

## Andhra Pradesh Government Compliance with Supreme Court Directives on Police Reform

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

The first affidavit (Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad) dated 29 December 2006, objects to four of the six directives. The second affidavit (affidavit of compliance) dated 8 February 2007, asserts compliance with two of the directives as well as constituting a Committee for preparing a Draft Police Act. The Third affidavit verified on 7 April 2007, asserts compliance with three of the six directives. On 23 August 2007 the Supreme Court dismissed the review petition filed by the Andhra Pradesh Government.

Although Andhra Pradesh has filed three affidavits on the Apex Court's directive the Government has failed to comply with three of the most important directives, justifying Andhra Pradesh's categorisation as non compliant.

### 1. State Security Commission (SSC)

#### 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.

#### Establishing a State Security Commission

The Andhra Pradesh Government opposed the creation of the State Security Commission (SSC) and filed a Review Petition against the directive.<sup>1</sup> The review petition was rejected on 23 August 2007 by the Supreme Court. According to our information Andhra Pradesh has not filed a new affidavit in the Court regarding compliance after the hearing in August 2007.

Andhra Pradesh asserts that creating a SSC will weaken the State's power of superintendence, pointing out that Law and Order is a State subject.<sup>2</sup> The arguments behind creating a SSC are to ensure that the police are guaranteed functional autonomy and to clearly lay down the parameters of superintendence by the Government. The suggested model will not weaken Government superintendence but it will weaken the avenues for unwarranted political interference.

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<sup>1</sup> Para 10, Affidavit 7 April, 2007, Hyderabad

<sup>2</sup> Page 5, Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 29 December 2006



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Andhra Pradesh asserts that if policy planning were dealt by the SSC, the State Government would have “no say in the matter”.<sup>3</sup> This argument is without merit. The SSC will be chaired by the Chief Minister/Home and in addition it will also have the Chief Secretary as a member. This will ensure that the State has proper representation in the Commission and provide full opportunity for the Government to “have a say in the matter”.

Andhra Pradesh further states that if a SSC would be created it should not have binding powers.<sup>4</sup> The Apex Court was firm in its stand that the SSC should make binding recommendations to guarantee that the policies, directions and evaluation of the police are adhered to by the Government.

## **Composition**

The Government opposed the inclusion of the Leader of Opposition and independent members in the SSC, based on the argument that they would use the SSC to achieve their agenda and political ends.<sup>5</sup> Any Committees or Commission runs the risk of its members insinuating individual agendas or attempting to gain political mileage. However this should not bar proper representation of society in the SSC. In a diverse democracy as India it is crucial that the policies and directions of the police and their evaluation is decided by government and non-government representatives of society since the performance of the police affects people at large.

## **Conclusion**

The SSC has been designed to be an important part of the system of policing and to aid and assist with larger police and planning issues. The body is not to be seen as one which would undermine the powers of the government in any way. The exclusion of the Leader of Opposition only seeks to limit a democratic composition of such a crucial body. Andhra Pradesh is and must therefore be regarded as non 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.

## **Tenure**

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<sup>3</sup> Page 6, Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 29 December 2006

<sup>4</sup> Page 8, Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 29 December 2006

<sup>5</sup> Page 7, Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 29 December 2006



The Andhra Pradesh Government in its affidavit has pointed to several difficulties in the selection of the DGP as well as guaranteeing security of tenure.

The government in its affidavit feels that short tenure is not a draw back for efficient functioning of a Police Chief. The affidavit states that the clause of fixed tenure irrespective of superannuation would affect the chances of eligible officers. This provision would also go against the existing statutory provisions. Giving due merit to these concerns it can however be said that in terms of guaranteeing tenure of the DGP Andhra Pradesh has failed to comply with the directive.

The Government further asserts that in urgent situations –specifically Law & Order– there will not be time to consult with the SSC before removing a DGP.<sup>6</sup> The Supreme Court has clearly stated the cases for removing the DGP from his or her post. The argument that it will take too long to consult the SSC is without merit. If the situation is of such severity the SSC would be able to quickly make its decision.

The objection comes across as an opportunity for the Government to use their discretionary powers instead of actually following objective criteria set out by the Supreme Court.

### **Selection process**

The government claims that the directives of the Supreme Court run contrary to existing statutory provisions when it comes to selection and tenure of the Chief of Police. It has asserted that the selection of the DGP is the prerogative of the state government since policing is a state subject and thus the involvement of the UPSC is not required. 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 of the Supreme Court.

### **Conclusion**

After a thorough analysis it is evident that the arguments put forward by the Andhra Pradesh Government are without merit and can only be seen as symbolic of a political need to control rather than govern the police. Therefore Andhra Pradesh is 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.

