

Karnataka Government's Compliance with Supreme Court Directives on Police Reform

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

The first affidavit, filed on 30th December 2006 by the Chief Secretary of Karnataka states that Karnataka is in the process of drafting a comprehensive legislation to replace its 1963 Karnataka Police Act. It also makes strong objections to setting up of a State Security Commission, a Police Establishment Board and Police Complaints Authorities, whilst claiming to be in compliance with the other directives. The second affidavit, filed by the Chief Secretary in April 2007, reiterates these objections and states that a Karnataka Police (Amendment) Bill 2007 has been drafted which would be introduced in the legislature within the next two days.

As of date, Karnataka has complied with Directive 4 and, in July 2009 established a State Security Commission via government order. The present Karnataka Government has also been drafting a comprehensive bill to replace the existing Karnataka Police Act. However, complete uncertainty as to when this bill will be introduced in the legislature, let alone enacted, together with Karnataka's continued non compliance with most of the directives justify characterizing Karnataka as non 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.

The Karnataka Government recently constituted a State Security Commission vide Government Order No. HD 61 POSAEE 2009 on 14th July 2009.

Composition

The Apex Court directed State Governments to set up SSCs to ensure that the Government does not exercise unwarranted influence or pressure on the state police. The SSC established by the Karnataka government does not bear any similarity to the NHRC, Ribeiro Committee or Sorabjee Committee models that the Supreme Court has proposed, and as such, lacks a balanced composition. Five of the seven members of the Commission are either members of the State executive (Chief Minister and

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

KARNATAKA

ACTUAL COMPLIANCE

Home Minister), bureaucracy (Chief Secretary and Additional Chief Secretary) or the police (DGP). With such composition, it is hard to see the Commission function as a buffer body designed to shield the police from unwarranted political interference and pressure by the state government. As a result, the SSC is likely to become a mere façade for continued executive control of the police.

Conclusion

Though the State Security Commission established by the Karnataka Government satisfies Directive 1 in terms of mandate and powers, however its flawed and lopsided composition ensures that the institution will not be able to serve the purpose envisaged by the Supreme Court. In this regard, Karnataka remains only partially compliant 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.

Selection

In its December 2006 affidavit, Karnataka objected to giving the UPSC a role in the empanelment of the DGP. It stated that Karnataka followed a procedure where a High Power Committee consisting of the Home Minister and Chief Secretary would empanel a list of candidates for the DGP post from which the Chief Minister would make the final selection. This was reiterated in the April 2007 affidavit. To ensure a modern, professional, efficient, and service minded police organisation, it is crucial that the head of the organisation is selected based on merit and experience. Karnataka has not passed any orders, notifications or subordinate legislation to ensure that empanelment of candidates for this post be carried out by an independent body.

Tenure

In its December 2006 affidavit, Karnataka argued that “while the State government is conscious of the need for a reasonable tenure for the Director General of Police, continuing him beyond the date of superannuation is a decision that...will have major ramifications, and hence this aspect will need deeper consideration.” The April 2007 affidavit is silent on the issue of tenure. As such, it is clear that Karnataka has taken no steps to provide the DGP with the security of a two year tenure.

Removal

Both affidavits filed by the Karnataka Government are silent on the removal process for the DGP. The Apex Court had elaborated on the grounds of removal in its judgment to ensure that the DGP could not



KARNATAKA

ACTUAL COMPLIANCE

be removed by the government for political reasons and could thus carry out his duties without fear or favour.

Conclusion

Karnataka has yet to put in place any measures that will ensure a transparent process for the selection and removal of the DGP or provide him with a minimum two year tenure. In this regard, Karnataka remains in gross non compliance with directive 2 in both letter and spirit.

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.

Karnataka has provided some officers on operational level duties with a minimum tenure of two years but not others. Therefore, it is only partially compliant with this directive.

Tenure

The Karnataka Government recently enacted a Government Order No. HD 61 POSAEE 2009 on 24th August 2009. This order states that the station house officer in charge of a police station, circle inspector in-charge of a circle and the sub-divisional police officer in-charge of a sub division shall have a minimum tenure of two years. However, the order is silent regarding the minimum tenure of the Inspector General of Police in charge of a zone, the Deputy Inspector General of Police in charge of a range and the Superintendent of Police in-charge of the district. As such, one can assume that these officers have yet to receive the security of a two-year tenure as mandated by the Supreme Court.

Conclusion

Although Karnataka has provided some officers on operational duties with a minimum tenure of two years, it has neglected to provide the same for all officers in this category. In this regard, Karnataka is only remains partially compliant with directive 3.

4. Separation between Investigation and Law & Order

Directive 4

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



KARNATAKA

ACTUAL COMPLIANCE

Separation

In its December 2006 affidavit, Karnataka states that it has already separated the investigating police from the law and order police in all the Commissionerates within the state, irrespective of the population. Further, Karnataka declared that separation was also occurring in some of the smaller towns and that it has placed an Additional Superintendent of Police exclusively in charge of crime investigation at the district level.

Conclusion

The Apex Court called for the separation to be effected in towns which have a population of ten lakhs and gradually extended to smaller towns also. By effecting separation in all the Commissionerates and commencing the process of extending separation in some of the smaller towns and districts, Karnataka is in 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 Karnataka Government recently constituted a Police Establishment Board vide Government Order No. HD 61 POSAEE 2009 on 24th August 2009 in near total compliance with directive 5. There is, however, one inconsistency; the PEB created by the Government Order does not have the mandate to be a forum of appeal for officers to challenge disciplinary proceedings that have been launched against them as stipulated in the Supreme Court judgement.

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



KARNATAKA

ACTUAL COMPLIANCE

(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 Karnataka Government has set up Police Complaints Authorities (PCAs) neither at the state nor at the district level.

Creation of Police Complaints Authorities

In both the December 2006 and April 2007 affidavits, Karnataka argued that there were already several institutions at both the state and district level that were looking into grievances against police personnel such as the Lok Ayukta, SC/ST Commission, Backward Classes Commission, Women's Commission and Minorities Commission, as well as the police's own internal disciplinary mechanisms. As such, it claimed that creating additional authorities would cost the exchequer an unnecessary expense of over Rs. 40 crores. This argument is without merit. Contrary to existing complaints mechanisms, the PCA has the power to make binding recommendations on the state government. The PCA will also be a specialised body dealing with only police abuse while the other complaints mechanisms have a much wider mandate.

Conclusion

The failure of the Karnataka Government to take any steps towards establishment of PCAs at state and district levels reveals its complete non compliance with this directive.

New Delhi, 11 September 2009

Commonwealth Human Rights Initiative

