

Jan 11, 2010

Comments of MHA on provisions of Model Police Act, 2006

Dear All,

In its effort to reform the functioning of Police services in our country, Common Cause has been campaigning for enactment of a new legislation meeting the contemporary needs of policing in the states and the UTs.

In this context, Common Cause obtained photocopies of the relevant sections of the Ministry of Home Affairs (MHA) files dealing with the enactment of Model Police Act, 2006 (MPA, 2006) drafted by Police Act Drafting Committee chaired by Shri Soli Sorabjee. These documents show that Shri A.K.Srivastava, Joint Secretary,(PM) in the MHA had, vide his letter D.O. No. 25019/15/2005-PM-II dated 24th January, 2007, addressed to Dr. K.N. Chaturvedi, Secretary, Legislative Department, requested him to draft a Bill incorporating the provisions of the MPA, 2006 as modified by the comments of MHA enclosed with the letter. Some of the more revealing decisions of MHA are given below.

In addition to the specific decisions quoted below, two amendments decided by MHA to the MPA, 2006 recur throughout the document. These are

1. All references to “Police service” should be replaced by “Police organization”. Quite clearly, the idea of government (of which police is a part) providing any service to public was anathema to the mandarins in the North Block.
2. Wherever the word “shall” is used (signifying the obligatory and legally binding nature of the requirement), it should be replaced with “may”.

It may be added here that some of the decisions of MHA on the provision in MPA also negate the orders of the Supreme Court, passed in 2006 in the PIL Prakash Singh, Common Cause and Others vs. Union of India.

Evidently, the idea that government functionaries and processes should be transparent and accountable to the law or to the public was unacceptable to the powers that be at that time. Hopefully, the system will now be more amenable to the idea of subjecting itself to the discipline of transparency and accountability.

The full text of the decisions of the MHA may be seen at http://commoncauseindia.org/whatsNew/attachments_ar/ImportantInformationreceivedunderRTIAct.pdf

Excerpts from the decisions of MHA on MPA, 2006

Section of MPA - 3. One Police Service for each state

There shall be one Police Service for each state. Members of the Police Service shall be liable for posting to any branch of the Service in the state, including any of its specialised wings.

MHA Comment

Replace "Police Service" everywhere by "Police Organization".

6. Selection and term of office of the Director General of Police

(3) The Director General of Police so appointed shall have a minimum tenure of two years irrespective of his normal date of superannuation : Provided that the Director General of Police may be removed from the post before the expiry of his tenure by the State Government through a written order specifying reasons

MHA Comment

The word "as far as possible" may be inserted after the word "shall" in the first line.

25. Recruitment to the post of Civil Police Officer Grade II

(3) The recruitment shall be made through the State-level Police Recruitment Board provided for in Section 4(2) under Chapter II, through a transparent process. The recruitment standards and the details of procedure including written tests, physical and medical fitness tests shall be prescribed by the State Government.

MHA Comment

Accepted with deletion of words "through a transparent process".

26. Service Conditions of Primary Ranks of the Civil Police Service

(1) Three promotions should ordinarily be available to all meritorious officers. The Police Recruitment Board shall evolve and lay down merit-cum-seniority criteria for promotion through a transparent process, for different ranks.

MHA Comment

1. Delete the first line viz. "Three promotions ... officers", and the words "through a transparent process".

27. Duties of Civil Police Officers

The Duties of all officers of and above the rank of Civil Police Officer Grade II shall include, inter alia, the following:

- (a) serving and protecting the citizens;
- (b) engaging with the citizens and gaining their cooperation;

MHA Comment

(a) Delete the words "serving and".

(b) Deleted completely.

42. Composition of the Board

(1) The State Police Board shall have as its members:

- (a) the Home Minister as its Chairperson;
- (b) the Leader of the Opposition in the State Assembly;
- (c) a retired High Court Judge, nominated by the Chief Justice of the High Court;
- (d) the Chief Secretary;
- (e) the Secretary in charge of the Home Department;
- (f) the Director General of Police as its Member-Secretary; and
- (g) five non-political persons of proven reputation for integrity and competence (hereinafter referred to as "Independent Members") from the fields of academia, law, public administration, media or NGOs, to be appointed on the recommendation of the Selection Panel constituted under Section 43.

MHA Comment

Composition by Board may be: HM, CS, HS, DGP, experts to be decided by government . No selection Panel.

43. Composition of the panel for selection of Independent Members

Independent Members of the State Police Board shall be appointed on the recommendation of a Selection Panel, which shall consist of:

- (a) a retired Chief Justice of a High Court as its Chairperson, to be nominated by the Chief Justice of the High Court;
- (b) the Chairperson of the State Human Rights Commission, or in the absence of such Commission in the state, a person nominated by the Chairperson of the National Human Rights Commission; and
- (c) the Chairperson of the State Public Service Commission.

MHA Comment

Delete

44. Method of selection

The Selection Panel shall evolve its own procedure to select Independent Members through a transparent process.

MHA Comment

Delete

45. Grounds of ineligibility for Independent Members

No person shall be appointed as an Independent Member of the State Police Board if he:

- (a) is not a citizen of India; or
- (b) has been convicted by a court of law or against whom charges have been framed in a court of law; or
- (c) has been dismissed or removed from service or compulsorily retired on the grounds of corruption or misconduct; or
- (d) holds an elected office, including that of Member of Parliament or State Legislature or a local body, or is an office-bearer of any political party or any organisation connected with a political party; or
- (e) is of unsound mind.

MHA Comment

Delete

50. Annual report of the State Police Board

(1) The Board shall, at the end of each year, present to the State Government a report on its work during the preceding year as well on the evaluation of performance of the Police Service, as provided for in Chapter XIII.

(2) The State Government shall lay the Annual Report before the State Legislature in the budget session. The Annual Report shall be made easily accessible to the public.

MHA Comment

1& 2 Delete

Role, Functions, Duties and Responsibilities of the Police

57. Role, functions and duties of the police

The role and functions of the police shall broadly be:

- (a) to uphold and enforce the law impartially, and to protect life, liberty, property, human rights, and dignity of the members of the public;

MHA Comment

Delete the word "impartially" in (a).

133. The officers posted to the Criminal Investigation Department will be selected on the basis of their aptitude, professional competence, experience and integrity. They will undergo appropriate training

upon induction, and their knowledge and skills will be upgraded from time to time through appropriate refresher and specialised courses.

MHA Comment

Accepted. Delete "and integrity" from first line.

147. Career planning

The State Government shall formulate a policy for career progression of police personnel in a manner that will ensure avenues for at least three promotions to meritorious officers in their career, through a transparent process in accordance with the provisions of Section 54 of Chapter V.

MHA Comment

DELETE "at least three"&"through a Chapter V".

152. Misconduct

A police officer shall, in addition to any other delinquent act or behaviour, as specified in the relevant rules, be liable for disciplinary action for any of the following misconduct:

(a) disobedience of lawful orders;

MHA Comment

DELETE "LAWFUL".

158. Police Accountability

In addition to the already existing mechanisms, and functions, duties and responsibilities of the departmental authorities, accountability of the police shall be further ensured through the additional mechanisms detailed in this chapter.

MHA Comment

The entire concept of accountability is accepted in principle. Existing mechanisms needs strengthening rather than creating additional mechanism. Include accountability in manual etc. The comments on the entire chapter need to be revised accordingly.

With warm regards,

Kamal Kant Jaswal,

Director, Common Cause