

MINUTES OF MEETING OF THE GOVERNING COUNCIL OF COMMON CAUSE

Date: January 27, 2016
Time: 3.30 PM
Venue: Common Cause House, Vasant Kunj

Participants:

Mr VikramLal President Emeritus

Mr Kamal Kant Jaswal President

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

Dr. B. P. Mathur Vice President

Mr LalitNirula

Mr JyotiSagar

Mr ParanjayGuhaThakurta

Dr.VipulMudgal Director

(Leave of Absence was granted to Mr Prakash Singh, Dr Ashok Khosla, Mr Prashant Bhushan and Ms MadhuKishwar)

1. Confirmation of minutes

Minutes of the Governing Council meeting held on October 27, 2015 were confirmed.

2. Common Cause Case Updates:

Supreme Court:

Illegal allocation of captive coal blocks

On December 14, 2015, expressing its unhappiness at the persistent delays in the investigations by the CBI, the Court allowed its request for substitution of a senior police official and noted that the investigation be concluded at the earliest without seeking further extensions or transfer of officials.

The Directorate of Enforcement (ED) had on September 17, 2015 filed the 8th Status Report for on investigations under the Prevention of Money Laundering Act, 2012 and the Foreign Exchange Regulation Act, 1973, in respect of 43 companies. Refraining from commenting on the progress made by the ED, the Court directed both the ED and the CBI to file their reports up to December 31, 2015, by January 5, 2016. The Court also stated that the CVC reports had been taken on record and would be dealt with on the next hearing. The matter was listed for January 11, 2016 but no order has been uploaded on the SC website as yet.

Noting that the Enquiry Committee constituted by the Court had started working from September 15, 2015, it directed the UOI to grant remuneration to the committee's members and staff. This high level committee headed by a former CBI Special Director, (Mr. M L Sharma) was constituted by the Court to ascertain whether the investigations conducted by CBI had been influenced in any manner by Mr. Ranjit Sinha in respect of the accused in the case. The Court also granted permission to Mr. Sharma to access the original Visitor's Register maintained at the residence of Mr. Sinha and the list of the names of 23 personnel and four CBI constables working at his residential establishment (so far kept in a sealed cover).

Previously this matter was taken up on December 7, 2015 when the Court had granted time to Mr. Sharma and listed the matter for December 14. The matter had similarly come up in October/ November 2015 but was deferred for later dates.

Contempt Petition in large scale govt. ads

The contempt petition filed by Common Cause in August 2015 was clubbed with the review petition filed by the Union of India and the states. The matter was taken up for hearing on October 27, 2015. In view of the review filed by the Union of India on October 26, 2015, the Court decided to hear the petitions filed by the centre and the states collectively. Though this was opposed by our counsels, the Court posted it for hearing on January 12, 2016 with the following observation:

"As a review petition has been filed by the Union of India seeking a review of the entire judgment, naturally, no useful purpose will be served by proceeding with the hearing of the review petitions listed today. We, therefore, order for hearing of all the cases along with the review petition filed by the Union of India on 12th January, 2016."

However, the matter did not appear in the cause-list. There are no further orders of hearing.

Contempt Petition against lawyers strike

The contempt petition filed by Common Cause against the strike of lawyers in Delhi High Court 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 taken up on November 27, 2015. At the hearing, Mr. Ram Jethmalani requested for time to convene a meeting of the important sections of the Bar to find a lasting solution to the problem. Granting the request, the Court directed the respondents to file their responses and listed the matter for February 1, 2016.

Living Will

The matter was listed before a constitution bench on January 15, 2016, when the government reportedly informed the Court of the possibility of enacting a law on passive euthanasia. It is believed that the government is studying the verdict of the Court in Shanbaug case and the Law Commission's 241st report that favoured allowing passive euthanasia with certain safeguards. The matter is likely to be taken up in February 2016.

Illegal Mining in Orissa

These matters were taken up on January, 13, 15 and 18 when the Court directed the *amicus curiae*, Mr. A D N Rao, to file his response on the issues raised in the IAs filed in pursuance its order of May 2014.

