

Tamil Nadu Government Compliance with Supreme Court Directives on Police Reform

The Government of Tamil Nadu was initially resistant to the Supreme Court directives and filed a review petition on 6 February 2007. This petition was dismissed in August 2007 by the Court. According to information furnished to the Monitoring Committee the Tamil Nadu Government has filed six additional affidavits.¹

In 2007 the Government passed three government orders relating to tenure of the DGP,² separation between Law & Order and Crime Investigation,³ and the creation of a Police Establishment Committee⁴. According to our information neither of these orders were submitted to the Supreme Court.

On 14 May 2008, the Tamil Nadu Police Bill was introduced in the Legislative Assembly and it has since been waiting to be passed in the Assembly. Till the new police legislation comes into force the Apex Court's directives will be operationalised via the above mentioned orders.

Although Tamil Nadu has passed orders and introduced new legislation in the Assembly, a careful analysis shows that the Government has not complied in letter and spirit with the directives and can therefore not be viewed as compliant with the Supreme Court's judgment.

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

The Tamil Nadu Police Bill, 2008 creates a State Security Commission which will be known as the Tamil Nadu Police Board (TNPB).⁵ The Bill further states that the TNPB shall be created within six months from the Act coming into force. This is an unnecessary delay and breaches the intent of the Supreme Court. The Court clearly stated that the deadline to set up the Board was no later than 10 April 2007. As of August 2009 Tamil Nadu has still not created this Board.

¹ dated 26 December 2006; 5 April 2007; 27 April 2007; 27 June 2007; 19 February 2008; and 24 April 2008

² G.O.Ms.No 813 dated 6 June 2007

³ G.O.Ms.No 640 dated 26 April 2007

⁴ G.O.Ms.No 639 dated 26 April 2007

⁵ Section 27 (1) Tamil Nadu Police Bill, 2008



Composition

The suggested composition of the TNPB does not adhere to any of the three models suggested by the Apex Court. The TNPB consists of nine members of whom four are independent members, three governmental officers, the Leader of Opposition and the DGP. There is no judicial representation as mandated.

The Bill does not specifically state the nature of powers the Board will have – whether recommendatory or binding.

Function

The function of the TNPB does not comply with the Supreme Court directive. The Court expressly stated that the purpose of the Board is to ensure that the State Government does not exercise unwarranted influence or pressure on the police, and its functions must include *giving directions* for the performance of preventative tasks by the police. The Bill merely states that the TNPB shall *identify* performance indicators.⁶ This conclusively weakens the powers of the board.

Conclusion

Despite creating a Police Board, the Tamil Nadu Government fails to do so in compliance with the Supreme Court directive. Not only is it unnecessarily delayed but also diluted in its function and composition. Tamil Nadu can therefore not be seen as compliant 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.

The Government of Tamil Nadu states compliance to this directive through two government orders.⁷ Presented below is a compliance analysis with the Government Orders as well as with the relevant provisions in the Tamil Nadu Police Bill, 2008.

Compliance according to the Governmental Orders, 2007

Selection

Posting of the DGP Law and Order will be initiated by the Secretary to the Government (Home), routed through the Chief Secretary and decided by the Chief Minister and the Governor.⁸ This selection

⁶ Section 28 (b) Tamil Nadu Police Bill, 2008

⁷ G.O.Ms.No.639 dated 26 April 2007 and the G.O.M.s.No. 813 dated 6 June 2007,

⁸ Para 5a, GO.Ms.No.639 dated 26 April 2007



procedure is in direct violation of the Supreme Court order which states that the DGP shall be empanelled by an independent committee based on three objective criteria and appointed by the Government. It is important that a non-state organisation nominate candidates to preserve objectivity and immunise the process from influence within the state.

Tenure

Further the DGP's tenure is subject to superannuation,⁹ and the State Government can remove the DGP unilaterally without the consent of the TNPB as intended by the Court.

Compliance according to Tamil Nadu Police Bill, 2008

Selection

According to the Tamil Nadu Police Bill, 2008 the DGP is appointed by the State Government from the three senior-most officers.¹⁰ This is violating the Supreme Court directive which states that the DGP candidates shall be empanelled by an independent selection committee. The idea behind an independent selection committee 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 committee's role in the selection procedure dilutes this intention which is highly concerning.

Tenure

The DGP has two years tenure subject to superannuation.¹¹ This violates the Court's directive, which stipulated that the tenure must run irrespective of superannuation.

Further, the Government can remove the DGP unilaterally without consulting the TNPB, increasing the risk for arbitrary decisions.

Conclusion

The Tamil Nadu Police Bill is not compliant with the third directive. DGP candidates are not empanelled by an independent selection committee and the two year tenure of the DGP is subjected to superannuation. Therefore Tamil Nadu Government cannot be seen as 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.

⁹ G.O.Ms.No813 dt. 6 June 2007

¹⁰ Section 7 (1) Tamil Nadu Police Bill, 2008

¹¹ Section 7 (2) Tamil Nadu Police Bill 2008



Tenure

Police officers on operational duties have two years tenure according to the Tamil Nadu Police Bill, 2008.¹²

Premature Removal

Police officers on operational duty can be removed if they are placed under suspension; to fill up a vacancy; transferred for a specific reason; relieved on other administrative functions.¹³ These broad, undefined powers which have been in the past and even today continue to be abused undermine the Supreme Court's objective of securing the tenure of senior officers.

