

## **Annexure 1: GC minutes 12.03.2016**

### **Director's report and case updates**

#### ***Public interest litigation (New initiatives):***

##### **Supreme Court**

**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 WP (C) 821/1990 (Harish Uppal vs Union of India) was again taken up on February 1, 2016. At the hearing, Mr. Ram Jethmalani sought more time to convene a meeting of the Bar Association. Granting the request, the Court listed the matter for April 5, 2016.

**Challenging the vires of the appointments made to the CVC:** The Petition challenges the arbitrary and non-transparent appointments of the new CVC and VC as violative of the principles of 'impeccable integrity' and 'institutional integrity' laid down in Vineet Narain case (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.

**Contempt Petition in Large Scale Advertisements:** Common Cause filed a contempt petition against the State Governments of Uttar Pradesh, Delhi and Tamil Nadu for publishing publicly-funded advertisements in violation of the letter and spirit of the Apex Court's guidelines regarding large scale advertisements, which had carved out exceptions for the Prime Minister, the President and the Chief Justice of India. The matter was last taken up on March 9, 2016. The Centre and seven States, including the poll-bound West Bengal and Tamil Nadu, sought revision of the verdict, pleading that it infringed the fundamental rights and the federal structure.

The Bench headed by Justice RanjanGogoi reserved its verdict on the review pleas of the Centre and the seven States which demanded that besides the PM, pictures of Central ministers, CMs and other State ministers be allowed to be carried in public advertisements.

##### **Delhi High Court:**

**Petition on electrocution by live wires:** The Petition highlights the issue of recurring fatalities due to live wire electrocution, especially during the monsoon. Notice has been issued and the matter is next listed on March 17, 2016.

##### **Allahabad High Court**

**Extension of C&AG's audit jurisdiction to NOIDA, Greater Noida and Yamuna Expressway Authorities:** The PIL on the subject was initially filed before the Supreme Court but was dismissed as withdrawn on February 24, 2015. The Allahabad High Court was approached on September 1, 2015 as per the leave granted by the Supreme Court. Notice was subsequently issued and counters and rejoinders filed. The affidavit of disclosure filed by the State government has revealed nothing new regarding the nature of its financial relationship with the authorities in question. However, the CAGs office has sought an adjournment to file a supplementary affidavit. The matter will now be taken up on March 30, 2016.

### **Significant developments in pending PILs:**

**Preventing the export of logs of red sandalwood:** The intervention of the Supreme Court 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. 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. The matter was taken up on February 23, 2016, when the Union of India and the State of AP were granted four weeks as a last opportunity to file their counter affidavits. The Court has directed that the matter be listed on May 6, 2016.

**Living Will:** The petition sought the enactment of a law on the lines of the Patient Autonomy and Self-determination Act of the USA, which sanctions the practice of executing a 'living will' in the nature of an advance directive for refusal of life-prolonging medical procedures in the event of the testator's incapacitation. The matter was disposed of on February 25, 2014. Without pronouncing any order on the specific prayer made in our petition, the Court invited a Constitution Bench to resolve the inconsistencies involved in the issue and the matter was taken up on July 16, 2014. After notices were issued to all States and UTs, the matter came up on January 15 and February 15, 2016. The ASG submitted that the government was considering a legislation on the subject. Hence, the matter was adjourned for July 20, 2016.

**Decriminalisation of politics:** 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 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 we sought specific time-bound directions for closer monitoring of all such cases. The matter was referred to the constitution bench on March 8, 2016.

**Illegal allocation of captive coal blocks:** Following the landmark Supreme

Court orders of August 25 and September 24, 2014 holding the allocation of captive coal block to private entities as arbitrary and illegal and cancelling 214 out of 218 allocations made between 1993 and 2010, Common Cause flagged various lapses in the investigation and prosecution of the cases including the role of the CBI and its then Director, Mr. Ranjit Sinha. Common Cause subsequently filed an interim application seeking a court monitored investigation and recusal of Mr. Sinha.

Mr. Sinha moved an application on November 17, 2014 praying for registration of an FIR for perjury against the Director, Common Cause, Mr. Kamal Kant Jaswal, and the Society's counsel, Mr. Prashant Bhushan, for making 'false' statements on oath. The Supreme Court not only dismissed the application, but also made adverse observations on the manner of conduct of inquiry by the CBI. On September 15, 2015, the Court constituted a high level committee headed by former CBI Special Director, Mr. M.L. Sharma, to ascertain if the CBI investigations were influenced by Mr. Sinha. The Court also granted permission to Mr. Sharma to access the original visitor's register maintained at the residence of Mr. Sinha. Mr. Jaswal and Mr. Bhushan were later invited to depose before the Sharma Committee.

The matter was listed in October, November and December 2015 but could not be heard.

**Illegal Mining in Odisha:** Our petition to curb illegal mining in Odisha, as highlighted by the Central Empowered Committee and the Justice M. B. Shah Commission was taken up on April 21, 2014. The Court issued notices to the respondents and directed the CEC to submit a report on illegal mining. On May 16, 2014, the Court granted an interim stay on the operation of 26 mines and directed the State Govt. to dispose of all renewal applications as per the law. These matters were later taken up several times and the Court directed the *amicus curiae*, Mr. A D N Rao, to file his response. The Court also requested the Attorney General to assist it on the interpretation of Section 8A for disposing the IAs filed, specially the one filed by the Steel Authority of India and posted the matter for March 16, 2016.

