

GOVERNMENT OF KERALA

Law Department (Suits)

No.9850-62/59

Dated, Trivandrum, 21-7-1969.

CIRCULAR

Sub:- Writ petition in High Court – Filling of counter-affidavit instructions – issued.

The Advocate General has brought to the notice of Government that the High Court is going to enforce strictly rule 8 of the rules for regulating proceedings under Article 226 and 227 of the Constitution of India issued by the High Court of Kerala published in Kerala Gazette Act 40 dated 19-10-1965. The rule is extracted below:

“8 (1) Any respondent filing a written objection to the application shall file it in the form of a counter-affidavit, and such objectives shall unless the Court otherwise orders, be filed within three months of the receipt of the notice of the application in the case of the Centre or State Government and within one month in other cases.

2. The objection shall be accompanied by a schedule of the documents relied on with copies of such of those documents are in his possession.

3. The copies of the documents filed under sub rule (2) shall be authenticated as true copies of the Advocate and if there be no advocate of the party.

4. Three authenticated copies of the objection and the annexures thereto for the use of the Court and an additional copy for the use of the petitioner shall be produced along with the objection.

5. The petitioner may file a reply to the objections, and such reply shall, unless the court otherwise orders be filed within three weeks of the date of receipt of the copy of the objections. The provisions of sub rules (1) to (3) shall apply to such reply. Three authenticated copies of the reply and annexures thereto for the use of the court and of many additional copies as there are contesting respondents shall be produced along with the reply.

6. With regard to the copies required to be produced under sub rules (4) and (5) above for service on the opposite party, the party may, instead of filing the copies in court, serve the copy on the opposite party and file a memorandum in court to that effect”.

Now, counter-affidavits in writ petitions are generally filed only after one or two years and that itself after the writ petitions are posted by the Bench for hearing and after the writ petitions are posted by the Bench for hearing and after peremptory orders of posting, On enforcement of the above rule all counter-affidavits in original petitions filed after three months of the receipt of notice have to be accompanied by delay petitions and supporting affidavit showing sufficient cause for the delay. This would considerably increased the work of every office especially that of the office of the Advocate General and would also cause much hardship to Government. Further, the entertainment of such counter-affidavits by the court will depend on the orders of the court on the petitions for condonation of the delay which will be entirely at the discretion of the court.

Government therefore, in order to obviate the above difficulties, stress the need for filing the counter-affidavits in time and direct all Heads of Departments and their subordinate officers to see that counter affidavits in writ petition in the High Court are filed within three months time as stipulated in rule 8 of the rules for regulating the proceedings under Articles 226 and 227 if the Constitution of India issued by the High Court of Kerala.

By order of the Governor,

Sd/- Law Secretary.

To

All Heads of Departments etc.

Endt. on G1-35063/69 dated 3-9/23-10-1969

Copy with copy of circular No.9850-C2/69/Law dated 20-8-1969 forwarded to all Conservator of Forests for information and strict attention.

Copy to stock file and vigilance section.

Sd/- for Chief Conservator of Forests.

Endt. on G1-23300/69 dated 29-10-1969

Copy with copy of enclosure to all SubOfficers for information and strict attention. The receipt of this ref: should be acknowledged.

Copy to Sections E1, ML, KT, TR, CH, D, G2 and S.E. & Stock file.