

No.F.32(2)/2009-Judl.
Government of India
Ministry of Law and Justice
Department of Legal Affairs
Judicial Section

Shastri Bhavan, Rafi Marg,
New Delhi-110 001.
Dated the 7th August, 2009

To

Assistant Solicitor Generals,
All High Courts.

Subject: Jurisdiction of High Power Committee (also referred to as Committee on Disputes) working under the Cabinet Secretariat to resolve disputes between Ministries/Departments and PSUs of Central Government-Reg.

Sir,

I am directed to refer to O.M. No.53/3/10/96-Cab. dated the 31st December, 1991 of the Cabinet Secretariat (copy enclosed) on the subject noted above and to say that the High Power Committee, also known as Committee on Disputes (CoD), has been functioning in the Cabinet Secretariat under the direction of the Hon'ble Supreme Court in the case of ONGC vs. Collector of Central Excise {1995 (1) 1995 Supp. (4 SCC) 541}. The Committee tries to conciliate and ensure that no litigation between a Government Department and PSU goes to the Court without its clearance. Composition of the Committee as approved by the Apex Court is as under: -

- (a) Cabinet Secretary
- (b) Secretary, Department of Industrial Development
- (c) Secretary, Department of Public Enterprises
- (d) Secretary, Department of Legal Affairs
- (e) Finance Secretary
- (f) Secretary of the concerned Ministry/Department.

2. The Apex Court has subsequently clarified that the Committee shall function under the ultimate control of Cabinet Secretary but delegate may look after the matter.

3. Instructions have been issued from time to time to all Departments of Government of India as well as the Public Sector Undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultations or through the good offices of the Empowered agencies of the Government or through arbitration and recourse to the litigation should be eliminated.

4. The Hon'ble Supreme Court in the case of ONGC vs. Chief Commissioner, Central Excise (supra) has given a categorical direction that it shall be the obligation of every court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the committee in case it has not been so pleaded and in the absence of the clearance the proceedings would not proceed with.

5. In the case of Mahanagar Telephones Nigam Ltd. vs. Chairman, Central Board of Direct Taxes (2004) 6 SCC 431, the Apex Court gave a further direction that there is need to set up similar Committees by the State Governments also to resolve the controversy arisen between the Departments of the State or the State and any of its undertakings. The Hon'ble

Supreme Court further observed that it would be appropriate for the State Governments to set a Committee consisting of Chief Secretary, Secretaries of the Departments concerned, Secretary of Law and where financial commitments are involved the Secretary of Finance. The decision taken by such a Committee shall be binding on all the Departments concerned and shall be the stand of the Government.

6. It will thus be seen that for amicable resolution of the disputes between the Central Government Ministries/Departments and the Central Government PSUs, there is a mechanism working under the Cabinet Secretariat. Similar mechanism is possibly working in the State Governments for settlement of disputes between the State Governments and the State PSUs. However, instance have come to the notice of the Cabinet Secretariat where some of the High Courts have given direction to the CoD in the Cabinet Secretariat to resolve disputes between the Central Government Departments/PSUs and the State Government/SPSUs.

7. We are of the considered view that such disputes are neither within the purview of the CoD working in the Cabinet Secretariat nor within the purview of the Committed that might have been constituted by the State Governments. It goes against the federal structure of the Constitution. It has been further noticed that some of the High Courts, while passing order in such disputes between Central and State entity also give direction to the Government of India to constitute Committees, composition of which is at variance with the Committee (CoD) already functioning in the Cabinet Secretariat. This leads to functional inconvenience and obliges the Government of India to set up separate Committee for each disputes which is administratively impracticable.

8. It is, therefore, requested that whenever dispute involving Government Departments and Public Sector Undertakings come before a court, you may apprise the Hon'ble Court of the existing practice and composition of the Committee and its jurisdiction so that reference of disputes between Central and State entities to the CoD could be avoided.

9. You are also requested to bring the contents of this letter to the notice of all the Central Government Counsel in your High Court/Benches for appropriate necessary action.

10. This issues with the approval of Hon'ble Minister of Law and Justice.

Yours faithfully,




(M.A. Khan Yusufi)

Joint Secretary & Legal Adviser to the Government of India

Copy to: -

1. Cabinet Secretariat, Litigation Cell, Sardar Patel Bhawan, New Delhi w.r.t. their letter F.No.1/126/3-G(S)/2009-LC, dated 8th June, 2009.
2. Branch Secretariats, Mumbai, Kolkata, Chennai and Bangalore.
3. All Officers of ILS in the Department of Legal Affairs.



(M.A. Khan Yusufi)

Joint Secretary & Legal Adviser to the Government of India