

## Maharashtra Government Compliance with Supreme Court Directives on Police Reform

The Government of Maharashtra has filed three affidavits and one review petition before the Supreme Court in the Prakash Singh case.

The first affidavit (Application for extension of time by Respondent state of Maharashtra) dated 3 January 2007, sought an extension to implement the directives. The second affidavit (Affidavit of the State of Maharashtra) verified on 9 January 2007, clearly opposed the most important directives, 1, 2, 5 and 6. The third and final affidavit (Application for direction) dated 20 April 2007, sought exemption from compliance until the Review Petition could be heard. On 23 August 2007 the Supreme Court dismissed the review petition filed by the Maharashtra Government. On 25 July 2008 Maharashtra passed three Government Resolutions creating a State Security Commission, Police Establishment Board and Police Complaints Authorities, which according to our information has not been filed in the Supreme Court. These Resolutions were found by CHRI on the Maharashtra Government website<sup>1</sup>.

Although Maharashtra has passed Government Resolutions on three of the directives, a careful analysis shows that they have not complied in letter and spirit to the directives and therefore cannot be viewed as compliant with the directives.

### 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.

#### Creation of a State Security Commission

Initially, the Maharashtra Government opposed the creation of the State Security Commission (SSC) and filed a Review Petition against the directive.<sup>2</sup> The review petition was rejected on 23 August 2007 by the Supreme Court. Maharashtra then passed a Government Resolution on 25 July 2008 creating the SSC. However this Resolution has not been submitted to the Supreme Court according to our information.

#### Composition

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<sup>1</sup>Home Department Maharashtra, *Government Resolution Search*, (electronic source) retrieved 26 December 2008 from <http://www.maharashtra.gov.in/english/gr/searchResultShowMK.php?fromDate=26%2F12%2F2003&toDate=26%2F12%2F2008&deptCode=all&keywords=police+reform&x=0&y=0&searchType=keyword&expired=&rank=-1&language=english>

<sup>2</sup> Para 4, Application for Direction, 20 April 2007, Maharashtra



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The composition of the SSC does not follow any of the three models suggested by the Apex Court. Its closest resemblance is to the NHRC model. According to the Government Resolution there are two independent members on the SSC but none of them are required to be a sitting or retired Judge or Lok Ayukta or a member of the SHRC as prescribed by the Apex Court.<sup>3</sup>

Even though it is welcoming that Maharashtra has included two independent members on their SSC, it is concerning that this has been done at the expense of other members in this model. As per the directive a judge and/or a member of the Lok Ayukta are the independent members of the NHRC model. The point with having this category as independent members of the SSC according to the NHRC model could be that a judge and/or member of the Lok Ayukta easier can resist being influenced by unwarranted political interference or be truly impartial in the process. It is therefore preferred that the judge and/or the member of Lok Ayukta is provided statutory statuses as envisaged by the Supreme Court, guaranteeing independent and fair representation in the SSC.

Further, the Maharashtra Government has included the Additional Chief Secretary on the SSC violating the Supreme Court's order, making the SSC a governmental steered body and thus undermining the independent checks and balances intended.

## **Function**

The SSC merely has *advisory* powers when it comes to laying down policy guidelines compared to the more active role the Supreme Court envisaged by stating that the SSC shall be "*laying down the broad policy guidelines*". Further the SSC can merely "*recommend steps*" for the performance of the preventive tasks and service oriented functions instead of "*giving directions*" as stated by the Apex Court.<sup>4</sup>

This weakening of the language describing the powers of the SSC is of grave concern. The alterations severely dilute the autonomy of the SSC and its powers. By changing the words "*laying down*" policy guidelines to "*advise*", the Government has removed any decision making authority that the SSC might have and has left it with only recommendatory powers. Similarly, the words "*giving directions*" has been changed to "*recommend steps*" ensuring that the powers of the SSC remain recommendatory and not binding.

