Government Cases: The speed breakers on road to success

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It is no secret that by number of cases, union government, state governments and various government statutory bodies are, collectively, the largest litigant in the Indian courts. Are these really the unavoidable cases that needed adjudication in the court of law? Answer is emphatic "NO". In majority of the cases, either filed by or against government or statutory bodies, the matter in issue could have been settled at pre-litigation stage, had the officer-in-charge acted timely in order to resolve the controversy leading to the litigation. No one in the government or statutory body is interested to take this responsibility. Unfortunately, we have reached the situation where one is not answerable for omission to act but is always answerable for the action one takes. Besides, the indifferent and lackadaisical approach of the courts towards the cases involving government or statutory authority also causes delay in disposal of the case thereby adding to the high pendency and backlog in the courts.

Section 80 of Civil Procedure Code, 1908 provides that no suit shall be instituted against the Government or any public official for any act purported to be done in his official capacity, until the person filing the suit had given a notice of two months (except only when there is an urgency for interim order) before filing the suit stating therein the cause of action, the name, description and place of residence of plaintiff and the relief he claims.

This notice is not a mere formality. It is to give an ample opportunity to the government to decide on genuineness of the grievance, the legality of the issue and financial burden involved with the help of its advisors so that the public money is not wasted. The two months period is provided to the Government to examine the claim put up in the notice and to give sufficient time to send a suitable reply so as to avoid litigation and to shrink area of dispute and controversy.

Unfortunately, it is generally observed that not taking this notice seriously has become a common norm and practice in government offices. The notice under section 80 has become, for the plaintiff, only a matter of legal formality and for the government, its absence a legal lacuna, for raising preliminary objection for the rejection of the suit.

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The underlying object of section 80 of Civil Procedure Code, 1908 gets totally defeated when the official department does not avail this opportunity to either redress the grievance of the prospective plaintiff, if the same is genuine, or give suitable reply explaining the government's stand so as to make that person examine his claim again. If timely and suitable reply is given then majority of unnecessary litigation can be avoided or area of dispute and controversy can be restricted. But the apathetic and indifferent attitude of government and its functionaries to the objective of this provision has not only increased the pendency of avoidable litigation wasting courts' valuable time and public exchequers money but adds to the vows of the public in search of justice and relief. Due to the frustration caused by delay in delivery of justice, the public eventually looses faith and trust in the system in particular and concept of State in general. Therefore, it is now high time that the government and its functionaries be made to realize the importance and value of this salutary provision.

The Hon'ble Supreme Court, in its celebrated case "*Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344"* has dealt with this issue. The apex court observed as under:

> *"……The two months period has been provided for so that the Government shall examine the claim put up in the notice and has sufficient time to send a suitable reply. The underlying object is to curtail the litigation. The object also is to curtail the area of dispute and controversy. ……..Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. ……..Judicial notice can be taken of the fact that in large number of cases either the notice is not replied or in few cases where reply is sent, it is generally vague and evasive…… It not only gives rise to avoidable litigation but also results in heavy expense and cost to the exchequer as well. Proper reply can result in reduction of litigation between State and the citizens……..*

*There is no accountability of the Government, Central or State or the statutory authorities in violating the spirit and object of Section 80. These provisions cast an implied duty on all concerned governments and States and statutory authorities to send appropriate reply to such notices. Having regard to the existing state of affairs, we direct all concerned governments, Central or State or other authorities……. to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. ……..**if the Court finds that either the notice has not been replied or reply is evasive and vague and has been sent without proper application of mind, the Court shall ordinarily award heavy cost against the Government and direct it to take appropriate action against the concerned Officer including recovery of costs from him.***"

In view of the direction of the Apex court *in re Salem Advocates Bar Association case (supra)*, now it is legal duty of every court to examine this point of non-reply or evasive-reply and pass appropriate order of exemplary cost*s* and appropriate action against the concerned officer so that message of accountability is permeated to all levels.

RELIEF OF INJUCTIONS AGAINST GOVERNMENT

Another area of concern is where the relief in nature of temporary or permanent injunction is sought against the government or statutory authorities.

It is undeniable that in hilly state of Uttarakhand, the right to life guaranteed by Article 21 of the Constitution of India, in its wider expansion, would also include the right of the people to have easy and all-weather access to their areas. The approaching road to village becomes so essential that in absence of it in mountainous terrain of the State of Uttarakhand, the people are cut off even from the other parts of the District. Consequently, residents of such areas don't get the emergency medical help, good education and suffer untold miseries. The transportation of agriculture

produce becomes next to impossible due to which poverty alleviation is still a dream in inaccessible areas. Therefore, slowly and gradually exodus from hills to semi-urban areas in the search of better living, medical facilities, education and earning is taking place. The mounting pressure of population in semi urban areas due to this exodus causes the problems of sanitation, waste disposal and unplanned growth of city. Therefore, Government would have to start several projects for constructing roads, waste management, and community facilities etc.

We are a developing nation with fastest growth rate in the world at present. Many foreign companies are coming to India with proposals of projects in infrastructure and manufacturing sector. Besides, Sri Montek Singh Ahluwalia in one of his writings stated that , to give employment to our burgeoning population we shall have to give more emphasis to manufacturing sector. Government of India has also come up with ambitious plans of "Make in India" "Smart City" and "Swacch Bharat Abhiyan" etc. For this huge network of roads, railways, waterways, SEZ , dry ports and airports to connect small and big towns have to be created and to meet ever expanding demand of energy for industrial, commercial and domestic use the mega projects for electricity generation, power grids would be needed.

