



# The Mizoram Gazette

## EXTRA ORDINARY

### Published by Authority

RNI No. 27009/1973

Postal Regn. No. NE-313(MZ) 2006-2008

VOL - LII Aizawl, Wednesday 15.3.2023 Phalgun 24, S.E. 1944, Issue No. 136

#### NOTIFICATION

**No. G. 11021/8/2017-LJA, the 15<sup>th</sup> March, 2023.** Mizoram State Litigation Policy, 2023 is hereby published for general information.

Helen Dawngliani  
Secretary to the Govt. of Mizoram

#### **MIZORAM STATE LITIGATION POLICY, 2023**

Pursuant to the recommendation of the 13<sup>th</sup> Finance Commission and resolution adopted at the National Consultation on strengthening the Judiciary towards reducing pendency and delay held on 24.10.09, the National Litigation Policy was framed which brought forth the Notification of the “Mizoram State Litigation Policy, 2010” vide the Mizoram Gazette, Vol. XXXIX, 24.09.2010 Issue No. 39, Part- II(IA), P.10. However, during the last year, it has been observed that a comprehensive review of the policy is needed to ensure that its objectives are achieved.

Upon review of the Mizoram State Litigation Policy, 2010 and a comprehensive deliberation on various issues related thereto, it is felt that a clear, efficacious and cohesive policy is needed for the effective management of litigation pertaining to the State Government at various levels. It is with this purpose that the existing policy is reviewed and a new policy, the “Mizoram State Litigation Policy, 2023” is brought into effect.

Notifications, Orders and Office Memorandums issued by the Law and Judicial Department from time to time shall remain in force to the extent this policy is silent and shall be followed in the spirit of this policy.

With a view to become an efficient and responsible litigant, the State Government shall be guided by the following principles:

## 1. OBJECTIVES

1) The Mizoram State Litigation Policy, 2023 is based on the recognition that the State Government and its various agencies are the pre-dominant litigants in the Courts and Tribunals within 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 citizens and to ensure that the fundamental rights are upheld. Those in charge of the conduct of Government litigation should never forget this basic principle.

2) “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; and
- (c) ensuring that good cases are won and bad cases are not needlessly persevered with.

3) “RESPONSIBLE LITIGANT” MEANS –

- (a) not resorting to litigation only for the sake of litigating;
- (b) presenting proper pleadings and highlighting clear cut technical points;
- (c) ensuring that the correct facts and all relevant documents are placed before the Court; and
- (d) suppressing nothing from the Court and making no attempt to mislead any Court or Tribunal.

3) The State 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 condemned.

4) The purpose underlying this policy is to reduce Government litigation in Courts so that valuable Court time would be spent in resolving other pending cases. The National Legal Mission goal is to reduce the average pendency of Court cases from 15 years to 3 years. Litigators on behalf of Government have to keep in mind the principles incorporated in the National Legal Mission for judicial reforms, which include identification of long pending cases that the Government and its agencies may be concerned with and also reduction of or even weeding away unnecessary Government cases. Prioritization in litigation has to be achieved with particular emphasis on welfare legislation and social reforms. Weaker sections of the society and senior citizens and other categories requiring assistance must be given utmost priority.

5) Applicability:

- (a) This Policy shall apply to any claim, dispute and litigation involving the State or its functionaries before Courts, Tribunal, Arbitration and Alternative Dispute Resolution Forums.
- (b) It shall be mandatory for all Departments to follow this Policy.
- (c) The Policy shall serve as the authoritative reference for all questions of procedure, norms and interpretation in relation to management and conduct of litigation at all stages and forums.

6) The Stakeholders:

- (a) All stake holders i.e. Government Departments and their functionaries viz., Government Counsels and Officials entrusted with the responsibility relating to control, supervision, management or conduct of litigation will have to play their respective part with utmost sincerity and commitment in effectively implementing this Policy.

