**MINUTES OF MEETING OF THE GOVERNING COUNCIL OF COMMON CAUSE**

**Date:**  December 15, 2014

**Venue:** VSF, India Habitat Centre, New Delhi

**Participants:**

Shri Vikram Lal      President

Maj. Gen. (Retd.) J. P. Gupta

Shri Prakash Singh

Shri Prashant Bhushan

Sushri Madhu Kishwar

Dr. B. P. Mathur

Shri Lalit Nirula

Shri Paranjoy Guha Thakurta

Shri Kamal Kant Jaswal Director

Shri Vipul Mudgal Special Invitee

Shri Pankaj Gupta Special Invitee

Before taking up the formal agenda, the President welcomed Shri Vipul Mudgal to the meeting. He informed the Council that after a protracted search Shri Mudgal has been chosen by the Executive Committee to succeed Shri Kamal Jaswal as Director of Common Cause.

The Council recorded its appreciation for the services rendered by Shri Jaswal. Members of the Council extended their best wishes to Shri Mudgal for the challenges ahead and assured him of their unstinting support and cooperation in the discharge of his onerous responsibility.

The Council thereafter proceeded with the agenda of the meeting.

1. **Confirmation of minutes**

Minutes of the Governing Council meeting held on September 9, 2014 were confirmed.

1. **Ratification of circular resolutions**

The Council ratified the following resolution approved by circulation.

* + Resolution dated September 30, 2014 regarding ​ approval and adoption of the Annual Accounts and Audit Report of the Society and the Trust for the year 2013-14.
  + Resolution dated September 30, 2014 regarding ​ approval and adoption of the Annual Report of the Society for the year 2013-14.
  + Resolution dated December 9, 2014 regarding ​ expansion of the Society’s Governing Council.

1. **Presentation of the Society’s activities**

The Director reviewed the Society’s activities since the last meeting and apprised the Council of the status of the following initiatives.

**1. ADVOCACY INITIATIVES:**

**a. Police reforms**

The Director attended a national workshop on ‘Paradigm Change in Community Policing’ organized by Kerala Police during November 13-14, 2014 at Thiruvanathapuram. He took part in a panel discussion on ‘Changes Required In Community Policing & Managing The Changes’.

The workshop provided a platform for highlighting the work of Common Cause and its partners in the field of police reforms and networking with the heads of police establishments across the country. It also offered an opportunity to sound the participants about the scope and methodology of the proposed State of Policing Survey and elicit their cooperation for the undertaking.

**b. Mining Sector reforms**

Common Cause has been urging the Ministry of Mines to adopt a transparent system of competitive bidding/auction for the grant of mining leases in areas of known mineralization. The Director has been in constant contact with Secretary, Ministry of Mines, and other senior functionaries of the Ministry on this issue.

After the lapse of the MMDR Amendment Bill of 2011, which had sought to streamline the regulatory framework for exploration and attribution of minerals, the Ministry of Mines formulated the Draft Mines and Minerals (Development and Regulation) (Amendment) Bill, 2014. Though limited in scope, the Bill seeks to address the core concerns of the regulatory regime. In response to a Public Notice, inviting comments/suggestions from the stakeholders on the Draft Bill, Common Cause has submitted its comments and suggestions to the Ministry of Mines.

**c. Regulation of Multi Level Marketing Schemes**

The inclination shown by the UPA government to proceed against disguised money circulation schemes got dissipated in its final years and the labours of the working groups constituted by the various Ministries did not lead to any tangible outcomes. Meanwhile, the Indian Direct Selling Association could make considerable headway in its lobbying efforts aimed at excluding its constituents from the ambit of the Prize Chits & Money Circulation Schemes (Banning) Act, 1978. The Association went an overdrive after the arrest of the Managing Director of Amway in Andhra Pradesh in July 2014 and the clamour for an amendment of the Banning Act became more strident. Against this backdrop, the Director, met the Secretary, Consumer Affairs on October 15, 2014 and sought to enlist the support of the Ministry in blocking the concerted moves to legitimise the operations of Amway and such like companies. The Secretary gave a categorical assurance that a final decision on the regulation of the direct selling industry will only be made after extensive stakeholder consultations and appraisal of international best practices.

Common Cause is collaborating with Vidhi Legal Centre with a view to collating information on international best practices in the regulation of multi-level marketing and direct selling operations and proactively drafting a model legislation to be proposed to the Ministry of Consumer Affairs.