Conclusion

Police officers on operational duty are ensured a two-year tenure but additional provisions for premature removal have been included in the Tamil Nadu Police Bill, undermining the Court's intent. Therefore the government of Tamil Nadu cannot and must not be seen as compliant with this directive.

4. Separation between Investigation and Law & Order

Directive 4

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

The Government of Tamil Nadu states that it is in compliance with this directive through its Government Order G.O.Ms.No.640 dated 26 April 2007

Compliance according to the Governmental Order, 2007

Separation

The Tamil Nadu Government ensures that the Law & Order and Crime Investigation wings will be separated at Police Station level.¹⁴

Compliance according to the Tamil Nadu Police Bill, 2008

Separation

The Tamil Nadu Police Bill, 2008 states that Law & Order and Crime Investigation shall have separate departments. However, in relation to the actual separation the Bill merely states that the government *may* separate the law and order wing from Crime Investigation.¹⁵ The use of the word "may" instead of "shall" does not put a positive obligation on the Government to comply with this directive.

Conclusion

¹² Section 13 (1) Tamil Nadu Police Bill, 2008

¹³ Section 13 (2) Tamil Nadu Police Bill, 2008

¹⁴ Para 4 G.O.Ms.No.640 dated 26 April 2007

¹⁵ Section 16 (5) Tamil Nadu Police Bill, 2008



The Tamil Nadu government has adhered to separating Law & Order and Crime Investigation wings according to its governmental orders but not according to the Tamil Nadu Police Bill.

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.

The Government of Tamil Nadu states that it is in compliance with this directive through its government order G.O.Ms.No.639 dated 26 April 2007.

Compliance according to the Governmental Order, 2007

Function

The order states that the Police Establishment Committee (PEC) will recommend posting and transfers for the SP and above but exempts the Addl. DGP and DGP.¹⁶ This is in direct breach of the Supreme Court's directive that clearly states that the PEC should make recommendations on postings and transfers for higher rank officers, to ensure the decisions were taken solely by the police leadership.

Further, the government order states that the PEC can delegate its powers to an "appropriate authority" to decide transfers involving Inspectors of police.¹⁷ The intent of the directive is to ensure that the transfers, postings and promotions are decided by the police leadership and this Order provides the Government with the loophole, in a worst case scenario, to delegate the powers of the PEC outside the Police, which is highly concerning.

In addition, the order is silent on the criterion that the PEC is envisaged as functioning as a forum for appeal.

Compliance according to Tamil Nadu Police Bill, 2008

Composition

The Tamil Nadu Police Bill, 2008 states that the Addl. DGP shall be the chairperson of the PEC even though the Supreme Court clearly stated that the Committee should be headed by the DGP and four other senior officers.¹⁸ Equally troublesome is that the Bill does not specify how many members it will have and leaves it to the Government to decide. This type of broad discretionary power is

¹⁶ Para 2 b) G.O.Ms.No.639 dt 26 April 2007

¹⁷ Para 3 G.O.Ms.No.639 dated 26 April 2007

¹⁸ Section 31 (1) Tamil Nadu Police Bill, 2008



unwarranted, and may be used to further entrench control over transfers, promotions and appointments in the hands of the state government.

Further the Tamil Nadu Police Bill provides the PEC with a very narrow mandate. According to section 31(2)(b) the Committee only has the power to recommend *postings* of Add. SP and above, while the Apex Court required that the Committee should recommend *transfers and postings*. It is highly concerning that the Bill omits the power for the PEC to recommend transfers of higher police officers. The intention of the Court was to ensure that the decisions on transfers remained within the department and that the decision was taken solely by the police leadership. Even worse the Government has ensured that the police remain under strict political control by omitting the role of the PEC to make recommendations on postings and transfers for the Add. DGPs and DGPs. The Bill fails to adhere to these issues and this can only be seen as the Government's desire to control the police rather than monitoring it.

In addition the PEC was supposed to make binding decisions on transfers, postings and promotions of Dy.SP and below according to the directive, however this has been omitted in the Bill which causes great concern. This limitation is significant because it gives the government the continued ability to decide the fate of a large number of officers in an arbitrary fashion.

Conclusion

Neither the government order nor the Tamil Nadu Police Bill adheres to this directive. It is apparent that the Government is reluctant to let the police leadership decide on transfers, postings and promotions of police officers.

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.

According to our information, the State Government has not responded to this directive and the Tamil Nadu Police Bill, 2008 is entirely silent on this issue. In this respect, the Bill is in complete violation of the Court's Order.

Conclusion

Tamil Nadu has not set up any Police Complaints Authorities and is therefore in blatant violation of the Supreme Court directive.

7. Recommendations

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

1. To direct immediate compliance with directives 1, 2, 3, 5 and especially directive 6;
2. To direct the Government of Tamil Nadu to report to the Monitoring Committee upon compliance within 1 month; and
3. To issue a notice of contempt against the Government of Tamil Nadu if they fail to comply with directives 1, 2, 3, 5 and especially directive 6 within one month's time.

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Commonwealth Human Rights Initiative

