

Orissa Government Compliance with Supreme Court Directives on Police Reform

The Government of Orissa has filed four affidavits before the Supreme Court in the Prakash Singh case.

The first affidavit (Application for extension of time to take necessary step on the order of this hon'ble court) dated 20 December 2006, asks for a six months extension to implement the directives. The second affidavit (affidavit of compliance on behalf of the State of Orissa) dated 10 April 2007 asserts that the Orissa Government has constituted a Drafting Committee under the Chairmanship of the Chief Secretary further claiming compliance with all the directives except for the State Security Commission where more time to find a suitable model are requested. A third affidavit (additional affidavit compliance) dated 23 May 2007 was filed before the Court.¹ The fourth and final affidavit (affidavit of compliance and submission of Statues Report on behalf of the state of Orissa) dated 25 January 2008, reiterates what was said in earlier affidavits.

The Orissa Government has also passed two notifications related to a Police Complaints Authority and a district Police Establishment Board, which according to our information has not been filed in the Supreme Court. These notifications were found by CHRI on the Orissa Government's official website.²

Although Orissa claims compliance with five of the six directives, a careful analysis shows that they have not complied in spirit to the directives and therefore should be viewed as 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.

Creation of a State Security Commission

The Orissa Government asserts in their latest affidavit (January 2008) that the Government is examining which model would be suitable for Orissa, stating that "appropriate decision in this

¹ This affidavit is not available with CHRI

² Home Department Orissa *Police Reforms* (electronic source) retrieved November 17, 2008 from <<http://homeorissa.gov.in/PoliceReforms/PoliceReformsTable.htm>>



regard will be *taken up shortly* on broad based consultation³. The same argument was made in the April 2007 affidavit. However until today there is no information that Orissa has created a State Security Commission.

Conclusion

Almost 11 months after Orissa's final affidavit to the Supreme Court the State has still not created a State Security Commission. Based on this information, Orissa is and must be seen as non compliant with the 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 procedure

The Orissa Government asserts that since there are no provisions in the UPSC Rules and AIS Rules for empanelment of candidates to the DGP post this has not been considered while passing the notification on selection and tenure of the DGP.⁴

The intention behind having the UPSC included in the selection process was to ensure enough checks and balances in the selection procedure. The directive seeks to achieve this objectivity by prescribing a role for the UPSC as an agency outside the state government that prepares a panel of three officers based on objective criteria. The final decision still rests with the State Government. In omitting the role of the UPSC, the transparency and accountability of the selection process is compromised and thus the spirit of the directive is significantly weakened.

Tenure

The Orissa Government asserts in their notification⁵ that the DGP shall have two years tenure "*as far as possible*" and that it is subject to superannuation, voluntary retirement, sent on Central deputation or relieved of the post for personal reasons.⁶

It is concerning that the Government has included the phrase "*as far as possible*" which widens the scope for premature removal of the DGP and open up avenues for unwarranted political interference. Equally concerning is that the Government has increased the numbers of exceptions to the two year tenure rule. The DGP's tenure according to the Notification is

³ Para 10, Affidavit of compliance and submission of status report on behalf of state of Orissa, dated 25 January 2008 this was also reiterated in Para 6vi), Affidavit of compliance on behalf of the state of Orissa, dated 10 April 2007

⁴ Para 6 i), Page 13, Affidavit of compliance on behalf of the state of Orissa, dated 10 April 2007

⁵ Notification No.PDA-II-175/06(Pt.II)18407/D&A, dated Bhubaneswar the 6th April 2007

⁶ Para 1. b) Notification No.PDA-II-175/06(Pt.II)18407/D&A, dated Bhubaneswar the 6th April 2007



also subject to superannuation, voluntary retirement and deputation. Adding exceptions to the rule and using vague language is clearly an attempt for the Government to remain control the police rather than monitoring it.

It is further shown that the State Government can remove the DGP without consulting the State Security Commission. Firstly, the SSC role is not defined in the Notification and secondly the SSC has yet not been created in Orissa, further diluting the intention of the Apex Court ruling.

It is crucial that the decision to remove the DGP is made by the State Government in consultation with the SSC to ensure checks and balances against arbitrary removal.