**d. Prevention of accidents caused by uncovered manholes, etc.**

Despite repeated admonitions and directions from the Courts, fatal accidents caused by open manholes, sewers, pits and drains have continued unabated. The National Crimes Record Bureau puts the death toll across India in the year 2013 at 1981. There have been recurrent fatalities in the National Capital region as well. In this context, the civic authorities concerned have been requested to place in the public domain full information on the safety measures instituted by them for preventing accidents of this kind and to enforce the accountability of the officers responsible for the upkeep and maintenance of the manholes in the areas under their jurisdiction.

**2. PUBLIC INTEREST LITIGATION**

**New intervention:**

***WP (C) 976/2014 : Preventing the export of logs of red sandalwood***

The Supreme Court’s intervention was sought to foil a determined bid by the Government of Andhra Pradesh to export a huge quantity of confiscated red sandalwood, an endangered species, in the form of round logs fancied by international traders. This move flies in the face of international conventions, express provisions of the Import-Export Policy and repeated admonitions of the Ministry of Environment & Forests. It also runs counter to a commitment made by the DGTD in the High Court of Madras. The Government of India has done a complete volte face and actively collaborated with the State government. The auction lot is far in excess of the State government’s own estimates of the global annual demand.

The Forest Bench of the Supreme Court issued notice to the respondents on November 21. There are no further orders of listing.

**Developments in earlier interventions:**

**Supreme Court**

1. ***WP(C) 387/2000: Crime and Violence on TV:***

At the hearing on September 25, the respondents were granted four weeks' time to indicate the steps proposed to be taken by the Union of India and the timeframe for implementation of the policy on the subject. There has been no further listing after October 31, 2014.

1. ***WP(C) 330/2001: Slaughter House Pollution:***

At the hearing held on September 2, 2014, the Court deplored the inaction of the state governments and directed the defaulters to ensure compliance of its orders within four weeks. The matter was last listed for December 10, 2014.

1. ***WP(C) 13/2003: Large scale government advertisements:***

The Court-appointed expert committee comprising Prof. Madhav Menon, Mr. Ranjit Kumar, Solicitor General, and Mr. TK Viswanathan, former Secretary General of Lok Sabha, submitted its guidelines for regulating publicly funded government advertisement campaigns to the Court sometime in October 2014. The guidelines, which are yet to be made available to us, are reported to contain several salutary provisions that should considerably mitigate the misuse of public resources for partisan ends.. The matter is now listed for January 13, 2015.

1. ***WP (C) 122/2008: Judicial Reforms:***

The Apex Court by its order dated December 10, 2014 has summarily disposed of the petition, which comprehensively addresses the demand, supply and efficiency issues contributing to the progressive dysfunction of the system of administration of justice in the country.on the basis of the Solicitor General’s statement that most of the issues raised in the petition are also involved in Criminal Appeal nos. 254-262/2012 Imtiyaz Ahmad Vs. State of U.P. & Ors., which actually concerns the peripheral issue of delays in the filling of vacancies in the subordinate judiciary. The Court also observed that the Judiciary has already considered most of these issues independently and finally.

The Council agreed that an application for the recall of this unwarranted order should immediately be moved.

1. ***WP(C) 536/2011: Combating Criminalization of Politics:***

The petition has been tagged with WP (Cr.) 208/2011: *J. M. Lyngdoh & Ors. Vs. UOI & Ors*., and listed for hearing on January 2, 2015.

1. ***WP(C) 194/2012 - RTI Rules of the Allahabad High Court:***

The matter was heard on September 9, 2014. Fresh notices were issued to the unserved respondents in the matters tagged with the petition.

1. ***WP(C) 21/2013: Challenging the provisions of the IT Act, 2000:***

Our PIL challenging the *vires* of Sec. 66A, 69A and 80 of the Information Technology Act, 2000, has been clubbed with a group of petitions challenging various provisions of the Act. The petitioners were heard at length on December 10-11, 2014. The hearing is to resume on December 16, 2014.

1. ***WP(C) 463/2012: Illegal allocation of captive coal blocks:***

After holding the allocations of captive blocks made during the period from 19913 to 2010 to be illegal, the Court held further hearing to determine the consequences flowing from its verdict. The UOI accepted the inevitability of auctions for the blocks held to be illegally allocated, but sought an exemption for 40 blocks, where mining leases had been granted by the state governments, and 6 others, where the end use plants were nearing completion.

At the hearing on September 9, 2014, the Union of India submitted that cancellation of allocations was the natural consequence of the August 25 judgment, while the affected private entities pressed for constitution of a committee to minimise the economic consequences of the judgment. The apex court pronounced its final order on September 24, cancelling 214 of the 218 allocations in question on grounds of the vice of arbitrariness and legal flaws.