Inquiry against ex-Chairman, NHRC Shri K.G. Balakrishnan

At the hearing on November 17, 2015, when our counsel requested for an adjournment and the Court listed the matter for January 19, 2016. However, the SC website now shows "no further orders of listing".

Slaughter House Pollution

This petition praying for remedial measures against the rampant malpractices in slaughter houses was taken up on November 27, 2015. At a previous hearing, the Court had nominated the Secretary, Urban Development, as the nodal officer for monitoring the functioning of the State Committees. He was also directed to report on the enforcement of the Prevention of Cruelty to Animals (Slaughter House) Rules,

2000, and the implementation of the broad framework prepared by the Ministry of Environment and Forests for the State Committees for slaughter houses. The Court has now nominated the Ministry of Environment and Forests as the nodal Ministry. The next date of hearing is January 29, 2016.

Crime and Violence on TV: The SC website shows that matter was last listed on January 20, 2016. No orders have yet been uploaded.

Delhi High Court:

Evidence of corruption by Shri Virbhadra Singh: It would be recalled that the issues of public interest raised in the petition were being pursued by the Court even after Common Cause had been discharged as the petitioner.

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 by the Delhi High Court on Dec 10, 2015 with the observation that it was no longer necessary to go into the issue of maintainability of the writ petition.

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 Uttar Pradesh was taken up on December 10, 2015. The Court had directed the parties in October 2014 to file their written submissions.

Accordingly, Common Cause had made its submissions. The matter could not be taken up during 2015 on account of adjournments sought by the respondent, lawyers' strike and non-availability of the bench. This matter has now been re-notified for February 25, 2016.

Post-retirement activities of judges

Common Cause had filed a PIL in 2010, praying that no retired Supreme Court Judge should be allowed to violate the spirit of Article 124 (7) of the Constitution by tendering legal advice to be cited as authority in a dispute under adjudication; and that no retired Supreme Court or High Court Judge be permitted to take up arbitration work while holding the office of Chairperson/Member of any Government appointed constitutional/statutory body, commission, commission of inquiry, tribunal or appellate body.

The HC decided to entertain the petition only to the extent of the second prayer, even though during the pendency of the petition, the Supreme Court, followed by the High Court of Delhi issued guidelines to their registries against accepting any petition to which the legal advice tendered by a retired Supreme Court or High Court judge was appended. Thus, in effect, the first prayer made in the petition was indirectly granted.

In the course of the hearing, the Court was informed by the Union of India that a Bill prohibiting members of a tribunal or a statutory body from acting as arbitrator had been introduced in the Rajya Sabha and referred to the Standing Committee for consideration.

The Court agreed that since retired Judges appointed as Chairpersons or Members of Statutory Bodies, Tribunals and Commissions discharged judicial/quasi-judicial functions, their involvement in any commercial legal activity or arbitration would necessarily require them to interact with the same set of people who appear before them in their capacity as Chairperson/Member of a Statutory Body/Tribunal, giving rise to speculation about their impartiality. Thus, not only would the pursuit of such a vocation/occupation during their term of office be at the cost of their official work, but it could also jeopardise the dignity of their office. From the contentions put forth by the respondents, the Court inferred that the relief sought in the petition had not been refused by the UOI. In fact, the UOI had taken steps in that direction, but there were inherent delays in the process.

It was observed that the Courts have stepped in whenever they have found a vacuum in legislation. However, the Bench would hesitate to do so in the instant case out of respect for the doctrine of separation of powers and in view of the fact that the legislature was already seized of the matter. Accordingly, the Court disposed of the petition on December 11, 2015 with a direction to the UOI to expedite the enactment of the appropriate legislation.

Allahabad High Court

Extension of C&AG's audit jurisdiction to NOIDA, Greater Noida and Yamuna Expressway Authorities

Common Cause filed an additional rejoinder in the matter on December 4, 2015. At the hearing on December 11, 2015, certain facts, which had not been disclosed in the respondents' earlier affidavits, came to light. The Court was assured by the AG that a comprehensive affidavit of disclosure would be filed in regard to the nature of the financial relationship between the State Government and the industrial development authorities in question. At his request for time in order to make a full and candid

disclosure, the Court allowed the matter to stand over to January 27, 2016.