Conclusion

Orissa has passed a notification to fulfil with this directive but has diluted it both in the selection procedure (by excluding the UPSC) and weakened the two year tenure rule by adding more exceptions to the rule and using vague language, breaching both the letter and spirit of the directive. Therefore Orissa must be seen as non 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

Similar to the tenure of the DGP, Orissa has included three more exceptions to the rule of two year tenure for police officers on operational duties. Police officers can be prematurely removed due to deputation to the Central Government, voluntary retirement or requesting to be relieved on personal grounds.⁷ Further the Government has stated that a police officer shall “normally” have two years tenure. Once again the Government has weakened the rule by using undefined language, creating a loophole. No where in the Notification is it stated what “normally” would mean, therefore this vague drafting can only be seen as an attempt of the Government to retain its control the police rather than monitoring it.

Conclusion

It is of concern that the Government has widened the scope for the removal of key officers as well. The added exceptions for removal of the officers together with the vague language

⁷ Para 2 b) Notification No.PDA-II-175/06(Pt.II)18407/D&A, dated Bhubaneswar the 6th April 2007

facilitate the creation of loopholes widening the scope for unwarranted interference by external sources. It is therefore held that Orissa cannot and must not be seen as compliant with this directive.

4. Separation of investigation and Law & Order

Directive 4

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

Separation

Orissa has separated Investigation from Law & Order in Bhubaneswar and Cuttack according to their Notification⁸ dated 6 April 2007. The Supreme Court directive states clearly that the separation should start in cities with 10 lakhs or more but this is only a starting suggestion, not the ultimate requirement. However there is no mention of separation in any other cities or plans of continuing the separation process.

It is of further concern to read that distribution of manpower shall be done on a “*realistic basis, keeping in view the workload by DySP⁹*” when no parameters have been defined for what “realistic basis” and “workload” means. Further, the approval of distribution of manpower is subject to the approval of the DGP which is a step in the right direction however it is worrying in this case since the DGP is not sufficiently independent from the Government (compare directive 2) and the Government of the day retains an avenue of undue influence in the day to day operational matters of the police.

Crucial to note is that the order relates to *district crime investigation* and does not address the issue on state level. Neither is there any selection criteria set for the investigation officers nor fixed tenure within the wing. The order has not indicated which crimes will be investigated by the wing, there is no mention of the forensic support and legal advise, nor any mention of infrastructure and funds in comparison with sections 122-137 Model Police Act, 2006

Conclusion

Orissa has separated Investigation from Law & Order in two major cities, however the separation is only on a district level and not at the state level and since the Notification is silent on this as well as on a plan for separating these functions in other cities, Orissa can only be seen as partially compliant.

⁸ Notification No. PDA-II-175/06(pt-II)-118415/D&A, dated Bhubaneswar 6th April 2007

⁹ Para 6, Notification No. PDA-II-175/06(pt-II)-118415/D&A, dated Bhubaneswar 6th April 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.

Composition of the Police Establishment Board

The Orissa Government has created a Police Establishment Board through Notification No.PDA-II-175/06(pt.II) 18407/D&A, dated Bhubaneswar the 6 April 2007 consistent with the composition set out in the directive.

Function of the Police Establishment Board

The Police Establishment Board (PEB) has not been given the power to make recommendations to the Government regarding transfers and postings of officers at SP level and above.¹⁰ Further the PEB has no explicit functions to deal with promotion and “other service related matters of officers”.¹¹ Neither does the PEB work as an appeal function for SP and above, as directed by the Apex Court.

In an attempt to minimise unwarranted pressure on postings and transfers of police officers the Supreme Court issued the order to create the PEB to ensure these decisions were decided only by the police. However in respect to police officers of the rank SP and above it only stated that the PEB could give recommendations on the subject but that the “Government is expected to give due weight to these recommendations and shall normally accept it”. It is crucial that the Government considers the recommendations made by the PEB to ensure that the police independence in deployment is clearly protected from unwarranted executive influence.