Meanwhile, it had transpired that Shri Ranjit Sinha, Director, CBI, had met at his residence a number of persons accused in various high profile cases being investigated by the CBI, such as the Telecom scam and the Coal block allocation cases. In this context, the Society filed an application for directions, seeking the recusal of Shri Sinha from the ongoing investigations and prosecutions related to the coal blocks allocation case.

Subsequently, credible information was received that the Income Tax Department had drawn up an appraisal report on the electronic information gathered in the course of a raid on the premises of Moin Qureshi, a known Hawala operator and a frequent visitor at the residence of Shri Sinha. Hence, an application for directions was moved to secure the production of the appraisal report, which was expected to throw light on Qureshi's interactions with Shri Sinha and the latter's suitability to lead the investigations in the Coal Blocks Allocation cases. The application was eventually granted.

At the hearing on September 19, the Court directed the Union of India to submit the appraisal report by October 17. In the mean time, the CBI was asked not to file any charge sheet or closure report in the ongoing investigations.

Producing the appraisal report in the Court, the Attorney General stated that it did not record any conversation between Qureshi and Shri Sinha and that the latter’s name always came up with reference to something else or as hearsay. Emboldened by this statement, Shri Sinha moved an application in the Court on November 17, 2014, praying for registration of an FIR for perjury against Shri Kamal Jaswal, Common Cause and Shri Prashant Bhushan for false statements made in the affidavit and in course of the Court proceedings.

The Director filed an additional affidavit on December 4 to submit an investigative report published in The Indian Express of October 30, 2014, which substantiated the references in the appraisal report to Qureshi’s dealings with Shri Sinha. The affidavit also underlined Shri Sinha’s determined efforts to subvert the investigation and prosecution of the Coal Scam cases and sought a court-monitored investigation by a Special Investigation Teams or by the Ant-corruption Bureau of Delhi Police in the entire matter. Our contention was that the CBI could not be trusted with this task since two of its former Directors and other senior functionaries would be the subject matter of the investigation.

However, the Court did not pay heed to this argument and returned the appraisal reports to the Government when the matter came up for hearing on December 8. The embargo on filing of charge-sheets and closure reports by the CBI was also lifted. The matter is now listed for January 8, 2014.

1. **WP (C) 728/2013- *Mala fide* favours to RIL in KG Basin contract:**

The Court has directed the Solicitor General to place on record the New Domestic Natural Gas Pricing Guidelines, 2014 and respond to our IA of July 11, 2014 regarding the draft report of the CAG on the subject. The matter has been listed for January 16, 2015.

1. ***WP (C) 880/2013:*** [***News broadcast by private radio stations***](http://commoncause.in/Recent_PILs/privateradio.php):

At the hearing on September 25, 2014, the Court directed the Union of India to file an affidavit reflecting the steps intended to be taken and the time frame for implementation of such policy, if any, with reference to news broadcast by private radio stations. There are no further orders of listing.

1. ***WP(C) 114/2014: Illegal Mining in Odisha:***

The Court granted the Government of Odisha further time of 3 months from November 21 to comply with the interim order of May 16, 2014, with leave to the respondents to file their objections to the orders that might be passed by the former. The reports of the Shah Commission and the CEC are to be put up for the Court’s consideration.

1. ***WP(C) 245/2014: Mismanagement of Defence Lands:***

Counter affidavits have been filed by the UOI and the Directorate General of Defence Estates. The matter is now listed for January 5, 2015.

1. ***WP(C) 245/2014: Challenging the Lokpal Search Committee Rules:***

The Union of India has virtually conceded the case made out in our PIL. There are no further orders of listing.

**Delhi High Court:**

1. ***WP(C) 866/2010:*** [***Post-retirement activities of***](http://commoncause.in/Recent_PILs/hc4.php) ***judges:***

The petition was heard on September 17, 2014. The Court was informed that a Bill to prohibit members of a tribunal or a statutory body from acting as arbitrator had been introduced in the Rajya Sabha and referred for consideration by the Standing Committee. The Court has posted the matter for February 25, 2015.

1. ***WP(C) 8363/2010:*** [***Misuse of BSP reserved symbol***](http://commoncause.in/Recent_PILs/hc4a.php):

At the hearing on October 13, parties were directed to bring their written submissions on record. The matter was adjourned at the BSP’s request for January 8, 2015.

1. ***WP(C) 2992/2013: Shoring up the institution of Lokayukta, Delhi:***

The Chief Justice’s Bench directed the parties on September 26, 2014 to address the question whether the Lt. Governor, Delhi, in exercise of the powers under Section 12 of the Delhi Lokayukta Act, is required to act on the aid and advice of the Council of Ministers. Thereafter, the matter has repeatedly been adjourned. It is now listed for January 22, 2015.

