



comply with the directions given by this Hon'ble Court, and thereby committed contempt of this Hon'ble Court.

3. The petitioner, vide his application dated April 23, 2007 submitted to the Court, presented the status of compliance of the Supreme Court directions in the various States and the Union Territories. On the basis of information available at that time, it was pleaded that the contempt proceeding should be initiated against the following six States:

- i. Gujarat
- ii. Jammu & Kashmir
- iii. Maharashtra
- iv. Rajasthan
- v. Tamil Nadu, and
- vi. Uttar Pradesh

4. During the intervening period, the Hon'ble Court dismissed, on August 23, 2007 the review petitions filed by the states of Gujarat, Karnataka, Maharashtra, Punjab, Tamil Nadu and Uttar Pradesh.

5. However, there has not been much change in the ground situation as far as implementations of the Hon'ble Court's directions are concerned. Gujarat and Rajasthan have not filed any affidavits but they are learnt to have enacted laws on the subject, which in any case do not conform to the letter or spirit of the Supreme Court directions. Uttar Pradesh, in its fresh affidavit, has claimed that they already have a Civil Services Board and as such do not require a State Security Commission. The plea is unacceptable because the Board comprises Principal Secretary (Home), Principal Secretary to the Chief Minister and the Director General of Police, and is thus completely government dominated. As regards the remaining three states, there is no change in the situation. The plea, already made, for the issuance of contempt notices to the aforesaid six states is reiterated. The latest position regarding compliance of the Hon'ble Court's aforementioned directions is summarised in

**Annexure-A.**

### **Fully Compliant/Almost Fully Compliant States**

6. Briefly, the following states have fully or almost fully complied with the directions: Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Uttaranchal and Goa.

### **Partially Compliant States**

7. The remaining states could be classified under the headings Partially Compliant and Notionally Compliant/Almost Non-Compliant. These states are listed in column B of Annexure A. The Petitioners were hopeful that with the passage of time, the partially compliant states would, in deference to the Hon'ble Supreme Court, take further steps and graduate in the category of Almost Fully Compliant States. However, that has not happened and these states continue to drag their feet. Briefly, the position obtaining in the partially compliant states is as follows:

- **Andhra Pradesh:** Has not set up State Security Commission on the ground that law and order is a state subject and such a Body would weaken the government's power of superintendence. Has also not set up Police Complaints Authority.
- **Chattisgarh:** Has not set up either the State Security Commission or the Police Complaints Authority.
- **Gujarat:** State has enacted Bombay Police (Gujarat Amendment) Bill, 2007. However, State Security Commission does not conform to any of the three models prescribed by the Supreme Court. Besides, tenure of DGP and other police officers in the field shall "ordinarily" be two years, which implies that the rule may or may not be observed generally. Police Establishment Board has been given powers only up to the level of Inspector (and not Deputy SP, as proposed by the Hon'ble Court). State Complaints Authority may be headed by a retired High Court Judge or a retired Principal Secretary; the provision regarding Principal Secretary is contrary to Supreme Court directions. The District Complaints Authority will be headed by

the Superintendent of Police which is again in violation of the direction of this Hon'ble Court.

- **Haryana:** State Police Board constituted, but its functions have been modified. IG Range and SP have been given only one year tenure.
- **Himachal Pradesh:** Composition of Model Police Board is different from that of State Police Act and is government dominated. Complaints Authority work has been assigned to Lok Ayukt.
- **Jammu & Kashmir:** State has not constituted State Security Commission, and has not taken any action on the Supreme Court directions regarding selection and minimum tenure of DGP and other field officers.
- **Jharkhand:** State is not agreeable to giving minimum tenure to DGP.
- **Karnataka:** State Security Commission formed, but its composition and functions have been modified. Powers of Police Establishment Board diluted. Complaints Authorities are headed by government functionaries.
- **Kerala:** State Security Commission recommendations may be rejected or modified by the Government for reasons to be recorded in writing. Police Establishment Board has been given authority to post/transfer officers up to the level of Inspector only.
- **Madhya Pradesh:** State has not formed State Security Commission or the Police Complaints Authority.
- **Orissa:** State Security Commission has not been set up. Powers of Police Establishment Board have been curtailed. Complaints Authority work entrusted to Lok Pal.
- **Punjab:** State Security Commission not set up . Powers of Police Establishment Board not clear. Complaints Authority not set up.

- **Rajasthan:** State Police Commission follows the Ribeiro model but the inclusion of a Judge, sitting or retired, has been left out; appears government dominated. Police Establishment Board has not been given any powers to recommend the transfers of officers of and above the rank of Superintendent of Police. Police Accountability Committees have no judicial component.
- **West Bengal:** State Security Commission has not been set up nor has Complaints Authority been constituted.

The Hon'ble Court may consider serving the aforesaid states also with contempt notices or giving them time till end of the year 2007 to comply with the directions already issued.

