

Jharkhand Government Compliance with Supreme Court Directives on Police Reform

The Government of Jharkhand has filed two affidavits before the Supreme Court in the Prakash Singh case.

The first affidavit (Application on behalf of state of Jharkhand for modification of order dated 22.9.2006 passed in writ petition [c] No. 310 of 1996, filed 4 January 2007) asks for modification to three of the six directives. The second affidavit (compliance affidavit on behalf of the state of Jharkhand in pursuance to the Hon'ble Court's order dated 11.01.07, dated 9th April 2007), asserts compliance with all of the directives.

Although Jharkhand has passed notifications and resolutions complying with five of the six directives, there are still deviations from the Supreme Court order.

Further, three of the notifications are passed as interim arrangements¹ and will get annulled when the new police act of Jharkhand is passed. However, there are no indications of the drafting process of the act or when it will be passed.

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.

The Jharkhand Government has set up the State Security Commission through a Notification No. 4332 dated 31.12.2006.

Composition

The model adopted by Jharkhand follows the Soli Sorabji Committee's model with the exception that the Advocate General has been included on the State Security Commission (SSC) instead of a Judge.² The Judge represents an impartial member of the SSC and must not be replaced by the Advocate General who is the lawyer for the Government. By including one more governmental official in the Commission the impartiality of the SSC will be compromised.

Function

¹ Interim notifications are passed for directive 3, 5 and 6, (tenure of police officers on operational duties, the Police Establishment board and Police Complaints Authorities)

² Government Notification No.-8/Ya.-4003/2006-4332 dated 31 Dec 2006



The notification pertaining to the SSC quotes the directive of the Supreme Court except that it is silent on one of its functions i.e. that the Commission is bound to submit a report to the State Legislature.³

Powers

Further the notification is silent on whether the SSC has binding powers or not.⁴ If the notification is read with the Supreme Court order it will follow from the directive but if the Government decides otherwise, it will be a violation of the directive, undermining the purpose of the Commission.

Conclusion

Despite complying with the majority of the directive, Jharkhand Government has still ignored implementing some vital components of the directive and can therefore not be seen as compliant.

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.

Selection

Jharkhand Government has followed the directive to some extent by sending two letters to the UPSC with short listed names for the position of DGP.⁵ However, the affidavit filed by the Government is silent on the selection criteria other than the basis of seniority. Further, the government in its affidavit states that the empanelment to the post to the DGP should be made by the SSC instead of the UPSC.⁶ However there is a failure to mention this clause in the notification setting up the SSC.

Tenure

In its affidavit filed 4 January 2007 the Jharkhand Government expressed its concern regarding the two year tenure and its limited removal grounds for the DGP.⁷ It states that if the directive will be adhered to the government will not be able to remove the DGP in the event of administrative exigencies like gross inefficiency and negligence. While the expressed concern is understandable in some cases the chances of such provision to be misused is far

³ Government Notification No.-8/Ya.-4003/2006-4332 dated 31 Dec 2006

⁴ Government Notification No.-8/Ya.-4003/2006-4332 dated 31 Dec 2006

⁵ Letter No.8/ya-4003/2006-515, dated 3 April 2007 from Secretary of Government to Secretary of UPSC & Letter No.-8/ Ya.-4003/2006-1079, dated 30 March 2007 from Secretary of Government to Secretary of UPSC

⁶ Para 9, Application on behalf of state of Jharkhand for modification of order dated 22.9.2006 passed in writ petition [c] No. 310 of 1996, filed 4 January 2007

⁷ Para 10, Application on behalf of state of Jharkhand for modification of order dated 22.9.2006 passed in writ petition [c] No. 310 of 1996, filed 4 January 2007



greater. Further there is no provision which sanctions the removal of the DGP in prior consultation with the SSC.

Conclusion

The Jharkhand Government has not complied with the selection procedure, tenure and the exception of tenure. Instead it has argued that the Court should modify its directives to grant the Government the power to remove the DGP at anytime due to administrative reasons, clearly defying the directive.

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.

Tenure

The Jharkhand Government has passed a notification fixing the tenure of the Officers. Two year tenure is *generally* granted to police officers on operational duties according to the notification.⁸

Premature removal

In contrast with the concerns regarding the premature removal grounds of the DGP as seen above, the Jharkhand Government implements these grounds for police officers on operational duties. However, one of the grounds states that a police officer can be removed if s/he has become *incapable* to discharge his/her duties instead of *incapacitated*.⁹ The word incapable would lend far more potential for removal than incapacitated.

Conclusion

Although Jharkhand Government has implemented most of the directive it has still refused two years binding tenure and provides a wider exemption clause than envisaged. Therefore it can not be seen as compliant with the directive.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation

⁸ Para (i) Government Notification No.-8/Ya.-4003/2006-619

⁹ Para (ii). Government Notification No.-8/Ya.-4003/2006-619, dated 27 Feb 2007

The Jharkhand Government states that separate cadres for Investigation and Law & Order are constituted in Ranchi, Jamshedpur, Bokaro and Dhanbad.¹⁰

Conclusion

Initial steps towards separations of Law & Order and Crime Investigation have been made by the Jharkhand Government but it is not clear if this initiative will be extended to smaller areas. Therefore it can only be seen as partially compliant with the directive.

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 Jharkhand Government has constituted the Police Establishment Board vide Notification No. 513 dated 19.2.2007.

Function

The Jharkhand Government has set up a Police Establishment Board (PEB) but the functions of the board remain unclear. The board does not have the power to dispose representations from police officers who have been subject to illegal and irregular orders neither do they have the power to dispose representations in relation to promotions.¹¹ This is in violation of the Supreme Court order.

Conclusion

Although the Jharkhand Government has set up the Police Establishment Board it has still not implemented all of its functions, leaving it to be non compliant with the directive.

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

¹⁰Government Resolution 4333, dated 31 Dec 2006

¹¹Para (c) Government Notification No.-8/Ya.4003/2006-513, dated 19 Feb 2007

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 Jharkhand Government has set up Police Complaints Authorities at District and State levels however, the Resolution is silent on whether the state and district PCAs has binding powers or not, which is a cause of concern.¹²

7. Recommendation

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

1. To direct immediate compliance with directives 1, 2, 3 and 5.
2. To direct the Government of Jharkhand to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Jharkhand if they fail to comply with the abovementioned directives.

New Delhi, 9 October 2009

Commonwealth Human Rights
Initiative

¹² Resolution 1113, dated 3 April 2007

