

MIZORAM

Mizoram Government Compliance with Supreme Court Directives on Police Reform

The Government of Mizoram has filed one affidavit before the Supreme Court in the Prakash Singh case.

In the affidavit (Affidavit of compliance on behalf of the State of Mizoram – respondent no.17, dated 28 December 2006) the government attach three notifications addressing the creation of a State Security Commission, tenure for the DGP, tenure for police officers on operational duties and the creation of a Police Establishment Board.

Although the government of Mizoram has passed notifications in relation to four of the directives there are still deviations from the Supreme Court order, categorising the state as non compliant with the judgement.

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.

Composition

The Mizoram government has set up a State Security Commission (SSC) through its notification No.C18018/12/90-HMP(SC) issue No. 288 published in the Mizoram Gazette on 10 November 2006. However the composition of the Commission has not been adhered to.

In the current composition of the Mizoram SSC, the Home Minister is the chairman. In addition to this, two MLAs, the Chief Secretary and the DGP are members. The Commission has no retired judges or independent members making the Commission purely government dominated breaching the intended balance between the executive and independent members. It also removes the possibility of the body to act as a buffer between the police and the political executive as foreseen by the Supreme Court.

Powers

It is clearly set out in the Apex Court's directive that the recommendations of the SSC shall be binding on the government. However the notification is silent to this effect and the silence can only be seen as a breach of the intent of the directive.

Conclusion



MIZORAM

The Mizoram government cannot be seen complaint with this directive. The notification admittedly established a State Security Commission but it has not adhered to the intended composition making the Commission purely government dominated. In addition the nature of powers is of the Commission is not defined making it a largely toothless body.

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 and tenure of DGP (compliant)

The Mizoram government has addressed the issue of selection and tenure of the DGP in the same notification as the State Security Commission.¹

It is welcoming to see that all aspects of the second directive have been adhered to. The selection criteria set out by the Apex Court is fulfilled just as the two year tenure regardless of superannuation as well as full compliance of the premature removal grounds of the DGP.

Conclusion

The second directive of the Supreme Court has been fully complied with in the notification passed by the Mizoram government in 2006.

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 and premature removal (compliant)

Police officers on operational duties have secured tenure of two years according to the notification passed by the government of Mizoram in November 2006.² The notification also fulfils the grounds for premature removal of the officers set out by the Supreme Court.

Conclusion

¹ No.C18018/12/90-HMP(SC) issue No. 288, dated 9 November 2006, published in the Mizoram Gazette on 10 November 2006

² No.C18018/12/90-HMP(SC) issue No. 290, dated 9 November 2006, published in the Mizoram Gazette on 10 November 2006



MIZORAM

The Mizoram government have fully complied with the third directive and given its officers on operational duties two year tenure as well as being compliant with the grounds for premature removal.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation

In its affidavit to the Supreme Court, the government of Mizoram requests to be exempted from separating law and order duties from crime investigation.³ The government argues that Mizoram is a small state and that the total population of the state does not exceed 891100 people. It also states that the present strength of the police force is far from adequate to enable a separation of the two functions (both in regard to manpower and infrastructure). As a final argument the government declares that the state has the highest conviction rate in the country implying that there is no need for separation between law and order and crime investigation.

The Supreme Court has given very little details in its directive regarding the practical aspects of separation between law and order and crime investigation. However, the directive is binding on the governments and it is therefore unlikely that the Supreme Court would accept the request of Mizoram.

Conclusion

The state of Mizoram is not compliant with the fourth directive and has asked to be exempted from the same.

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.

Composition (compliant)

³ Page 3-4, para D, Affidavit of compliance on behalf of the state of Mizoram – respondent no. 17, dated 28 December 2006



MIZORAM

A Police Establishment Board (PEB) is set up by the state government in Mizoram.⁴ Its composition is compliant with the directive, having the DGP as chairperson and an IGP, DIGP and two AIGPs as members.

Function & power

The function of the PEB is compliant with the Supreme Court directive except in one important aspect. The directive plainly states that the PEB shall *decide* the transfers, postings and appointments of officers of and below the rank of the DySP. In direct contrast, the notification declares that the PEB shall *consider* the transfers, postings and appointments. This change of words alters the mandatory function of the PEB and makes it a mere recommendatory Body, furnishing continuous political interference in police administrative issues.

Conclusion

A Police Establishment Board is set up by the government of Mizoram and the composition of the PEB is fully complied with. In aspect of the function and power of the PEB it has been made a purely recommendatory body breaching the intent of the directive. Hence the government cannot be seen as 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 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.

Creation

⁴ Notification No.C.18018/12/90-HMP(SC) issue No. 289, dated 9 November, published in the Mizoram Gazette 10 November 2006



MIZORAM

The government of Mizoram explicitly asks, in its affidavit to the Supreme Court, to be exempt from setting up a Police Complaints Authority at both state and district level.⁵ Reasons for doing so are sparse but the main objection is that the state does not have any retired district judges to head the district level Authority and neither does it have any retired High Court or Supreme Court judges to head the state level Authority. It therefore requests the permission to have a retired IAS or retired IPS officer as chairpersons. This is in direct violation of the directive which explicitly declares that the chairperson must be a retired judge. To have a retired police officer as the chairperson also breaches the intent of a truly independent Police Complaints Authority. The body in such case could end up being no different from an internal inquiry within the police force.

Conclusion

Mizoram fails to set up a Police Complaints Authority at state and district level by asking for exception to do so in its affidavit to the Supreme Court. Therefore the state cannot be seen compliant with the directive.

7. Recommendations

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

1. To direct immediate compliance with directives 1, 4, 5 and 6.
2. To direct the Mizoram Government to report to the Monitoring Committee regarding compliance within 1 month's time; and
3. To issue a notice of contempt against the Government of Mizoram if it fails to comply with directives 1, 4, 5 and 6 within one month's time.

New Delhi, 2 December 2009

Commonwealth Human Rights Initiative

⁵ Page 5, para F, Affidavit of compliance on behalf of the state of Mizoram – respondent no. 17, dated 28 December 2006