**Notionally Compliant/Almost Non-Compliant:**

8. The following states come in the category of Notionally Compliant/Almost Non-Compliant States:

- **Maharashtra:** State has taken the stand that the directions of the Hon'ble Court are "inconsistent with statutory provisions in existence". It has not complied with any of the directions except the direction regarding separation of investigative work from law and order work, which was already in place at the State level and at the level of Commissionerates and district police.
- **Tamil Nadu:** State has argued that "Courts have no power to pass directions by way of judicial order to affect the legislative autonomy of the State". It has taken the stand that a statutory tenure for the DGP may lead to practical difficulties and that fixed tenure for field officers could not be rigidly enforced. Police Complaints Authority, according to the state, would act as a parallel authority to the existing constitutional remedies.
- **Uttar Pradesh:** State has pleaded that it has already a Civil Services Board, comprising Principal Secretary (Home), Principal Secretary to Chief Minister and the Director General of Police. The body is, however, completely dominated by the Government. The state has not

taken any steps to comply with the directions regarding the selection and minimum tenure of DGP and the tenure of officers posted in the field. Significantly, 526 IPS officers were transferred in the State during the period January 1 to August 31, 2007. Police Establishment Board has not been constituted, nor has Complaints Authority been set up. The state has set up a Police Reforms Commission to make recommendations in the light of Supreme Court directions and draft a bill which could be passed by the legislators. It is an exercise in futility with the sole object of gaining time.

**States which have passed Laws**

9. The following states have passed new Police Acts as a follow up to the directions given by the Hon'ble Court:

- i. Haryana Police Bill passed on March 21, 2007
- ii. Bihar Police Bill passed on March 28, 2007
- iii. Tripura Police Bill passed on March 29, 2007
- iv. Chhattisgarh Police Bill passed on July 20, 2007
- v. Bombay Police (Gujarat Amendment) Bill 2007 passed on July 20, 2007
- vi. Assam Police Bill passed on August 8, 2007
- vii. Himachal Pradesh Police Act passed on August 28, 2007
- viii. Kerala Police (Amendment) Bill, 2007 passed on September 19, 2007
- ix. Rajasthan Police Bill passed on September 21, 2007

It is submitted that the real intention behind the legislative activity is essentially to circumvent the implementation of Supreme Court directions and put in place an arrangement which would legitimise the *status quo* and, in some cases, even strengthen and reinforce the hold of bureaucracy over the police. The laws passed by the states are generally contrary to the Supreme Court directions. The composition of the State Security Commissions are not as per the Supreme Court directions and these do not follow the model prescribed by the NHRC, the Ribeiro Committee or the Sorabjee Committee. Complaints

Authorities, wherever set up, follow a composition different from that prescribed by the Supreme Court; besides, their powers have been diluted. None of the states have accepted the involvement of Union Public Service Commission in the preparation of panel for the selection of DGP. If these laws had been passed in the normal course, it would have been possible to countenance them. But as things are, the laws have been passed in the wake of Supreme Court directions on September 22, 2006 and January 11, 2007. They are, therefore, *mala fide* to the extent they violate the content or the spirit of the Supreme Court directions in regard to restructuring the police organisations.

10. The Petitioners would like to make a special mention of the Bihar Police Bill, 2007 in this context. It provides for a Rajya Police Board (State Security Commission) comprising the Chief Secretary, Home Secretary and the DGP. The Board thus be completely government dominated and will not have any independent members. The DGP would be selected by the state government (there is no reference to any panel prepared by the UPSC) and his tenure would generally be of two years; he may however be removed for, among other reasons, on administrative grounds also, which gives a long handle to the state government. There is no provision for the creation of Police Establishment Board nor is there any mention of separating investigation work from law and order work. The Accountability Authority has been set up at the district level only and here also it is headed by the District Magistrate, the other members be the Additional District Magistrate and the Superintendent of Police. The arrangement makes a mockery of the Complaints Authority at the state and district levels stipulated by the Hon'ble Court. Some provisions of the Bill, Section 30 for example, strengthen bureaucratic control over the police which was not visualised even in the Act of 1861. The Bihar Police Bill is thus a highly regressive legislation. Significantly the Bihar Police Association, which represents the non-gazetted officers of the State has mooted contempt petition against the State Government for having passed the

Bihar Police Bill, 2007 whose provisions are not in consonance with the directions given by the Hon'ble Supreme Court of India.

11. The Petitioners strongly feel that the constitutionality of the Police Acts passed by the State Governments in the recent past need to be examined. These Acts, passed as they have been in the wake of Supreme Court directions on the subject, should be in conformity with the letter and spirit of the Supreme Court directions.