- (b) The Nodal Officers have 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 Department must be mindful of the responsibility to appoint proper Nodal Officers who have legal background in case there are, and if not, those who have experience and expertise in handling court cases. 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 State Litigation Policy.
- (c) There will be a State Empowered Committee to monitor the implementation of this Policy. The Nodal Officers and the Heads of Department will ensure that all relevant data is sent to the Empowered Committee. The Empowered Committee shall be chaired by the Chief Secretary to the Government of Mizoram and such other members not exceeding six in number as may be nominated by the Law & Judicial Department, with the Secretary or the Additional Secretary of the Law and Judicial Department acting as the Member Secretary. There will be District Empowered Committees to be chaired by the respective Deputy Commissioner. It shall include such number of Government Counsels of the Judicial District and such other members as may be decided by the Law and Judicial Department not exceeding 10 (ten) and the Additional Deputy Commissioner of the District shall be the Member Secretary . The District Committees shall submit yearly reports to the State Empowered Committee which shall in turn submit Comprehensive Reports to the Law and Judicial Department.

## **2. GOVERNMENT REPRESENTATION**

- (a) While it is recognized that appointment as Government Counsel(s) is a broad-based opportunity for a cross section of lawyers, it cannot be used as a medium 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 scrutinize the credentials of those recommended with particular reference to legal knowledge and integrity.
- (b) There will be an Appointment Committee to appoint Government Counsel(s) to represent the State of Mizoram in various Courts. Law and Judicial Department shall formulate guidelines and uniform terms and conditions for engagement of Government Counsels.

## **3. DUTIES AND RESPONSIBILITIES**

- (a) Government Counsels 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 Counsels as well as equipment for producing compilations of cases.
- (b) Government Counsels are expected to discharge their duties & obligations with a sense of responsibility towards the Court as well as to the Government.
- (c) Government Counsels who head the Civil or Criminal side must play a meaningful role in Government litigations. They cannot continue to be merely responsible for filing appearances in Court.
- (d) Incomplete briefs are frequently given to Government Counsels. This must be discontinued. The Advocates-in-Charge will be held responsible if incomplete briefs are given. 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 file a complaint to the Empowered Committee concerned.

#### **4. RESPONSIBILITIES OF LAW & JUDICIAL DEPARTMENT**

- (a) It will be the responsibility of the Law and Judicial Department to train Government Counsels and to explain to them what is expected of them in the discharge of their duties and functions.
- (b) Government Counsels shall be deputed for National and Regional Conferences of Government Counsels as may be organized so that matters of mutual interest can be discussed and problems analyzed.
- (c) Training programs, seminars, workshops and refresher courses for Government Counsels must be encouraged. There must be continuing legal education for Government Counsels with particular emphasis on identifying and improving areas of specialization. Law schools will be associated in preparing special courses for training of Government Counsels with particular emphasis on identifying and improving areas of specialization. Most importantly, there must be an effort to cultivate and instill values required for effective Government representation.
- (d) While the Government cannot pay fees which private litigants are in a position to pay, the fees payable to Government Counsels 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 Annexure - II of the Uniform Terms and Conditions for Engagement of Government Advocates in the Government of Mizoram, 2016 should be paid within a reasonable time. Malpractice in relation to release of payments must be eliminated.

#### **5. DUTIES AND RESPONSIBILITIES OF NODAL OFFICERS**

- (a) Every Department shall appoint a Nodal Officer. The duties and responsibilities of the Nodal Officers shall inter alia include regular monitoring, coordination and effective management of litigation pending before the Supreme Court, High Court, Subordinate Courts (District Courts) and Tribunals. Nodal Officers shall pay special attention to curb delay in filing appeals/petitions within time and in particular, identify cases in which repeated adjournments are being taken at the instance of the State for instructions or filing reply and report such cases of repeated and unjustified adjournments to the Head of the Department.
- (b) The Nodal officer shall maintain a record of the cases pending in Courts, related to his Department. Such record shall be maintained court-wise so that cases may be tracked easily.
- (c) It has been observed more often than not that the Government Counsels either do not appear in Courts or appear without due preparation. The basic reason is incomplete record of pending litigation with the Administrative Department and improper briefing to the Counsel for the State. This not only causes inconvenience to the Court but also adversely affects the State's interest. The Nodal Officer shall ensure that the relevant record of the cases is provided to the Counsel without delay.
- (d) Nodal Officers will be responsible for active case management. This will involve constant monitoring of cases particularly to examine whether cases have gone "off track" or have been unnecessarily delayed.

