

West Bengal Government Compliance with Supreme Court Directives on Police Reform

The Government of West Bengal has according to our information filed three affidavits¹ and passed five Government Notifications², setting up a Drafting Committee, addressing selection and tenure of DGP, providing two year tenure for police officers on operational duties, setting up a Police Establishment Board and effecting a certain degree of separation between the investigating police and the law and order police in Kolkata.

Although West Bengal has addressed four of the Supreme Court directives, it has remained silent on some of the significant principles behind the judgment, namely functional autonomy for the police and greater accountability for police wrongdoing. Further, the Government asserts that the Drafting Committee was set up on 12.3.2007. Until today no draft has been submitted to the Court or posted in the public domain or introduced in the Legislative Assembly, thereby justifying the characterisation of West Bengal as only partially compliant 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.

No comment has been provided by West Bengal on this directive in any of its affidavits to the Supreme Court.

Conclusion

The West Bengal Government has not furnished any information on the creation of a State Security Commission. Its complete silence on this issue can only be seen as indicative of its reluctance towards implementing the directive. Thus, West Bengal can only 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.

¹ Affidavit of compliance dated 2 January 2007, Affidavit of compliance dated 27 August 2007 and Affidavit/Status Report of Compliance dated 19 November 2008

² Government Notification No. 1161 dated 21.3.2007, Government Notification No. 381-PS dated 30.3.2007, Government Notification No. 382-PS dated 30.3.2007, Government Notification No. 383-PS dated 30.3.2007 and Government Notification No. 1445-PL/PE/165-36/05 dated 29.8.08



Selection

The Notification is silent on the role of empanelment by the UPSC or any other equivalent independent selection committee to the post of DGP. If the role of the UPSC is omitted, the transparency and accountability of the selection process can be compromised and thus the spirit of the directive would be significantly weakened. The Government's powers of selection and transfer of the Director General of Police are most often used to keep police leadership pliant to illegitimate political bidding. Putting in place routine administrative processes for fixing tenure and instituting a selection procedure for the highest police post mean that a DGP's tenure is secure as long as the officer remains honest, law abiding, and a good leader. Ultimately, it is a matter of creating enough checks and balances that are characteristic of a democratic set-up to maximise objectivity in decision making. The Court seeks to achieve this objectivity by prescribing a role for the UPSC as an agency outside state politics that prepares a panel of three officers based on objective criteria, leaving the final decision of which one to appoint in the hands of the State Government.

Tenure

West Bengal ensures the DGP two year tenure but it is subject to superannuation.³ Good management practice dictates that people in leadership roles require stability of tenure to deliver good results. In a worst case scenario, the DGP of West Bengal can be chosen for his post only six months before his retirement and then there would not be sufficient time for a stable leadership which would affect the police organisation negatively.

Conclusion

The role of the UPSC in selection has been omitted and the two year tenure proscribed for the DGP is subject to superannuation, leaving West Bengal non 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.

Premature removal

West Bengal has provided for a two-year tenure to all police officers on operational duties in compliance with the Supreme Court directive. However, grounds for premature removal are not in tune with what has been laid down by the Supreme Court. The Notification permits premature removal in case an officer is found to be "incompetent and inefficient" instead of "*incapacitated*" as prescribed by the Supreme Court. It also permits removal in case an officer is "accused in a criminal case of moral turpitude" but fails to include the criteria for removal in case an officer is "*convicted in a criminal*

³ Para 2, Government Notification No. 381-PS dated 30.3.2007

offence or corruption".⁴ Further, it permits for premature removal of officers in cases where they are found to have exhibited "*palpable bias*" in the discharge of their duties.⁵

It is acceptable for "*incompetence and inefficiency*" and "*palpable bias*" to be grounds for removal but considering that such grounds are vague, undefined and could be open for abuse, the Notification should have included a clause which made it mandatory for the dismissing authority to give reasons and specific instances of the same in writing to the concerned police officer. However, in the absence of such clause, the said criteria cannot be seen as compliant with the spirit of the directive.

