

No.EDN-H(Ele)H(1)B(6)Misc/2025-
Directorate of Elementary Education
Himachal Pradesh, Lalpani, Shimla-1

Dated Shimla-171001, the

March, 2025

To

All the Deputy Director of Elementary Education
in Districts of Himachal Pradesh.



Subject: -


Regarding CWP No. 90/2023-Ganesh Dutt Thakur Vs State of H.P. & ors.

Sir,

Please find enclosed herewith copy of letter No. Home(G)F(1)-1/2017-L
Dated 21.01.2025 and 28.02.2025, of Addl. Secretary (Home) to the Government of H.P. and order
dated 09.01.2025j passed by the Hon'ble High Court on the subject cited case.

In this context, you are requested to take further action in the above matter in
letter and spirit.


Encls:- as above


Additional Director (Admn)
Elementary Education,
Himachal Pradesh, Shimla-1.

Endst No. even, dated Shimla-171001 the March, 2025

Copy to:-

1. The District Attorney, Directorate of Elementary Education H.P. for infomatipn please.
2. All the Branch Supdts./Branch officers for information please.
3. The Supdt.(IT) Branch, with the direction to upload this letter on departmental website.
4. Guard File.


Additional Director (Admn)
Elementary Education,
Himachal Pradesh, Shimla-1.

No. Home (G)F(1)-1/2017-L
Government of Himachal Pradesh
Department of Home (Prosecution)

Form

The Addl. Chief Secretary to the
Government of Himachal Pradesh, Shimla-2

To

✓ All Administrative Secretaries to the
Government of Himachal Pradesh, Shimla-2

Dated Shimla-171002,

21.01.2025

Subject:-

CWP No. 90/2023- Ganesh Dutt Thakur Vs. State of HP & ors.

Sir/ Madam,

I am directed to invite your attention to the Order passed by the Hon'ble High Court on 06.01.2025 in CWP No. 90/2023-titled as Ganesh Dutt Thakur Vs. State of HP & Ors (Copy of order/ judgment be downloaded from the official website of Hon'ble High Court of HP) in which the Hon'ble Court has taken a serious view of not implementing the H.P. State Litigation Policy, 2011. The Hon'ble High Court has directed the Chief Secretary to the Government of Himachal Pradesh to ensure the strict compliance of the above order/judgment in letter and spirit. The Hon'ble High Court has further directed the State Government vide para 25 of above referred order/judgment which is as under:-

"It is high time that we restrain the State and its agencies from litigating endlessly just because of lack of responsibility to take decisions by its Officers and direct that henceforth all the litigation on the Appellate or revisional side at the behest of the State shall be initiated only after following the H.P. State Litigation Policy and certificate to this effect shall be appended with the appeal/second appeal/revision petition, including petition under Article 227 of the Constitution of India, or else, such litigation would ordinarily not be entertained, unless an affidavit of the Department Head or the Secretary concerned, as the case may be, is filed setting out therein cogent reasons as to why the provisions of the Litigation Policy have not been adhered to, or else, the Courts may be constrained to follow the course of action as adopted by the Hon'ble Supreme Court while deciding SLP(C) No.3398 of 2024 titled as State of Rajasthan and others vs. Gopal Bijawat, on 16th February, 2024, wherein it was held as under: "The respondent was reinstated by the Labour Court in the year 2001 and the writ petition filed by the State of Rajasthan was dismissed. Thereafter, continuously the respondent has been compelled to file repeated litigation in order to get the fruits of the award of the Labour Court. The State of Rajasthan has now come up in Special Leave Petition against the orders passed by the learned Single Judge and the Division Bench directing for

1/1/25
Pones
SAD/SWD
CCM
SCLAC
S.C.I.P.P.
3/1
edu
24/1/25

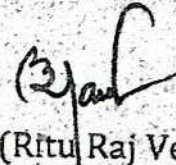
Implementation of the said award. It is unfortunate that the State of Rajasthan has been harassing the poor litigant, a part-time labourer, who was extended benefits by the Labour Court in the year 2001, i.e. for the last 22 years he has been litigating. This is totally a frivolous petition. It is, accordingly, dismissed with costs of Rs.10,00,000/- (Rupees ten lakhs only) to be paid to the respondent within four weeks from today and file proof of such payment before this Court within six weeks."

As per observation of the Hon'ble High Court the cost(s)/penalty(s) for non compliance of the judgment/order, the same be recovered from the concerned officer(s)/Official(s) after fixing responsibility for slackness in his/his slackness in his/her duties and for not complying with instructions issued by the Government from time to time in this regard.

The State Government has approved the Litigation Policy which outlines the broad guidelines with a view to reduce litigation to save avoidable cost on unproductive litigation and thus helping to reduce avoidable load on the Courts with respect to Government induced litigation (policy is available on website www.himachal.nic.in/home).

Keeping in view of the above position and in compliance to the Hon'ble High Court order dated 06.01.2025; it is requested to take further action in the above matter in letter and spirit It is also intimated that a meeting in this regard is also to be conveyed under the chairmanship of the Chief Secretary to the Govt. of HP very shortly.

Yours faithfully,




(Ritu Raj Verma)
Addl. Secretary (Home) to the
Government of Himachal Pradesh

Endst. No. No. Home (G)F(1)-1/2017-L

Dated, Shimla-2 21.01.2025

Copy for information and necessary action to:-

1. The Spl. Secretary (Home-D & Vig)/ The Addl. Secretary (Home-F)/ The Deputy Secretary (Home-A)/ The Under Secretary (Home-B & C) to the Govt. of HP.
2. The Director, Prosecution, Himachal Pradesh, Shimla-9.



Addl. Secretary (Home) to the
Government of Himachal Pradesh

7/3/25

CNC 2090
5/3/25

No. Home (G) F (1)-1/2017-L
Government of Himachal Pradesh
Department of Home (Prosecution)

From

The Addl. Chief Secretary (Home) to the
Government of Himachal Pradesh, Shimla-2

To

1. All Administrative Secretaries to the
Government of Himachal Pradesh, Shimla-2
2. All the Head of Departments,
Himachal Pradesh

Dated Shimla-171002, the 28/02/2025

Subject:

Himachal Pradesh State Litigation Policy, 2011-instructions
thereof.

Sir/Madam,

A meeting of the State Empowered Committee (SEC) for implementation of the HP State Litigation Policy was held on 19.2.2025 under the Chairmanship of the Chief Secretary to the Govt. of HP. In the meeting the Chairman has directed to the Home Department that necessary instructions may be issued to all the Administrative Secretaries/all the Head of Department for implementation of the HP State Litigation Policy, 2021. In this regard, it is intimated that the Hon'ble High Court in CWP No.90/2023-titled as Ganesh Dutt Thakur Vs. State of HP & Others vide its order dated 9.1.2025 has observed that the State and its agencies are litigating endlessly just because of lack of responsibility to take decision by its officers. The Hon'ble High Court has now imposed a condition of furnishing a certificate and an affidavit before filing any appeal or revision to the effect that the provisions of HP State Litigation Policy have been followed before filing of the appeal/revision (Refer to Para 25 of the orders). While passing these orders, the Hon'ble High Court has referred various directions previously made by the Hon'ble High Court wherein it was directed that mechanism should be developed ensuring that cases are placed before the Departmental Litigation Monitoring Committee and periodical audit of litigation and working of Monitoring Committee could be done.