3. Presentation of the Society's activities:

The Director reviewed the Society's activities since the last meeting. A discussion on the society's advocacy initiatives ensued.

Initiative for Judicial Reforms: Common Cause has been holding wide ranging formal and informal consultations with like-minded individuals and organisations such as ADR, Daksh, CJAR, Vidhi and NASSCOM on the smart and effective use of information and communication technologies for rendering better judicial services to the stakeholders and expediting the delivery of justice. In the past two months, several rounds of interaction have been held with Dr. Justice (Retd.) G C Bharuka and NASSCOM President R Chandrashekar with a view to revamping the e-Courts Project, which was expected to enhance the productivity of judges and improve the delivery of justice. A channel of communication with the top functionaries of the Department of Justice has also been opened to take the matter forward.

The members felt that the judicial reforms were crucial for restoring the rule of law and obviating the recourse to extra judicial methods of conflict resolution. It was felt that the issue of judicial reforms was intrinsically linked to criminalization of politics. It was suggested that the effective use of ICT could help in cutting pendency as well as in improving the efficiency of courts.

The ideas put forward included undertaking an in-depth study of the incidence of unwarranted adjournments, networking for a nationwide campaign to create a constituency for judicial reforms, performance rating of judges, and propagating modern systems of docket management. It would also be useful to study the international best practices in this domain as well as the legal solutions being provided by reputed companies like Thomson Reuters for integrating content, expertise, and technologies.

In this context, the Director apprised the members of the work being done by the Common Cause team to pinpoint the shortfalls in the deliverables of the e-Courts project. A critical analysis of the user-feedback covering a number of courts in Delhi and UP and a succinct presentation of the policy issues involved will be shared with the members in due course.

Initiative for Police Reforms: The Director informed the members that the State of Policing Report project has made significant progress. We have committed a sum

of Rs. 12 lakh for conducting a performance cum perception survey on a pilot basis. The pilot is to be conducted in association with Lokniti/ CSDS in the states of Bihar, Delhi, Andhra Pradesh and Maharashtra. The nationwide survey, which should follow the pilot, will be capital intensive. Our partners are open to the idea of jointly applying for funding, once we are able to showcase the pilot study.

Initiative on Right to Education: Common Cause has made a representation to Delhi's Education Minister Manish Sisodia to amend the Delhi RTE Rules in order to incorporate a framework to prevent school drop-outs. A series of meetings and brainstorming sessions have been held with Video Volunteers, CIVIC, RTE Forum, NCPRI, SatarkNagarikSangathan and others to inventorise effective interventions to prevent children from dropping out of schools. The weak spots in the legal framework of RTE have been identified along with ideas for advocacy campaigns and legal interventions. The feasibility of approaching the courts for effective implementation of RTE is also being studied.

One area identified by the Common Cause team for advocacy is about empowerment of School Management Committees (SMCs) to improve community participation in the running of schools, particularly in slums and urban villages. The team took part in the SMC Convention organized by the RTE Forum. Over 400 SMC members had participated in the Convention. Subsequently, the team held one on one meetings with school principals and local MLAs. The team is now in the process of finalizing a simple but imaginative booklet for distribution among SMC members to acquaint them with their rights and duties.

A suggestion was made that Common Cause must accord priority to addressing the structural deficiencies in the administrative system, particularly the stranglehold of central and state secretariat services on government functioning. The Director stated that all major long term projects, such as policing, judicial and administrative reforms each would require at least one dedicated human resource. Drawing attention to the wide gap between the projected income and expenditure of the Society during the next fiscal year, the President suggested that efforts must be made immediately to raise additional resources. He was also of the view that an organization like Common Cause should not depend on a single donor to fund its expansion plans. The Director agreed but cautioned that the proposal-to-funding cycle normally takes more than a year and that the organization was not geared to mount an ambitious fund raising campaign in the immediate term. There was a general agreement that the Society will have to equip itself to enhance its fund raising capacity and diversify its sources of funds.

The Meeting ended with a vote of thanks to the chair.

(Kamal Kant Jaswal)
President