- (e) There should be equitable distribution of briefs so that there will be broad based representation of Government. Complaints that certain Government Counsels are being preferred in the matter of briefing will be inquired into seriously by the Empowered Committee concerned.

**6. ADJOURNMENTS**

- (a) Unnecessary and frequent adjournments by Government Counsels will be frowned upon and infractions dealt with seriously.
- (b) In fresh litigations 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. If instructions are not forthcoming, the matter must be reported to the Nodal Officer and, if necessary, to the Head of the Department concerned.
- (c) In Appellate Courts, if the paper books are complete, then adjournments must not be sought in routine course. 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 this, instructions have to be obtained.
- (d) 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. 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 Department or Agency shall ensure that the records of the case reflect reasons for adjournment, if these are repeated adjournments. Serious note will be taken of cases of negligence or default and the matter will be dealt with appropriately by referring such cases to the Empowered Committee. If the advocates are at fault, action against them may entail discontinuation of their engagement.
- (e) Cases in which costs are awarded against the Government as a condition of grant of adjournment will be viewed very seriously. In all such cases the Head of Department must give a report to Law Department of 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.

**7. PLEADINGS / COUNTERS**

- (a) Suits or other proceedings initiated by or on behalf of Government have to be drafted with precision and clarity. There should be no 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 highlight the facts in dispute and the issues involved. Slipshod and loose drafting will be taken seriously, defaulting advocates may be removed.
- (c) 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.
- (d) Counter Affidavits in important cases will not be filed unless the same are duly vetted by the Law & Judicial Department. This should, however, not delay the filing of Counter Affidavits.

**8. FILING OF APPEALS**

- (a) Appeals will not ordinarily be filed against ex parte ad interim orders. Attempt must first be made 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.
- (b) Appeals must be filed intra court in the first instance.
- (c) Given that Tribunalisation is meant to remove the loads from Courts, challenge to Orders of Tribunals should be an exception and not a matter of routine.
- (d) In Service Matters, no appeal will be filed in cases where:
  - (i) the matter pertains to an individual grievance without any major repercussion on the Government Policy;
  - (ii) the matter pertains to a case of pension or retirement benefits without involving any principle and without setting any precedent or financial implications.
- (e) 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.
- (f) Proceedings will be filed challenging orders of the High Court in Service matters only if:-
  - (i) there is a clear error of record and the finding has been entered 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, the Government is compelled to file a petition; or
  - (iv) if the judgment will have recurring implications upon other cadres or if the judgment involves huge financial claims being made.
- (g) 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;
  - (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.

- (h) Appeals will not be filed in the Supreme Court unless:
- (i) the case involves a question of law;
  - (iii) it is a question of fact, and the conclusion of the fact is so perverse that an honest judicial opinion could not have arrived at that conclusion;
  - (iv) public finances are adversely affected;
  - (v) there is substantial interference with public justice;
  - (vi) there is a question of law arising under the Constitution;
  - (vii) the High Court has exceeded its jurisdiction;
  - (viii) the High Court has struck down a statutory provision as ultra vires;
  - (ix) the interpretation of the High Court is plainly erroneous.
  - (x) In each case, there will be a proper certification of the need to file an appeal to be issued by the concerned Department. 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 fit or proper to file an appeal.

**9. LIMITATION : DELAYED APPEALS**

- (a) 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.
- (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 must 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 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 of the data and fixing of responsibility will play a vital role. Data must be obtained on a regular basis annually, bi-monthly or quarterly.
- (c) Applications for condonation of delay are presently drafted in routine terms without application of mind and presentation of underlying facts. This practice must immediately stop. It is the responsibility of the Advocate-in-Charge to carefully draft an application for condonation of delay, identifying the areas of delay and identifying the causes with particularity. Drafting Advocates who fail to adhere to this may be removed.
- (d) Every attempt must be made to reduce delays in filing appeals/applications. It shall be 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. Tendency on the part of Government Counsel to expect leniency towards the Government for condonation of delay must be discouraged. The question of limitation and delay must be approached on the premise that every court will be strict with regard to condonation of delay.