You are, therefore, requested to adhere to the instructions issued by the Home Department from time to time as well as directions of the Hon'ble High Court on the similar line in the above referred matter and all the

Cont...page-2-

Copy
Sd/Alsh
E- J Case
4/3/25
SKE

Department should take all necessary steps in consonance with the HP State Litigation Policy to reduce unnecessary and unwarranted litigation. It is further requested that emphasis should be made to identify excessive litigation areas where special intervention can be made to reduce the pendency of cases in these areas. Apart from it, the meetings for implementation of the Litigation Policy should be regularly taken up with respective Administrative Secretaries.

Yours faithfully,

Mamuday
(Man Mohan Chopra)

Under Secretary (Home) to the
Government of Himachal Pradesh

Endst. No. Home (G) F (1)-1/2017-L

28/02/2025

Copy for information and necessary action to:-

1. The Advocate General State of Himachal Pradesh, Shimla-1.
2. The Member Secretary-cum-Director, Prosecution, Himachal Pradesh, Shimla-9.

Mamuday

Under Secretary (Home) to the
Government of Himachal Pradesh

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 90 of 2023

Reserved on: 06.01.2025

Decided on: 9th January, 2025

Ganesh Dutt Thakur

.....Petitioner

versus

State of H.P and others

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner:

Mr. Vinay Kuthiala, Senior Advocate with Mr. Rajiv Rai, Advocate.

For the respondents:

Mr. I.N. Mehta, Sr. Addl. A.G with Ms. Sharmila Patial, Addl. A.G., Mr. Sushant Keprate, Addl. A.G., Mr. J.S. Guleria, Dy. A.G., and Mr. Raj Negi, Dy. A.G for respondents No.1 & 3/State

Mr. Vishal Mohan, Senior Advocate with Mr.Ashwani, Advocate for respondents No.2, 4 to 7 and 9.

Mr.Vijay Kumar Arora, Senior Advocate with Ms.Lalita Sharma, Advocate for respondent No.8.

Mr. Satish Kumar, Advocate for respondent No.10.

Tarlok Singh Chauhan, Judge.

After having arrived at a conclusion that the State was choosing to avoid and not implementing the H.P. Litigation

¹ Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

Policy, 2011 (for short 'policy'), this Court vide order dated 04.12.2024, directed the State to place the minutes of the meeting held on the Policy for our perusal.

2. The respondents have been *dilly-dallying* in producing the said decision and the reason for the same is obvious that despite the policy having been notified on 11th May, 2011 and despite various orders, from time to time passed by this Court, which shall be adverted to, in the later part of the judgment, the respondents have only ensured that the Policy is given a complete go by. This is evident from the fact that the first meeting of the State Empowered Committee to monitor the implementation of the State Litigation Policy and matters connected thereto, was held on 07.12.2013, second meeting on 29.03.2014, third meeting on 03.07.2014, fourth meeting on 24.09.2014, fifth meeting on 05.1.2015, sixth meeting on 04.07.2015, seventh meeting on 09.11.2015, eight meeting on 06.05.2016 and ninth meeting, that too, pursuant to the orders passed by this Court in **CWPOA No.486 of 2020** titled as **Ms.Ankita Bhardwaj vs. State of H.P and others** held on 04.10.2021. Later, another meeting held on 28.10.2021 and thereafter on 18.11.2021 and no meeting whatsoever has been held thereafter. Even in these 10 odd meetings, no major decisions whatsoever have been taken by the authorities and it

was virtually paying lip service to the policy rather than making a serious effort to implement the same.

3. It was as far back as on 14.08.2013 that the learned Principal Bench (Coram: Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice, as his Lordship then was and Hon'ble Mr. Justice Kuldeep Singh, Judge), while dealing with **CWP No.4060 of 2013** titled as **Vipta Nand vs. State of H.P and others**, regarding a labour dispute made strong observations regarding the casual manner in which the Department had dealt with the case and observed that "if the matter was considered by the Departmental Litigation Committee established in consonance with the H.P. Litigation Policy, this litigation was certainly avoidable." It was further directed the Department to proceed against the officer concerned for generating this litigation, which was avoidable.

4. On the same day i.e. 14.08.2013, LPA No.428 of 2012 came up for consideration before the Court and the Chief Secretary was directed to file his affidavit disclosing whether the Litigation Monitoring Committee Department-wise had already been established in consonance with the H.P. State Litigation Policy and the date of establishment of the concerned Committees, including number of proposals dealt with by the concerned Committees from the date of establishment.

Similarly, the information about the State Level Monitoring Committee was also directed to be furnished on the affidavit.

5. Thereafter, LPA No.428 of 2012 came up for consideration before the Court on 24.09.2013, on which date, after taking into consideration the affidavit filed by the respondents therein, again impressed upon the State to implement the H.P. State Litigation Policy.

6. On 18.10.2016, **CWP No. 2536 of 2016** titled as **State of H.P and another** vs. **Natter Singh** came up for consideration before a Division Bench of this Court of which, one of us was the member and author (Coram: Hon'ble Mr. Justice Sanjay Karol, Judge and Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge), wherein, after noticing the frivolous stand taken by the respondents observed that "It is high time that the State implements the 'H.P. State Litigation Policy' in its letter and spirit with a view to save time and money on the one hand and at the same time, relieves the burden of the Court from being clogged with frivolous litigation."

7. On 24.07.2017, a learned Division Bench of this Court (Coram: Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice, as his Lordship then was and Hon'ble Mr. Justice Ajay Mohan Goel, Judge) while dealing with the **CWP No.1498 of**

2017 titled as **State of H.P and another vs. Raju Ram** had observed in paras 4 to 12 as under:-

4. *State of Himachal Pradesh has formulated a Litigation Policy, which it is duty bound to follow.*

5. *The said Litigation Policy came to be introduced, acknowledging that:*

(a) *litigation is generally believed to be an unproductive investment both in time and money;*

(b) *Government has to conserve the resources, determine priorities of expenditure by a judicious approach so that unproductive litigation does not eat away a large chunk of the scarce resources;*

(c) *The officer who initiates litigation is so much involved into it that his work as an employee suffers;*

(d) *litigation contributes to the docket explosion; and*

(e) *avoidable litigation pursued relentlessly, discloses managerial failure.*

6. *The object of the Litigation Policy reads as under:*

“The Policy outlines the broad guidelines on litigation strategies to be followed by the State Government or its agencies with a view to reduce litigation, saving avoidable costs on unproductive litigation, reducing avoidable load on judiciary with respect to government induced litigation and thus realising the promise of Article 39A of the Constitution, which obligates the State to promote equal justice and provide free legal aid.”