Equally disturbing is that the Maharashtra Government has included a discretionary clause stating that the SSC shall perform other functions as "*may be assigned by the State Government*". This will widen the function of the SSC risking diluting the sharp focus of the SSC.<sup>5</sup> The SSC is a body whose main aim is to ensure that the State Government does not exercise unwarranted influence or pressure on the State police. By assigning more functions to the SSC, Maharashtra runs the risk of overburdening it and diverting the SSC from its main purpose.

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<sup>3</sup> Para 1, Government Resolution No. NPC1008/2/CR-6/POL-3, dated 25 July 2008

<sup>4</sup> Para 5 (i), and (iv) Government Resolution No. NPC1008/2/CR-6/POL-3, dated 25 July 2008

<sup>5</sup> Para 5 (viii) Government Resolution No. NPC1008/2/CR-6/POL-3, dated 25 July 2008



## Conclusion

After careful analysis it is clear that the composition of the Maharashtra SSC does not fulfil the criteria set by the Apex Court and therefore breached the letter and spirit of the directive. It is also troubling that the powers of the SSC have been diluted and weakened and that a discretionary clause risks overburdening the SSC. In the view of CHRI, Maharashtra cannot and must not be seen as compliant with this directive since it has breached the requisite checks and balances stipulated by the Supreme Court.

## 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.

According to the Affidavit verified on 9 January 2007, Maharashtra has already ensured that the DGP has three years tenure through the Maharashtra Government Servants Regulation of Transfers and Preventions of Delay in Discharge of Official Duties Act, 2005.<sup>6</sup>

## Selection

Maharashtra Government asserts that the selection process of the DGP is done “*according to a procedure and norms contained in guidelines issued under the Government of India, Ministry of Home Affairs letter no. 450201/11/97-PS-1 dated 15 January 1999*”<sup>7</sup> without attaching the letter or clarifying exactly how the selection process is conducted. Further, the Maharashtra Government asserts that the selection process recommended by the Supreme Court contradicts the provision of sub-rule 2A of Rule 3 of the Indian Police Service (Pay) Rules, 1954,<sup>8</sup> again without elaborations.

This argument is without merit. First, the selection process according to Rule 3 (2A) of the Indian Police Service (Pay) Rules does not contradict any of the criteria set by the Supreme Court directive. The Apex Court has merely reiterated what is said in the rules; the selection of the DGP shall be based on *merit* and *seniority*. However, the Apex Court has stated that the DGP candidate shall be one of the three senior-most officers while the Rules seem to imply that the senior-most officer should be appointed DGP. Second, the Indian Police Service (Pay) Rules are merely *rules* and a judgement of the Supreme Court obviously supersedes those rules.

In addition, the Maharashtra Government has not given any role to the Union Public Service Commission (UPSC) to empanel suitable candidates as suggested by the Apex Court. The idea

<sup>6</sup> Para II (i), Annexure, page 6, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>7</sup> Para II (i) Annexure, page 6, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>8</sup> Para II (ii), Annexure, page 7, Affidavit of the State of Maharashtra, date 9 January 2007



behind the 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 Maharashtra Government asserts that the DGP has three years tenure according to the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge Official Duties Act, 2005.<sup>9</sup> However, this Act does not give the same safeguards as the Apex Court has provided for in its judgement.

The Government further asserts that the directive contradicts the statutory provision for the age of superannuation of IPS officers and if implemented, would cause demoralisation in the higher ranks of the Police.<sup>10</sup> This argument stands without merit. In a modern, professional and efficient police service one cannot simply guarantee that every police officer reaches the rank of DGP strictly because of their seniority. In order to encourage a police service based on merit, the DGP post should only be awarded to the officer best suited for the position. In specifying that the tenure of the DGP remains fixed irrespective of the superannuation date, the Court prioritised the need to keep the most able person uninterrupted in the leadership role. Good management practice dictates that people in leadership roles require stability of tenure and a fixed period (no less than 2 years) to deliver good results.

## **Removal**

The Maharashtra Government objects to not being able to remove the DGP without the SSC consent.<sup>11</sup> This safeguard is crucial for the independence of the DGP from the executive and must not be altered. Only in the most severe cases shall the DGP be removed from his or her position and those cases shall be with the SSC consent to ensure the removal is not due to political reasons.