Further, the West Bengal Notification states that an officer should be removed if s/he is accused in a criminal case involving moral turpitude. This is limiting the removal ground set out by the Supreme Court, which clearly states that a police officer should be removed in any criminal offence not merely offences related to *moral turpitude*. Therefore the Notification cannot be seen as compliant with this criterion.

Additionally, as the civil service rules are clear that an officer convicted of an offence shall be dismissed from service, it is important that the same provision is reflected in the Notification. In the absence of this provision, West Bengal can be said to be non compliant with the spirit of the directive.

Conclusion

West Bengal has given a two year tenure to police officers on operational duties but has altered the premature removal grounds in such a way so that it is easy to remove an officer on vague pretexts whilst difficult to do so when he is convicted for an offence. Therefore, West Bengal can only be seen as partially compliant 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 West Bengal Government asserts in its affidavit that a separation between the Law and Order Police and Investigating Police has been implemented at 10 police stations in Kolkata.⁶ However, the Government has only earmarked Sub-Inspectors for the investigation wing and has stated these officers will not be deployed for law and order duties "*in normal circumstances*". Unfortunately the affidavit does not specify what "normal circumstances" are. Neither does the affidavit state that orders relating to these circumstances should be made in writing. This is highly concerning since this exception can be used as an excuse to avoid true separation. Further, the Supreme Court directive

⁴ Para 2, Notification No 382-PS dated 30.3.2007

⁵ Para 4, Notification No 382-PS dated 30.3.2007

⁶ Para 6, Affidavit/Status report of compliance dated 19.11.2008



makes no distinction of what ranks separation should be made, rather, it simply states that the two wings have to be separated. Additionally, very little details are included in the affidavit on how this separation should be effected in reality (as compared to sections 122 – 137 the Model Police Act).

Conclusion

The West Bengal Government has earmarked Sub-inspectors for investigation in 10 police stations in Kolkata. However, the affidavit provides an exemption clause stating that these Sub-inspectors will not be deployed to other duties “*in normal circumstances*” undermining the intent of the directive. Further, no detailed information has been furnished on how the separation should be effected in other areas. Therefore, West Bengal cannot and must not be seen as compliant with the 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.

Function

The West Bengal Government has set up a Police Establishment Board (PEB) for the West Bengal Police as well as for the Kolkata Police. The Notification states that the PEB shall function as a forum for appeal; however, the PEB is not mandated to look into complaints about *disciplinary proceedings* and complaints related to *illegal and irregular orders*.⁷ This is in direct violation of the Supreme Court order. It is important that the PEB can look into these complaints to ensure that there are sufficient checks and balances in the decision making process, and to successfully bar unwarranted political interference in the day to day functioning of the police.

Powers

The PEB's power in regards to deciding transfers, postings, promotions and other service related matters of Dy.SP and below has been altered by omitting the stipulation that the State Government can only in exceptional cases interfere in the decision *after recording its reasons for doing so*. The Court's aim with the PEB is to ensure that these administrative controls remain within the leadership of the police but it also acknowledges that the State Government in exceptional cases can be allowed to alter a decision but only if the reasons for this is recorded and communicated to the affected officer.

⁷ Para 4, Government Notification No. 383-PS dated 30.3.2007



Further, the Notification omits the stipulation that the State Government must *normally accept* the recommendations of the PEB for postings and transfers of Assistant Commissioner and above of Kolkata Police. Curiously, this criteria was included for the PEB of the West Bengal Police but has been omitted in the case of the PEB of Kolkata Police.

Conclusion

The West Bengal Government has set up Police Establishment Boards for both the West Bengal Police and the Kolkata Police. However, it has omitted two criteria from the functions of the PEB. It has also failed to provide the PEB with the necessary powers given to it by the Supreme Court directive. West Bengal can therefore be seen as only partially 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.

No comment has been provided by West Bengal on this directive.

Conclusion

The West Bengal Government has not furnished any information on Police Complaints Authorities in any of its three affidavits. Its complete silence on this issue can only be seen as indicative of its reluctance towards implementing the directive. As such, West Bengal can only be seen as non 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 and 6;



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

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 recommend the amendment of the UPSC (Exemption from Consultation) Regulation 1958 regulations to enable this to happen.

New Delhi, 27 May 2009

Commonwealth Human Rights Initiative