7. *By virtue of clause 1.4 (d to h), the State is under an obligation to avoid litigation, wherever possible and not to file appeal unless the State or its agency believes that it has reasonable prospects for success or the appeal is otherwise justified in public interest, which in the instant case, we have found none.*

8. *In fact clause (2) of the Litigation Policy mandates formulation of Committees for monitoring the litigation. A High Powered Committee, at the highest level, is under an obligation to monitor the implementation of the Policy and hold the delinquent accountable and responsible.*

9. Clause (4) lays down the practices to be adopted for achieving the object of the Policy, in the following terms:

“(iii) Litigation between government departments/ agencies is to be avoided at all costs. For amicable settlement of disputes between departments, a suitable mechanism for resolution will be established under the Chairpersonship of the Chief Secretary who will settle these inter departmental issues/ disputes after hearing the concerned departments/ agencies.

(iv) Employees Grievance Redressal Mechanism with respect to grievances of the employees will be set up in every department which ensures that employees do not have to resort to litigation, as far as possible. The decisions of this mechanism shall be binding upon the government in so far as individual grievances, not having a larger implication for other employees of the department/ other departments, are concerned.”

10. It is in this backdrop, we find that the instant petition came to be filed, without due and proper application of mind and dehors the State Litigation Policy.

11. Under these circumstances, we direct the Chief Secretary to the Government of Himachal Pradesh to convene a meeting of the Principal Secretaries of the Government of Himachal Pradesh, in apprising them of the existence, importance, significance, advantages and benefits of adhering to the Litigation Policy, in letter and spirit. In turn, it is expected of the Principal Secretaries to convene a meeting in their respective Departments, sensitizing the stakeholders with regard thereto. This would only help curtail the problem of docket explosion and prevent cause any unnecessary inconvenience and expenditure by innocent persons.

12. We further direct the Chief Secretary as also the Principal Secretaries to the Government of Himachal Pradesh to have all the cases reviewed, periodically, in terms of the H.P. State Litigation Policy. This alone would generate lot of good will to the State.

8. On 14.11.2017, the same learned Division Bench while dealing with **CWPIL No.133 of 2017** titled as Court **on**

its own motion vs. State of H.P and others, while commenting adversely on the action in not implementing the Litigation Policy had observed in paras 36 to 39 as under:-

36. We notice that State has formulated a Litigation Policy with the avowed object of not only reducing litigation, saving avoidable cost on unproductive litigation, reducing avoidable load on judiciary with respect to Government induced litigation. This is in tune with the mandate of Article 39-A of the Constitution of India, obligating the State to promote equal justice and provide free legal aid. In fact, by virtue of clause 1.4 (d to h) of the State Litigation Policy, the State is under an obligation to take steps to reduce litigation, wherever possible. Now, if the employees are not paid their salaries within time, obviously, they are left with no remedy but to rush to the Courts.

37. Of late, litigation pertaining to employees of the State has increased and it is not that State is the petitioner. The action assailed is of mis-governance or avoidable omissions on the part of the Government. Why should the State force an employee to litigate in a case where emoluments/salaries, which are undisputed, are not disbursed in time.

38. An employee has a constitutional right to receive salary/emoluments within time, so also State is under a constitutional obligation and duty to disburse the same. 39. In the light of the aforesaid discussion and position of law, in exercise of our writ jurisdiction, we deem it necessary to pass the following directions:-

A. The Chief Secretary to the Government of Himachal Pradesh, shall provide a mechanism for enabling the employees to vent out their grievances of non-disbursement of due and admissible wages/salaries/emoluments. And one such mechanism being of setting up a 'Web Portal' at the level of the Principal Secretary/ Secretary of the concerned Department(s), where the employees can lodge their grievances/complaints. Such grievances/complaints shall be processed and adequately responded to

within a period of one week. This would facilitate speedy redressal of genuine grievances and prevent unnecessary litigation, clogging the wheels of administration of justice. Such endeavour shall not only be in the spirit of Litigation Policy, framed by the State Government. We see great advantage in the use of information and technology. Not only it would result into effective and efficient redressal of grievances, if any, but also improve efficiency in the affairs of governance of the State.

B. All the Head of Departments of Government of Himachal Pradesh/Government Institutes/State Instrumentalities to ensure that in future emoluments to all employees of their respective Departments/Institutes are disbursed in time;

C. In case of said emoluments not being disbursed on schedule, except in the event of the emoluments being withheld as per law, the State/ instrumentality of the State shall be liable to compensate the employees concerned by paying statutory interest or the existing rate for saving bank deposit account provided by the State Bank of India, whichever is higher;

D. Immediately thereto, the Head of the Departments/Instrumentality of the State shall hold an inquiry, which shall be completed within a period of 30 days, to ascertain the omission on the part of the concerned person, resulting in delay of disbursement on schedule; and

E. Pursuant to the findings of the inquiry, the interest which stands paid to such employee, shall be recovered from the erring officer(s)/officials(s).

We direct the Chief Secretary to the Government of Himachal Pradesh to ensure compliance of the above directions and file affidavit within a period of four weeks.”

9. On 28.11.2017, Single Bench of this Court(Coram: Justice Tarlok Singh Chauhan, Judge) while deciding CWP No.10776 of 2012 titled as **Daulat Ram vs. State of H.P and another**, after taking note of the policy and its non-implementation had observed as under:-

“14. Bearing in mind the aforesaid exposition of law as also the test laid therein, I am at a complete loss to appreciate as to how even the plea of estoppel by conduct could have been raised by the respondents as none of the tests as set out above, are satisfied. After all, the question of estoppel arises only when the representor wishes to disavow the assumptions contained in his earlier representation and it is in these circumstances that Courts examine whether it would be unjust or unequitable to allow the representor to resile from his statement while this admittedly is not the fact situation obtaining in the present case.

15. It is, therefore, high time that before instituting or defending a litigation, the State first implements and follows the provisions of the H.P. State Litigation Policy, 2011 which shall not only ensure that there is no unnecessary burden on the State Exchequer, but would also ensure that the dockets of the Court are not unnecessarily clogged with unproductive and otherwise unavoidable litigation, which is one of the main objective of the Litigation Policy laid down in Clause 1.2 of the Policy which reads thus:

“1.2 Objective:

The Policy outlines the broad guidelines on litigation strategies to be followed by the State Government or its agencies with a view to reduce litigation, saving avoidable costs on unproductive litigation, reducing avoidable load on judiciary with respect to government induced litigation and thus realising the promise of Article 39A of the Constitution, which obligates the State to promote equal justice and provide free legal aid.”

19. Registry is directed to send a copy of this judgment to the Chief Secretary to the Government of Himachal Pradesh, who, in turn, is directed to issue instructions to all concerned to ensure that before the matters are instituted or defended in the Court, the provisions of the H.P. State Litigation Policy are adhered to and followed in its letter and spirit.”

10. On 03.01.2018, a learned Division Bench of this Court (Coram: Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice, as his Lordship then was and Hon'ble Mr. Justice Sandeep Sharma, Judge) while dealing with the **CWPIL Nos.181 and 225 of 2017** both titled as **Court on its own motion vs. State of H.P and others**, reiterated the earlier observations made by the Bench on 14.11.2017 while deciding CWPIL No.133 of 2017.

