

COMMON CAUSE UPDATES

Supreme Court:

Allahabad High Court RTI Rules: In a petition by Common Cause, the Supreme Court (SC) in a landmark order on March 20, 2018, directed that the fee per application should not exceed ₹50 and ₹5 for document photocopying, for individuals keen to access information under the Right to Information (RTI) Act. This order, applicable to all government authorities, addresses concerns expressed by our organisation and other RTI activists about excessive fees being a deterrent to information seekers. The apex court, in its final order, capped the fee at ₹50, giving leeway to the high courts (HC) to deal with exceptional situations differently. It clarified that this capping would not exclude revision in future, if such a demand arises. The SC however, did not specify situations under which fee revision could be allowed, giving room to all HCs to charge any amount as RTI fees.

Right to Living Will: The Constitution Bench of Chief Justice Dipak Misra and Justices AK Sikri, AM Khanwilkar, DY Chandrachud and Ashok Bhushan delivered its verdict on a 2005 PIL filed by Common Cause on March 9, 2018.

The apex court's ruling is a confirmation of the fundamental right to die with dignity, as an integral part of the right to live, under Article 21 of the Indian Constitution. It held that a dignified-life involves smoothening the dying process for a terminally-ill patient or a person in persistent vegetative state (PVS), with no hope of recovery. Holding passive euthanasia and a living will legally valid, the Bench laid down guidelines on several issues. There are specific rules on who could execute the advance directive and how, what should it contain, how should it be recorded and preserved, as well as when and by whom can it be given effect to. There are even guidelines on procedures to be followed in the event of refusal of permission by the medical board and revocation or inapplicability. The Bench clearly specified that said class of persons without an advance directive could not be alienated. In addition to laying down the procedure and safeguards for cases where advance directives exist, other protective measures were prescribed too.

Contempt Petition on Non-Appointment of Lokpal: The petition filed by Common Cause for appointment of Lokpal was disposed by the SC on April 27, 2017. The apex court held that the Lokpal and Lokayuktas Act, 2013, as it stands today, was a perfectly-workable legislation. Hence, the government had no justification in suspending the act's enforcement till the amendments, as proposed, were carried out. The government had failed to appoint the Lokpal even nine months after the judgment. Hence, a contempt application, seeking the initiation of contempt proceedings against the executive for wilful and deliberate failure to fully comply with the aforementioned judgment of the apex court was filed by Common Cause.

This matter was taken up on February 23, 2018, when the Attorney General (AG) informed the Court that steps under the Lokpal and Lokayuktas Act, 2013 were under way and a meeting had been scheduled for March 1, 2018. The Court directed the Secretary to the Government of India, Department of Personnel & Training, to file an affidavit, indicating steps taken and proposed. In continuation of its stand on March 6, 2018, the AG on April 17, 2018, apprised the Bench that a meeting for appointment of an eminent jurist, scheduled to be a part of the selection committee for Lokpal was held on April 10, 2018. Though the Common Cause counsel urged the Court to pass an order directing the Centre to appoint Lokpal, arguing that it was merely dragging its feet, the Bench refrained from passing such an order. The Court desisted from taking this step with the expectation that the process of Lokpal appointment would be made at the earliest, and adjourned the matter to May 15, 2018.

Introduction of Electoral Bonds Challenged: Common Cause and the Association for Democratic Reforms (ADR) have challenged the introduction of electoral bonds, as part of the Finance Act 2017. They feel that these bonds have made electoral funding of political parties more opaque, legitimising high-level corruption of an unprecedented scale by removing electoral funding limits for big corporations and foreign lobbyists. The PIL seeks direction from the Supreme Court to strike down the amendments made through the Finance Act, 2017, and the Finance Act, 2016. It is alleged that such wide-ranging amendments to the Representation of People's Act, 1951, the Reserve Bank of India Act, 1934, the Income Tax Act, 1961 and the Companies Act were brought in illegally, as a "Money Bill," in order to bypass the Rajya Sabha. This matter was taken up on October 3, 2017, when notice was issued to the Union of India and other respondents. There are no further orders of listing. However, on February 2, 2018, our petition was tagged with the petition filed by the Communist Party of India (Marxist) who approached the Court challenging the Centre's decision to introduce electoral bond scheme. The CPI(M) contended that the move "undermines democracy" and that it will "lead to greater political corruption."

News Broadcast by Private Radio Stations: The PIL prays for the quashing of unreasonable provisions in the policy guidelines of the Ministry of Information and Broadcasting as well as its grant of permission agreements. This prohibits the broadcast of news and current affairs on frequency modulation (FM) and community radio stations. The government sought more time to file its reply in March 2017. This matter was taken up on January 18, 2018, when the Court directed that the replies filed in the matter be taken on record and the matter be listed after 15 days.

