

Uttar Pradesh Government Compliance with Supreme Court Directives on Police Reform

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

The first affidavit (Interlocutory application for seeking clarifications/modifications) dated 22 December 2006, strongly objects to the directives. The second affidavit (supplementary affidavit) dated 1 January 2007 asserts that Uttar Pradesh Government has constituted a Police Reforms Commission under the chairmanship of Mr Bholu Nath Tewari (retd. IAS officer). On 23 August 2007 the Supreme Court dismissed the review petition filed by the Uttar Pradesh Government. The third and final affidavit (affidavit of compliance and extension for time) dated 30 August 2007, only addresses separation of Investigation from Law & Order and the Police Establishment Board.

Although Uttar Pradesh has passed Government Orders on two of the directives and an office memorandum and an official letter on two other directives, addressing 4 out of 6 directives, the letter and spirit of the directives are diluted and Uttar Pradesh displays non compliance dressed as compliance. These documents have however not been filed in Court according to our information. CHRI found the documents on Government website of Uttar Pradesh.¹

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.

Uttar Pradesh passed an Office Memorandum on 12 March 2008,² creating a State Security Commission (SSC). This Memorandum has, according to our information, not been submitted to the Supreme Court.

Composition

The composition of the SSC does not follow any of the three models suggested by the Apex Court. Its closest resemblance is to the Ribeiro Committee model. However the SSC does not

¹ Home Department, Uttar Pradesh (electronic source) retrieved 17 November 2008 from <<http://home.up.nic.in/go.htm>>

² Government of Uttar Pradesh Home (Police) Section – 10 No. 615/6-pu-10-2008 Lucknow, dated 12 March 2008, Office Memorandum



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include the Leader of Opposition or a sitting or retired Judge. Instead the Government has included the Chairman of the State Advisory Council and the Principal Secretary Home Department, thus making the SSC a purely governmental body, undermining the independent checks and balances intended through the inclusion of the Leader of Opposition.

Further the Memorandum asserts that the independent member of Uttar Pradesh State Human Rights Commission and the two non-political citizens shall be nominated by the *State Government*.³ Even though the Supreme Court judgment does not elaborate on the selection procedure of the members, it specifies that “the other members of the Commission shall be chosen in such a manner that it is able to function independent of government control.” It is evident that a member nominated by the State Government enjoys less independence than a member selected by an independent selection panel (such as the Chief Justice or State Human Rights Commission). Thus undermining the independent checks and balances intended through the independent member and non-political citizens.

Function

The Memorandum asserts that the SSC shall “*advise* the State Government on policy guidelines”⁴ instead of “*laying down* broad policies” (as stated in the SC judgement). The Memorandum further states that the SSC shall “*assist* the State Government in identifying performance indicators”⁵ instead of “*giving directions* for the performance” (as stated in the SC judgment).

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*” broad policies to “*advise*”, the Government has removed the decision making power of the SSC leaving it with recommendatory powers only. Similarly the words “*giving directions*” has been changed to “*assist*” ensuring that the powers of the SSC remain recommendatory and not binding.

Tenure and Removal of independent members

Although the Apex Court directive does not mention the tenure and removal of the independent members of the SSC, there are still adequate guidelines on the subject from the Model Police Act, 2006 drafted by the Soli Sorabjee Committee. Section 45 of the Model Police Act ensures the non official members of the SSC three year term to guarantee continuity and stability. It is welcoming to see that Uttar Pradesh Government has ensured its

³ Para 1, Government of Uttar Pradesh Home (Police) Section 10, No.615/6pu-10-2008,Lucknow, dated 12 March 2008, Office Memorandum

⁴ Para 4, Government of Uttar Pradesh Home (Police) Section 10, No.615/6pu-10-2008, Lucknow, dated 12 March 2008, Office Memorandum

⁵ *Ibid.*



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independent members a two year term,⁶ even though a three year term as stated in the Model Police Act, 2006 would be preferable.

The Uttar Pradesh Government has also added provision of premature removal of the non official members of the SSC.⁷ Such provisions are provided in section 25 of the Model Police Act, 2006. However the provisions in the Memorandum are much wider than in the Model Police Act which opens the avenues for manipulation.

Conclusion

After careful analysis it is clear that the composition of Uttar Pradesh SSC does not fulfil the criteria set by the Apex Court and therefore breaches the letter and spirit of the directive. It is further concerning that the powers of the SSC have been diluted and weakened together with the wide scope for misuse and manipulation through the removal of the non official members. In the view of this, Uttar Pradesh cannot and must not be seen as compliant with the directive since it has breached all the requisite checks and balances stipulated by the Court.