11. On 30.07.2019, one of us (Justice Tarlok Singh Chauhan, Judge) while deciding **CWP No.2646 of 2015** titled as **Sat Dev Singh vs. State of H.P and others**, adversely commented upon the stand taken by the respondents, wherein, official respondents had acted irresponsibly like a belligerent litigant had observed as under:-

15. Respondents No. 2 to 5 have acted irresponsibly though they were expected to litigate within expected judicial norms. Respondents No. 2 to 5 like belligerent litigants could not resist the temptation of litigation and have fought their legal battle as if it was a war. The battle otherwise is "uneven" as on one side is a public institution whereas on the other side is a private individual.

16. In such a case, one is bound to recall to mind the observations made by Hon'ble Supreme Court in **Dilbagh Rai Jerry vs. Union of India, AIR 1974 SC 130**, wherein it was observed as under:-

"25. I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the

present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved make a big draft on the public exchequer. In the contest of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negatived in the judgment just pronounced. Instances of this type are legion as is evidenced by the fact that the Law Commission of India in a recent report on amendments to the Civil Procedure Code has suggested the deletion of Section 80, finding that wholesome provision hardly ever utilised by Government, and has gone further to provide a special procedure for government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not right for a welfare State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision, P.P. Abubacker v. Union of India, AIR 1972 Ker 103, 107: para 5 which I may usefully excerpt here:

“The State under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably get involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook ; for, the State’s interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage,

simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to right in court. The lay-out on litigation costs and executive time by the State and the agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Minister of India way back in 1957. Tis second appeal strikes me as an instance of disregard of that policy.”

17. *It must be remembered that the State defined within the ambit of State under Article 12 of the Constitution of India, is not an ordinary party trying to win a case against one of its own citizens by hook or by crook. The State’s interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity.*

18. *This Court has no hesitation to conclude that public money has been wasted because of the adamant behaviour of the officers of respondent No. 2 due to litigious attitude adopted by those officers in pursuing the instant litigation before this Court.*

19. In **Urban Improvement Trust, Bikaner vs. Mohan Lal (2010) 1 SCC 512**, the Hon'ble Supreme Court observed that it is a matter of concern that such frivolous and unjust litigations by Governments and statutory authorities are on the increase. It was further observed that statutory authorities which existed for to discharge statutory functions in public interest should be responsible litigants and cannot raise frivolous and unjust objections nor act in a callous and high-handed manner. It would be apposite to refer to the relevant observations, which reads thus:

“5. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

7. [In Dilbagh Rai Jarry vs. Union of India](#) [1974 (3) SCC 554] where the Hon'ble Supreme Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court (*P.P. Abubacker vs. Union of India*, AIR 1972 Ker 103, AIR pp. 107-08, para 5):(SCC p.562, para 25)

"25.....'5."The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.' "

8. [In Madras Port Trust v. Hymanshu International](#), (1979) 4 SCC 176 the Hon'ble Supreme Court held: (SCC p. 177, para 2):

"2. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for

the purpose of resisting such a claim has become unavailable...."

9. In a three Judge Bench judgment of [Bhag Singh & Ors. v. Union Territory of Chandigarh](#) through LAC, Chandigarh [(1985) 3 SCC 737]: the Hon'ble Supreme Court held: (SCC p. 741, para 3)

"3... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

10. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) *All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.*

(ii) *If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.*

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals."

20. In **Mahanadi Coalfields Ltd. and another vs. Mathias Oram and others (2010) 11 SCC 269**, the Hon'ble Supreme Court observed as under:-

10. The counter argument goes like this. It is very often the process of development that most starkly confirms the fears expressed by Dr. Ambedkar about our democracy. A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the constitution hardly ever reach the most marginalized citizens.

11. This is not to say that the relevant laws are perfect and very sympathetic towards the dispossessed. There are various studies that detail the impact of dispossession from their lands on tribal people. It is pointed out that even when laws relating to land acquisition and resettlement are implemented perfectly and comprehensively (and that happens rarely!), uncomfortable questions remain. For a people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

21. In **Gurgaon Gramin Bank vs. Khazani and another (2012) 8 SCC 781**, the Hon'ble Supreme Court considered the approach of the Government to litigate and observed as under:-

2. Number of litigations in our country is on the rise, for small and trivial matters, people and sometimes Central and State Governments and their instrumentalities Banks, nationalized or private, come to courts may be due to ego clash or to save the Officers' skin. Judicial system is over-burdened, naturally causes delay in adjudication of disputes. Mediation centers opened in

various parts of our country have, to some extent, eased the burden of the courts but we are still in the tunnel and the light is far away. On more than one occasion, this court has reminded the Central Government, State Governments and other instrumentalities as well as to the various banking institutions to take earnest efforts to resolve the disputes at their end. At times, some give and take attitude should be adopted or both will sink. Unless, serious questions of law of general importance arise for consideration or a question which affects large number of persons or the stakes are very high, courts jurisdiction cannot be invoked for resolution of small and trivial matters. We are really disturbed by the manner in which those types of matters are being brought to courts even at the level of Supreme Court of India and this case falls in that category.

22. In *Punjab State Power Corporation Ltd., Patiala and others vs. Atma Singh Grewal (2014) 13 SCC 666*, the Hon'ble Supreme Court noted the facts that Courts are burdened with unnecessary litigation primary for the reason that the Government or Public Sector Undertakings etc. decide to litigate even when there is no merit in the claim. It would be apposite to refer to the relevant observations, which read thus:-

8. It is not the first time that the Court had to express its anguish. We would like to observe that the mind set of the Government agencies/undertakings in filing unnecessarily appeals was taken note of by the Law Commission of India way back in 1973, in its 54th report. Taking cognizance of the aforesaid report of the Law Commission as well as National Litigation Policy for the States which was evolved at an All India Law Ministers Conference in the year 1972, this Court had to emphasize that there should not be unnecessary litigation or

appeals. It was so done in the case of *Mundrika Prasad Singh v. State of Bihar*, 1979 4 SCC 701. We would also like to reproduce the following words of wisdom expressed by Justice V.R. Krishna Iyer, who spoke for the Bench, in *Dilbagh Rai Jarry v. Union of India and Ors.*, 1974 3 SCC 554.

25.....5..... But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf.

9. In its 126th Report (1988), the Law Commission of India adversely commented upon the reckless manner in which appeals are filed routinely. We quote hereunder the relevant passage therefrom:

2.5. The litigation is thus sometimes engendered by failing to perform duty as if discharging a trust. Power inheres a kind of trust. The State enjoys the power to deal with public property. That power has to be discharged like a trust keeping in view the interests of the *cesti que trust*. Failure on this front has been more often commented upon by the court which, if it was taken in the spirit in which it was made, would have long back energised the Government and the public sector to draw up its litigation policy. When entirely frivolous litigation reaches the doorsteps of the Supreme Court, one feels exasperated by the inaction and the policy to do nothingness evidenced by blindly following litigation from court to court. Dismissing a Special Leave Petition by the State of Punjab, the Court observed that the deserved defeat of the State in the courts below demonstrates the gross indifference of the administration towards litigative diligence. The court then suggested effective remedial measures. It may be extracted:

4. We would like to emphasize that Government must be made accountable by parliamentary Social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80 Code of Civil Procedure is intended to alert the state to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to the parliament's expectation in continuing Section 80 in the Code despite the Central Law Commission's recommendations for its deletion. An opportunity for setting the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in court. We are constrained to make these observations because much of the litigation in which governments are involved adds to the case load accumulation in courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in courts of cases which deserve to be attended to.

