

Goa Government's actual Compliance with Supreme Court Directives on Police Reform

The Government of Goa has, according to CHRI's information, filed two affidavits before the Supreme Court in the *Prakash Singh* case.¹

The first affidavit, filed on 3rd January 2007 by the Chief Secretary of Goa, makes strong objections to the setting up of a State Security Commission, Police Establishment Board and Police Complaints Authority. It also states that the state government has no role to play with regards to selection and minimum tenure of the DGP, Inspector General and Deputy Inspector General as that is under the jurisdiction of the Ministry of Home Affairs at the Centre. However, it also states that Goa has accepted the directive calling for the separation of law and order and investigation in principle and would begin the process shortly.

The second affidavit, filed on 7th April 2007, sees the state claiming to be in compliance with several directives. These assertions are supported by government orders establishing a State Security Commission², Police Establishment Board³ and Police Complaints Authority.⁴ The state reiterated its inability to implement directives 2 (selection and tenure of DGP) and 3 (tenure for police officers on operational duties) due to it lacking the jurisdiction to do so. Further, it changed its position with regard to directive 4 (separation of law and order from investigation) from the earlier affidavit, stating that separation was not feasible in a small state like Goa.

Goa is also in the process of enacting a comprehensive bill which would replace the 1861 Police Act in the state. The Goa Police Bill, 2008 was tabled in the Goa Assembly in August 2008 and has been with a Select Committee ever since. There is uncertainty as to when the new legislation will be enacted. In the interim period, Goa's continued non compliance with several of the directives of the Apex Court justify characterization of the state as partially compliant.

1. State Security Commission

Directive 1

Constitute a binding State Security Commission to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, and (iii) evaluate the performance of the state police. In the composition of this Commission, governments have the option to choose from any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee.

¹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1

² Government Order No. 2/51/2006-HDLG

³ Government Order No. 2/51/2006-HD(G)

⁴ Government Order No. 2/51/2006-HD(G)



The state government has, through the promulgation of Government Order No. 2/51/2006-HDLG, set up a State Security Commission (SSC) that only partially satisfies the Supreme Court's directive.

Composition

While drawing on the model recommended by the NHRC, the Goa government has made one change - it has omitted having a second sitting or retired judge recommended by the Chief Justice as a member of the SSC. Thus the composition of the Commission now comprises of the Chief Minister, retired judge, Chief Secretary, Leader of Opposition and Director General of Police. This omission tilts the numbers in favor of the government and police, who now have a clear majority of three in the five member commission. As a result of this composition, the SSC is likely to become a mere façade for continued control of the police by the state executive.

Powers

Nowhere in the Bill does it state that the recommendations of the Commission shall be binding on the state government as explicitly stated in the Supreme Court judgment. Without binding powers, the Commission will be reduced to a toothless body with the state government disregarding its recommendations whenever the recommendations are inconvenient.

Conclusion

The government dominated State Security Commission established by Goa violates the Supreme Court's order in letter and spirit. The composition of the SSC and its lack of binding powers ensure that it will not be able to insulate the police from unwarranted political interference as envisaged by the Supreme Court. Thus, Goa has only partially complied with Directive 1.

2. Selection and tenure of the DGP

Directive 2

Ensure that the Director General of Police is appointed through a merit based, transparent process with the involvement of the UPSC and enjoys a minimum tenure of two years.

In its January 2007 affidavit, the Goa government argued that "the selection (of the DGP) for the state is done by the Ministry of Home Affairs, Government of India and the state has no control over the tenure." This was reiterated in the April 2007 affidavit.

Conclusion



As the Goa government has no jurisdiction over the selection, tenure and removal of the DGP, responsibility for the same lies with the Union Government. The Union Government has not addressed this matter in any of its affidavits, and thus is non compliant with this directive in respect to Goa.

3. Tenure for police officers on operational duties

Directive 3

Ensure that other police officers on operational duties (Superintendents of Police in-charge of a district, Station House Officers in-charge of a police station, IGP (zone) and DIG (range)) also have a minimum tenure of two years.

