

GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS
(Law Litigation Section) Civil Secretariat
Srinagar / Jammu

**Subject: - Monitoring of litigation in the Union Territory of Jammu
and Kashmir**

Circular No: 07- JK(LD) of 2020.
Dated : 28-10-2020

Hon'ble High Court of Jammu and Kashmir has passed various directions from time to time for streamlining the litigation in the Union Territory of Jammu and Kashmir, and in this regard, this department had also issued circular instructions in view of the serious view taken by the Hon'ble Court (s) in respect of delay in filing of replies / counter affidavits /statement of fact's and LPA (s) etc. Further, in order to streamline the litigation and with a view to revamp and improve the prevalent mechanism for legal defence of the cases in which Government of Jammu and Kashmir is a party and for reducing the pendency of cases, the Department of Law, J and PA pursuant to the recommendations of the committee constituted by General Administration Department vide Government Order No. 580 JK (GAD) of 2020 dated 20-05-2020 under the Chairmanship of Ld. Advocate General J&K, issued **Circular No: 06 - JK(LD) of 2020 Dated: 06-08-2020, wherein it was** impressed upon all the Law Officers posted in different Departments, Directorates, Organizations and Corporations, etc to adopt and adhere to the measures/SOPs religiously as indicated therein. The circular instructions were exhaustive which were issued to arrest the practice of non-filing of response, non-appearance of government counsels, delay in filing of response, statement of facts and LPA (s) etc. Despite issuance of the circular instructions on the subject, the Hon'ble court(s) have been passing strictures/adverse remarks against the government in such matters

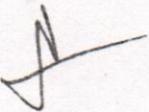
In this regard, the Division Bench of the Hon'ble High Court, while hearing the condonation of delay application in LPA No. 82/2020 in SWP No. 441/2014 titled Union Territory of Jammu and Kashmir vs Mushtaq Ahmad vide order dated 21-09-2020 has again observed that "there is lack of coordination between different departments regarding filing of appeal etc. There is no system in place in various departments as to how to deal with the litigation. Apparently no one is responsible or accountable for its action/inaction.....there is no set procedure regarding opinion of the counsel, to be attached with the copy of order passed by the court, when the same is forwarded to the concerned department. The same would

enable the competent authority to examine the same in light of the opinion of the law officer, whether it is a fit case for filing the appeal or not. Time bound action is required by all the authorities involved in the process, keeping in view the period prescribed for filing appeal." The issue has been examined at length and it was decided to issue guidelines for strict compliance of all the concerned with a view to ensure proper and effective monitoring of the litigation. Now therefore in compliance with the orders of Hon'ble High Court passed in the afore-titled matter, and in continuation to the circular instructions issued in this behalf from time to time, the following guidelines are hereby laid down which shall be implemented by all concerned who are dealing with the litigation of the Union Territory of Jammu and Kashmir at different levels in letter and spirit.

1. Director Litigation Kashmir/Jammu on receipt of copy of writ petitions and other connected papers etc shall immediately, (preferably within a period of 05 days) forward and deliver the same against proper receipt to all the official respondent(s)/ departments. They shall engage Law Officer of the main contesting department in the writ petition as per allocation made by the Department of Law, Justice and PA with an intimation to the concerned department as well against proper receipt.
2. All concerned Law Officers on receipt of the copy of the writ petition shall simultaneously prepare para-wise reply which will be forwarded to the Government Counsels in a time bound manner, so as to enable them to prepare reply/objections etc. in accordance with the rules. It shall be the responsibility of the law officer posted in the department to give complete brief to the government counsels for preparation of objections/reply. Thereafter he may return the same to the concerned department for finalization/vetting. The Law Officer posted in the department shall ensure that the legal defense available to the Government is properly reflected in the reply/objections and shall return the same to the Government counsel duly sealed and signed by the competent/authorized officer for filing before the Hon'ble court. The whole exercise should be done in a time bound manner and should not take more than (30) days, unless there is court direction for filing of response before said period. The Government Counsels shall invariably prepare pleadings/ reply/ objections/LPAs etc in each and every case on its own, so as to make them understand what is to be argued when case will come up for hearing. It has been noticed and observed from time to time that Ld. Counsels who are representing the departments are not fully acquainted/well versed with the facts and legality of the case when the said cases come up for hearing

before the Hon'ble court resulting in precarious situation for the counsels as well as for the Government. The objections prepared by them will enable them to have first hand information and knowledge of the case. As far as practicable, the consolidated reply after receiving inputs from all concerned shall be filed by the main contesting department on behalf of all the official respondents. The Law Officer of the main contesting departments and also other concerned departments shall ensure filing of objections in consultation with the Ld. Counsels to whom the departments have been assigned within a period of one month from the date of receipt of the copy of writ petition or within such period as may be directed by the Hon'ble Court.