Nearly a decade has passed since the observations but not a leaf has turned, not a step has been taken, and the Law Commission is asked to deal with the problem.

2.6. A little care, a touch of humanism, a dossier of constitutional philosophy and awareness of futility of public litigation would considerably improve the situation which today is distressing. More often it is found that utterly unsustainable contentions are taken on behalf of Government and public sector undertakings.

10. Even when Courts have, time and again, lamented about the frivolous appeals filed by the Government authorities, it has no effect on the bureaucratic psyche. It is not that there is no realisation at the level of policy makers to curtail unwanted Government litigation and there are deliberations in this behalf from time to time. Few years ago only, the Central Government formulated National Litigation Policy, 2010 with the "vision/mission" to transform the Government into an efficient and responsible litigant. This policy formulated by the Central Government is based on the recognition that it was its primary responsibility to protect the rights of

citizens, and to respect their fundamental rights and in the process it should become "responsible litigant". The policy even defines the expression 'responsible litigant' as under:

Responsible litigant" means-

- (i) That litigation will not be resorted to for the sake of litigating.*
- (ii) That false pleas and technical points will not be taken and shall be discouraged.*
- (iii) Ensuring that the correct facts and all relevant documents will be placed before the Court.*
- (iv) That nothing will be suppressed from the Court and there will not attempt to mislead any court or tribunal.*

2. That 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 eschewed and condemned.

3. The purpose underlying this policy is also to reduce government litigation in courts so that valuable court time would be spent in resolving other pending cases so as to achieve the goal in the national legal mission to reduce average pendency time from 15 years to 3 years. Litigators on behalf of the Government have to keep in mind the principles incorporated in the national mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary government cases. Prioritisation in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker sections and senior citizens and other categories requiring assistance must be given utmost priority.

11. This policy recognises the fact that its success will depend upon its strict implementation. Pertinently there

is even a provision of accountability on the part of the officers who have to take requisite steps in this behalf. The policy also contains the provision for filing of appeals indicating as to under what circumstances appeal should be filed. In so far as service matters are concerned, this provision lays down that further proceedings will not be filed in service matters merely because the order of the Administrative Tribunal affects a number of employees. Also, appeals will not be filed to espouse the cause of one section of employees against another.

12. The aforesaid litigation policy was seen as a silver lining to curb unnecessary and uncalled for litigation by this Court in the matter of Urban Improvement Trust, Bikaner v. Mohan Lal, 2010 1 SCC 512 in the following manner:

11. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the Government and for filing appeals and revisions against adverse decisions, thereby eliminating unnecessary litigation. But it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigations. Vexatious and unnecessary litigations have been clogging the wheels of justice for too long, making it difficult for courts and tribunals to provide easy and speedy access to justice to bona fide and needy litigants.

13. Alas, in spite of the Government's own policy and reprimand from this Court, on numerous occasions, there is no significant positive effect on various Government officials who continue to take decision to file frivolous and vexatious appeals. It imposes unnecessary burden on the Courts. The opposite party which has succeeded in the Court below is also made to incur avoidable expenditure. Further, it causes delay in allowing the successful litigant to reap the fruits of the judgment rendered by the Court below.

14. No doubt, when a case is decided in favour of a party, the Court can award cost as well in his favour. It is stressed by this Court that such cost should be in real and compensatory terms and not merely symbolic. There can be exemplary costs as well when the appeal is completely devoid of any merit. [See *Rameshwari Devi and Ors. v. Nirmala Devi and Ors.*, 2011 8 SCC 249]. However, the moot question is as to whether imposition of costs alone will prove deterrent? We don't think so. We are of the firm opinion that imposition of cost on the State/PSU's alone is not going to make much difference as the officers taking such irresponsible decisions to file appeals are not personally affected because of the reason that cost, if imposed, comes from the government's coffers. Time has, therefore, come to take next step viz. recovery of cost from such officers who take such frivolous decisions of filing appeals, even after knowing well that these are totally vexatious and uncalled for appeals. We clarify that such an order of recovery of cost from the concerned officer be passed only in those cases where appeal is found to be *ex-facie* frivolous and the decision to file the appeal is also found to be palpably irrational and uncalled for.

23. In ***Subrata Roy Sahara vs. Union of India and others* (2014) 8 SCC 470**, it was observed by the Hon'ble Supreme Court that State and its agencies litigate endlessly just because lack of responsibility to take decision. It was observed as under:-

This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions. So much so that we have started to entertain the impression that all administrative and executive decision-making are being

left to courts just for that reason. In private litigation as well, the litigant concerned would continue to approach the higher Court, despite the fact that he had lost in every court hithertobefore. The effort is not to discourage a litigant in whose perception his cause is fair and legitimate. The effort is only to introduce consequences if the litigant's perception was incorrect and if his cause is found to be not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant no matter how irresponsible he is suffers no consequences. Every litigant, therefore, likes to take a chance even when counsel's advice is otherwise.

24. Similar reiteration of law can be found in a fairly recent judgment of the Hon'ble Supreme Court in **Rajendra Shankar Shukla and others vs. State of Chhattisgarh and others (2015) 10 SCC 400**, wherein again while referring to the earlier decision in Hymanshu's case (supra), the Hon'ble Supreme Court held in para 32 as under:

“32. Further, this Court has frowned upon the practice of the Government to raise technical pleas to defeat the rights of the citizens in *Madras Port Trust vs. Hymanshu International* (1979) 4 SCC 176, wherein it was opined that it is about time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Para 2 from the said case reads thus :- (SCC p.177)

“2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (2 of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to

defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under [Article 136](#) of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (2 of 1905).”

25. In ***Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalak and others (2015) 14 SCC 327***, the Hon’ble Supreme Court considered the plight of farmers effected by land acquisition and creation of compulsive situation to avoid luxurious litigation instituted or the circumstances created by the State. It shall be apposite to refer to the relevant observations as contained in paras 16 to 18 of the judgment, which read as under:-

16. *The judicial process of the court cannot subvert justice for the reason that the court exercises its jurisdiction only in furtherance of justice. The State/authority often drags poor uprooted claimants even for payment of a paltry amount upto this Court, wasting the public money in such luxury litigation without realising that poor citizens cannot afford the exorbitant costs of litigation and,*

unfortunately, no superior officer of the State is accountable for such unreasonable conduct. It would be apt to quote the well known words of Justice Brennan:

"Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with. But injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness."