#### **Government of India's Response**

12. The Supreme Court had, in its order of January 11, 2007, observed that the Government of India notification regarding the setting up of National Security Commission was strictly not in accordance with the directions given by the Court. This Hon'ble Court gave further time up to March 31, 2007 to the Union of India to re-constitute the National Security Commission. The Union of India has, while enlarging the Committee formed by it earlier with the inclusion of retired Director General of a CPMF and a retired Chief Justice of a High Court, unfortunately, repeated the very arguments which had been rejected by this Hon'ble Court earlier on January 11, 2007. The Union of India is opposed to the proposal on the ground of its nomenclature and has reiterated its objection to including the serving heads of the Central Paramilitary Forces as members of the Committee. It is most surprising that the Union of India is averse to keeping the heads of the CPMFs as members of a body whose stated objective is *inter alia* to upgrade the effectiveness of the Forces, improve the service conditions of its personnel, and ensure that there is proper coordination between them. These arguments were heard at great length by the Supreme Court on January 11, 2007 and found unacceptable. It is also surprising that the Central Government is averse to giving a minimum tenure of two years to the Heads of the Central Police Organisations. These officers are commanding huge forces and they deserve stability of tenure.
13. It is also a matter of great regret that the Government of India has yet to enact a Model Police Act for the Union Territories even though a draft was submitted

to them by the Police Act Drafting Committee headed by Shri Soli Sorabjee as far back as October 31, 2006.

14. In view of the above, it is therefore submitted that this Hon'ble Court may initiate contempt proceedings against the states which have even after the passage of one year and two months only partially complied or notionally complied with the directions of the this Hon'ble Court dated September 22, 2006 and January 11, 2007. Further, this Hon'ble Court may appoint a Monitoring Committee headed by a former Judge of the Supreme Court, assisted by two other persons, to oversee the implementation of the Supreme Court's directions or may request the High Courts of the respective states to monitor the implementation of the Supreme Court's directions and examine the constitutionality of any Acts or Ordinances drafted by the State governments on the subject and similarly, the Hon'ble High Court of Delhi may be requested to monitor the implementation of the Supreme Court's directions in the Union Territories and the High Court of Assam, Sikkim and Nagaland to monitor the implementation of the Supreme Court's directions in the north-eastern states.

#### **COMPLAINT OF DIRECTION REGARDING FEDERAL CRIME**

15. It would be further pertinent hereto mention that the Hon'ble Supreme Court, in its judgement in the aforesaid Writ Petition, made the following observations in the concluding pages:

*“Before parting, we may note another suggestion of Mr. Prashant Bhushan that directions be also issued for dealing with the cases arising out of threats emanating from international terrorism or organized crimes like drug trafficking, money laundering, smuggling of weapons from across the borders, counterfeiting of currency or the activities of mafia groups with trans-national links to be treated as measures taken for the defense of India as mentioned in Entry I of the Union List in the Seventh Schedule of the Constitution of India and as internal security measures as contemplated under Article 355 as these*

*threats and activities aim at destabilizing the country and subverting the economy and thereby weakening its defense.*

*The suggestion is that the investigation of above cases involving inter-state or international ramifications deserves to be entrusted to the Central Bureau of Investigation. The suggestion, on the face of it, seems quite useful. But, unlike the aforesaid aspects which were extensively studied and examined by various experts and reports submitted and about which for that reason, we had no difficulty in issuing directions, there has not been much study or material before us, on the basis whereof we could safely issue the direction as suggested. For considering this suggestion, it is necessary to enlist the views of expert bodies. We, therefore, request the National Human Rights Commission, Sorabjee Committee and Bureau of Police Research and Development to examine the aforesaid suggestion of Mr. Bhushan and assist this Court by filing their considered views within four months. The Central Government is also directed to examine this suggestion and submit its views within that time.”*

16. This Hon'ble Court had directed that the following should send their views on the aforementioned issue before the matter could be taken up:
  - i. National Human Rights Commission
  - ii. Sorabjee Committee
  - iii. Bureau of Police Research & Development
  - iv. Government of India
17. The National Human Rights Commission, the Sorabjee Committee and the BPR&D have already submitted their views on the subject. However, the Government of India has sought three extensions of time so far. They were required to submit their views by January 21, 2007. They sought extension by 12 weeks till April 15, 2007. The second extension was again for 12 weeks till July 10, 2007. The third extension was yet again for another 12 weeks till October 2, 2007. Till day, the Government of India has not filed any response. The matter is of great urgency. It is significant that the NHRC, the Sorabjee Committee and the BPR&D have all supported the concept of Federal Crime

and the need to have a specialised investigating agency to investigate the cases coming under this category.

18. The Government of India may be directed to submit their views on the subject at the earliest by December 31, 2007, failing which the Supreme Court may proceed with the matter on the basis of comments already furnished to them by the NHRC, the Sorabjee Committee and the BPR&D.

DEPONENT

VERIFICATION:

I, the above named Deponent, do hereby verify that the contents of the above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi on this \_\_\_\_ day of November 2007.

DEPONENT