**Slaughter House Pollution:** This petition praying for remedial measures against the rampant malpractices in slaughter houses was taken up on January 29, 2016, and the court asked the Ministry of Environment and Forests to file the affidavit in terms of the orders issued in March and August 2015. The Court made it clear that no further opportunity would be granted to the Ministry and listed the matter for February 26, 2016. Although the Court granted further adjournment at the hearing, it imposed a cost of Rs. 25,000 on the Union of India. The Welfare Board of India too was impleaded as a respondent.

**Judicial Reforms:** Filed by Janhit Manch, Common Cause and two others, the PIL offered a multi-pronged and comprehensive strategy to expedite the

dispensation of justice and liquidate the backlog of court cases. Regrettably, the Apex Court by its order dated December 10, 2014 summarily disposed of the petition. Among other things, the Court also observed that the Judiciary had already considered most of these issues independently and finally. An application for the recall of this order was filed by Common Cause on behalf of the petitioners on February 16, 2015, but that too was dismissed on technical grounds by the Registry.

**Internet Freedom:** Common Cause approached the Supreme Court to challenge the constitutional validity of Sections 66A, 69A and 80 of the IT Act. Affirming the value of free speech and expression, the Supreme Court Bench of Justice Rohinton Nariman and Justice Chelameshwar, in a landmark decision on March 24, 2015 struck down in its entirety Section 66A of the IT Act as unconstitutional. Referring to the government's argument that the possibility of abuse does not render a law invalid, the Court held that section 66A, which was otherwise invalid could not be saved by the ASG's assurance that the law would be administered flawlessly. "Governments may come, and governments may go, but the law will remain", observed the judges.

The Court, however, upheld the law related to blocking, section 69A, and the connected Rules, in its entirety. As for the Intermediary Rules, the court has upheld section 79 of the IT Act, and the Intermediary Rules subject to reading down both provisions to allow for a requirement of a court order before an intermediary is to take down information if it was related to subject matter covered by Article 19(2). No observation was made on Common Cause's challenge to the constitutional validity of Section 80 under which an arrest can be made on the basis of intention to commit a crime depending on the discretion of the police officer.

**Appointment of Lokpal and Lokayuktas:** The writ petition pertaining to enactment of the Lok Pal Act and ensuring appointment of LokAyuktas/ Up LokAyuktas under the Legal Services Authorities Act was dismissed on April 30, 2015 for having become infructuous in view of the enactment of the Lokpal and Lokayuktas Act, 2013 and as another petition seeking inter alia the implementation of the said Act has already been filed before the Apex Court.

## **Delhi High Court**

**Misuse of BSP reserved symbol:** The petition challenging the order of the Central Election Commission rejecting our request for freezing the reserved symbol of BSP on account of its misuse by its government in UP could not be taken up during 2015 due to adjournments sought by the respondent, lawyers' strike and non-availability of the bench. On February 25, 2016, the counsel for the BSP contended that the said order of the ECI was passed pursuant to an order of in another petition which was still pending before the Supreme Court. The Court demanded to know why the respondent in the last five years did not

seek the transfer of the petition to the Supreme Court, or seek a clarification. The Court has reserved its judgment after hearing the counsels.

**Evidence of corruption by Shri Virbhadra Singh:** The High Court on Dec 10, 2015 disposed of the petition filed by Common Cause against Mr. Singh, ruling that issue was already under investigation by CBI and income tax. During the course of hearing, the Court was informed by the counsels that with respect to the tax matters, the proceedings had been taken up for assessment and re-assessment. The counsel for CBI stated that a regular case had been registered and the investigation would be taken to its logical conclusion in accordance with law. In light of this, the petition was disposed with the observation that it was no longer necessary to go into the issue of maintainability of the writ petition.

**Post-Retirement Activities of Former Supreme Court Judges:** Common Cause had filed a writ petition in the Delhi High Court on February 10, 2010, highlighting how Article 124(7) of the Constitution was being violated in letter and spirit because of certain post-retirement activities of the former SC judges. This provision forbids former SC Judges from pleading or acting in any court or before any authority. During the pendency of this petition the Society secured some significant outcomes. The HC had instructed its registry to reject writ petitions annexed with opinions of retired judges. This was in line with our prayer for the prohibition of this practice. The Union Government has also introduced the Tribunals, Appellate Tribunals and other Authorities (Conditions of Service) Bill, 2014 in this regard and this is before the Standing Committee.

The petition was disposed on December 11, 2015 with a direction to the UOI to give special attention to the issue and to ensure that appropriate legislation was made at the earliest.

**Guidelines for appointment of CAG:** A PIL filed by Mr. N. Gopaldaswami, former CEC, and 8 former senior public servants, including the Director, Common Cause, for a transparent, broad-based and objective procedure for appointment to the Constitutional office of the CAG of India was dismissed by the Delhi High Court on August 13, 2014. The Court held that the appointment of Mr. S. K. Sharma as the CAG was neither in violation of the principle of institutional integrity, nor arbitrary. Differentiating the matter from the CVC case, the Court refused to undertake what it termed as a merit review of the appointment, as opposed to a judicial review. It also refrained from issuing any directions for framing objective criteria for future appointments and a subsequent SLP also met the same fate in February 2015.