

## MINUTES OF COMMON CAUSE GOVERNING COUNCIL MEETING

**Date:** November 28, 2016

**Venue:** Common Cause House, Nelson Mandela Marg, Vasant Kunj, New Delhi

### **Participants:**

Mr. Vikram Lal President Emeritus

Mr. Kamal Kant Jaswal President

Maj. Gen. (Retd.) J. P. Gupta Vice President Emeritus

Mr. Paranjoy Guha Thakurta

Mr Lalit Nirula

Dr. Vipul Mudgal Director

Mr. Pankaj Gupta Special Invitee

Dr. B. P. Mathur, Dr. Divya Jalan, Dr. Ashok Khosla, Prof. Madhu Kishwar, Mr. Prashant Bhushan, Mr. Jyoti Sagar, and Mr. Prakash Singh were granted leave of absence.

### **1. Confirmation of minutes**

Minutes of the Governing Council meeting held on August 3, 2016 were confirmed.

### **2. Ratification of the Circular Resolutions approved on 30.09.2016**

The Governing Council took note of and ratified the following resolutions approved by circulation on September 30, 2016

#### **Resolution No.1**

“Resolved to approve and adopt the Annual Accounts and Audit Report of the Society and the Trust for the year 2015-2016.”

#### **Resolution No.2**

In the matter of accumulation of Rs. 62,00,000 under section 11(2) of the Income Tax Act, 1961 for the financial year 2015-16 relevant to the Assessment year 2016-17, the following resolution was passed:

“Resolved that a sum of Rs. 62,00,000 be set aside as provided in section 11(2) of the Income Tax Act, 1961 and to be spent till 31.03.2021 for the following purposes:

- i) Development of an interactive website
- ii) Mobile phone and social media outreach
- iii) Conducting research-based surveys and data compilation
- iv) Research on social policy and governance
- v) Policy-dialogues and brainstorming sessions

Resolved further that Dr Vipul Mudgal, Director of Common Cause or Mr Kamal Kant Jaswal, President of Common Cause be and are authorized to sign and file Form 10 with the Income Tax return of the Society, and do all such acts, deeds, matters and things, as it may in its absolute discretion deem necessary, proper or desirable and to settle any question, difficulty or doubt that may arise in regard thereto."

### **3. Presentation of the Society's activities**

The Council noted the significant developments in the Society's public interest litigation detailed in the enclosed report. (Annexure 1)

### **4. Presentation of the Annual Report of the Society for the year 2015-16**

The Director recapitulated the salient features of the Annual report of the Society for the year 2015-16, which had already been circulated. The Council considered the Report and adopted the following resolution.

"Resolved to approve and adopt the Annual Report of the Society for the year 2015-16 to be circulated to the members of the Society along with the notice of the Annual General Meeting to be held on Saturday, March 4, 2017, at 11:00 a.m. at Common Cause House, 5, Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi-110070."

### **5. Presentation of the Society's activities:**

**Judicial Reforms:** The Director updated the Governing Council on the efforts to reach out to new partners like the National Law University, Indian Law Institute and the Indian Institute of Technology, Delhi, for fresh collaborations on the use of technology for making justice accessible for all. The idea is to reinforce our dip-stick study to check the availability of online services through the websites of 27 district courts in eight states of India with a parallel, ground-based survey. The President suggested that the findings of the dip-stick study done by the Common Cause team should be highlighted and shared with other stakeholders, including the Department of Justice.

The members expressed shock at the sudden decision of the CJI to remove Justice Madan B Lokur as the head of the Supreme Court's E-Committee.

