



GOVERNMENT OF KERALA
General Administration (SC) Department

No. 177/SC1/GA(SC)2022

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CIRCULAR

Sub:- Judicial review in policy matters of Government-Judgments of Hon'ble Supreme Court- information -reg:

The practice of filing writ petitions on the policy matters of the Government has been noticed at several instances in the past. The attempts made by the litigants to invoke the jurisdiction of judicial review of Constitutional Courts in policy matters, being contrary to the settled principle of separation of powers between the Executive, and the Judiciary, have been discouraged by the Hon'ble Supreme Court time and again. It is well settled that unless policy decisions of the State are found to be grossly arbitrary or malafide, the same shall not be interfered with.

In Fertilizer Corporation Kamagar Union (Regd.), Sindri and Others Vs Union of India and Others, (1981) 1 SCC 568, the Hon'ble Supreme court observed:

"35. We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded".

In State of Punjab & Ors. Vs Ram Lubhaya Bagga & Ors, (1998) 4 SCC 117, the Hon'ble Supreme Court held thus:

".....When Government forms its Policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out in affidavits. The Court would dissuade itself from entering into this realm which belongs to the Executive".

In Federation of Railway Officers Association and Others Vs. Union of India (2003(4) SCC 289), the Hon'ble Apex court held :

"In examining a question of this nature where a policy is evolved by the Government, judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary and irrational or abuse of the power, the Court will not interfere with such matters".


In Directorate of Film Festivals Vs Gaurav Ashwin Jain (2007 (4) SCC 737), the Hon'ble Supreme Court held as follows:

"The scope of judicial review of Governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are courts Advisors to the Executive on matters of policy which the Executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review".

Recently, the Hon'ble Supreme Court while considering the policy of Central Government in the matter of "One Rank One Pension" principle in **Indian Ex-Servicemen Movement & Ors. Vs Union of India & Ors (Writ Petition (Civil) No. 419 of 2016; March 16, 2022)** has clarified in Para 46 as follows:

"Most questions of policy involve complex considerations of not only technical and economic factors but also require balancing competing interests for which democratic reconciliation rather than adjudication is the best remedy. Further, an increased reliance on judges to solve matters of pure policy diminishes the role of other political organs in resolving contested issues of social and political policy, which require a democratic dialogue. This is not to say that this Court will shy away from setting aside policies that impinge on constitutional rights. Rather it is to provide a clear-eyed role of the function that a court serves in a democracy". (Para 46)

Taking into consideration the judgments discussed above and in view of the observations made therein, all the departments while preparing Statement of Facts or Affidavits, should take steps to bring these aspects to the notice of the judicial forums at the initial stage itself, especially when the matters relating to the policy of the Government are involved, so as to effectively defend such cases.


Dr. V P Joy
Chief Secretary

All Additional Chief Secretaries/ Principal Secretaries/Secretaries and Special Secretaries.

All Additional Secretaries/ Joint Secretaries/Deputy Secretaries/Under Secretaries.

All departments including Law and Finance.

All Heads of Departments.

All District Collectors

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