⁶ Para 2, Government of Uttar Pradesh Home (Police) Section 10, No.615/6pu-10-2008, Lucknow, dated 12 March 2008, Office Memorandum

⁷ *Ibid.*



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.

Uttar Pradesh passed an Order on 12 March 2008,⁸ relating to the selection and tenure of the DGP. This Order, according to our information, has not been submitted to the Supreme Court.

Selection process

The Government asserts that a selection committee comprising of the Chief Secretary, Principal Secretary Home and Principal Secretary to the Chief Minister will select the DGP.⁹ This is in stark contrast with the SC judgement which clearly states that DGP candidates shall be nominated by the UPSC and then selected by the State Government. The idea behind 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.

Further, the Order is silent on the selection criteria set by the Apex Court, it merely asserts that the DGP shall be selected “from a panel of Officers consisting of Officers already working in the rank and pay scale of the Director General of Police”¹⁰. The selection criteria set by the Apex Court are to ensure that the most senior, competent, and experienced officer should be appointed as the DGP. The criteria set out in the Order do not include the seniority principle leaving scope for nepotism and discrimination.

Tenure

The Order asserts that the DGP shall “ordinarily” have two years tenure and be subject to superannuation violating the fixed two year tenure in the SC judgment. The reason behind two years tenure regardless of superannuation is to ensure that the DGP has functional autonomy from the Executive and other extraneous sources and to instil good management practice of continuity in leadership and strengthen the police chain of command.

It is concerning that the language has been altered in the Order to include “ordinarily” which can only be explained as unwillingness to let go of the avenues for political interference. Further, it is superfluous to include such a word since the Apex Court has clearly set three

⁸ G.O. No. 846-PS-2-2008, Lucknow, dated 12 March 2008

⁹ Para 1, G.O. No. 846-PS-2-2008, Lucknow, dated 12 March 2008

¹⁰ *Ibid.*



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objective criteria for the removal of a DGP prior to the minimum tenure of two years, only opening up a loophole, the very thing the Court seeks to close off.

It is crucial to point out that according to a letter¹¹ from the Chief Secretary to All Principal Secretaries, dated 15 May 2008, related to transfer policy of government officials, 6 other reasons for transfers are enumerated. Additionally the Chief Minister may order any person to be "*transferred in the public interest*"¹². It is unclear whether this letter is superseding the Order, if this is the case it is clear that it undermines all safeguards set out in the Order above.

¹¹ No 1/3/96-A-4-2008, Lucknow, 15 May 2008

¹² Para 1 & 14, Letter No 1/3/96-A-4-2008, Lucknow, 15 May 2008



Conclusion

After careful analysis it is clear that the selection procedure and tenure provided by the Uttar Pradesh Government breaches the letter and spirit of the directive. It is further highly concerning that a letter superseding the Order provides more exceptions than granted by the Apex Court and a discretionary clause undermining the sole intention with the directive. Unless the terms “ordinarily” and “public interest” are defined, they can only be viewed as loopholes to the Court’s order. Uttar Pradesh 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.

Tenure

The Uttar Pradesh Government opposes this directive as encroaching on the Government’s discretionary powers, interfering with the need to quickly transfer police officers in public interest.¹³

The Government’s objections are symbolic of a political need to control, rather than govern, the police. The intent of this directive is to protect the SP, SHO, IGP (zone) and DIG (range) against unwarranted political or external interference. To ensure that an officer has two years tenure is not encroaching upon the Executive rights; it 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 find any of these officers objectionable they still have the power to remove them through the objective removal grounds set out in the judgement.

Conclusion

It is obvious that the Uttar Pradesh Government breaches the letter and spirit of the directive by opposing to it. Meeting the Government’s argument that they have to issue transfers in the *public interest*, it must be stated that it is in the *public’s interest* that an officer is removed and investigated rather than merely transferred to another station or district. This should be the major concern of the Government to ensure the rule of law in the state. It is therefore held that Uttar Pradesh cannot and must not be seen as compliant with the directive.

¹³ Para 3, page 4, Interlocutory application seeking clarification/modification of the Order dated 22.9.2006 passed by this Hon’ble Court, dated 22 December 2006

4. Separation of investigation and Law & Order

Directive 4

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

Uttar Pradesh Government has in a letter¹⁴ from the Principal Secretary Home to the Director General of Police stated that separation between Law and Order and Investigation will take place in Kotwalis. This letter has not, according to our information, been submitted to the Supreme Court.