Further, the Maharashtra Government seeks clarifications regarding the removal of the DGP based on “any action against him under the All India Services (Discipline and Appeal) Rules”. It asks whether the mere initiation of disciplinary action is enough for the removal of the DGP, or if a “punishment” is needed in order to have the DGP replaced.<sup>12</sup> It is a long-held proposition that everyone shall be presumed innocent until proven guilty.<sup>13</sup> Therefore, it seems premature to remove a DGP with the mere initiation of a disciplinary proceeding.

Similarly, the Maharashtra Government points out that the DGP cannot be removed unless he is convicted in a criminal case or in a case of corruption, and he cannot be removed while a criminal

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<sup>9</sup> Para II (i), Annexure, page 6, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>10</sup> Para II (ii) and (iv), Annexure, page 7f, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>11</sup> Para II (v), Annexure, page 8, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>12</sup> Para II (vi), Annexure, page 9, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>13</sup> Article 11, Universal Declaration of Human Rights



case is pending.<sup>14</sup> This presumption is correct. However, it would be ideal if such a criminal case was heard without delay.

## **Conclusion**

After careful analysis it is clear that the Maharashtra Government has not supplied enough information to see if the selection procedure of the DGP is in accordance with the directive. Neither has it mentioned the UPSC's role in the empanelment of suitable candidates for the post. Moreover, the Government has stated that the DGP has three years tenure according to the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge Official Duties Act, 2005. However, this Act does not provide tenure as secure as the Apex Court directives and it is easier to remove the DGP through this Act than it would be under the directive. Therefore, Maharashtra cannot, and must not, be seen as compliant with 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.

According to the Affidavit verified on 9 January 2007, Maharashtra has already ensured that Groups A, B and C of Government Servants receive three years tenure through the Maharashtra Government Servants Regulation of Transfers and Preventions of Delay in Discharge of Official Duties Act, 2005.<sup>15</sup>

## **Removal**

Similar to the removal of the DGP, the Maharashtra Government seeks clarification as to whether the removal of police officers ought to be based on conviction or is the initiation of criminal proceedings against the police officer sufficient.<sup>16</sup> As stated above, everyone shall be presumed innocent until proven guilty. Therefore, merely initiating criminal proceedings should not trigger the removal of a key officer.

Further, the Maharashtra Government asserts that the limited grounds for removal contradict the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act 2005.<sup>17</sup> A closer reading of the concerned section of the Act shows that the section is vaguely drafted and a transfer or removal can be made on almost any ground as long as it is in writing. The Supreme Court has listed three objective criteria for the removal of a police officer from the post to ensure that his or her tenure is as secure as possible. These criteria must be complied with in order to prevent the executive's unwarranted interference with the police.

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<sup>14</sup> Para II (vii), Annexure, page 9, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>15</sup> Para III (i), Annexure, page 10, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>16</sup> Para III (ii) and (iii), Annexure, page 11, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>17</sup> Para III (iv), Annexure, page 12, Affidavit of the State of Maharashtra, date 9 January 2007



The Maharashtra Government also asserts that flexibility is needed in regards to transfers of police officers. This is without merit. The Government's objections are symbolic of a political need to control, rather than govern the police. To ensure two year tenure is merely setting good management practices. People in leadership roles require stability of tenure and a fixed period to deliver good results. If the Government finds any of these officers objectionable they still have the power to remove them through the objective removal grounds set out in the judgement.

## **Conclusion**

By not limiting grounds for removal to the objective criteria set out by the Apex Court, the Maharashtra Government is not sufficiently ensuring the tenure of its key police officials. The Government's arguments are indicative of a political need to control the police rather than govern them. Therefore, Maharashtra is non compliant with this directive.

## **4. Separation between Investigation and Law & Order**

### **Directive 4**

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

According to the Affidavit dated 9 January 2007 separation between Law & Order and investigation has taken place at the State level, at the Police Commissionerates and at the District Police level.<sup>18</sup>

## **Separation**

The Maharashtra Government asserts that complete separation of the two wings does not appear to be practicable at the present time due to financial reasons. Even though separation is desirable, no time frame can be laid down because of the cost involved.<sup>19</sup> The absence of a time frame in the Affidavit, and complete silence on any kind of plan for future steps to separation between the two wings, is deeply troubling. Nor is there any mention of forensic support and legal advice, nor does the affidavit mention infrastructure and funds in comparison with sections 122-137 Model Police Act, 2006.

