

No: 26011/23(1)/2015-Coord  
Government of India  
Ministry of Chemicals & Fertilizers  
Department of Fertilizers

Shastri Bhawan, New Delhi  
Dated the 24<sup>th</sup> April, 2015

**OFFICE MEMORANDUM**

**Subject: Advice of the Ministry of Law in cases in which legal or constitutional issues are involved**

Please find enclosed a copy of O.M. No. I -28015/01/2009 – Admin.IV (LA) dated 3<sup>rd</sup> September, 2009 received from Department of Legal Affairs on the subject mentioned above for information and compliance.

**Encl: as above**



**(Sanjay Srivastava)**  
Under Secretary to the Govt. of India  
Tel. No. 23389364

All the Officers of Department of Fertilizers

✓ NIC to keep a copy at Web Portal.

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भारत सरकार Government of India  
विधि एवं न्याय मंत्रालय Ministry of Law & Justice  
विधि कार्य विभाग Department of Legal Affairs  
शास्त्री भवन, नई दिल्ली Shastri Bhawan, New Delhi-110001  
Tel.No: 23382913; FAX 23388028

No.I-28015/01/2009-Admn.IV(LA)

Dated : 3<sup>rd</sup> September 2009.

OFFICE MEMORANDUM

Subject: Advice of the Ministry of Law in cases in which legal or constitutional issues are involved.

Under the Government of India (Allocation of Business) Rules, 1961, giving of advice on legal matters and interpretation of laws is one of the primary functions of the Department of Legal Affairs. As early as in 1967, vide OM No.F.18(1)/69-O&M dated 20<sup>th</sup> May 1967, this Department has emphasized that in a case, if the Ministry/Department feels that the facts of the case have not been fully appreciated or further clarification is needed in any matter, the case may be referred back to this Department for consideration and advice in the matter. If, after further reference, the Department adheres to its previous advice, the same should be followed by the Ministry/Department concerned. It is not appropriate on the part of any Ministry/Department to say that neither the latter is bound by the advice given by this Department nor can refuse to follow such advice. These instructions have been reiterated from time to time in the past.

2. In spite of these instructions, instances have come to notice where Ministries/Departments keep on making repeated references insisting for concurrence of this Department to a particular course of action.

3. In one such case, the High Court of Delhi in WP(C) No. 2893 of 2008 in the case of UOI vs. Govind Manish has taken a serious view in the matter and has observed as under:-

"Notwithstanding, categorical opinion of the Department of Legal Affairs that it was not a fit case for filing the

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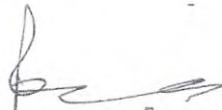
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writ petition, the petitioner went ahead and filed the instant writ petition. Not that we are influenced by the remarks of the Department of Legal Affairs. For this reason, we have referred to these remarks only after considering the matters ourselves on its own merits. Reason for quoting the aforesaid opinion of the Department of Legal Affairs is that even when there are instructions that normally the Department should concede to such legal advice and should not challenge the orders by filing frivolous petitions/appeals, many times such advice is not heeded to. This tendency of filing appeals till the highest Court by the Government Department, and in turn becoming biggest litigant in this country, is one of the reasons clogging judicial systems with huge pendency."

4. It is, therefore, re-iterated that once a considered view has been expressed by this Department, the Ministries/Departments should consider acting in terms of the advice tendered. If for some reasons, reconsideration of advice is desired, it should be done only with the approval of the Secretary of the concerned Ministry/Department. On reconsideration, if the advice is re-iterated, the Department should follow such advice.

5. The contents of this Memorandum may be brought to the notice of all concerned officers/staff.



( P.K. Malhotra )

Additional Secretary to the Govt. of India

Copy to:

1. All Ministries/Departments in the Govt. of India
2. All Officers of the Department of Legal Affairs
3. Branch Secretariat, Mumbai/Kolkata/Bangluru/Chennai.
4. Central Agency Section/Litigation (High Court) Section/  
Litigation (Lower Court) Section, New Delhi.



प्रेम कुमार मल्होत्रा  
सचिव  
P. K. Malhotra  
Secretary



भारत सरकार  
विधि और न्याय मंत्रालय  
सचि कक्षा विभाग  
GOVERNMENT OF INDIA  
MINISTRY OF LAW & JUSTICE  
DEPARTMENT OF LEGAL AFFAIRS

Dated the 7<sup>th</sup> August, 2014

D.O.No.2969/2014-Judl

Dear Secretary,

In a meeting chaired by Principal Secretary to the Hon'ble Prime Minister on 31 July, 2014, the issue relating to instructions to all the Ministries/ Departments/ PSUs/ Boards/ Authorities under administrative control of various Ministries/ Departments to desist from initiating inter-ministerial/ departmental litigation in the Court of Law was discussed.

2. It has been effort of this Department to reduce Government litigation in courts so that valuable court time is spent in resolving other pending cases. It has also been endeavour of the Government to see that disputes between various Ministries/ Departments/ PSUs/ Boards/ Authorities under the control of the Government do not go to the court. In that direction, a Permanent Machinery of Arbitration is functioning in the Department of Public Enterprises which deals with disputes between two Public Sector Undertakings. Similarly, in-house mechanism is working in some other Departments of the Government. Such mechanism includes Arbitration and other alternate dispute resolution mechanism. In spite of these instructions, certain PSUs/ Departments still resort to court proceedings in settlement of disputes either with the Government Departments or with other PSUs.

3. On the basis of the 154th Report of the Public Accounts Committee given in 1974-75, directions were issued which have been reiterated from time to time with regard to Resolution of such disputes. The instructions read as under:-

(i) In so far as disputes between one Government Department and another are concerned, there can be no question of taking recourse to litigation or even arbitration in seeking settlement of points at issue. If a discussion at the level of Ministers concerned does not result in agreement the problem can always be taken to the Cabinet for final decision.

(ii) Unresolved disputes between a Government Department and public sector enterprise and between one public enterprise and another would ordinarily fall in either of the two following categories:

- (a) Those relating to statutory matters, and
- (b) Those relating to commercial or other agreements.

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Regardless of the type of dispute, it has been decided that all disputes should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated."

4 All Ministries/ Departments are, therefore, requested to desist from inter-ministerial/ departmental litigations in any Court of Law and may issue necessary instructions in this regard to all Public Sector Undertakings/ Boards/ Authorities under their administrative control. In case it is not possible to resolve the dispute amicably by mutual consultation or through the good offices of Empowered Agencies of the Government or through Arbitration, the same should be referred first to the Cabinet Secretariat, and, then if necessary to PMO.

With regards,

Yours sincerely,



(P.K. Malhotra)

All Secretaries to the Government of India