suspension / modification of the order appealed against within 90 days;

**D. FILING COUNTERS BY GOVT. PLEADERS/STANDING COUNSELS:**

- i. The Government Pleaders/Standing Counsels should prepare draft counter based on the para-wise remarks submitted by the respective office within two weeks and return it to the concerned for approval and submitting fair counter. Government Pleaders are fully responsible for approval of draft affidavits within the above time frame;

- ii. Soon after receipt of the fair counter affidavit from the respective offices, the Government Pleader/Standing Counsel should check the fair counter and file it in the court immediately. Necessary action will be initiated against the defaulting Govt. Pleaders/Standing Counsels through Law Department.
- iii. In accordance with the Govt Memo 1<sup>st</sup> read above, it is the primary duty of the Government Pleader to apply to the court on the very date of delivery of judgment for a copy of the judgment and to forward such copy to the Government without delay in every cases conducted by him in which the decision is adverse to the Government. While forwarding a copy of the judgment he shall inform the date before which further action, if any, should be taken and offer his views as to the advisability of appealing against the adverse judgment of the court to safeguard the interest of the Government.

#### **E. REVIEW OF PENDING CASES:**

- i) All court cases shall be monitored with the help of OLCMS computer package developed by the Centre for Good Governance;
- ii) At the District level, the court cases shall be reviewed in the 1<sup>st</sup> week of every month in the offices of Chief Executive Officer of ZPP, Superintendent Engineers, Panchayat Raj Engineering and Rural Water Supply Departments and District Panchayat Officer. While conducting review, the Cases shall be grouped and categorized such as ACB cases, service matters, V&E cases, site disputes for infrastructure constructions, levy of taxes, usufructs rights, Cases filed by contractors, etc.,. The CPR&RE and ENC (PR) and RWS&S should evolve suitable standard formats in this regard to facilitate the review;
- iii) The review should also be focused to identify areas of litigation and find out reasons why do we get more number of court cases on particular issue and find out remedial measures to reduce the litigation in the department;
- iv) The best approach in addressing the pendency of court cases especially on service matters is the competent authority directly interact with aggrieved persons and ensure effective dispensation of grievances and disputes at their level by properly interpreting the existing rules and regulations instead of referring every small matters to the Government;
- v) It will be the responsibility of reviewing authority to see whether the litigation can be avoided. If litigation cannot be avoided, then alternative dispute resolution methods like mediation must be considered. Section 89 of the Code of Civil Procedure must be resorted to extensively.
- vi) After considering the above aspects, the district heads should send the list of court cases to the respective Heads of Department in the second week of every month with their specific remarks on the pendency of cases;
- vii) The Heads of Department should review the cases and furnish the list of all pending cases in the third week of every month along

with their specific recommendations on policy initiatives, if any required to reduce the litigation on specific issues;

**F. ACCOUNTABILITY OF THE OFFICERS/STAFF CONCERNED:**

Accountability of competent authority is the touch-stone in handling the court cases. Accountability will be at various levels especially at the level of officers in charge of litigation, those responsible for defending cases.

- i. The officer who is responsible for litigation, failed to settle the issue in the normal course must be identified and suitable disciplinary action should be initiated against the concerned for not discharging his/her responsibility;
- ii. The Officer/staff concerned who fails to take proper action on the court direction leading to contempt proceedings or fails to follow the above guidelines should be identified and disciplinary action should be initiated against them. Complacency must be eliminated in handling the court cases.

**G. TRAINING TO ALL OFFICERS ON COURT MATTERS:**

All the officers who are handling the court cases in Panchayat Raj Department, Panchayat Raj Engineering Department and Rural Water Supply & Sanitation Department shall be trained to handle the legal cases in an effective manner. The Commissioner, AMR-APARD is requested to prepare suitable training module to train the staff and officers in the department.

The Commissioner, Panchayat Raj and Rural Employment, Engineer-in-Chiefs of Panchayat Raj Engineering and Rural Water Supply & Sanitation Departments are requested to take necessary action to follow the above guidelines.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**DR.K.S.JAWAHAR REDDY  
SECRETARY TO GOVERNMENT (PR)**

To  
The Commissioner, Panchayat Raj and Rural Employment, A.P. Himayatnagar,  
Hyderabad  
The Engineer-in-Chief, Panchayat Raj Engineering Department, A.P,  
Hyderabad.  
The Engineer-in-Chief, Rural Water Supply & Sanitation Department, A.P.  
Hyderabad  
The Commissioner, AMR-A.P. Academy of Rural Development, Rajendranagar,  
Hyderabad.  
Government Pleaders for Panchayat Raj Department (AP), APAT, Hyderabad.  
Government Pleaders for Panchayat Raj Department (AP), High Court,  
Hyderabad.  
All Standing Counsels of Panchayat Raj Institutions in High Court/APAT (AP),  
Hyderabad.

**Copy to**

Office of Advocate General(A.P.), High Court, Hyderabad  
All Chief Executive Officers of ZPP in the state  
All Superintending Engineers of PR Engineering Department  
All Superintending Engineers of Rural Water Supply & Sanitation Department  
All District Panchayat Officers in the state  
Law Department.  
SC/SF

**//FORWARDED::BY ORDER//**

**SECTION OFFICER**