As with directive 2, Goa stated in its January 2007 affidavit that “the Inspector General of Police and Deputy Inspector General of Police are selected by the Ministry of Home Affairs.” Implementation of this directive with respect to those officers is thus the responsibility of the Union Government. However, Goa retains the ability to implement this directive with regard to other officers on operational duties. The following analyses Goa’s compliance with directive 3 in the case of those officers under its jurisdiction.

Tenure

Goa objected to providing a two year tenure for officers on operational duties in its January 2007 affidavit, arguing that “being a small state,...administrative exigencies may not permit officers to have the minimum prescribed tenure.” In its April 2007 affidavit, however, Goa changed its position, stating that it “will ensure that field level postings are maintained for at least two years.”

The Goa government does not support this assertion with any notifications, orders, rules or subordinate legislation. Whilst there is a possibility that officers on field postings do now generally hold two year terms, there is nothing on paper that institutionalises this practice.

Removal

Both affidavits filed by the Goa government are silent on the removal process for officers on operational duties. The Apex Court had elaborated on the grounds of removal in its judgment to ensure that these officers could not be removed by the government for political reasons and could thus carry out their duties without fear or favour.

Conclusion

The Goa government has agreed in principle to provide the security of a two year tenure to officers on field postings. Nevertheless, its failure to institutionalize this practice, together with its total silence on the issue of premature removal of officers ensure that it remains non compliant with directive 3.



4. Separation between Investigation and Law & Order

Directive 4

Separate the investigation and law and order functions of the police.

Separation

Goa agreed in principle to separating the law and order police from the investigating police in its January 2007 affidavit. It has since, however, backtracked from this position, stating in its March 2007 affidavit that “it is not administratively feasible for a small state like Goa to commence the separation as suggested by this Honble Court.” Goa, however, states that 66 Sub Inspectors have been recruited who will be posted for investigation duties.

The Supreme Court’s orders are non negotiable. It has highlighted this aspect of its ruling by dismissing all review petitions filed with regard to the *Prakash Singh* case. In its directive, the Supreme Court has stressed that the investigation and law and order functions of the police *must* be separated. It has even suggested how this can be done, stating that separation can start in large urban areas and gradually be extended to smaller towns. Training 66 Sub Inspectors and posting them for investigating duties does not suffice.

Conclusion

Goa’s failure to take any concrete steps with regard to separation of law and order and investigation leaves it in gross non compliance with directive 4.

5. Police Establishment Board

Directive 5

Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police. This Board will comprise the Director General of Police and four other senior officers of the police department, and will be empowered to dispose of complaints from SPs and above regarding discipline and other matters.

The state government has, through the promulgation of Government Order No. 2/51/2006-HD(G), set up a Police Establishment Board in full compliance with directive 5.



6. Police Complaints Authorities

Directive 6

Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt, rape in police custody, extortion, land grabbing and serious abuse. The Complaints Authorities are binding on criminal and disciplinary matters.

The state level authority is to be chaired by a retired judge of the High Court or Supreme Court to be chosen by the state government out of a panel of names proposed by the Chief Justice. It must also have three to five other members (depending on the volume of complaints) selected by the state government out of a panel of names prepared by the State Human Rights Commission, the Lok Ayukta and the State Public Service Commission. Members of the authority may include members of civil society, retired civil servants or police officers or officers from any other department.

The district level authority is to be chaired by a retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge nominated by him or her. It must also have three to five members selected according to the same process as the members of the state level Police Complaints Authority.

The state government has, through the promulgation of Government Order No. 2/51/2006-HD(G), set up a state level Police Complaints Authority (PCA) in full compliance with directive 6.

7. Recommendations

In light of the above analysis, the following should be considered:

1. To direct immediate compliance with directives 1, 3 and 4
2. To direct the Goa to report to the Monitoring Committee regarding compliance within a month's time; and
3. To issue a notice of contempt against the Goa Government if it fails to comply with directives 1, 3 and 4 within one month's time.

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Commonwealth Human Rights Initiative