17. *The fundamental right of a farmer to cultivate his land is a part of right to livelihood "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being predominantly an agricultural society, there is a "strong linkage between the land and the person's status in the social system."*

"10.....A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens. For people whose lives and livelihoods are intrinsically connected to the land. the economic and cultural shift to a market economy can be traumatic."

(Vide: Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors., 2010 11 SCC 269; and Narmada Bachao Andolan v. State of Madhya Pradesh & Anr., 2011 AIR(SC) 1989)

18. *A farmer's life is a tale of continuous experimentation and struggle for existence. Mere words or a visual can never convey what it means to live a life as an Indian farmer. Unless one experiences their struggle, that*

headache he will never know how it feels. The risks faced by the farming community are many; they relate to natural calamities such as drought and floods; high fluctuation in the prices of input as well as output, over which he has no control whatsoever; a credit system which never extends a helping hand to the neediest; domination by middlemen who enjoy the fruits of a farmer's hard work; spurious inputs, and the recent phenomenon of labour shortages, which can be conveniently added to his tale of woes. Of late, there have been many cases of desperate farmers ending their lives in different parts of the country. The Principles of Economics provides for the producer of a commodity to determine his prices but an Indian farmer perhaps is the only exception to this principle of economics, for even getting a decent price for their produce is difficult for them.

26. The observations of the Hon'ble Supreme Court in the judicial precedent noted above squarely apply to this litigation generated because of and by respondent No. 2.

27. If this was not enough, the respondents, more particularly, respondent No. 2 did not even care to reply to the legal notice issued by the petitioner through his counsel.

28. It is more than settled that the object of the notice is to give the opposite party, be the government or the public officer or even an individual, an opportunity to reconsider the legal position and to make amends or settle the claim, if so advised without litigation. When statutory notice is issued to public authority, they must take the notice in all seriousness and they should not sit over it and force the citizens to the vagaries of litigation. They are expected to let the petitioner (who has given notice), know what stand

they take, within the statutory period, or, in any case before plaintiff embarks upon litigation. The whole object of serving a notice is to give opposite party sufficient warning of the case proposed to be instituted so that the opposite party can settle the claim without litigation or afford restitution without recourse of law.

29. The giving of notice to the government or any public officer in respect of any act purporting to be done by such public officer is mandatory as per Section 80 of the CPC even though the said provision does not apply to a writ petition but nonetheless once a notice had been issued to respondents, who admittedly are covered under Section 80 of the CPC then it was incumbent upon the respondents to have taken the notice in all seriousness and not sit over it and force the petitioner to the vagaries of litigation.

30. Issuance a notice under Section 80 is a measure of public policy with the object of ensuring that before a suit is instituted against the government or public officer, the government or the officer concerned is afforded an opportunity to scrutinize the claim and if it be found a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person who has issued the notice to resort to litigation involving considerable expenditure and delay.

31. The defence raised by the respondents is most bogus and frivolous one, where public money has been squandered and the petitioner harassed. It is a well known fact that the courts across the country are saddled with large number of cases and respondent No.

2 unfortunately has indulged in further burdening the court.

32. Time and again, the courts have been expressing their displeasure at the Governments'/public sector undertakings' compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon the Government/public sector undertakings not only when it pursue cases which can be avoided but also when it forces the public to do so. The precise time, effort and other resources go down the drain in vain.

33. This situation is best described by the Hon'ble Delhi High Court in **National Textile Corporation vs. Kunj Behari Lal (2011) 167 Comp Cas 29 (Delhi)**, wherein it was observed as under:-

18. Present petition is most bogus and frivolous one and has been filed just to squander public money and to harass a common man who committed blunder by giving his property on rent to the mighty public undertaking. It is a well known fact that courts across the country are saddled with large number of cases. Public Sector undertakings indulgences further burden them. Time and again, courts have been expressing their displeasure at the Governments/Public Sector undertakings compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon Government/Public Sector undertakings not only when it pursue cases which can be avoided but also when it forces the public to do so.

19. Public Sector undertakings spent more money on contesting cases than the amount they might have to pay with regard to the premises which have been taken on rent by them. In addition there to, precious time, effort and other resources go down the drain in vain. Public Sector

undertakings are possibly an apt example of being penny wise, pound foolish. Rise in frivolous litigation is also due to the fact that Public Sector undertakings though having large number of legal personnel under their employment, do not examine the cases properly and force poor litigants to approach the court.

20. Frivolous litigation clogs the wheels of justice making it difficult for courts to provide easy and speedy justice to the genuine litigants. Public Sector undertakings should not indulge in mindless litigation and unnecessary waste the time and public exchequer's money. A strong message is required to be sent to those litigants (whether Government or Private) who are in the habit of challenging each and every order of the trial court even if the same is based on sound reasoning and also to those litigants who go on filing frivolous applications one after another.

12. On 14.07.2021, a learned Single Judge of this Court (Coram: Justice Vivek Singh Thakur, J.) while disposing of **CWPOA No.486 of 2020** titled as **Ms.Ankita Bhardwaj vs. State of H.P. and others** while dealing with the Litigation Policy and had observed as under:-

“9. The Policy has been made applicable to any claim and litigation involving the State or its agencies including litigation before Courts, Tribunals, inquiries and in arbitration and matters pending in other alternative dispute resolution processes. All concerned have been requested to take necessary steps in accordance with this Policy after immediately forming Departmental Litigation Monitoring Committee in the Department and also appoint Nodal Officers to monitor the pendency and future litigation being faced by the Department in terms of Policy.

10. As per Policy, it is compulsory obligation upon the State and its agencies to act honestly and fairly in handling claims and litigation, which includes dealing with claims promptly and not causing unnecessary delay in the handling of claims; paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clearly established that at least part of the claim is payable; acting consistently in the handling of claims and litigation; endeavoring to avoid litigation, wherever possible; where it is not possible to avoid litigation, keeping the costs of litigation to minimum, including by: i) not requiring the other party to prove a matter which the State or an agency knows to be true; and ii) not contesting clearly established liability if the State or an agency knows that the dispute is really about quantum; not taking advantage of a claimant who lacks the resources to agitate a legitimate claim before any competent Court; not relying on technical defences unless the interests of the State or a State agency would be prejudiced adversely; and not to file/continue appeals/ revisions etc unless the State or an agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, provided that a decision to file/continue the appeal is made as soon as practicable and to file second appeals only on substantial questions of law.

11. Despite approval and adoption of aforesaid Policy, it has been seen that Departments, like present case, are invariably, instead of settling the claims or redressing grievances at their own level or rectifying the mistake wherever it is apparent on the face of record, are contesting cases vigorously for years together. Another case, where despite noticing and admitting mistake, Department/ Government did not rectify it, is CWPOA No.7684 of 2019, titled as *Netar Singh v. The State of H.P.*, wherein also reply was filed in the year 2017, admitting the mistake, but till 2021 no action for rectifying the same was taken and it was observed by this High Court that despite

having noticed the mistake, no steps have been taken to rectify it and to redress the grievance of the petitioner that too after filing reply affidavit to that effect. Such practice deserves to be deprecated. It can be done by the Government by issuing reminders, time-to-time, to all concerned and Court may also enforce this Policy by imposing heavy costs upon the State, recoverable from the concerned Officers/officials responsible for overburdening the Courts with unwarranted and avoidable litigation.

