

Nagaland Government Compliance with Supreme Court Directives on Police Reform

The Government of Nagaland has filed two affidavits¹ and passed three Government Notifications before the Supreme Court in the *Prakash Singh* case.² The first Affidavit is dated 3 January 2007. The second Affidavit is dated 10 April 2007, and the accompanying Notifications are attached in annexure form. Notification No.POL-9/SF/20/2000 is contained in Annexure A, B, C, D, G, and H. Notification No.POL-1/ESTI/328/98 is Annexure E, and Notification No. PHQ(CON-II)1/2006 is Annexure F.

Through these documents, it has set up a State Security Commission, addressed the tenure of the DGP, provided a two-year minimum tenure for officers on operational duties, set up a Police Establishment Board, attempted to separate the investigatory duties of the police from law and order functions, and has set up a Police Complaints Authority.

Although Nagaland has addressed all six directives, it has not accurately followed them as mandated by the Supreme Court. As a result, Nagaland has only partially complied with the Supreme Court 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.

In its first Affidavit dated 3 January 2007, the Government of Nagaland objected to the creation of a State Security Commission (SSC), indicating that it did not have any retired High Court judges.³ Moreover, given the ethnic diversity of the state, it needed more time to “...*examine how best to make the objectives of the [SSC] relevant to the local situation...*”⁴

1 Affidavit of compliance dated 3 January 2007, Affidavit of compliance dated 10 April 2007

2 Government Notification No.POL-9/SF/20/2000 dated 30.03.2007, Government Notification No. POL-1/ESTT/328/98 dated 23.06.1998, and Government Notification No. PHQ(CON-II)1/2006 dated 17.01.2007; *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1

3 Para 4, Affidavit of compliance dated 3 January 2007

4 Id.



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As per its second Affidavit dated 10 April 2007 and the attached Notification No.POL-9/SF/20/2000 dated 30 March 2007, it appears that Nagaland has opted to use the Ribeiro Committee's model for the creation of the SSC with the following proposed members: Minister of Home in charge of Police as the Chairman, the leader of the opposition, a sitting or retired Judge nominated by the Chief Justice of the Guwahati High Court, Chief Secretary, three non political citizens of proven merit, and the DGP as the Member Secretary.⁵

Selection

However, Notification No.POL-9/SF/20/2000 dated 30 March 2007 fails to include some further specifics as outlined by the Ribeiro Committee; namely, that the non-political members of the Commission, excluding the Chief Secretary, hold office for three years. More importantly, it does not address how the non political citizens of proven merit who are to be members of the SSC would be appointed. One is therefore left to assume that these members are likely to be politically appointed, which renders the SSC futile as it would no longer be independent.

Powers

The 30 March 2007 Notification remains silent on the issue of the binding nature of the SSC's recommendations. This renders the SSC powerless and weakened, failing to act as the buffer body between the police and political executive.

Mandate

The 30 March 2007 Notification states that the SSC is constituted with the purpose of guaranteeing that *"...no unwarranted influence or pressure is exercised on the State Police and to lay down broad policy guidelines to ensure that the State Police always acts according to the laws of the land and the Constitution..."*⁶ This language is in line with that mandated by the Apex Court. However an additional mandate of the SSC which is to evaluate the performance of the police has been left out, as has the requirement that a report be prepared after this evaluation, to be placed before the State legislature.

Conclusion

The Nagaland Government has issued a Notification to create a State Security Commission comprised of members based upon the Ribeiro model, and its purpose is aligned with that of the Supreme Court directive. While this is a step in the right direction, in order to be absolutely compliant, Nagaland must ensure that the non political members of the Commission are given a three-year tenure as outlined in the Riberio model, that the SSC's recommendations are binding, and that the SSC's mandate is also

⁵ Para 4, Affidavit of compliance dated 10 April 2007; Government Notification No.POL-9/SF/20/2000 dated 30.03.2007

⁶ Government Notification No.POL-9/SF/20/2000 dated 30.3.2007



to evaluate the performance of the state police and produce a report thereon. As such, Nagaland has only partially complied with this directive.

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

Notification No.POL-9/SF/20/2000 dated 30 March 2007 states that the DGP is to be appointed from a pool of three senior officers who have been empanelled by the UPSC, but may be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission in the event of misconduct as per the All India Services (Disciplinary and Appeal) rules, a conviction in a Court of Law in a criminal case, or in the case of corruption, or if he is otherwise incapacitated from discharging his duties⁷.

Tenure

Nagaland ensures the DGP a two-year period of tenure, irrespective of his date of superannuation.⁸

Conclusion

The involvement of the UPSC in the merit-based transparent selection of the DGP is imperative, and its empanelment been duly included in the Notification, as has the minimum two year tenure of the DGP irrespective of superannuation. Therefore, Nagaland has fully complied 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.

According to the second Affidavit filed by the Government of Nagaland dated 10 April 2007 and the attached Notification No.POL-9/SF/20/2000 dated 30 March 2007, Nagaland has provided for a two-

⁷ Para 2, Government Notification No.POL-9/SF/20/2000 dated 30.03.2007

⁸ Para 2, Government Notification No. 381-PS dated 30.3.2007

year period of tenure to all police officers on operational duties, and has also followed the Supreme Court directive with regards to premature removal.⁹

Conclusion

As such, Nagaland has fully complied with this directive.