#### **10. ALTERNATIVE DISPUTE RESOLUTION**

- (a) More and more Government Departments and PSUs are resorting to arbitration particularly in matters of breach of contract. Careful drafting of commercial contracts, including arbitration agreements must be given utmost priority. The Law and Judicial Department recognizes that it has a major role to play in this behalf, and that the Department needs to be strengthened on priority basis.
- (b) 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.
- (c) It is recognized that the conduct of arbitration at present leaves a lot to be desired. Arbitrations are needlessly dragged on for various reasons. One of them is by repeatedly seeking adjournments. This practice must be deplored and stopped.
- (d) The Head of Department may requisition the data of pending arbitrations. Copies of record of proceedings etc. 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 concerned to call for regular review meetings to assess the status of pending arbitration cases.
- (e) 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 arbitrariness 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.
- (f) Arbitration agreements are loosely and carelessly drafted with regard 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.
- (g) 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 or arbitrary reasons. It must be ascertained whether the arbitrator will be in a position to devote time for expeditious disposal of the reference.
- (h) It is found that if an arbitration award goes against the Government, it is almost invariably challenged by way of objections filed in the arbitration. Very 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. A clear formulation of the reasons to challenge Awards must precede the decision to file proceedings to challenge the Awards.



## 11. SPECIALISED LITIGATION

In the following cases, proper affidavits should be filed explaining the rationale between the statute or regulation and also making appropriate averments with regard to legislative competence:

- (a) Proceedings seeking judicial review including in the matter of award of contracts or tenders.
- (b) Cases involving ultra vires or statutes or rules and regulations

Such matters 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 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 of as expeditiously as possible.

### (c) PUBLIC INTEREST LITIGATIONS (PIL):

- (i) Public Interest Litigations 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 the Government finds inconvenient. It is recognized that the increase in PIL 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.
- (ii) PILs challenging public contracts must be seriously defended. 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.

### (d) PSU LITIGATIONS:

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 the CMD or MD. It will be his responsibility 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.

## 12. ACCOUNTABILITY

- (a) Strengthening accountability of all the stakeholders/duty holders in the management and conduct of litigation shall be of key importance for successful implementation of the policy at various levels. The Head of the Department, District Head of various Departments, Government Counsel and Nodal Officers must ensure that any laxity/negligence on the part of any Officers/Counsels entrusted with any case is taken seriously and appropriate action shall be taken promptly. Any imposition of cost and adverse observation of the Court with regard to conduct of any Officer/ Official or Government Counsel must not be taken leniently.
- (b) As part of accountability, there must be critical appreciation of the conduct of cases. Meritorious cases which have been lost must be reviewed and subject to detailed legal scrutiny to ascertain responsibility and take action accordingly.

- (c) The Counsel for the State shall appear in Court with adequate preparation.
- (d) The Counsel for the State shall inform the Nodal Officer regarding any direction/Order of the Court and apply for the copy of the Order on the same day or latest by the next working day.
- (e) It shall be the responsibility of the Law Department to receive and deal with suggestions and complaints including those from litigants and Government Departments and take appropriate measures in connection therewith.

**13. REVIEW OF PENDING CASES**

- (a) All pending cases involving the 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 PSUs). The Empowered Committee with the Office of the Advocate General and the Government Advocate as well as the Public Prosecutor of each district shall also be responsible for reviewing all pending cases once in a calendar year and filtering frivolous and vexatious matters from the meritorious ones.
- (b) In order to maintain continuity and to have a record of the steps taken and the current stage of the proceedings in a court, the Government Counsels and all concerned Departments shall maintain a record of all cases in a register format prepared by Law & Judicial Department.