

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) NO. 310 OF 1996

IN THE MATTER OF:

PRAKASH SINGH & ORS.

...Petitioner

VERSUS

UNION OF INDIA

...Respondents

An application for directions on behalf of Amicus Curiae

To,

The Hon'ble Chief Justice of India

And his Companion Judges of

the Hon'ble Supreme Court Of India

The Humble application of
the applicant abovenamed

MOST RESPECTFULLY SHEWETH:

1. The present application is being filed by the Amicus Curiae (Raju Ramachandran, Senior Advocate through his Co-Amicus Ms. Archana Pathak Dave), in order to formally place on record the suggestions orally made by him and recorded by this Hon'ble Court in its order dated 12 June 2020 passed in Interlocutory Application No. 49907/2020 in the above writ petition.
2. The present application does not make any contentious averments which would require factual responses from the parties, it would only require responses on the suggestions made hereinafter.

PURPOSE OF THIS APPLICATION

3. At the outset, it is necessary to indicate the purpose of the suggestions being made in the application. These are:
 - (a) To ensure speedy and effective implementation of the directions given in the judgment of this Hon'ble Court in its judgement dated 22 September 2006 in *Prakash Singh vs Union of India* (2006 8 SCC 1) by entrusting the task of ensuring implementation of the directions passed by this Hon'ble Court to the respective High Courts and ;
 - (b) To eliminate the need for frequent applications to this Hon'ble Court in State-specific situations.
4. The instant application will also indicate the matters which will still need to be adjudicated by this Hon'ble Court.

FACTS AND BACKGROUND IN BRIEF

5. A detailed chronology of events since the delivery of the judgment till now is consciously not being given in the present application since they are too numerous, and are not required for the purpose of the suggestions being made herein.
6. The directions given in the judgment dated 22 September 2006 in *Prakash Singh vs Union of India* (2006 8 SCC 1) are extracted below:

“ With the assistance of learned counsel for the parties, we have perused the various reports. In discharge of our constitutional duties and obligations having regard to the aforementioned position, we issue the following directions to the Central Government, State Governments and Union Territories for compliance till

framing of the appropriate legislations :

State Security Commission

(1) The State Governments are directed to constitute a State Security Commission in every State to ensure that the State Government does not exercise unwarranted influence or pressure on the State police and for laying down the broad policy guidelines so that the State police always acts according to the laws of the land and the Constitution of the country. This watchdog body shall be headed by the Chief Minister or Home Minister as Chairman and have the DGP of the State as its ex-officio Secretary. The other members of the Commission shall be chosen in such a manner that it is able to function independent of Government control. For this purpose, the State may choose any of the models recommended by the National Human Rights Commission, the Ribeiro Committee or the Sorabjee Committee, which are as under:

NHRC

Ribeiro Committee

Sorabjee Committee

1. Chief Minister/HM as Chairman.

1. Minister i/c Police as Chairman

1. Minister i/c Police (ex-officio Chairperson)

2. Lok Ayukta or, in his absence, a retired Judge of High Court to be nominated by Chief Justice or a Member of State Human Rights Commission.

2. Leader of Opposition.

2. Leader of Opposition.

3. A sitting or retired Judge nominated by Chief Justice of

High Court.

3. Judge, sitting or retired, nominated by Chief Justice of High Court.

3. Chief Secretary

4. Chief Secretary

4. Chief Secretary

4. DGP (ex-officio Secretary)

5. Leader of Opposition in Lower House.

5. Three non-political citizens of proven merit and integrity.

5. Five independent Members.

6. DGP as ex-officio Secretary.

6. DG Police as Secretary.

The recommendations of this Commission shall be binding on the State Government.

The functions of the State Security Commission would include laying down the broad policies and giving directions for the performance of the preventive tasks and service oriented functions of the police, evaluation of the performance of the State police and preparing a report thereon for being placed before the State legislature.

Selection and Minimum Tenure of DGP:

(2) The Director General of Police of the State shall be selected by the State Government from amongst the three senior-most officers of the Department who have been empanelled for promotion to that rank by the Union Public Service Commission on the basis of their length of service, very good record and range of experience for heading the police force. And, once he has been selected for the job, he should have a minimum tenure

of at least two years irrespective of his date of superannuation. The DGP may, however, be relieved of his responsibilities by the State Government acting in consultation with the State Security Commission consequent upon any action taken against him under the All India Services (Discipline and Appeal) Rules or following his conviction in a court of law in a criminal offence or in a case of corruption, or if he is otherwise incapacitated from discharging his duties.

Minimum Tenure of I.G. of Police & other officers:

(3) Police Officers on operational duties in the field like the Inspector General of Police in-charge Zone, Deputy Inspector General of Police in-charge Range, Superintendent of Police in-charge district and Station House Officer in-charge of a Police Station shall also have a prescribed minimum tenure of two years unless it is found necessary to remove them prematurely following disciplinary proceedings against them or their conviction in a criminal offence or in a case of corruption or if the incumbent is otherwise incapacitated from discharging his responsibilities. This would be subject to promotion and retirement of the officer.