It is equally important that the PEB functions as a forum for appeal for police officers (SP and above) to ensure that the decision has been taken in accordance with the set criteria (merit based) in the directive. The intent with this was that the Government should enjoy some autonomy regarding transfers, appointments and postings of SP and above but the Apex Court made sure that there should be checks and balances and asserted that the PEB should give suitable recommendations that would normally be accepted. It is therefore concerning that this function is not vested in the Orissa PEB.

¹⁰ Para 3, Notification No.PDA-II-175/06(Pt.II)18407/D&A, dated Bhubaneswar the 6th April 2007

¹¹ Notification No.PDA-II-175/06(Pt.II)18407/D&A, dated Bhubaneswar the 6th April 2007



Further Orissa has passed a Notification¹² dated 29 May 2007, creating a Range Police Establishment Board and a District Establishment Board. The composition of these PEBs are against the letter of the directive but still within its spirit.

However, the Range PEB is only mandated to decide inter-district transfers of police personnel up to the rank of SP and remains silent on the mandate of postings and promotions. Similarly the District PEB is only mandated to decide transfers and postings up to the rank of SP but remains silent on the mandate to promote an officer.

Conclusion

Although Orissa has established PEBs, its functions are still diluted by being silent on the crucial factor that there is no statutory obligation for the Government to give due consideration to the PEB's recommendations as well as considering promotions of police officers and functioning as an appellate authority. Therefore Orissa can only be regarded as partially compliant to this 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.

Establishing Police Complaints Authorities

Initially Orissa only created a Police Complaint Authority (PCA) on State Level under the Lokpal through a notification dated April 2007.¹³ However this notification was repealed and

¹² Notification No.PDA-II-107/200727882/D&A, dated Bhubaneswar the 29th May 2007

¹³ Notification PDA-II-175/06(Pt-II)-I No 18422 D&A dated 6th April 2007

replace with a new notification in May 2008 setting up the PCA both on State Level and District Level under the Lokpal.¹⁴

Composition of the PCA

The notification May 2008 is silent on the composition of the PCAs. The Government has set up the PCA under the Lokpal and Lokayuktas Act, 1995.¹⁵

To create a PCA under the Lokpal and Lokayuktas Act is a direct violation of Supreme Court's directive since PCA is supposed to be an external independent body which has its own specific mandate and powers. The directive clearly state that the Chair of the PCA shall be a retired judge selected from a panel of three nominees chosen by the State Chief Justice. The selection and nomination process of the Chairperson of the Lokpal is unclear and might lead to breaching the directive.

Function of the PCA

To empower the PCA the Apex Court decided that the recommendations made by it shall be binding on the Government. By setting up the PCAs under the Lokpal and Lokayukta Act it can be assumed that the recommendations will not be binding since this the Lokpal is not empowered with such authority.

Subsequently to the Notification May 2008, the Orissa Government issued a new notification,¹⁶ laying down the procedures for making a complaint. The complainant is compelled to give his or her complaint on an affidavit and further pay a fee of 50 Rs for a complaint against a police officer of the rank of Additional SP or above or 25 Rs for a complaint against any other police officer. This is in clear violation of the Supreme Court's letter and spirit, where the PCA should be public friendly and easily accessible. These measures can easily have a deterrent effect on the public.

However it is welcoming to see that the notification May 2008 compels the Lokpal to look into complaints against all police officers.

Conclusion

Although Orissa has created a PCA under the Lokpal and Lokayuktas Act it is clearly violates the letter and spirit of the directive as such a complaints body has neither the independence nor the specialised ability to respond to police complaints as envisaged by the Court. Orissa's unwillingness to set up the authority as intended by the Supreme Court justify it being seen as non compliant with this directive.

¹⁴ Notification PDA-II-95/2007 No.22123 D&A dated 1 May 2008

¹⁵ Notification PDA-II-95/2007 No.22123 D&A dated 1 May 2008

¹⁶ Notification PDA-II-133/2008 No. 37211 D&A dated 12 August 2008



7. Recommendations

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

1. To direct immediately compliance with directive 1, 2, 3 and 6
2. To direct the Government of Orissa to report to the Monitoring Committee upon compliance within 1 month
3. To issue a notice of contempt against the Government of Orissa following their failure to comply with directive 1, 2, 3 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