12. It is also relevant to note that in CWP No.1498 of 2017, titled as State of H.P. v. Raju Ram, a Division Bench of this High Court has directed as under:

*“11. Under these circumstances, we direct the Chief Secretary to the Government of Himachal Pradesh to convene a meeting of the Principal Secretaries of the Government of Himachal Pradesh, in apprising them of the existence, importance, significance, advantages and benefits of adhering to the Litigation Policy, in letter and spirit. In turn, it is expected of the Principal Secretaries to convene a meeting in their respective Departments, sensitizing the stakeholders with regard thereto. This would only help curtail the problem of docket explosion and prevent cause any unnecessary inconvenience and expenditure by innocent persons.
12. We further direct the Chief Secretary as also the Principal Secretaries to the Government of Himachal Pradesh to have all the cases reviewed, periodically, in terms of the H.P. State Litigation Policy. This alone would generate lot of good will to the State.”*

13. A Division Bench of this High Court in CWPIIL No.133 of 2017, titled as Court on its own Motion v. State of Himachal Pradesh, after observing that State, as a model employer, is expected to show fairness in action and directed as under:

“36. We notice that State has formulated a Litigation Policy with the avowed object of not only reducing litigation, saving avoidable cost on unproductive litigation, reducing avoidable load on judiciary with respect to Government induced litigation. This is in tune with the mandate of Article 39-A of the Constitution of India, obligating the State to promote equal justice and provide free legal aid. In fact, by virtue of clause 1.4 (d to h) of the State Litigation Policy, the State is under an obligation to take steps to reduce

litigation, wherever possible. Now, if the employees are not paid their salaries within time, obviously, they are left with no remedy but to rush to the Courts.

37. Of late, litigation pertaining to employees of the State has increased and it is not that State is the petitioner. The action assailed is of mis-governance or avoidable omissions on the part of the Government. Why should the State force an employee to litigate in a case where emoluments/salaries, which are undisputed, are not disbursed in time.

38.

39. In the light of the aforesaid discussion and position of law, in exercise of our writ jurisdiction, we deem it necessary to pass the following directions:-

A. The Chief Secretary to the Government of Himachal Pradesh, shall provide a mechanism for enabling the employees to vent out their grievances of non-disbursement of due and admissible wages/salaries/ emoluments. And one such mechanism being of setting up a 'Web Portal' at the level of the Principal Secretary/ Secretary of the concerned Department(s), where the employees can lodge their grievances/ complaints. Such grievances/ complaints shall be processed and adequately responded to within a period of one week. This would facilitate speedy redressal of genuine grievances and prevent unnecessary litigation, clogging the wheels of administration of justice. Such endeavour shall not only be in the spirit of Litigation Policy, framed by the State Government. We see great advantage in the use of information and technology. Not only it would result into effective and efficient redressal of grievances, if any, but also improve efficiency in the affairs of governance of the State.

B. All the Head of Departments of Government of Himachal Pradesh/ Government Institutes/ State Instrumentalities to ensure that in future emoluments to all employees of their respective Departments/ Institutes are disbursed in time;

C. In case of said emoluments not being disbursed on schedule, except in the event of the emoluments being withheld as per law, the State/ instrumentality of the State shall be liable to compensate the employees concerned by paying statutory interest or the existing rate for saving bank deposit account provided by the State Bank of India, whichever is higher;

D. Immediately thereto, the Head of the Departments/Instrumentality of the State shall hold an inquiry, which shall be completed within a period of 30

days, to ascertain the omission on the part of the concerned person, resulting in delay of disbursement on schedule; and E. Pursuant to the findings of the inquiry, the interest which stands paid to such employee, shall be recovered from the erring officer(s)/officials(s).”

14. In present case also, huge exemplary costs, recoverable from the Officers and officials proportionately, according to their pay, may be imposed upon the Department. But, taking a lenient view no cost is being imposed, with direction to the Chief Secretary, Government of Himachal Pradesh, to look into the matter and issue appropriate instructions, reminders and to take all necessary steps in consonance with the Policy to reduce unnecessary and unwarranted avoidable litigation in order to save not only public exchequer but also energy in terms of time and human resources for utilizing the same in creative developmental work of public interest.

15. A mechanism should be developed ensuring that all such type of cases are placed before the Departmental Litigation Monitoring Committee by the Officer/official concerned and responsibility of the officer/official, who failed to do so, should be fixed. Also, there must be periodical audit of litigation and working of Monitoring Committee and there must be effective a consequential action to ensure accountability.”

13. It was pursuant to the aforesaid directions that the 9th meeting of the State Empowered Committee under the H.P. Litigation Policy came to be held on 04.10.2021.

14. On 20.07.2021, Division Bench of this Court, of which one of us was the member (Coram: Hon’ble Mr. Justice Sanjay Karol, Judge and Hon’ble Mr. Justice Tarlok Singh Chauhan, Judge), while dealing with **CWP No.3366 of 2020** titled as **Varun Dhiman vs. State of H.P and others** had

reiterated the observations made in **Sat Dev Singh's** case (supra).

15. A learned Single Judge of this Court (Coram: Justice Vivek Singh Thakur, Judge) while dealing with **CWP No.1314 of 2016** titled **Ms. Nagma Devi vs. State of H.P.** reiterated all the observations that were earlier made by the Bench in **Ankita Bhardwaj's** case (supra).

16. A Division Bench of this Court, of which one of us (Coram: Justice Tarlok Singh Chauhan, Judge and Justice Virender Singh, Judge), was the member while deciding **LPA No. 19 of 2023** titled as **State of H.P and others vs. Nek Ram**, decided on 10.03.2023, after noticing the frivolous claim set up by the State had observed as under:-

“10. The State would be well-advised not to file such kind of frivolous appeals thereby clogging the dockets of this Court and would be better advised to implement the H.P. State Litigation Policy, 2011, as has been repeatedly directed by this Court in its various decisions, so as to ensure that there is no docket explosion at least at the instance and at the behest of the State Government.

11. Reference in this regard can conveniently be made to the judgments passed by this Court in CWP No.2646 of 2015 case titled Sat Dev Singh vs. State of H.P. and others, decided on 30.07.2019 and CWP No.1314 of 2016 case titled Nigma Devi vs. State of H.P. and others, decided on 30.08.2022.

12. Let a copy of this order be sent to the Chief Secretary to the Government of Himachal Pradesh for issuance of

necessary instructions for the implementation of the H.P. State Litigation Policy, 2011.”

17. A Division Bench of this Court, of which one of us (Coram: Justice Tarlok Singh Chauhan, Judge and Justice Satyen Vaidya, Judge), was the member while noticing the defence of the State Government in **CWP No.2306 of 2023** titled as **Krishan Lal vs. State of Himachal Pradesh and others**, decided on 14.07.2023, had observed as under:-

“9. We are astounded with the reply submitted by the official respondents. We would have very well appreciated that the official respondents would have clearly and candidly conceded that it was on account of fault of the Principal of the school that the deputation orders of the petitioner as ADPEO had been cancelled. Rather, they are trying to invent reasons, which are absolutely false, absurd and otherwise not sustainable in the eyes of law.

