

Meghalaya Government Compliance with Supreme Court Directives on Police Reform

The Government of Meghalaya has, according to CHRI's information, passed six notifications with regard to the directives in the *Prakash Singh* case and filed an affidavit of compliance with the Supreme Court in December 2006.

The notifications establish a State Security Commission¹, Police Establishment Board² and state level Police Complaints Authority.³ In addition, Meghalaya has addressed the question of selection and tenure of the DGP⁴ and fixed minimum tenure of officers on operational duties.⁵ Despite these initiatives, however, Meghalaya's continued non compliance with several of the directives justify characterizing Meghalaya as only 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.

Meghalaya established a State Security Commission vis Government Notification No. HPL 122/96/516 on 19th December 2006.

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 Meghalaya government appears to have been based on the model suggested by the Ribeiro Committee. However, it deviates from the model as it does not have a judge nominated by the Chief Justice of the High Court. Furthermore, the notification names five persons as members, without stating their background or qualifications. This subverts the Apex Court's order, which clearly states that any "other members of the Commission shall be chosen in such a manner that it is able to function independent of government control." These five members are essentially government appointees and thus it is unlikely that they would exercise independent judgment. With such a composition, it is hard to see the Commission function as a buffer body designed to shield the police from unwarranted political

¹ Government Notification No. HPL 122/96/516 dated 19/12/2006

² Office Memorandum No. HPL 122/96/392 dated 22/11/2006

³ Office Memorandum No. HPL 122/96/515 dated 19/12/2006

⁴ Government Notification No. HPL 122/96/396 dated 19/12/2006

⁵ Office Memorandum No. HPL 122/96/391 dated 22/11/2006



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.

Powers

Further, there is no mention in the Act whether the SSC will have binding powers. This violates the Supreme Court directive that is explicit in declaring that the recommendations of the SSC be binding on the state government.

Conclusion

Though Meghalaya has established a State Security Commission, its flawed and lopsided composition ensures that the institution will not be able to serve the purpose envisaged by the Supreme Court. Further, its inability to make binding recommendations on the government further heightens its ineffectiveness. In this regard, Meghalaya 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.

Meghalaya has, vis Office Memorandum No. HPL 122/96/392, provided the DGP with a fixed two-tenure as of 22 November 2006.

Selection

In its affidavit, Meghalaya rightly states that as “Assam Meghalaya is a joint cadre, orders about the procedure for the selection of Director General of Police may be issued by the Government of India.” At the time of writing, the Government of India has not taken any steps to ensure that the DGP for joint cadre states are appointed through a merit based transparent process.

Conclusion

As Meghalaya comes under the joint cadre, it is the responsibility of the Government of India to speedily harmonize the selection process of the DGP with the selection process outlined in the Supreme Court directive. Meghalaya is fully compliant with respect to guaranteeing a fixed two year tenure for the DGP.

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.

Meghalaya has granted a minimum two year tenure for officers on operational duties in full compliance with directive 3 vis Office Memorandum No. HPL 122/96/391 on 22 November 2006.

4. Separation between Investigation and Law & Order

Directive 4

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

In its December 2006 affidavit, the state government claimed that “with regard to separation of investigation from law and order, Meghalaya has no city having a population of 10 lakhs. The matter in respect of Shillong City is under examination by the state government.” At the time of writing, the government has taken no further steps to effect separation at any level in the state.

The Apex Court declared in its order that “the investigating police shall be separated from the law and order police” The use of the word *shall* in the directive leaves no doubt that separation was an imperative and not merely an option. The proviso that separation should begin in cities with a population of ten lakhs or more and then be phased into smaller areas was more of a suggestion by the Court regarding the mechanics of separation. It does not mean that states without cities of that population could ignore this directive altogether. As Meghalaya has taken no concrete steps to implement separation, it is non compliant 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.

Meghalaya set up a Police Establishment Board vis Office Memorandum No. HPL.122/96/392 dated 22nd November 2006.

Mandate



The Supreme Court's order expressly ordered that the Police Establishment Board would function as a forum of appeal for disposing of representations from officers of the rank of SP and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to irregular or illegal orders. The PEB established in Meghalaya is not mandated to perform this function.

Conclusion

Although Meghalaya has set up a PEB, the fact that it is not empowered to function as a forum of appeal leaves Meghalaya only partially compliant 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.

Meghalaya has established a Police Complaints Authority (PCA) at the state level vis Office Memorandum No. HPL 122/96/515.

Non-creation of District Police Complaints Authorities

The Apex Court expressly ordered that complaints authorities be established at both the state and the district level. Meghalaya requests in its affidavit that "as Meghalaya has small districts with a small population", it would prefer to constitute authorities in the two ranges in the state rather than in every district. It is unclear whether the Supreme Court ever addressed this request. Unless and until it does so, one can assume that the Supreme Court's orders are non-negotiable and no exceptions can be made. In this regard, Meghalaya's failure to establish district level complaints authorities violates the Apex Court's judgment.

Composition of State Police Complaints Authority



The government order establishing the state PCA names the chair and three other members. The chair is a retired judge, whilst the members include a retired IPS officer and two retired government officials. Whilst the background of the PCA chair and members appear satisfactory on paper, what is troubling is the method of appointment. The Supreme Court explicitly ordered that the government appoint the chair from a panel of names proposed by the Chief Justice, and that the other members be appointed from a panel of names prepared by the State Human Rights Commission/Lok Ayukta or State Public Service Commission. This was to ensure that the members be independent, suitably qualified and not beholden to the government. Meghalaya, by directly appointing members without an empanelment process is in violation of the Apex Court judgment.

Powers of State Police Complaints Authority

The Supreme Court expressly ordered that “the recommendations of the Complaints Authority...for any action, departmental or criminal...shall be binding on the concerned authority.” The government order does not explicitly provide binding powers to the PCA. Without binding powers, the PCA will become a toothless institution that will not be able to hold the police accountable. The state government will not be statutorily obliged to give due regard to the PAC’s recommendations.

Conclusion

Meghalaya has constituted a complaints authority at the state level but not at the district level. Furthermore, the state PCA that has been constituted does not have binding powers and has been structured in such a way that potentially compromises the independence of the authority. For all these reasons, Meghalaya is only partially compliant with directive 6.

7. Recommendations

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

1. To direct the immediate compliance with directives 1, 4 and 6.
2. To direct Meghalaya to report to the Monitoring Committee regarding compliance within 1 month’s time; and
3. To issue a notice of contempt against the Meghalaya Government if it fails to comply with directives 1, 4 and 6 within one month’s time.

New Delhi, 19 November 2009

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