3. The Government Counsels shall cause their appearance before the Hon'ble Court/Tribunal in each and on every date of hearing. They shall not resort to unnecessary adjournments. Failure on their part to make proper and effective representation on behalf of the Government shall entail action against them. Any laxity in this behalf shall not be condoned.
4. In contempt cases Ld. Counsel(s) / Director Litigation Kashmir/Jammu, on request from the department(s) shall obtain copies of contempt petitions from the Hon'ble Court and shall forward the same to the concerned department for immediate filing of statement of fact(s)/compliance report(s). The Law Officers posted in the departments shall also of their own take all the requisite steps for defending of contempt petition, after the receipt of contempt notices from the Hon'ble court and shall provide all the necessary assistance/ inputs to the Ld. Counsel (s) representing their departments for preparation of Statement of facts /compliance reports and shall be responsible for filing of the same in consultation with the Ld. Counsels within a period of 15 days from the receipt of notice or as may be directed by the Hon'ble Court.
5. In cases, where counter affidavit/rejoinder are required to be filed, the same shall be filed within the time frame as granted by the Hon'ble court. The Law Officers /Government Counsels shall avoid seeking time for filing of the same and further time can only be sought in exceptional circumstances.
6. All the Government Counsels are impressed upon, as soon as the orders / judgments are passed by the Hon'ble Court/Tribunal, they shall apply for the certified copy of the same on the same date. On date of receipt of the order/judgment, same shall be forwarded to the Department of Law, Justice and Parliamentary



Affairs and to the concerned department, specifically indicating therein (i) date of application for certified copy, and (ii) date of receipt of judgment, along with his concrete opinion on merits of the case, as to whether the case is fit for filing of appeal or not. In both cases i.e filing of appeal or implementation of the Judgment, reasons should be clearly recorded by the Government counsel. The Law Officer of the concerned department, shall immediately upon receipt of the order/judgment alongwith the comments of the Government counsel examine the matter and the decision regarding implementation of the Judgment or filing of appeal ought to be taken in a time bound manner keeping in view the period of limitation. In case appeal is required to be filed, it is to be forwarded to the Law Department at an earliest or at least one month before the expiry of the limitation period which shall be clearly reflected.

7. The Department of Law, J and PA shall on receipt of the file for according sanction or otherwise immediately process the same and after proper examination shall accordingly convey its decision to the concerned department within the period of limitation after seeking approval of the competent authority. Where there is delay in approaching the law department for accord of sanction same shall be explained reasonably and in a proper manner.
8. In case where sanction for filing of LPA/SLP etc. is accorded, the concerned department shall immediately file the LPA/SLP etc. before the Hon'ble High Court / Supreme Court as the case may be. Any laxity in this regard shall be taken seriously and will entail action against such person(s) who are found to have caused delay in the matter. After sanction is accorded by the Law Department the concerned Law Officer (s) shall be responsible for filing of SLPs/LPAs at the earliest occasion and should not resort to delaying tactics on this count. Any failure on their part will entail action against them under rules and shall also be reflected in their APRs.
9. There should be no delay in filing of LPAs/SLPs. However in exceptional cases where there is delay, the application for condonation of delay should not be drafted casually and in a routine manner without proper application of mind. It shall be the responsibility of the Government counsel(s) to carefully draft an application for condonation of delay, identifying the areas and causes of delay, after receiving the inputs from the concerned Law Officer.

10. All Law Officers are impressed upon to stay in touch with the Government counsel(s) for proper handling of the matters and provide them necessary assistance as and when required so that Government interests are protected. There shall not be any delay in filing of objections, statement of facts, compliance reports, LPAs and SLPs etc.
11. All persons who are dealing with the litigation at different levels must discharge their duties with utmost sincerity and commitment and be mindful of their responsibility. There shall be accountability at every level. If any officer is found negligent in handling court matters, the Law Department shall after full scrutiny fix responsibility, when good cases are lost or adverse orders are passed in any matter against the Government. The department shall consider taking appropriate action against them in accordance with the rules including remarks of his conduct in APRs.

Sd/
(Achal Sethi)
Secretary to Government

Copy to the:-

1. Learned Advocate General Jammu and Kashmir.
2. All Financial Commissioner / Principal Secretaries/Commissioner Secretaries to Government _____ Department.
3. Registrar General, Jammu and Kashmir High Court.
4. Head of Departments _____
5. Special/Additional Secretaries (Legal)/ Director Litigation Kashmir/Jammu. Senior Law Officers/ Public Law Officer/Legal Assistants/Junior Legal Assistants _____
6. Private Secretary to Chief Secretary, Jammu and Kashmir.
7. Private Secretary to Secretary Law J and PA.
8. Private Secretary to Ld. Advocate General Jammu and Kashmir. He /She is requested to circulate the above circular instructions to all the Law Officers of Kashmir /Jammu Division for information and strict compliance.
9. Incharge Website Section. Department of Law, J and PA for updating on the official website
10. Office Copy

(Shafiq Hussain Mircha) 28.10.2020
Deputy Legal Remembrancer

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