## **Conclusion**

Maharashtra has according to its Affidavit separated Investigation from Law & Order at the State level, Police Commissionerates and at the District Police level. However, the Government is completely silent on any time line of further separation or steps to be taken to ensure separation. This silence can only be read as the Governments reluctant to properly implement this directive and therefore Maharashtra can and must only be seen as partially compliant with this directive.

<sup>18</sup> Para IV(i), Annexure, page 13f, Affidavit of the State of Maharashtra, date 9 January 2007

<sup>19</sup> Para IV (ii) and (iii), page 14, Affidavit of the State of Maharashtra, date 9 January 2007



## 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 Maharashtra Government initially opposed the creation of a Police Establishment Board (PEB). However, on 25 July 2008 the Government passed a Resolution<sup>20</sup> creating the PEB. According to our information this Resolution has not been submitted to the Supreme Court.

### **Function**

According to the Apex Court's directive the PEB shall decide transfers, postings and promotions for police officers of and below the rank of *Dy. SP* and shall make recommendations to the Government for officers of and above the rank of SP. However, the Maharashtra Government Resolution asserts that the Maharashtra State PEB shall decide transfers, postings and promotions for police officers of and below the rank of *Inspector of Police*,<sup>21</sup> thus removing the protection to the *Dy. SP* provided for by the Apex Court. The reason for the Apex Court to ensure that the transfers, postings and promotions for the *Dy.SP*s and below are decided by the PEB is to ensure that the executive does not interfere with a decision that should be made purely by the police department. Consequently, the PEB as currently constituted, can only make recommendations regarding the *Dy.SP*s transfers, promotions and postings.

In addition, the Maharashtra Government is asserting that the transfers will be decided within the purview of the Maharashtra Government Servants Regulation of Transfer and Prevention Delay in Discharge of Duties Act 2005.<sup>22</sup> This is also highly concerning since the Act does not fulfil the criteria set out by the Apex Court regarding the reasons for premature removal of a police officer, the Act provides for a more wide scope for removal than the Apex Court intended.

Equally disturbing is that the Government Resolution includes a discretionary clause asserting that the PEB shall exercise functions that may be prescribed to it by the State Government.<sup>23</sup> This can widen the function of the PEB, thus potentially overburdening the Board and diverting it from its main purpose.

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<sup>20</sup> Government Resolution No. 1008/2/CR-6/POL-3, dated 25 July 2008

<sup>21</sup> Para 1A (a), Government Resolution No. NPC 1008/CR-6/POL-3, dated 25 July 2008

<sup>22</sup> Para 1A (a) Government Resolution No. NPC 1008/CR-6/POL-3, dated 25 July 2008

<sup>23</sup> Para 1A (f), Government Resolution No. NPC 1008/CR-6/POL-3, dated 25 July 2008



Maharashtra also constitutes one Regional PEB and one PEB at Commissionerate level to decide the transfers, postings and promotions for Sub-Inspectors to Inspectors of Police in a Range respectively district.<sup>24</sup> However, it is unclear why the Regional PEB and Commissionerate PEB do not decide transfers, postings and promotions for Assistant Sub-Inspector and below, in the current set up these decisions will be taken by the State PEB.

## **Conclusion**

The Maharashtra Government has created a PEB according to the Supreme Court directive. However, it has excluded the protection for the Dy.SP as provided for by the Apex Court and restricted the PEB function to make its decision in accordance with the Maharashtra Government Servants Regulation of Transfer and Prevention Delay in Discharge of Duties Act 2005 which is vaguely formulated and does not fulfil the objective criteria set by the Supreme Court regarding tenure and transfers as discussed above.

