**MINUTES OF MEETING OF THE GOVERNING COUNCIL OF COMMON CAUSE**

**Date:**  September 9, 2014

**Venue:** AIHDA, India Habitat Centre, New Delhi

**Participants:**

Mr. Vikram Lal      President

Maj. Gen. (Retd.) J. P. Gupta

Dr. Divya Jalan

Mr. Prakash Singh

Mr. Prashant Bhushan

Ms. Madhu Kishwar

Dr. B. P. Mathur

Mr. Paranjoy Guha Thakurta

Mr. Kamal Kant Jaswal Director

Mr. Pankaj Gupta Special Invitee

1. **Confirmation of minutes**

Minutes of the Governing Council meeting held on June 9, 2014 were confirmed.

1. **Confirmation of circular resolution**

Circular resolution dated July 4, 2014 for amending the list of authorised signatories for operating the Society’s accounts was approved.

1. **Resolution to authorize Mr. Pankaj Gupta to deal with statutory matters**

The Council welcomed Mr. Pankaj Gupta, who has assumed charge as Head, Administration & Accounts, Common Cause, and passed the following resolution.

“Resolved that Mr. Pankaj Gupta, Head, Administration & Accounts, Common Cause, be authorized to deal with all Income Tax and Service Tax matters, as well as matters pertaining to the Society’s interface with various statutory authorities and sign the relevant papers on behalf of Common Cause.”

1. **Presentation of the Society’s activities**

The Director reviewed the Society’s activities since the last meeting and apprised the Council of the status of the following initiatives.

**Public interest litigation:**

**Supreme Court**

1. ***WP(C) 13/2003: Large scale government advertisements***

In response to the public notice issued by the Ministry of Information & Broadcasting inviting suggestions for framing of guidelines for publicly funded government advertisement campaigns, Common Cause submitted its proposition for the proposed guidelines to the Joint Secretary (P & A), Ministry of Information & Broadcasting, on June 19, 2014. A [supplementary proposition](http://commoncause.in/whatsNew/SupplementaryProposition.docx) on the subject was submitted on July 11, 2014.

***ii. WP(C) 215/2005: Living Will***

Pursuant to the Court’s reference order dated February 25, 2014, the matter was taken up by the Constitution Bench on July 16, 2014. Notice was issued to all States and Union Territories in view of the prayers made in the writ petition, particularly, the prayer to declare 'right to die with dignity' as a fundamental right within the fold of right to live with dignity under Article 21 of the Constitution.

1. ***WP(C) 463/2012: Allocation of coal blocks for captive mining***

In a landmark judgment delivered on August 25, 2014, the Supreme Court ruled that neither the Coal Mines (Nationalisation) Act, 1973, nor the Mines & Minerals (Development & Regulation) Act, 1957, empowers the Central government to allocate coal blocks. The Court also undertook a judicial review of the entire process of allocation and concluded that the allocations made on the recommendations of the Screening Committee as well as the allocations made through the Government Dispensation Route between 1993 and 2009 were arbitrary and illegal.

Coal blocks, where competitive bidding was held for the lowest power tariff for Ultra Mega Power Projects (UMPPs), were excluded from the purview of the verdict. However, the Court, at the instance of our counsel, directed that no diversion of coal for commercial exploitation will be permitted from the blocks allocated for UMPPs commercial exploitation.

The Court held further hearings on September 1 and September 9 to determine the consequences flowing from its verdict. The Union of India accepted the inevitability of auctions for the blocks held to be illegally allocated, but sought an exemption for 46 blocks, where mining leases have been granted, and/or the linked industrial plants are nearing completion. Final order in the matter has been reserved.

Meanwhile, it transpired that Mr. Ranjit Sinha, Director, CBI, had met at his residence a number of persons who are the accused in various high profile cases being investigated by the CBI, such as the Telecom scam and the Coal block allocation cases. In this context, the Society has filed an application for directions, seeking the recusal of Mr. Sinha from the ongoing investigations and prosecutions related to the coal blocks allocation case. This application will be taken up on September 19, 2014.

1. ***IA in Ashok Chavan’s SLP (C) 29882/2011***

We had intervened in Ashok Chavan’s SLP in the Supreme Court against the order of the Delhi High Court upholding the Election Commission's power to inquire into the correctness of the account of election expenses filed by a candidate. Disposing of the SLP, the Supreme Court held in its judgment dated May 5, 2014 that the Election Commission was well within its jurisdiction to inquire into the correctness of accounts and order disqualification if a candidate was found to have lodged incorrect accounts of expenditure.

Pursuant to the Supreme Court decision, the Election Commission of India passed an order on July 13, 2014, holding that Ashok Chavanhad failed to lodge his election accounts in the manner required by the relevant rules. The Commission directed Ashok Chavan to show cause within 20 days why he should not be disqualified under section 10A , Representation of the People Act.

Ashok Chavan filed a writ petition in the Delhi High Court to set aside the finding of the Commission, as well as the consequential order to issue show cause notice to him. The High Court has stayed the operation of the Commission's order.

A Special Leave Petition filed by the aggrieved opposite party against the order of the High Court was dismissed by the Supreme Court. The Court, however, requested the High Court to dispose of Chavan’s petition expeditiously.  Accordingly, the High Court concluded the hearing and reserved judgment on August 26, 2014.

Irrespective of the outcome of the pending writ petition, the matter is bound to be agitated in the Supreme Court by the unsuccessful party. The Commission has made it clear that it will not seek to defend the order impugned by Ashok Chavan since it is a quasi-judicial order.

## Under the circumstance, Common Cause has taken the initiative to mobilise the civil society organisations and eminent citizens who were co-interveners in the IA referred to earlier and urged them to be prepared to intervene when an SLP is eventually filed in the Supreme Court.