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<sup>6</sup> Page 11, Para viii), Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad 29 December 2006



The Andhra Pradesh Government has implemented this directive through its Government Order dated 7 February 2007.<sup>7</sup>

## **Conclusion**

Andhra Pradesh is compliant with this directive however the Government Order 7 February 2007 should be submitted to the Court.

## **4. Separation between Investigation and Law & Order**

### **Directive 4**

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

## **Separation**

Separation between Law & Order and investigation has taken place in seven larger cities but only in relation to Property Crime Investigation Police and the Law & Order division.<sup>8</sup> The Andhra Pradesh Government is committed to do more but this creates infrastructure demands which have financial implications.<sup>9</sup> However the Affidavit is silent, on the forensic support and legal advice, nor does it mention infrastructure and funds in comparison with sections 122-137 Model Police Act, 2006.

## **Conclusion**

Andhra Pradesh has separated Investigation from Law & Order in seven larger cities. However the separation only relates to Property Crime Investigation and has not indicated a plan for separating these function in other cities. Therefore Andhra Pradesh can only be seen as 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.

## **Function**

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<sup>7</sup> G.O.Ms.No.61, dated 7 February 2007

<sup>8</sup> Page 15, Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 29 December 2006

<sup>9</sup> Para 8, Affidavit of compliance filed on behalf of the Government of Andhra Pradesh by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 8 February 2007

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Andhra Pradesh has passed an Order creating a PEB.<sup>10</sup> The Order complies with the composition of the PEB and two out of its four functions

The Government asserts in a letter<sup>11</sup> from the Chief Secretary to the Secretary to Government of India that the PEB cannot function as a forum for appeal for IPS officers as this runs contrary to the All India Services (D&A) Rules, 1969. If the PEB functions as a forum of appeal it will effectively be serving as an appellate authority over the orders of the state and central government.

Further, The Order fails to mention whether recommendations made by the PEB for officers of and above the rank of SP, will be given due weight and be normally accepted. The intent of this directive was that the Government should enjoy some autonomy regarding transfers, appointments and postings of SP and above. However in order to avoid arbitrariness in this process the Court directed that the PEB should make recommendation regarding these transfers which the government would normally accept.

It is further concerning to notice that the PEB has been given the power to delegate their powers to any "appropriate authority, as they may decide"<sup>12</sup>. Without going into the merits of this provision it potentially goes against the Court's intention.

## **Conclusion**

Although Andhra Pradesh has established a PEB, its functions have been diluted as borne out by silence on the crucial factor that there is no statutory obligation for the Government to give due consideration to the PEB's recommendations. More concerning is that the PEB can delegate its powers to an appropriate authority. One of the reasons to create the PEB is to ensure that decisions regarding transfers, promotions and postings were made by the Police Department to guarantee independence from the Executive in these decisions. Therefore Andhra Pradesh must only be seen as partially compliant with 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

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<sup>10</sup> G.O.Ms.No.62, 7 February 2007

<sup>11</sup> Letter No.907/SC-C/2005-11, 7 February 2007

<sup>12</sup> Para 3, G.O.Ms.No.62, 7 February 2007



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.

The Andhra Pradesh Government filed a review petition against this directive however the petition was rejected by the Supreme Court on the 23 August 2007

### **Establishing Police Complaints Authorities**

The Andhra Pradesh Government opposes the creation of Police Complaints Authorities (PCA) both at State and District level and asserts that there are adequate oversight bodies in the state already, such as SHRC, Lok Ayukta SC/ST Commission etc and creating one more oversight body will mean large financial costs and would demoralise the police.<sup>13</sup>

Contrary to existing complaints mechanisms, the PCA has the power to make binding recommendations on the State Government. The PCA will also be a specialised body dealing with only police abuse while the other complaints mechanisms have a much wider jurisdiction. Further, the argument that police officer would feel demoralised with the creation of a PCA seems farfetched. It is in everyone's interest that an allegation of police abuse be thoroughly and independently investigated by a competent body.

### **Conclusion**

Andhra Pradesh Government has opposed implementation of this directive with a series of objections, since all the objections are without any merit, Andhra Pradesh must be seen as non compliant to the directive.

## **7. Recommendations**

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

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

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<sup>13</sup> Para 10, Affidavit of compliance filed on behalf of the Government of Andhra Pradesh by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad, dated 8 February 2007 and Page 21 ii) and iii), Affidavit filed by the Chief Secretary to Government, Government of Andhra Pradesh, Hyderabad 29 December 2006



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New Delhi, 13 July 2009

Commonwealth Human Rights Initiative

