

EFFECTIVE HANDLING OF STATE
LITIGATION
AT
C.A.T AND COURTS

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INTRODUCTION :

Indian Judiciary is burdened with heavy load of cases and laws delays-mounting

meager population of judges –a major cause

Other contributory factors :

The STATE –a major litigant in Courts and Tribunals

Failure to minimize the litigation by preventive actions and to reduce the pending cases

Failure to file answers and documents in time

Avoiding unnecessary adjournments

Luke –warm attitude to adopt ADR methods

The National Litigation Policy – 2010

The Central Govt. adopted the National Litigation Policy to reduce pendency and to prevent delays. Recommendations were sent to State Govts. to adopt similar methods.

Surprisingly, those resolutions were confined to files till the end of 2014.

Recently some activity is undertaken to give life. If implemented sincerely – positive results flow

Due reference will be made about them at the appropriate stages.

ROLE OF ADMINISTRATIVE OFFICIALS :

A Legal Legend and Former Judge of Supreme Court Sri Justice Krishna Ayer commented that if officers at the helm of affairs are aware of administrative law and observe basic principles of natural justice, birth of many babies of litigation can be avoided.

Experience tells that invariably office notes generated from grass root level are accepted. Desirable to train the personal who play prominent role in preparing the office notes. They have to digest and follow the N.L.P. and principles governing legal scrutiny while preparing the office notes.

This obviates many maladies in State litigation.

Judicial Scrutiny of Administrative Action

It is limited. Tested on the Touch- Stone of :

(A) Principles of Natural Justice are followed or not?

I.E. (1) FAIR HEARING (2) FAIR ACTION

(B) Action is vitiated by Arbitrary approach or not

(C) Discriminatory or not

(D) Jurisdiction

(E) Violation of Fundamental Rights

(F) Mandatory procedure is followed or not and if not, it caused prejudice or not

(G) Law on the subject is followed or not

If the Actions stand for the legal scrutiny stated supra, they are unassailable.

PREVENTIVE MEASURES

- Pre litigation stage : Public grievances have to be attended promptly to prevent litigation.
- Principles of natural justice to be observed while attending the grievances ,be it from public or service related issues.
- “Let the court take a decision” shall be avoided.
- Explore the possibility for amicable settlement by ADR systems, and to avoid unnecessary, costly and time consuming litigation .

Public Servants Handling GOVT. Litigation

Posses the Following :

- 1) Independent Stance and Fairness
- 2) Thorough knowledge of facts
- 3) Provisions of Law on the Subject and procedure prescribed
- 4) Knowledge about Hierarchy of Courts and their jurisdiction and way of functioning
- 5) Communicating Skills
- 6) Protocols to be followed before Courts and Officers .

Court Proceedings

Mainly five Categories

- Writ Petitions before S.C. or High Court (W.P.)
- Original Application (O.A.) before C.A.T.or S.A.T
- Original Suits (O.S.) before Civil Courts
- Proceedings before Lokayukta
- Proceedings before Human Rights Commission
- Information Commissions

Writ Proceedings

- Art. 226 of the Constitution of India empowers the High Court to issue Writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari.
- Art. 32 also empowers the S.C. to issue similar Writs.

A Citizen can move the H.C. or S.C. for enforcement of Fundamental Rights under the Constitution of India, if violated by State or any Organ of the State.

Writs are mainly five Types

- Habeas Corpus:
A Writ to assert Personal Liberty. To Liberate a Person from illegal Custody.
- Mandamus:
A Command issued to the State or Authority requiring performance of a particular Duty.
- Prohibition:
Preventing Tribunals or Inferior Courts or Administrative Authorities from continuing their proceedings in excess or abuse of their Jurisdiction.
- Quo Warranto:
Enquires into the legality of the Claim to a Public Office and Ousts him from its enjoyment if the Claim is not well founded.
- Certiorari:
Judicial Control for review of inferior Courts or Tribunals and Administrative Action if Ultra Vires.

Writ Procedure

- W.P.'s are filed Stating the Facts and Grounds and an affidavit is filed in their support.
- Affidavit: It is a Statement on Oath by the Deponent Stating the Facts Known Personally, based on information and on belief. A Signature is affixed at the end with date and place. It is to be attested by a person who is Authorized to Administer Oath and Attest.
- Counter Affidavit: The Respondent in the W.P. files a Counter Affidavit as an Answer to the averments in the W.P.

O.A. before Administrative Tribunals

- Art. 323-A of the Constitution of India empowers the Parliament to establish Administrative Tribunals to adjudicate disputes and complaints in respect of recruitment, conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any state or any Local or other Authority.
- Parliament enacted The Administrative Tribunal Act 1985.
- Central Administrative Tribunals and State Administrative Tribunals are established as per the said Act.
- The Applicant files a verified application in support of his Plea.
- The Respondent files Written Statement (C.A.T.)/ Counter Affidavit (S.A.T) in reply to it as per Rules applicable
- C.A.T deals all service matters of All India Services, Civil Services or Civil post u/Union of India, Civilian appointed to
- Defence service or a post in Defence Service

Civil Courts

- Junior Civil Judge (Specified Pecuniary and territorial Jurisdiction)
- Senior Civil Judge (Specified Pec.and Teri. Jurisdiction)
- District Judge (SP.Pec.and Teri. Jurisdiction unlimited)
- All Civil Disputes are Cognizable by Civil Courts subject to Territorial and Pecuniary Jurisdiction.
- Civil Proceedings are known as Original Suits (O.S.)
- The Person who files a Suit is known as Plaintiff.
- He files Civil Proceedings known as PLAINT.
- The Person against whom Suit is filed is known as defendant.
- He files a Written Statement in reply to the averments in the Plaint.