An incident closely related to this issue needs to be reported in this context. An official directive has been circulated by the Centre on January 17, 2018, asking all states and union territories to constitute committees to monitor violation of rules by private-satellite television, FM and community radio channels. The matter was dismissed on April 12, 2018, by the bench of Justices Arun Mishra and UU Lalit by default, owing to non-appearance of the petitioners.

Petition Challenging the Appointment of RK Asthana as Special Director, CBI: In its quest to maintain transparency and institutional integrity in the appointment of key functionaries in sensitive organisations, Common Cause filed a petition in the SC, challenging the appointment of Rakesh Asthana as the Special Director (SD), Central Bureau of Investigation (CBI). The petition stated that the appointment of SD, the second highest authority in the organisation, should be in strict compliance with all the norms laid down by the apex court in the past. The petition also alleged that the government and the selection committee overruled the opinion of the Director, CBI, in violation of the law on statutory consultation, as laid down in various judgments.

The petition also sought directions to the parties concerned to produce before the Court the agenda and the minutes of the selection committee meeting under Section 4C of the Delhi Special Police Establishment (DSPE) Act, 1946. It was also sought that parties produce the note and material put up by the CBI Director regarding the proposed appointment of the Special Director. The petition was dismissed on November 28, 2017 by a Bench comprising Justices RK Agrawal and Abhay Manohar Sapre. A review petition [R.P. (C) 28/2018] was filed by Common Cause against the SC order of November 28, 2017, with a plea to reconsider the order. The review petition was dismissed by the two-judge bench comprising Justices Aggarwal and Sapre on January 23, 2018.

Contempt Petition Against Lawyers' Strike: The contempt petition filed by Common Cause against the strike of lawyers in Delhi HC and all district courts of Delhi on the issue of conflict over pecuniary jurisdiction, in W.P. (C) 821/1990 (Harish Uppal vs UoI), was again taken up on January 13, 2017. After hearing the counsels, the Court ordered that the reply, if any, be filed within six weeks. The matter was adjourned on July 5, 2017, and is likely to be listed on April 9, 2018. As the SC website is yet to become fully functional, a related news report is quoted: "Terming strikes by lawyers as illegal for obstruction of access to justice, the Supreme Court has decided to act tough against erring advocates and Bar associations that passed resolutions for strike. A bench headed by Justice AK Goel has asked the Ministry of Law and Justice to compile information and present a quarterly report on strikes/ abstaining from work so that contempt proceedings would be initiated against lawyers."¹

Illegal Mining in Odisha: There has been much progress since the final judgment on August 2, 2017, when the Court imposed 100 per cent penalty on companies indulging in illegal mining -- lack of forest and environment clearances, mining outside lease/permited area and mining in excess of what had been allowed. In September 2017, Common Cause filed an application for clarification of issues arising out of the judgment. The Court vide order December 13, 2017 stated that in case of non-payment of compensation and dues, the State of Odisha shall close the mining operations of that mining lease holder. This was an answer to our prayers. The Committee formed by the SC, vide its order of November 22, 2017, and consisting of Justices GS Singhvi and Anil R Dave, was asked to ascertain whether there had been any violation by any of the lessees of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 in terms of Paragraphs 187 to 195 of the SC judgment and violation of Rule 37 of the Mineral Concession Rules, 1960 in terms of Paragraphs 196 to 204, of the judgment. The SC urged the Committee to endeavour to submit its report within a period of 12 weeks from the date of first hearing.

On January 30, 2018, the Central Empowered Committee (CEC) report (4/2018, filed on January 17, 2017) stated that compensation for violation of environmental and forest clearance by the 131 mining lease holders was ₹17417.99 and ₹1756.39 crore respectively. The report further stated that as on December 31, 2017, an amount of ₹8289.87 crore had been paid by various lessees. During the hearing on January 30, 2018, the SC directed the State of Odisha to take coercive steps to recover the unpaid dues from the defaulting mining lease holders and listed the matter for February 22, 2018. The SC heard the counsels for all parties on February 22 and 23, 2018, on the CEC report and directed the matter be listed in April 2018. However, we wish to bring the following news items to our readers' notice:

1. Orissa Post reported that the "Bhubaneswar Chapter of Federation of Indian Chambers of Commerce and Industry (FICCI) has requested the state government to urge the Centre to formulate a regulatory framework, if required through an ordinance. This should allow the non-operational iron ore mines to restart operations under a deferred-penalty payment mechanism".²
2. "The Centre is preparing a legislative amendment to clarify the definition of illegal mining. This has a direct impact on companies such as Tata Steel, Coal India Ltd and Steel Authority of India that are facing hefty penalties owing to a SC order on a contentious section of the statute. The central government is considering retrospective changes in the Mines and Minerals Development and Regulation Act (MMDRA). This will be placed before the cabinet this month after inter-ministerial consultation, sources familiar with the development said."³