Separation of Investigation:

(4) The investigating police shall be separated from the law and order police to ensure speedier investigation, better expertise and improved rapport with the people.

It must, however, be ensured that there is full coordination between the two wings. The separation, to start with, may be effected in towns/urban areas which have a population of ten

lakhs or more, and gradually extended to smaller towns/urban areas also.

Police Establishment Board:

(5) There shall be a Police Establishment Board in each State which shall decide all transfers, postings, promotions and other service related matters of officers of and below the rank of Deputy Superintendent of Police. The Establishment Board shall be a departmental body comprising the Director General of Police and four other senior officers of the Department. The State Government may interfere with decision of the Board in exceptional cases only after recording its reasons for doing so. The Board shall also be authorized to make appropriate recommendations to the State Government regarding the posting and transfers of officers of and above the rank of Superintendent of Police, and the Government is expected to give due weight to these recommendations and shall normally accept it. It shall also function as a forum of appeal for disposing of representations from officers of the rank of Superintendent of Police and above regarding their promotion/transfer/disciplinary proceedings or their being subjected to illegal or irregular orders and generally reviewing the functioning of the police in the State.

Police Complaints Authority:

(6) There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of

Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him. These Authorities may be assisted by three to five members depending upon the volume of complaints in different States/districts, and they shall be selected by the State Government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The panel may include members from amongst retired civil servants, police officers or officers from any other department, or from the civil society. They would work whole time for the Authority and would have to be suitably remunerated for the services rendered by them. The Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization. The State level Complaints Authority would take cognizance of only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody. The district level Complaints Authority would, apart from above cases, may also inquire into allegations of extortion, land/house grabbing or any incident involving serious abuse of authority. The recommendations of the Complaints Authority, both at the district and State levels, for any action, departmental or criminal, against a delinquent police officer shall be binding

on the concerned authority.

National Security Commission:

(7) The Central Government shall also set up a National Security Commission at the Union level to prepare a panel for being placed before the appropriate Appointing Authority, for selection and placement of Chiefs of the Central Police Organisations (CPO), who should also be given a minimum tenure of two years. The Commission would also review from time to time measures to upgrade the effectiveness of these forces, improve the service conditions of its personnel, ensure that there is proper coordination between them and that the forces are generally utilized for the purposes they were raised and make recommendations in that behalf. The National Security Commission could be headed by the Union Home Minister and comprise heads of the CPOs and a couple of security experts as members with the Union Home Secretary as its Secretary. The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31st December, 2006 so that the bodies afore-noted became operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3rd January, 2007.”

7. This Hon'ble Court took up the matter again on January 11, 2007 and on finding that most of the States had not implemented the directions, extended the time for implementing the directions upto 31 March 2007. Various

review petitions filed by different States were dismissed on 23 August 2007.

8. By an order dated 16 May 2008, this Hon'ble Court set up a Committee headed by Justice K.T. Thomas (retired) to monitor the implementation of its directives. The said Committee submitted four interim reports and its final report in August 2010. The Committee visited four States viz. Maharashtra, U.P., West Bengal and Karnataka and found them to be non-compliant. As for the remaining States, the Committee was of the view that “ *it is for the Supreme Court to decide on the course and modalities of such verification, to assess the exact level of compliance of the directives by them, before deciding on the action to be taken by them.*”

9. In the years that have intervened, the question of implementation of the Court's judgment has formed the subject matter of numerous contempt petitions. On the other hand, several applications have been filed over the years, by, *inter alia*, State Governments seeking the intervention of this Hon'ble Court in specific situations.

10. It is pertinent to point out that the Justice J.S.Verma Committee which was constituted in the wake of the brutal gang-rape in Delhi in December 2012 had, in its comprehensive report dated 23.1.2013, bemoaned the fact that the directions of this Hon'ble Court in the present case

remain to be implemented by all the Governments and that action on that front brooked no further delay. In Chapter XII of the Report which dealt with the subject of 'Police Reforms', the Committee emphasised that "*Ensuring full compliance with this judgment across all of India is of utmost priority to national welfare....*" And further observed "*We believe that if the Supreme Court's directions in Prakash Singh are implemented, there will be a crucial modernization of the police to be service-oriented for the citizenry in a manner which is efficient, scientific and consistent with human dignity*".

11. Thereafter orders dated 03rd July 2018 and 13/3/2019 were passed in W.P.(C) No. 310/1996 and certain significant clarifications/directions were issued by this Hon'ble Court in respect of Direction No.2 passed in the main judgment dated 22 September 2006 in *Prakash Singh vs Union of India* (2006 8 SCC 1) . A copy of the Order dated 3/7/2018 passed in W.P.(C) No. 310/1996 by this Hon'ble Court is attached hereto as **Annexure P/1 (Pg)**. A copy of the Order dated 13/3/2019 passed in W.P.(C) No. 310/1996 by this Hon'ble Court is attached hereto as **Annexure P/2 (Pg to)**.