10. The State is the largest litigant today paying a huge expenditure on litigation and making it drain on public exchequer. In any case, the Officers of the State should shoulder responsibility and muster courage to call a spade a spade rather than trying to litigate cantankerously, thereby chocking the dockets of this Court.

11. We have repeatedly impressed upon the State Government to implement the Litigation Policy. It is only then that we can expect, find a sense and sensibility in the litigation being instituted by the State and its agencies.

12. We are really at a complete loss why the State in the instant case will still try to justify its action when the same is totally unjustifiable apart from being unfair and illegal and otherwise designed to confer illegal benefits upon the private respondent.”

18. A learned Division Bench of this Court (Coram: Justice Vivek Singh Thakur, Judge and Justice Ranjan Sharma, Judge) while deciding **CWPOA No.6151 of 2020** titled **Rashid Mohammad vs. State of H.P. and others**, on 13.06.2024, after noticing the frivolous stand taken by the respondents again reminded the State to implement the Litigation Policy.

19. The same Bench while dealing with **LPA No. 177 of 2024** titled as **State of H.P and others vs. Sat Dev Sharma and others**, decided on 01.07.2024, after noticing the frivolous appeals being preferred by the State observed as under:-

“8. We consider it fit to record that State is preferring the appeals despite dismissal of their similar appeals in identical matters. Such conduct is not in consonance with the Litigation Policy adopted by the State of HP which is causing wasting the time and energy of the State as well as the Court. It may invite imposing cost but taking lenient view, no cost is being imposed.”

20. Recently, a learned Single Judge of this Court (Coram: Justice Jyotsna Rewal Dua, Judge) while deciding **CWP No.16060 of 2024** titled as **Sohan Lal vs. State of H.P and others**, decided on 04.01.2025 after taking note of the Litigation Policy framed by the State Government had observed in para 4 as under:-

“4. Once the legal principle involved in the adjudication of present petition has already been decided, it is expected

from the welfare State to consider and decide the representation of the aggrieved employee within a reasonable time and not to sit over the same indefinitely compelling the employee to come to the Court for redressal of his grievances. This is also the purport and object of the Litigation Policy of the State. Not taking decision on the representation for months together would not only give rise to unnecessary multiplication of the litigation, but would also bring in otherwise avoidable increase to the Court docket on unproductive government induced litigation.”

21. We have consciously and purposefully referred to various judgments/orders of this Court only to show and reflect upon the working of the State where despite orders of this Court, it has conducted in itself of untrustworthiness and like a belligerent litigant has dragged not only the people of the State, but even many non State entities to an unnecessary and otherwise avoidable litigation. Instead of gracefully accepting the legitimate claims of persons, the respondents have not been able to resist the temptation of litigation and has been continuously fighting the legal battle as it is a war. Such battles as repeatedly observed by this Court are otherwise “uneven” as on the one side is the public institution, whereas, on the other side is normally a private individual.

22. We have no hesitation to conclude that public money is being wasted because of adamant behavior of Officers of the State due to the litigious attitude adopted by these

Officers in pursuing avoidable litigation and trying to justify their action/inaction which is otherwise not at all justifiable.

23. Merely because the Officers of the State Government, do not have to pay for the litigation from their own pocket, they cannot be permitted to file frivolous petitions as observed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Nos. 20070 and 30326 of 2023 in case titled as **Special Land Acquisition Officer vs. Vithal Rao**, decided on 6th September, 2023 which reads as under:-

- “1. *Delay condoned.*
2. *We deprecate the practice of filing such a frivolous petition after the award passed by the Reference Court has attained finality before this Court. The landowners were, thereafter, required to file execution proceedings before the competent authority. The Executing Court passed an order directing payment to the landowners.*
3. *The petitioner-State did not stop at that and they further challenged that order before the High Court. The High Court by the impugned order directed the petitioner(s) to make the payment of compensation.*
4. *Even the High Court's order directing payment to the landowners is now challenged by way of special leave petition.*
5. *Merely because the officers of the State Government, do not have to pay for the litigation from their own pocket, they cannot be permitted to file such frivolous petitions and harass the landowners, who have already lost their valuable land.*
6. *The special leave petitions are, therefore, dismissed with cost quantified at Rs.5,00,000/- (Rupees Five Lakhs Only) to be paid within four weeks from the date of this order. The cost of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) shall be deposited in the Supreme Court Advocates-on-Record Association to be used for the purpose of Library and the cost of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand*

Only) shall be deposited with the Supreme Court Bar Association Advocates Welfare Fund.”

24. The officials of the State Government have been totally oblivious to the fact that the State defined within the ambit of Article 12 of the Constitution of India, is not an ordinary party trying to win a case against one of its own citizens by hook or crook. The State interest is to meet honest claims, vindicate or substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such opportunity.

25. It is high time that we restrain the State and its agencies from litigating endlessly just because of lack of responsibility to take decisions by its Officers and direct that henceforth all the litigation on the Appellate or revisional side at the behest of the State shall be initiated only after following the H.P. State Litigation Policy and certificate to this effect shall be appended with the appeal/second appeal/revision petition, including petition under Article 227 of the Constitution of India, or else, such litigation would ordinarily not be entertained, unless an affidavit of the Department Head or the Secretary concerned, as the case may be, is filed setting out therein cogent reasons as to why the provisions of the Litigation Policy have not been adhered to, or else, the Courts may be

constrained to follow the course of action as adopted by the Hon'ble Supreme Court while deciding SLP(C) No.3398 of 2024 titled as **State of Rajasthan and others vs. Gopal Bijawat**, on 16th February, 2024, wherein it was held as under:-

“The respondent was reinstated by the Labour Court in the year 2001 and the writ petition filed by the State of Rajasthan was dismissed. Thereafter, continuously the respondent has been compelled to file repeated litigation in order to get the fruits of the award of the Labour Court.

The State of Rajasthan has now come up in Special Leave Petition against the orders passed by the learned Single Judge and the Division Bench directing for implementation of the said award.

It is unfortunate that the State of Rajasthan has been harassing the poor litigant, a part-time labourer, who was extended benefits by the Labour Court in the year 2001, i.e. for the last 22 years he has been litigating. This is totally a frivolous petition. It is, accordingly, dismissed with costs of Rs.10,00,000/- (Rupees ten lakhs only) to be paid to the respondent within four weeks from today and file proof of such payment before this Court within six weeks.”

26. With the aforesaid observations, we would only hope that the officials of the State see reasons and would implement this order in letter and spirit and give no opportunity to complain.

Let a copy of this order be forwarded to the Chief
Secretary to the Government of Himachal Pradesh.

List on 13th March, 2025.

(**Tarlok Singh Chauhan**)
Judge

January 09, 2025
(naveen)

(**Rakesh Kainthla**)
Judge