Combating the Criminalisation of Politics: The PIL was filed for debarring persons charged with serious-criminal offences from contesting elections and expediting the disposal of pending-criminal cases involving MPs and MLAs. The constitutional validity of Section 8(4) of the Representation of Peoples Act 1951 was challenged. A landmark order was obtained in March 2014 for concluding criminal cases against lawmakers within a year of charge framing. The matter was tagged with two other cases with similar prayers and was referred to a Constitution Bench on March 8, 2016. In a hearing on July 12, 2017, the Court criticised the Election Commission for retracting its earlier position supporting a plea for lifetime ban on convicted lawmakers. On December 12, 2017, in a tagged case [W.P.(C) 800/2015], the Centre informed the Court that it will set up special courts to deal with criminal cases against parliamentarians. The Law Ministry's Special Secretary subsequently submitted an affidavit stating that the Finance Ministry has approved ₹7.8 crore for the scheme. A five-judge Constitution Bench was set up in the matter in January 2018. (On January 15, Common Cause President and Director met their lawyer Mr. Dinesh Dwivedi along with the IPF Acting President Anil Kumar, to discuss the case).

Illegal Allocation of Captive Coal Blocks: On January 15, 2018, the apex court expressed its displeasure over the tardy pace of probe into the coal-scam cases. "Progress in the investigations by the CBI and Enforcement Directorate (ED) in the coal scam cases has been slow," a special bench headed by Justice MB Lokur said. The CBI's special investigation team (SIT), formed to probe the agency's then-chief Mr. Ranjit Sinha, who *prima facie* tried to scuttle the investigation in the coal-scam case, informed the apex court that substantial progress has been made in the enquiry, involving the CBI's former director. The Bench listed the matter in the second week of March to see further progress into the investigation after it was informed that SIT will take six more months to complete the probe. As per news reports, on January 21, 2018, the CBI informed the SC that it has closed its enquiry into 22 coal block allocations, which were made from 1993 to 2005, with the approval of the chief vigilance commissioner. "The probe agency, in its 18th status report filed before the apex court in coal-block allocation scam cases last month, has said it had registered 16 regular cases covering 21 coal blocks during the period 1993-2005. The top court is monitoring the probe in the coal-scam cases."⁴

Delhi High Court:

SIT on Over Invoicing Requested by CPIL, Common Cause

Common Cause and Centre for Public Interest Litigation (CPIL), have approached the Delhi High Court seeking a direction for a thorough investigation by an SIT into the over-invoicing of imported coal and equipment. The over-invoicing was carried out by various private power-generating companies as detailed by Directorate of Revenue Intelligence (DRI) in several of its investigation reports. In the last three or four years, several major instances of such over-invoicing have been unearthed by the DRI in which several prominent and influential companies are involved.

Unfortunately, the executive is yet to take action against such entities. In the hearing on December 11, 2017, notices were issued to UoI (Union of India) and DRI and were accepted by representatives of both. On February 7, 2018 the respondents were directed to file their affidavits within two weeks of the date of hearing.

In the hearing on April 4, 2018, the bench headed by Justice S Ravindra Bhat sought the CBI's reply on the allegation that it had improperly closed the preliminary enquiry without registering FIR against Adani for the over-invoicing of power equipment. CBI has been granted two weeks' time for filing the status report. The Court also directed CBI to file a report on the status of the FIR registered by it against NTPC and Metals and Minerals Trading Corporation of India (MMTC).

The DRI also submitted an affidavit on April 4, 2018, stating that show-cause notices had been issued to the companies and the adjudication of cases are at different stages. It urged the Court to dismiss the petition, stating that the investigation is time consuming and complicated owing to its voluminous nature and the multiplicity of countries involved. However, it was taking all necessary steps for expeditious completion of the investigations.

Endnotes:

- 1.(<http://www.newindianexpress.com/nation/2018/apr/02/supreme-court-to-act-tough-on-lawyers-who-go-on-strike-abstain-from-work-1795723.html>)
- 2.<http://ismenvis.nic.in/ViewGeneralLatestNews.aspx?Id=16138&Year=2018>
- 3.lbid
- 4.<https://economictimes.indiatimes.com/news/politics-and-nation/enquiry-into-22-coal-blocks-allocated-between-1993-2005-closed-cbi-to-supreme-court/articleshow/62593010.cms>