¹⁴ Letter No. 2601/VI-P9-2007, Lucknow, dated 7 September 2007



Level of separation

The letter merely refers to separation between Investigation and Law & Order at the Inspector Level Police Stations (Kotwalies).¹⁵

The directive makes no distinction about which stations and at what ranks separation should be made. The directive simply states that the two wings have to be separated, starting in the bigger cities. In the letter there are no selection criteria for the investigation officers or fixed tenure within the wing. The letter has not indicated which crimes will be investigated by the wing, there is no mention of the forensic support and legal advice, nor any mention of infrastructure and funds in comparison with sections 122-137 Model Police Act, 2006

Further, the letter clearly states that “no additional post shall be created” to ensure there is enough manpower at the station when separating Law & Order from investigation, which raises the question of whether the separation will be practically feasible.

Conclusion

Uttar Pradesh has partially complied with the directive by separating Investigation from Law & Order at Kotwalies. However, Uttar Pradesh has not furnished any details on how the separation shall be conducted or provided any details on how the day to day work shall function, neither has any information been given on how to implement the directive at all levels as indicated by the Apex Court directive. Uttar Pradesh can and must therefore be seen as only partially compliant.

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.

Uttar Pradesh has passed an Order on 12 March 2008,¹⁶ constituting a Police Establishment Board (PEB). This Order has, according to our information, not been submitted to the Supreme Court.

Composition

¹⁵ Letter No. 2601/VI-P9-2007, Lucknow, dated 7 September 2007

¹⁶ G.O. No. 616/6-P-10-2008, Lucknow, dated 12 March 2008



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Uttar Pradesh Government has created four different PEBs for deciding transfers of officers of and below the rank of ASP. Each PEB has a different composition depending on the rank of the officer.¹⁷

Although the composition of the PEB is not being followed in letter, the spirit of the directive has been upheld relating to transfers of officers. However since promotions and postings have administrative and operational implications it is crucial that these are decided by the DGP, this has not been upheld in the Order and therefore the Order cannot be seen as compliant of the directive.

Function

The mandate of the PEB is not mentioned in the Order. The Apex Court's directive clearly states that the PEB shall decide on appointments, transfers and promotion. However the Order only refers to transfers of *ASP and below* clearly diluting the letter and spirit of the directive. The intent with creating a PEB was to guarantee that the administrative and deployment decisions were made by the police leadership only, ensuring the autonomy from the Executive and ensuring the chain of command. Further, the order merely states that "powers relating to establishment matters (...) have already been delegated to the Director General of Police".¹⁸ Exactly what "establishment matters" are referred to is not clear.

Neither does the Order empower the PEB to give recommendations of transfers, promotions and appointments for *SP and above* nor does it state that the Government should "give due weight to the recommendations (...) and normally accept it".¹⁹ The Letter NO.1/8/2001-KA-4.2007, dated 19 May 2007,²⁰ clearly states that the Civil Service Board shall decide the transfers, postings and career planning of I.P.S & P.P.S officers breaching the principle that a purely police departmental board should make recommendations in this regard to the Government.

Neither does the Order empower the PEB to function as an appeal body for SP and above if they feel they have been subjected to illegal or irregular orders. Nor does the PEB have the power to generally review the functioning of the police.²¹ The silence in this respect can only be seen as unwillingness to let go of unwarranted methods and an urge to rule rather than govern the police.

Conclusion

¹⁷ Para 2, G.O. No. 616/6-P-10-2008, Lucknow, dated 12 March 2008

¹⁸ Para 2, G.O. No. 616/6-P-10-2008, Lucknow, dated 12 March 2008

¹⁹ *Prakash Singh and Ors v Union of India and Ors* (2006) 8 SCC 1

²⁰ The Letter is attached to the Affidavit of compliance on behalf of Uttar Pradesh along with annexures, 29 August 2007

²¹ Para (1) – (10), Letter NO.1/8/2001-KA-4.2001, 24 Dec 2001 and Letter NO. 1/8/2001-KA 4.2001, 19 May 2007 and G.O. NO.-616/6-P-10-2008, 12 March 2008



Although the Uttar Pradesh Government is fulfilling the spirit of the directive by creating a PEB for subordinate officers it still breaches the function of the intended Board. Further, the Government has removed the possibility for officers to appeal to a body insulated from Governmental control clearly breaching the directive. It is therefore held that Uttar Pradesh cannot and must not 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.