## **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 Maharashtra Government was initially opposed to creating the Police Complaints Authorities (PCA). However, on 25 July 2008 the Government passed a Resolution<sup>25</sup> creating the Authorities. According to our information this Resolution has not been submitted to the Supreme Court.

## **Composition**

Neither the Maharashtra State PCA nor the Maharashtra District level PCA follow the suggested composition set out by the Supreme Court.<sup>26</sup>

<sup>24</sup> Para 2A and 3A, Government Resolution No. NPC 1008/CR-6/POL-3, dated 25 July 2008

<sup>25</sup> Government Resolution No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008





It is highly concerning that the Head of the Maharashtra State PCA can be a retired DGP or a retired IAS officer clearly violating the Apex Court direction which asserts that only a Judge from the High Court or Supreme Court can be the chairperson of the State PCA. It is equally troublesome that members of the State PCA are *servicing* IPS and IAS officers diluting the impartiality and independence intended by the Supreme Court. Furthermore, the State PCA only has one non IPS/IAS officer and that is “a person of eminence appointed by the State Government”<sup>27</sup>. However, since the State Government is appointing this person it is questionable whether that person can act fully independent from the Government.

The composition of the District PCA is equally concerning. Only *servicing* IPS and IAS officers are members of the District PCA in clear violation of the Apex Court direction, leaving little scope for the independence and impartiality that would have followed if the directive was strictly adhered to. It is also concerning that there is not a single civil society member on the district PCA.<sup>28</sup>

In addition, the Resolution does not mention any criteria of how the IPS and IAS officers will be selected to be members of the PCA, leading us to conclude that the State Government will select and appoint the members in complete violation of the directive which clearly state that the members shall be empanelled by the SHRC/Lok Ayukta/State Public Service Commission and appointed by the Government.

## **Function**

The Maharashtra State PCA looks into complaints against Dy.SP and above (compared to the directive which states that the State PCA shall look into complaints against SP and above).<sup>29</sup>

Further the function of the State PCA is not clear. The Resolution asserts that the State PCA shall look into “*misconduct, dereliction of duty, misuse of power, corruption, negligence or any other matter that may be referred to it*”.<sup>30</sup> However it does not specify whether death or rape in custody or grievous hurt would be interpreted in that list which was intended to be the functions according to the directive. If these three offences do not fall under the wider jurisdiction of the Maharashtra State PCA it will lead to a grave violation of the Apex Court directive.

The district PCA has been given equally vague jurisdiction and it is questionable whether the additional offences prescribed to it by the Apex Court (*extortion, land/house grabbing or any incident involving serious abuse of authority*) will be included in the jurisdiction of the district PCA. If not, then the function of the PCA violates the Apex Court order.

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<sup>26</sup> Para 1 and 3, Government Resolution No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008

<sup>27</sup> Para 1 (iii), Government Resolution No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008

<sup>28</sup> Para 3, Government Resolution No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008

<sup>29</sup> Para 2 (i), Government Resolution No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008

<sup>30</sup> Para 2 (i), Government Resolution No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008



Of great concern is that neither the State, nor the district, PCA have binding powers. This means that they will merely be recommendatory authorities, thus diluting their sole purpose and intention.

An additional concern is that neither the State nor the District PCA have ensured that their members will work full time and that they would be suitably remunerated as prescribed by the directive.

## **Conclusion**

The Government Resolution creating a State and District PCA in Maharashtra is clearly violating the directive on all accounts. First, the composition has been diluted thus compromising the independent checks and balances ensured by the Supreme Court. Second, the PCA does not have binding powers and third its members have not been provided statutory protection for suitable remuneration. All this will lead to a weak and diluted PCA clearly violating the letter and spirit of the directive. Therefore, Maharashtra cannot and must not be seen as compliant with this directive.

## **7. Recommendations**

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

1. To direct immediate compliance with directives 1, 2, 3, 5 and 6;
2. To direct the Government of Maharashtra to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Maharashtra if they fail to comply with directives 1, 2, 3, 5 and 6 within one month's time.

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

4. To report to the Supreme Court that it considers 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 to happen.

New Delhi, 3 December 2009  
Commonwealth Human Rights Initiative