4. Separation between Investigation and Law & Order

Directive 4

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

Separation

The Nagaland Government argues that it lacks sufficient financial resources and manpower in order to separate the investigation and law and order functions of its State police. In its initial Affidavit dated 3 January 2007, it cited the lack of funds to effect this bifurcation, stating that, “...*this will involve creation of posts for which the State’s resources are not sufficient to cover and therefore, separation as desired will be feasible only when funds are made available.*”¹⁰ Further, the second Affidavit dated 10 April 2007 is silent regarding specific details on how such a separation would be effected in reality, and the attached Notification No.POL-9/SF/20/2000 dated 30 March 2007 states that DGP would be responsible to do the needful within “*available budgetary and manpower availability...*”¹¹ and that the bifurcation would take place “*in phases at the earliest*”.¹²

The Apex Court has stated that the separation of the investigation and law and order functions of the State police may begin in larger urban areas and later extend to smaller areas and districts. Given the Government of Nagaland’s tight budget for policing, the small size of the state and its cities, it is understandable that a bifurcation of this nature will not occur instantly, and it is thus acceptable that the Government is postponing the implementation of this directive. However, the Government has not outlined a plan or presented a timeline for when such separation would take place, and in what manner.

Conclusion

⁹ Affidavit of compliance dated 10 April 2007; Government Notification No.POL-9/SF/20/2000

¹⁰ Para 9, Affidavit of compliance dated 3 January 2007

¹¹ Para 4, Government Notification No. POL-9/SF/20/2000

¹² Para 4, Government Notification No. POL-9/SF/20/2000



Though the Government of Nagaland has issued a Notification dated 30 March 2007 separating the investigating police from those maintaining law and order, its failure to outline what concrete steps they plan to take with regard to said separation, leaves it 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.

According to the Affidavit submitted by the Nagaland Government, dated 10 April 2007, a Police Establishment Board (PEB) had been set up at 1998 for the purpose of deciding all cases of transfer, postings, promotion, and other service-related matters of officers of the rank of SP and above.¹³ As per notification **No.POL-1/ESTI/328/98** this Committee is headed by the Chief Secretary, DGP, Additional Chief Secretary and Commissioner, and the Principal Home Secretary as its members.

There are two notifications passed by the Nagaland government addressing the issue of setting up a police Establishment Committee. The first notification dated 23rd June 1998 - **No.POL-1/ESTI/328/98** sets up a Committee headed by the Chief Secretary, the DGP and the Commissioner as members, and the Home Commissioner/Home Secretary as the member secretary. The function of this Committee is to examine all proposals for appointment, tenure, transfer and postings of officers of and above the rank of SP and accordingly make recommendations to the government. This Committee clearly does not look at any matters pertaining to officers below the rank of SP.

Via a second notification dated 17th January 2007 - **No.PHQ(CON-II)1/2006** the government sets up a Police Establishment Board to be headed by the ADG (admin) and two IGPs and DIGPs as its members. The composition is not in line with the Court's directive which prescribed that the Board be headed by the DGP with three senior most officers as members.

The mandate of the Board is clearly limited when compared to the Court's directive. The sole function of this Board is to examine all proposals for transfer and posting of officers of the category of UBSI/ABSI and ASI and submit its recommendations to the DGP. Though the Board will look into transfers and postings the notification is silent on the issue of promotions, and other service-related matters of officers of and below the rank of Deputy Superintendent of Police. Further as envisioned by the Court, the PEB is mandated to function as a forum for appeal for disposing of complaints from

¹³ Affidavit of compliance dated 10 April 2007

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officers of the rank of SP and above regarding their postings and transfers. However, this Notification is silent on this issue. Finally there is no mention of how this PEB will address all matters of other officers up to the level of DySP.

Powers

As per the Supreme Court directive, the decisions of the PEB in relation to officers of and below the rank of DySP will be binding. The State Government can only interfere in rare cases once it has recorded its reasons to do so. With regards to officers of and above the rank of Superintendent of Police, the PEB is to make appropriate recommendations to which the Government is expected to give due weight and normally accept. The Notification remains completely silent on the nature of powers that the Board will hold.

Conclusion

It is interesting to note that Nagaland in addition to the PEB also has a committee that is screening proposals for appointment, tenure, transfer and posting of officers of the rank of SP and above. The PEB as set up in pursuance of the Apex Court directive has a very limited mandate and fails to capture the spirit of the Apex Court's directive. The existence of two such bodies only complicates matters and in short does not adhere at all to the Apex Court 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.



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There was initial reluctance on the part of the Nagaland Government to implement this directive. It asserted that it did not have any retired District level judges, that police excesses are rare in the state, that funding would be an issue, and that the community serves as a “*conscious watchdog*” thus eliminating the need for a PCA.¹⁴

However, as per its Notification dated 30 March 2007, the State of Nagaland has set up both a state and district level Police Complaints Authorities (PCA).¹⁵ The core mandate and the composition of both the state and district level PCAs are in line with the Supreme Court directive; however, there is no mention of its binding powers. In the absence of binding powers, the PCA will be a toothless entity and will fail in its purpose.

Conclusion

The Nagaland Government’s silence on the issue of the binding powers of the PCA’s recommendations is an indication that it subverts and dilutes the Supreme Court’s directive. As a result, Nagaland is non compliant with this 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 Government of Nagaland to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Nagaland if it fails to comply with directives 1, 4, 5, and 6 within one month’s time.

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¹⁴ Para 11, Affidavit of compliance dated 3 January 2007

¹⁵ Government Notification No. POL-9/SF/20/2000