**Police Reforms:** The Director apprised the members of the progress on the collaborative work on the study of policing in India. The study includes a thorough compilation and crunching of the manifest data on the functioning of the police

and the state of the rule of law. The backbone of the study is a performance cum perception survey of police in around 10 selected states of India. It uses a systematic random sampling technique to draw upon a representative sample using a structured questionnaire and a data-based comparison of positive and negative indicators of the functioning of the police force. The Lokniti Programme of the Centre for the Study of Developing Societies (CSDS) has started work on the survey and a grant/ financial assistance of Rs 25 lakh, which was set aside for this purpose, is being made to them in a phased manner. The survey is following a strict time frame and it is expected to be completed by May 2017.

**Fund Raising:** The GC appreciated the efforts made by the Common Cause team to attract donations through the crowd funding platform. So far, the platform has yielded just above Rs 50,000, but the exercise has attracted financial support from over 50 young people of diverse backgrounds. The Director also disclosed that the total fund collection through crowd funding, email campaign, and appeals published in the journal, is expected to cross Rs 2.5 lakh in the financial year. The Director apprised the members of the efforts being made to attract funding from institutional donors and private trusts and foundations.

The GC also approved the Life Membership of Mr D Parthasarathy of Chennai with voting rights. According to information furnished by the applicant, his late father, Mr T Durairajan, was also a member of Common Cause and was introduced by its first President and a former CAG of India, Mr S Ranganathan, ICS, (Retired).

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

(Kamal Kant Jaswal)  
President

## COMMON CAUSE CASE UPDATES

New Interventions:

1. **Sedition Petition:** A petition was filed in the Supreme Court in September 2016 to address the misuse and misapplication of Section 124A (sedition law) by the Central and the State Governments leading to baffling cases of persecution of students, journalists and intellectuals engaged in social activism. It was submitted that the overzealous use of the sedition law could be aimed at instilling fear and suppressing dissent in complete violation of the norms laid down by the Constitution Bench judgment of the Supreme Court in *Kedar Nath v State of Bihar* (1962), which is the locus classicus on the interpretation of sedition.

Our petition sought to lay down a procedure for application of the law of sedition so as to minimise the possibilities of misuse by governments and individuals. While highlighting several cases of arbitrary arrests and harassment of social and political activists, we argued that the only way to check arbitrariness was to lay down a "procedure established by law" before arrests under Section 124A could be made. Our prayers included a review of all pending sedition cases and for criminal complaints about sedition made before a Judicial Magistrate.

Our PIL was heard on September 5, 2016, and unceremoniously disposed of by the Apex Court in the first hearing itself. Unfortunately, the Apex Court did not entertain our prayer and disposed of the case with the general order for adherence to the verdict in *Kedar Nath*.

Significant developments in previous interventions:

2. **Lokpal Search Committee Rules: WP (C) 245/2014** - The matter was taken up on November 22 and 23, 2016. As reported in the media, the Supreme Court expressed deep displeasure with the Centre not appointing the Lokpal even after two years of enactment of the law by the Parliament.

The law requires that the Leader of the Opposition (LoP) be a part of the selection process. As there is no LoP presently, the law needs to be amended to substitute the LoP by the leader of the largest Opposition party in the House. The Attorney General informed the Apex Court that the Government was seized of the issue and the amendment Bill was pending. He argued that any order by the Court would, therefore, amount to judicial legislation.

The Bench, comprising Chief Justice Thakur, Justice Chandrachud and Justice Nageswara Rao, admonished the Centre for the unjustifiable delay. The Bench questioned the reason for the delay in the appointment when the Government claims that it is committed to fighting corruption. Expressing his concern over the delay, Justice Thakur noted, as reported in the media, that the institution of Lokpal was created for probity in public life and could not be allowed to become redundant merely because there would not be a Leader of Opposition for the next two and a half years.

Resisting the AG's submission on judicial legislation, the CJI said, "You are committed to Lokpal and you also say that the leader of the single largest party should be recognised as leader of opposition. You should welcome any judgment by the court saying that the leader of the single largest party would be treated as the leader of the opposition (for the purpose of the Lokpal Act)...If we interpret the Act, it will be consistent with your stand on the amendment of the Act. After all, you have amended four other Acts on similar lines."

