

MADHYA PRADESH

Madhya Pradesh Government Compliance with Supreme Court Directives on Police Reform

The Government of Madhya Pradesh has, according to our information, filed one affidavit before the Supreme Court in the Prakash Singh case.

This affidavit (Application for extension of time on behalf of the state of Madhya Pradesh) dated 3 January 2007, merely seeks an extension of time based on administrative problems in implementing the directives.

However, Madhya Pradesh has, to our information, passed a Government Order dated 14 February 2007 on three of the directives. Despite this order Madhya Pradesh displays non compliance dressed as compliance.

The casual approach of the Madhya Pradesh Government, borne out by its lack of effort in filing any affidavits of compliance before the Court or taking any concrete steps to implement significant directives with far reaching consequences for improving the state police demonstrate its unwillingness to reform or obey the Court.

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.

Establishing of a State Security Commission

The state Government has not responded to this directive, according to our information, therefore Madhya Pradesh is non 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.

Madhya Pradesh has according to an order dated 14 February 2007, ensured two year tenure for the DGP.



Selection Process

According to the Order the UPSC has no role in the selection process. This is in contrast with the SC judgement which clearly states that DGP candidates shall be nominated by the UPSC and then selected by the State Government. The idea behind UPSC nominating candidates to the DGP post is to ensure the impartiality of the selection procedure and to ensure that the DGP enjoys operational autonomy from the Government. Removing the UPSC role in the selection procedure dilutes this intention which is highly concerning.

Tenure

The DGP can be removed in cases of serious law and order situations. The Government asserts that in cases of serious law and order situations the DGP can be removed from his or her post.

The Supreme Court has clearly stated in which cases a DGP can be removed. If the law and order situation is of such severity the SSC should be able to quickly make its decision. In worst case scenario it can be argued that that decision must be approved by the SSC retrospectively. The objection further comes across as a convenient opportunity for the Government to use their arbitrary powers instead of actually following the objective criteria set by the Court.

Conclusion

Although the Madhya Pradesh Government has stated that the DGP shall have two year tenure it has included an exception in the case of law and order situation. Therefore Madhya Pradesh must be seen as partially compliant with this 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 (Compliant)

Madhya Pradesh has in its order dated 14 February 2007 established two year minimum tenure for police officers on operational duties.

Conclusion

Madhya Pradesh is compliant with the directive.

4. Separation of investigation and Law & Order

Directive 4

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

Separation

According to our information, the state Government has not responded to this directive, therefore Madhya Pradesh is non compliant with this 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.

Madhya Pradesh has created a Police Establishment Board (PEB) according to its Government Order dated 14 February 2007.

Functions

In exceptional cases the State Government has the right to intervene, therefore the PEB's decisions will be sent to the Government before implementation.

This is in stark contrast with the directive which ensures that the State Government can only intervene in exceptional cases giving its reasons in writing. However from the Order it seems that the Government has the final say on all the decisions taken by the PEB which dilutes the sole intention of the directive. The intention is to ensure that transfers, postings and promotions are made and decided within the department only to ensure police autonomy from the Executive in its day to day functions.

Conclusion

Although Madhya Pradesh has created a PEB it has diluted it by giving the State Government the final say in the decision process which is breaching the intent of the directive. Therefore Madhya Pradesh can and must only be seen as partially compliant to this directive.

6. Police Complaints Authorities

Directive 6



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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.

According to our information, the state Government has not responded to this directive, therefore Madhya Pradesh is non compliant with this directive.

7. Recommendations

Pursuant to the in-depth analysis the following should be considered:

1. To direct immediately compliance with directive 1, 4 and 6
2. To direct the Government of Madhya Pradesh to report to the Monitoring committee upon compliance within 1 month
3. To issue notice of contempt against the Government of Madhya Pradesh following their failure to comply with directive 1, 4 and 6 within one month

It is further generally submitted to the Monitoring Committee that the following should be considered:

4. To report to the Supreme Court that it consider directing the UPSC to nominate candidates for the post of State DGPs and to amend the UPSC (Exemption from Consultation) Regulation 1958 regulations to enable this.

New Delhi, 18 November 2008

Commonwealth Human Rights Initiative