## *WP(C) 204/2014: Corruption in the management of Defence lands*

At the hearing on August 19, 2014, the respondents were granted a last opportunity to file their counter affidavit in four weeks time. The matter is now listed for November 3, 2014.

1. ***WP(C) 245/2014: Challenging the Lokpal Search Committee Rules***

The process of initial constitution of the Lokpal had become mired in controversy, as the Union Government did not frame the rules to give effect to the long awaited Lokpal Act with sincerity and honesty of purpose. The rules notified on January 17, 2014 undermined the independence of the institution of Lokpal by restricting the field of selection to the hand-picked nominees of the Government [Rule 10 (1)], and giving undue advantage to senior bureaucrats, most of whom are likely to be members of the IAS, in appointment as non judicial members of Lokpal [Rule 10 (4) (iii)]. This was a blatant abuse of the device of delegated legislation.

Hence, a PIL challenging the arbitrary Search Committee rules was filed in the Supreme Court on March 5, 2014. Subsequently, we had to file an IA to foil the outgoing government’s bid to convene a meeting of the Selection Committee in order to install its nominees as Chairman and Members of the Lokpal. The government had to give an undertaking that it would proceed with the appointments only after amending the impugned rules.

During the hearing on August 22, 2014 the CJI’s Bench pulled up the government for delaying the process of constituting the Lokpal. As reported by the media, the government has notified the amended Lokpal search committee Rules on September 2, 2014.

As per the amended rules, *"The search committee may, for the purpose of short-listing of persons, adopt such short-listing norms as it may consider appropriate."* The words, *'from amongst the list of persons provided by the Central government in the Department of Personnel and Training',* have been omitted*.*

Thus, one of the two reliefs sought in our PIL has already been secured. The matter has been listed for final disposal on September 16, 2014.

**Delhi High Court**

1. ***WP(C) 4653/2013:***[***Writ against the C & A G’s appointment***](http://commoncause.in/Recent_PILs/hc4_25_7_13.php)

The PIL filed by Mr. N. Goplaswami, former CEC, and 8 former senior public servants, including the Director, Common Cause, was dismissed by the Delhi High Court on August 13, 2014. The Court held that the appointment of Mr. S. K. Sharma 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 to the Government for framing objective criteria for future appointments to the office of C & A G.

In view of the importance of the issues raised in the PIL, an SLP has been filed in the Supreme Court to secure the desired reliefs.

1. ***WP(C) 7240/2013: Evidence of corruption by Mr. Virbhadra Singh***

Pursuant to an affidavit filed by us with fresh evidence of corruption against Mr. Virbhadra Singh, The Court at the hearing on August 6, 2014 Court declined the CBI’s request for grant of further time and directed the CBI and the Income Tax Department to produce the reports of investigation into the allegations against Mr. Singh. The CBI filed its final status report in the probe on September, 1, 2014. The Chief Justice’s bench thereupon directed Mr. Singh to file his affidavit without further delay and posted the matter for September 10, 2014.

**Orissa High Court**

***WP (C) 9095/2014: Discretionary allotments of plots to influential persons in Odisha:***

The PIL was listed before the Chief Justice, Orissa High Court in May 2014, but could not be taken up due to his elevation to the Supreme Court. Subsequently, the matter was listed on two occasions, but deleted each time at the last minute. Our counsel lodged a strong protest with the Registrar (Judicial) against the inexplicable deletions from the cause list on August 14, 2014. The matter was eventually taken up on September 8 and argued by our counsel at the admission stage. It will now be listed after the Puja vacations.

**Advocacy Initiative:**

**Reform of the system for grant/renewal of mining leases**

In addition to the PIL filed in the Supreme Court to put a stop to the rampant illegal mining in Odisha, we have mounted an advocacy initiative to persuade the custodians of the rich natural resource endowments of Odisha to adopt a system of allocation that is consistent with the Constitutional principles of equity and transparency. As per the law laid down by the Apex Court in the 2G Spectrum Case and the subsequent Presidential Reference, the attribution of a national resource to any commercial entity must be made in a transparent and equitable manner. As such, even for the first renewal of a mining lease, the consideration should be determined through open auction. The Society urged the Chief Minister of Odisha, in a letter dated June 13, 2014 to adopt the system of competitive bidding for the grant/renewal of mining leases in compliance of the interim directions issued by the Supreme Court in our PIL on May 16, 2014.

This was followed by a [generic proposal](http://commoncause.in/whatsNew/GenericProposaltoUnionMinisterforMines.docx) to the Union Minister for Mines for extending the system of competitive bidding for grant/renewal of mining leases to private commercial entities across the country. Subsequently, a meeting was held with the Secretary, Ministry of Mines. The engagement with the Ministry is ongoing.

1. **Future initiatives**

Right to Education

The Director underlined the significance of the decision of the Los Angeles County Court in Vergara *et al* vs. State of California (attached), wherein certain statutes of the State of California, which resulted in the retention of incompetent teachers in the education system, were quashed on the ground that competent teachers were critical to the enjoyment of a student’s fundamental right to equality of the educational experience.

It was felt that a public interest petition on behalf of school children in the age group of 6-14 years could be drawn up to demand that the wide disparities in the quality of education imparted in different categories of government schools and government aided schools be minimised so that the constitutional guarantee of free and compulsory education becomes a reality for children from disadvantaged backgrounds. Apart from the collection of relevant factual information in support of this premise, it would be necessary to formulate the specific prayers to be incorporated in the petition after due deliberation and in consultation with the experts in the domain.

C & A G Audit of NOIDA and Greater Noida

The proposed writ petition for extending the audit jurisdiction of C & A G to industrial area development authorities constituted under the relevant U. P. Act will be finalised with the help of Mr. Prashant Bhushan.

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

(Vikram Lal)

President