1. ***WP (C) 7240/2013: Evidence of corruption by Shri Virbhadra Singh:***

At the hearing of December 10, the Court ordered that the Income Tax and CBI reports be tabled for examination in the next hearing. The matter is now listed for December 19, 2014.

1. ***WP(C) 3791/2000: Animal hazard on roads:***

The Court disposed of the matter on September 23, 2014 with liberty to the petitioners to approach it in the event of contempt of the order of 2007 by the respondent authorities.

In the light of the above direction, the Society conducted an impressionistic survey of the Ghogha Dairy Establishment (GDE) on November 12, 2014. It was observed that there has been no substantial improvement over the state of affairs which had been brought to the notice of the Apex Court in October 2013. In this connection, factual information regarding the development of infrastructure in GDE has been sought under the RTI Act.

1. **Long term impact of reliefs granted in PILs**

The discussion on the subject was framed in the context of the issues raised in Swaminathan S Anklesaia Aiyar’s article, *‘The innocent shouldn’t pay fines to the guilty’,* which appeared in The Times of India of November 26, 2014.

The burden of the article is that the verdict of the Supreme Court in the PILs on telecom licences and coal blocks was doubly flawed: it had penalized innocent companies, which had acted in accordance with the established policy and unduly rewarded the government which was the guilty party; and it had failed to weigh the cost and benefits of alternate remedies before ordering wholesale cancellation of licences/allocations. The article goes on to recommend two major changes in judicial procedure. First, every affected party must be heard before being deprived of its property rights. Second, the Court must seek the advice of an expert panel on the detriment or benefit caused to the public interest by a particular government decision.

A view had been expressed that the Court had ignored the fact that the affected telecom and coal projects have been funded by public debt and as a result of cancellation of the licences/allocations on which the financing was based, the creditors are stranded with NPAs of astronomical proportions. It was also felt that Common cause, which was the petitioner in both these cases, could adopt a more nuanced approach while framing its prayers in future PILs.

It was clarified that where the very foundation of a government policy is being challenged, it is not always feasible to implead each and every one of the beneficiaries of such policy. The numbers involved may simply be too large, in which case the preliminary processes would drag on indefinitely. However, in the Coal Allocations matter, where Common Cause was the lead petitioner, due care was taken to ensure that the beneficiaries of the impugned allocations had adequate opportunity to present their case. Prior to the Supreme Court order of August 25 holding the allocations to be arbitrary and illegal, a hearing was given to four associations of coal mine owners. Further, before pronouncing its final judgment of September 24, the Court heard all the affected parties, including the banks, in order to assess the economic implications of its ruling.

Significantly, the allocations made in favour of ultra mega power plants, which had been awarded on the basis of competitive bids for the lowest power tariff, were excluded from the purview of the Court order at the instance of the petitioners’ counsel. Moreover, coal blocks allotted to public sector entities had *ab initio* been excluded from the challenge, because the focus of the petition was on undue favours given to private profit-making entities in disregard of the provisions of Article 14 of the Constitution. However, commercial diversion of coal by UMPPs and outsourcing of mining operations by public sector entities through the device of joint ventures were effectively challenged. Thus, the approach adopted by the petitioners was indeed a nuanced one. The tenor of the Supreme Court order would have been somewhat different had the Union of India not readily accepted the inevitability of cancellations of the allocations made between 1993 and 2010.

It was also pointed out that it would be unwise to repose bind faith in cost benefit analysis by a panel of experts. There is an element of subjectivity in the choice of methodology, identifying the factors of direct and indirect costs and benefits and assigning relative weights to them. The outcome is always amenable to manipulation, as borne out by the experience of appraisal of public sector projects.

The long term gains of reforming the system of allocation of national resources will far outweigh the short term economic costs of an overdue course correction. Hence, it was decided that no modification in the Supreme Court orders was called for.

1. **Future initiatives**

C & A G Audit of NOIDA and Greater Noida

Mr. Prashant Bhushan was of the view that although there were certain provisions in the relevant statutes that make the audit of statutory boards by the C&AG contingent on the concurrence of the state government, a case for extending the C&AG’s audit jurisdiction to the industrial area development authorities in U.P. can be made out on grounds of overriding public interest. The draft writ petition in this regard will be finalised with the help of Dr. B. P. Mathur and other experts.

The meeting ended with a vote of thanks to the Chair.

(Vikram Lal)

President