The Court reportedly also made an observation that the Leader of Opposition was "dispensable" and could be extended to include the leader of largest opposition party in the Selection Committee to expedite the appointment of the Lokpal. It, however, did not pass an order on the issue and granted time to the AG to seek instructions from the Government on bringing the necessary amendment through legislation or ordinance.

The matter has been adjourned to December 7, 2016.

**3. The Interim Application filed in the petition for combating the Criminalization of politics: WP (C) 536/2011** - The Supreme Court had on March 10, 2014, passed an interim order directing that trials in criminal cases against MPs and MLAs must be concluded within a year of the charges being framed. The Court had also directed that if the trial court is unable to complete the trial within a year, it would have to submit an explanation to, and seek an extension from, the Chief Justice of the High Court concerned. While seeking compliance of the Supreme Court order, Common Cause sought specific, time-bound directions for closer monitoring of all such cases.

We learnt through our correspondence as well as RTI applications that the hope for the implementation of the landmark SC order was fading. Meanwhile, the PIF, the lead petitioner in the case, had almost become defunct and lost interest in pursuing the case due mainly to its changing circumstances. Hence, Common Cause took lead in the matter and persuaded the PIF to jointly approach the Apex Court through an interim application praying for urgent implementation of its order dated March 10, 2014.

The IA is likely to be taken up in the coming week.

**4. IA on Sahara/Birla diaries filed in the petition challenging the appointments made to the CVC: WP (C) No. 505/2015** - Last year, Common Cause had filed a petition in the Supreme Court challenging the arbitrary and non-transparent appointments of the new CVC and VC as violative of the principles of 'impeccable integrity' and 'institutional integrity' as laid down in Vineet Narain (1998) and Centre for Public Interest Litigation (CPIL) case (2011). The matter was heard on February 22, 2016, and listed for hearing on a non-miscellaneous day.

Meanwhile, it came to our knowledge that the CBI had recovered incriminating documents and a huge stash of unaccounted cash during searches on the premises of the Aditya Birla

group in October 2013 in relation to coal block allocations to the group's Hindalco Industries. Similar incriminating evidence was found in the Income Tax raid on the Sahara group in 2014. Although the documents seized indicated the commission of offences of corruption, bribery, possession of black money and disproportionate assets, and also Income Tax violations, the CBI and the Income Tax Department did not take appropriate action by conducting a thorough scrutiny of their contents. It was also learnt that both Sahara group and Birla group had approached the Settlement Commission of Income Tax to settle and bury the whole issue. This would have allowed evidence of serious corruption of important public functionaries getting buried and those guilty of bribery and corruption going scot-free.

On 15 November, 2016, Common Cause approached the Apex Court through an Interim Application praying for a thorough investigation and further action on the Sahara/Birla documents -- allegedly detailing illicit payouts to political functionaries. Court's intervention was also sought to preclude any settlement between the corporate groups and the IT Department in order to prevent the destruction of the evidence.

In the hearing on 25 November, 2016, the Supreme Court was not persuaded by the evidence of the payoffs and allowed three weeks to the Petitioners to bring forth more credible material in support of the allegations. As per media reports, the bench comprising of Justice J S Kehar and Justice Arun Mishra said that they were not averse to hearing the graft case as long as more authentic evidence was placed before the Court.

The matter is now listed for 14 December, 2016.

**5. Extension of audit jurisdiction of the C & AG of India to NOIDA, G. Noida and Yamuna Expressway Authorities: WP (C) 48416/205** - In the hearing of January 27, 2016, the Advocate General sought an extension of time to file the counter affidavit as directed in the previous order. Subsequently, the CAG office sought an adjournment to file a supplementary affidavit. The Court granted two weeks to the parties to file their response to the supplementary affidavit filed by the office of C & AG of India.

The case is likely to be listed on December 20, 2016.