

GOVERNMENT OF KERALA

ABSTRACT

SUITS – ARRANGEMENT FOR PROSECUTING GOVERNMENT CASES OR DEFENDING CASES AGAINST GOVERNMENT – CREATION OF A NEW SUIT SECTION IN LAW DEPARTMENT – PROCEEDURE TO BE ADOPTED - ORDERS ISSUED

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LAW DEPARTMENT

G.O. (P) No.3/68/Law.

Dated, Trivandrum, 6th February, 1968.

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Read:- G.O.Rt.No.3846/Public (Special) Department dated 24-11-1966.

O R D E R

In the G.O. cited Government sanctioned the creation of a new wing by name 'Suit Section' in the Law Department to guide and co-ordinate the work in connection with the prosecution of Government cases and defence of cases filed against the Government. Government also ordered in the said G.O. that detailed instructions will be issued by the Law Department in consultation with the Administrative Departments regarding the preparation of statements, affidavits, counter-affidavits etc., to be filed before the High Court and the other Courts. The Administrative Departments were accordingly consulted and other examining the suggestions offered by them Government are pleased to issue the following instructions.

A General.

1. Copies of judgments, decrees and orders passed in every proceeding of a civil nature in which the Government are a party shall promptly be forwarded to the Suit Section in the Law Department along with all relevant records by the Advocate General, if the proceedings were pending before the High Court, and by the concerned Government Pleaders if the proceedings were pending in other Courts subordinate to the High Court. They should also simultaneously forward their opinion as to the desirability or otherwise of the decision being challenged in appropriate proceedings before a higher forum.
2. The suit Section of the Law Department in consultation with the concerned Administrative Department shall decide whether it is necessary to have the decision challenged and in case it is decided to do so, the suit section will take necessary steps in that behalf.

3. If at any stage of any proceedings, instructions or assistance of an officer of the Government is deemed necessary by the counsel in charge of the proceedings, intimation shall be given thereof to the suit section and that section on consultation with the concerned Administrative Department will send either an officer of the section or of the Administrative Department of appropriate rank to assist the counsel.
4. Satisfaction of decrees passed against or other liabilities imposed upon the State shall not be undertaken by the Administrative Departments without consulting the Suit Section in the Law Department.
5. The Suit Section will maintain separate registers for original petitions, tax references, civil appeals and other miscellaneous proceedings before the High Court and suits, civil appeals and other original proceedings before the Courts subordinate to the High Court, in which Government are a part. The progress and disposal of these proceedings will be carefully recorded in these registers and reviewed by the Secretary in the Law Department from time to time.

#### B. PROCEDURE IN REGARD TO ORIGINAL PETITIONS AND OTHER CIVIL PROCEEDINGS IN THE HIGH COURT.

1. The Advocate General will forward to the Suit Section in the Law Department, copies of all original petitions, tax references, tax revival and other proceedings of an original character filed in the High Court regarding which he receives notice of all interlocutory applications wherein interim orders were sought or passed.
2. The suit section will immediately forward the papers to the concerned Administrative Department for the furnishing of relevant particulars in the form of a draft statement of facts.
3. The Administrative Department, after collecting the necessary particulars from the concerned departmental authorities will prepare a draft statement of facts and forward the same to the Suit Section for scrutiny with all relevant records as far as possible within 4 weeks of receipt of the papers by that Department.
4. The Suit Section will scrutinise the draft statement of facts with reference to the records forwarded by the Administrative Department and take such modifications as may be necessary or call for additional particulars that may be required and after finalising the statement of facts forward the same with the relevant records to the Advocate General for preparation of counter-affidavits or statements of defence.

5. The Government Pleader or any other counsel acting on behalf of the Government, may if necessary require the services of an Assistant Secretary in the Suit Section for finalising the counter-affidavit or statement of defence and for deciding upon the strategy of defence in important and complicated cases.