Affidavit

- In reply to Court Proceedings in W.P. a Counter Affidavit is to be filed by one of the Respondents or all.
- The Affidavit shall contain all facts and Pleas that are to be Projected by the Respondents.
- Facts if Known personally to the deponent, he has to state the same. If facts are based on information, the source of information has to be furnished. If facts are based on belief, the grounds for belief have to be stated.

Para wise Remarks

- The Central Govt. Appoints Standing Councils in all courts to represent it in Civil Proceedings.
- Generally the Affidavits are drafted or approved by the Standing Councils
- .The Material to draft an Affidavit is to be supplied generally by grass root level Officials who are acquainted with the facts
- The Officer offers his remarks to the contents of W.P. or O.A. or O.S. by Para wise based on records or information available.
- They are known as Para- wise Remarks.

Precautions to be observed

- In legal Proceedings the stand of state or institution or public servants is different than an individual.
- Public interest is the paramount consideration.
- No personal interest shall be demonstrated.
- Facts to be presented without distortion or coloring – truth and truth alone to be stated.
- Consequences of false Pleadings are serious.

Promptness

- Top Priority to be assigned to Court Proceedings.
- Avoid delay in submitting Para wise remarks.
- If interim orders are issued, take steps immediately to vacate such orders.
- If final orders are issued, seek instructions for implementation or assailing the same in the higher Courts.
- Don't wait as Law of limitation may be attracted.

Procedure

- Answer all averments in W.P.'s or O.A. or O.S. or other Proceedings by Para wise ,on the basis of Record or file or information obtained
- If repetitions are there, remarks need not be repeated.
- Remarks shall be Specific, avoid vague or evasive remarks. Denials shall be specific
- Desirable to note down separately all the points to be answered to avoid missing of certain points.
- If there is no information get it from the relevant source by way of report.

Legal Aspects

Legal aspects pleaded can be answered in Para wise remarks regarding sections, rules and G.O.s etc.

- In respect of Judgments of H.C. or S.C desirable to leave it to the Standing Council. or Higher Officials who know very well about their application and relevancy.
- If Judgments or Orders of H.C. or S.C. are available with respect to similar matter, furnish the information.

All legal defenses such as limitation, jurisdiction, **failure to exhaust statutory remedies**, want of Statutory notices(u/sec 80 C.P.C.), any other legal bar ,shall be pleaded.

Other Aspects :

The name of Court/Tribunal shall be stated at the top of affidavit. Then, parties names, on whose behalf affidavit is filed shall be stated. Any person acquainted with facts can file an affidavit. It shall be in 1st person un like complaints, petitions and written statements.

WRITTEN STATEMENT

In civil Suits as per Civil Procedure Code and
In O.As. Before Central Administrative Tribunals
as per Central Adm.Tribunal Rules respondents
to file Written Statements in answer.

They shall be as provided u/ order 6R15 of C.P.C
It can be filed by Respondent/ person authorised
All averments in plaint/o.a. shall be specifically
admitted or denied. Other wise they will be
deemed to have been admitted.

Shall be divided by paragraphs and to be
numbered

Verification of Pleading U/ O 6 R 15 C.P.C.

Every pleading including W.St shall contain at the foot a verification by party/authorised person acquainted with facts.

It shall state with reference to paras , which are to his personal knowledge and based on information which he believes to be true.

It shall be signed by person verifying with date and place.

He shall also file an affidavit in support of such pleading.

It shall be signed by party and pleader.

Corrections shall be attested, and pages to be numbered.

Documents to be enclosed

- The Copies of all Documents relevant to the Proceedings shall be enclosed to para wise remarks/affidavits/w.st.
- Copies of Orders passed, permits or licenses issued shall be enclosed.
- Copies of Office Notes have to be enclosed if necessary
- Copies of G.O.'s are to be enclosed.
- If copies of Orders of H.C. or S.C. on relevant matters are available - to be furnished.

APPEALS AND REVISIONS

Whenever orders adverse to the interest of Govt. are passed ,prompt action shall be taken to file Appeal or Revision as the case may be.

Against judgments of civil Courts and H.C. Orders an appeal lies.

Against Interim Order of Civil Courts/ Tribunals and regular Orders of Tribunals only Revisions lie to H.C.

Against Orders of single Judge of H.C. Appeal lies to Division Bench, in other cases to S.C.

Legal Advise is to be taken to assail them or not.

N.L.Policy discourages Appeals/Revisions which can be avoided.

MANAGEMENT AND MONITORING

Nodal officers for each department in various courts to bridge the gap between department and standing council . He shall communicate the progress of the proceedings and maintain record of it.

He shall address the higher authorities about any lapse from any wing.

Periodical Review of pending cases is to be done
Progress is to be monitored and prompt action is to be taken for early decision or to avoid delays on the part of Govt.

Database is to be created in the system(computer) in respect of all cases together with stage and alert signals for taking next step.

Communication Skills

- In Para wise remarks or affidavits or written-statements use the appropriate words.
- Desirable to state them in simple sentences.
- Use appropriate active or passive voice
- Proper Tense is to be used.
- Para and pages to be numbered
- Take care of the Grammar.
- Precision is the Priority.
- Avoid abusive or scandalous language.
- Avoid to exhibit prejudice.

BEST OF LUCK

THANK YOU