Last but not the least, for being relevant in international geo-politics not only our economy has to be strong but we have to be a military power to be reckoned with. This is also necessary for playing pivotal role globally to protect our maritime and economic interests. Again for this we need strong manufacturing base of military equipments and defence hardware.

However, for creation of such infrastructure, establishing the manufacturing units and making all these dreams a reality, the land is the primary requirement. At times, the encroachment on the public land needs to be cleared. In such situations, sometimes the individual rights and interests come in conflict with the interests of such projects. More often than not, the suits are filed to restrain the government or executing agencies from carrying out the construction work or clearing the encroachment. In such circumstances, it is observed that injunction/stay orders are passed at drop of hat in utter disregard to the importance and exigency of the work in mechanical manner without realizing the harm such mechanical orders cause to public interest.

The injunctive orders from the Courts of law should be a rarity and be passed only when the applicant has a strong case as it frustrates the objective of the development.

The Hon'ble Supreme Court in its judgment *A.I.R. 1996 S.C. 2018 Delhi Development Authority vs. Skipper Construction Co. (P.)Ltd.* has observed as under-

> *"38. On this occasion, we must refer to the mechanical manner in which some of the Courts have been granting interim orders- injunctions and stay orders without realizing the harm such mechanical orders cause to the other side and in some cases to public interest. It is no answer to say that "let us make the order and if the other side is aggrieved let it come and apply for vacating it". With respect, this is not a correct attitude. Before making the order, the Court must be satisfied that it is a case which calls for such an order. This obligation cannot be jettisoned and the onus placed upon the respondents/ defendants to apply for vacating it."*

The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 or their discretionary power in a civil suit for granting of injunction or an interlocutory nature. The Hon'ble Supreme Court in its judgment *A.I.R. 1997 S.C. 1238* ***Ramniklal N. Bhutta Vs. State of Maharashtra*** has observed on this point as under:

> *"10- Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., south Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of*

transportation, power and communications are in dire need of substantial improvement, expansion and modernization …….. It is, however, natural that in most of these cases, the person affected challenge the acquisition proceedings in Courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariable, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the Courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. …….. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226- indeed any of their discretionary powers"

Hon'ble Gujrat High Court in its judgment ***'Daulatsinhji vs. Exe. Engineer, Himmatnagar AIR 1997 Guj 64'*** also observed that:

"11. In State of Himanchal Pradesh vs. Umed Ram Sharma, reported in (1986) 2 SCC 68 (AIR 1986 SC 847) the Apex Court held that the right to life includes the quality of life as understood in its richness and fullness by the ambit of the Constitution. Access to road was held to be and access to life itself in that State ……..

12. In fact it should not be issued even in cases where prima facie case is made out as the irreparable loss which is likely to be caused to the Government and to the rural masses is so enormous and tremendous that no degree of moulding the relief subsequently by the Court would be a panacea for the miseries which injunctive wound will leave. The Courts of law, therefore, should be slow in granting injunction against public project which are meant for the interest of the public at large as against the private proprietary interest or otherwise of few individuals. The proprietary interest of few individuals can always be provided for by suitable order of a Court of

law but the enormous rise in the price or escalating of price in constructing the road at the end of the litigation which may last for a decade or two , would not only frustrate the object, but would in substance compel the rural masses to live in the situation in which they had been for decades living with no access to the State Highways or other ways from which they can undertake to and fro journey to their villages."

Another critical area of concern is cantonment areas. Almost in all the cantonment areas, civil population also resides besides military installation and there are Cantonment Boards. Similarly there are exclusive military and defense areas but most of the time, surrounded by civil areas. Previously, the surrounding people might have been allowed to use some paths etc. inside the defense area but now, due to heightened threat to security of such defense installations and families of defence personnel, authorities are taking some measures by constructing walls etc thereby hindering free movement of the civilians. Again, the private interest of individual or neighboring residents should give way to larger public interest of security of the defence installations.

There are some important provisions that can be made of good use for early, effective and judicious disposal of the cases/suits against or by government or statutory bodies.

i. No urgent relief be granted in suit filed against government without serving notice under section 80(1) CPC with leave of the court *unless the opportunity to show cause in respect of relief prayed for is afforded to government*. (Sec.80 Sub. Sec. 2 CPC)

ii. The court, in fixing the day for the government to answer to the plaint, *shall allow a reasonable time for the necessary communication with the government* through the proper channel, and for the issue of instructions to the government pleader to appear and answer on behalf of the govt. (O.27 R.5 CPC)

iii. It shall be the *duty of the court in suit against the government to assist in arriving at a settlement* where it is possible to do so consistently with the nature of the case. (O.27 R.5-B CPC)

iv. To facilitate early disposal of the case against the government, the *court may direct the attendance of any person on the part of the government who is able to answer material questions relating to suit*. (O.27 R.6 CPC)

The experience shows that this is an important provision, for many a times, the cases linger on account of absence of responsible person acquainted with facts of the case to conduct the proceedings on behalf of the government.

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