12. As far as implementation of the directions through executive orders is concerned, it has been the petitioner's case that the Court's directions in the judgment are unimplemented/not fully implemented. A final determination by this Hon'ble Court with regard to compliance with the directions contained in the main

judgment is yet to take place. A chart giving the status of compliance/non-compliance as per the petitioner has been filed by him along with Contempt Petition No 534/2019 filed by him, which is pending before this Hon'ble Court.

13. It is also relevant to state that this Hon'ble Court, in its judgment in *Prakash Singh vs Union of India*, made it clear that its directions were “*for compliance till framing of appropriate legislations*”. As on date there are seventeen (17) state legislations which have since been passed. However, the validity of the said new state legislations is under consideration by this Hon'ble Court in Writ Petition (Civil) No. 286 of 2013 moved by Shri Harish Salve, Senior Advocate and Amicus Curiae. In the said petitions, this Hon'ble Court is considering the issue of whether the said legislations conform to the essential principles laid down in its judgment in the *Prakash Singh* case. In addition to the above legislations, a recent legislation has been enacted by the State of Telengana dealing with the limited aspect of appointment of the DGP. The Telengana Police [Selection and Appointment of Director General of Police (Head of Police Force)] Act, 2018 provides for direct appointment of the DGP without empanelment by the UPSC and the tenure of two years is made contingent upon superannuation.

14. Another aspect which requires to be placed before this Hon'ble Court is that the Government of India, by

notification dated 28 January 2014 issued the IPS (Cadre) Amendment Rules 2014, which, by constituting a Civil Services Board re the IPS, went, according to the Petitioner, contrary to the directions of this Hon'ble Court regarding the setting up of a Police Establishment Board. On a contempt petition moved by the Petitioner (Contempt Petition No 235/2014) this Hon'ble Court has directed that Rule 7 of the said Rules which provides for the setting up of a Civil Services Board be not acted upon pending reconsideration by the Union of India. The Court recorded its prima facie view that the said Rule is not in consonance with the judgment in Prakash Singh's Case. This Hon'ble Court vide order dated 6.5. 2014 observed as under:

“Learned Solicitor General appearing on behalf of the Union of India represented that the Union of India is considering the question of amending the Rule 7 of the Indian Police service(Cadre) Amendment Rules, 2014 to bring the rule in consonance with the judgment passed by this Court in Prakash Singh and Others Vs. Union of India and Others 2006(8) SCC 1. It appears prima facie that rule, as it exists on the statute book today, pursuant to an amendment made on 28th January, 2014 insofar as it pertains to the cadre of Indian Police Service does not appear to be in consonance with the earlier judgments of this Court(supra). In such circumstances, pending consideration by the Government of India about the amendment of the Rule, we direct the Government of India as well as all the State Governments not to take any proceedings in pursuance of the rules referred to above. This order be communicated to Chief

Secretaries of all the States and the Cabinet Secretary. -2- List the matter in the second week of July, 2014.”

SUGGESTIONS BY AMICUS

15. It is suggested by the Amicus-Applicant that:
- (a) The jurisdictional High Courts constitute dedicated Benches to determine the extent to which compliance by executive orders has been made by the concerned States/UTs. For this purpose, the High Courts would have to take the assistance of an Amicus Curiae and also appoint Expert Committees to verify compliance at the ground level. The High Courts may be requested to complete the exercise of determining compliance within a period of six months.
 - (b) Individual applications pertaining to the States/UTs concerned may be dealt with by the said Benches in keeping with the letter and spirit of the directions given by this Hon’ble Court in its judgment dated 22.9.2006.
16. It is further respectfully submitted that this Hon’ble Court be pleased to fix an early and actual date of hearing for the adjudication by itself of:
- (a) Writ Petition no. 286/2013 in which the question of the constitutional validity of the concerned State legislations is involved, and
 - (b) Contempt Petition No. 235/2014 in the present Writ Petition in which the validity of the relevant provisions of the IPS (Cadre) Amendment Rules 2014 is involved.

PRAYER

17. It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Consider and pass orders in the light of the suggestions made in paras 14 and 15 above; AND
- b) Dispense with the filing of an affidavit in support of this application; AND/OR
- c) Pass such other orders as may be deemed fit in the interests of justice.

SETTLED BY:

FILED BY:

RAJU RAMACHANDRAN

ARCHANA PATHAK DAVE

Sr. Adv (Amicus Curiae)

AOR (Co Amicus Curiae)

FILED ON: 06/07/2020

PLACE: NEW DELHI