Establishing a Police Complaint Authorities

The Uttar Pradesh Government asserts that establishing Police Complaint Authorities (PCA) is “unwarranted” because it would be redundant (there are a host of other mechanisms which receive complaints such as the SHRC, SC/ST Commission and 12 other authorities).²²

Stating that the PCA is unwarranted because it is redundant has no merit. Contrary to existing complaints mechanisms, the PCA is a specialised body with a limited jurisdiction that only relates to the occurrences of police abuse. The complaints mechanisms referred to by the Government have much wider jurisdictions and mandates. Instead of rejecting the PCA the Government should embrace the fact that the PCA will dispose of complaints against the police more speedily and the decisions will be made by an expert Body.

Further, Uttar Pradesh Government asserts that an Authority, if created according to the directive, would be unaccountable, because it is manned by retired individuals.²³ This

²² Para 6 c, Interlocutory application seeking clarification/modification of the Order dated 22.9.2006 passed by this Hon'ble Court, dated 22 December 2006

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argument is not valid. To have a truly external independent oversight body it is important that the members of that body will not be dependant, pressurised or under the influence of the Executive or the Police. The directive clearly states that the Chair of the PCA will be selected by the State Government leading to the conclusion that the PCA will be accountable to the State Government and therefore its citizens. Further there is nothing to stop the State Government from putting in accountability measures for such an independent body as it sees necessary.

Grounds for eligibility and removal of PCA members can be explicitly stated in the law to ensure the accountability of the Authority as suggested in ss. 162-164 Model Police Act. To further enhance the accountability of the PCA it should prepare an annual report as suggested in s. 172 Model Police Act.

The Uttar Pradesh Government also asserts that there is no need for a PCA on district level because there are not enough complaints based on crime statistics.²⁴ Both the Uttar Pradesh State Human Rights Commission and the Uttar Pradesh Minorities Commission Chairpersons noted large numbers of complaints against the police coming from all districts of Uttar Pradesh.²⁵

This argument does not stand in court. First, very few complaints of police abuse are reported to the police and the crime statistic in this country only shows the top of the iceberg; second, the availability of the PCAs are crucial to increase the public's trust in the police; three, the mandate of the district level PCAs is wider than the state level PCA, the district PCAs mandate includes examination of allegations of extortion, land/house grabbing or serious abuse of authority; four, the district level PCA have jurisdiction over complaints concerning police officers of and up to the rank of Dy SP while state level PCA can only look into allegations against SP and above.

Further the Uttar Pradesh Government is trying to escape implementing the directive by stating that if the PCA is created the NHRC and SHRC would be unnecessary.²⁶ The current Chairperson of the Uttar Pradesh State Human Rights Commission informed CHRI that as at 17 October 2008 the SHRC has 14,000 pending complaints, most of which concern the police. Surely a specialised body set up to purely look into complaints against the police would free up the SHRC of its enormous backlog and ensure no duplication.

²³ Para 6 a, Interlocutory application seeking clarification/modification of the Order dated 22.9.2006 passed by this Hon'ble Court, dated 22 December 2006

²⁴ Para 6 b, Interlocutory application seeking clarification/modification of the Order dated 22.9.2006 passed by this Hon'ble Court, dated 22 December 2006

²⁵ CHRI Interview, Justice Sema, Chairperson, UPHRC and Mr Kidwai, Chairperson, UP Minorities Commission, Lucknow, 17 October 2008

²⁶ Para 6 d, Interlocutory application seeking clarification/modification of the Order dated 22.9.2006 passed by this Hon'ble Court, dated 22 December 2006



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This argument has no merit. The jurisdiction of the PCA is to *only* look into allegations of police abuse while the NHRC and SHRC has a much wider mandate looking into all human rights abuses and discrimination made by *any authority* not only the police.

Conclusion

Uttar Pradesh Government has opposed implementation of the directive with a series of objections. All the objections are without any merit. Subsequently it has passed orders seemingly to implement four out of the 6 directives. It is palpably evident these measures are on compliance in the garb of superficial compliance. Uttar Pradesh is and must be seen as non compliant to the directive.

7. Recommendations

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

1. To issue notice of contempt against Government of Uttar Pradesh in response to their non compliance in the *Prakash Singh case*. Despite the Governments attempt to comply with the judgement Uttar Pradesh has clearly diluted the letter and spirit of the judgement and shown resistance to comply.

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

2. 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