6. The Counter-affidavit or statement of defence so prepared shall be forwarded to the Suit Section for approval and after approval by an officer not below the rank of a Joint Secretary in that Section, will be sent to the concerned Administrative Department for being sworn to or signed and case may be, An officer not below the rank of an Assistant Secretary to the Administrative Department will swear the affidavit or sign the statement of defence and forward the same to the Advocate General for presentation to the Court under intimation to the Suit Section.

7. If the Administrative Department feels that it is necessary to challenge any interlocutory order passed by the High Court, that department will inform the Suit Section of such necessity and the later will take appropriate section as is necessary for that end.

#### C. PROCEDURE IN RESPECT OF SUITS, CIVIL APPEALS ETC. IN COURTS SUBORDINATES TO THE HIGH COURT

1. The Suit Section of the Law Department shall be consulted by the Administrative Departments regarding the feasibility or otherwise of file suits, civil appeals or other civil proceedings on behalf of Government in Court subordinate to the High Court.

2. The Administrative Department shall forward to the Suit Section all relevant records while seeking advice on the feasibility or otherwise of filing suits, appeals etc; and this shall be done much ahead of the expiry of the period of limitation in every case.

3. If it is decided to file a suit or appeal etc. The Administrative Department shall be required to prepare a draft statement of facts and ward the case to the Suit Section for scrutiny along with the relevant records, with such modification, if any, that may be necessary the suit section will finalise the statement of facts and forward the same to the concerned Government Pleader for preparation of the plaint or memorandum of appeal as the case may be.

4. The Government Pleader after preparing the plaint or memorandum of appeal as the case may be will forward the same to the Suit Section for approval and after approval by an Officer not below the rank of a Joint Secretary in that section, the same will be sent to the concerned Administrative Department for being signed. An Officer not below the rank of an Assistant Secretary in the Administrative Department will sign the plaint or memorandum of

appeal and forward the same to the concerned Government Pleader under intimation to the Suit Section for presentation before the Court.

5. Statutory notices like those under Section 80 of the Civil Procedure Code received on behalf of Government shall be forwarded by the Concerned authorities to the Suit Section of the Law Department within a period of 6 weeks of the receipt of the same with the draft reply and relevant records. The draft reply will be returned to the concerned Department after scrutiny by the Suit Section within a week of its receipt in that section.

6. When suits civil appeals or other civil proceedings are filed against Government the authority receiving the summons or notice shall forward to the suit Section through the concerned Administrative Department the copy of the plaint or appeal memorandum or other proceedings with the draft statement of facts and relevant records for scrutiny and also intimate the date of hearing of the proceedings.

7. The draft statement of facts as approved by the Suit Section after scrutiny will be promptly forwarded by it to the concerned Government Pleader or preparation of the written statement or memorandum of objection as the case may be. The Government Pleaser after preparing the written statement or memorandum, of objection shall send the same to the Suit Section for approval. After approval by an Officer of the Suit Section not below the rank of a Joint Secretary, the same shall be sent to the concerned Administrative Department for being signed and forwarded to the Government Pleader for presentation before the Court under intimation to the Suit Section.

(By Order of the Governor)

Sd/-

P.K. LAKSHMANAN,  
Law Secretary.

To

All Heads of Departments and Offices.

Endt. on F.Dis.B2-7634/68 dated 10/12-12-1968

Communicated to all Conservator of Forests, Divisional Forest Officer's, Assistant Conservator of Forests, Wild life Preservation Officer, S.R.O., Principal K.F.S., F.V.O. and F.H.O. for information and guidance.

Copy to all Officers and Section Heads in Office.

Copy to B1, B2 and B3 Stock Files

Sd/-  
for Chief Conservator of Forests.

Endt. on G1-26031/68 dated 1-1-1969

To all Sections, Conservator of Forests and Senior Superintendent  
To Stock File and Circular File

for Conservator of Forests, Trichur.