



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

By Speed Post

छठी मंजिल, 'बी' विंग, लोक नायक भवन
खान मार्किट, नई दिल्ली-110003

6th Floor, 'B' Wing, Lok Nayak Bhawan
Khan Market, New Delhi - 110 003

Dated 04/06/2010

File No. 13/2/2010-(Meeting)/RU-IV

To

- (1) The Principal Secretary,
Department of Home,
Govt. of Tamil Nadu,
Chennai-600009
- (2) The Principal Secretary,
Adi Dravidar & Tribal Welfare Department,
Govt. of Tamil Nadu,
Fort ST. George,
Chennai-600009
- (3) The Director General of Police,
Govt. of Tamil Nadu,
No. 1, Dr. Radhakrishnan Road,
Mylapore, Chennai-600004.

Sub: Review of implementation of SCs and STs (POA) Act, 1989

Sir/Madam,

I am directed to refer to this Commission's letter of even number dated 28/04/2010 on the above subject and to forward herewith a copy of the proceedings of the proceedings of the Sitting held in this Commission on 12/05/2010 for necessary action.

2. It is requested that action taken report with reference to the above proceedings may please be sent to this Commission at an early date.

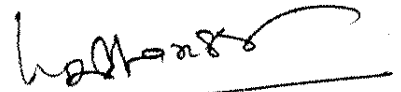
Yours faithfully,


(Mrs. K.D. Bhansor)
Deputy Director

Copy for information and necessary action to:

- (i) The Resident Commissioner, Govt. of Tamil Nadu, Chanakyapur, New Delhi-21
- (ii) The Assistant Director, NCST, Regional Office Bhubaneswar, Orissa.

2947-SP
2/6/10
जारी किया
ISSUED


(Mrs. K.D. Bhansor)
Deputy Director

g/c

Record of the Sitting taken by the Vice-Chairperson to review implementation of the SC/ST PO Act, 1989 by the Government of Tamil Nadu on 12.05.2010

The following Officers were present:

NCST

1. Shri Maurice Kujur, Hon'ble Vice-Chairperson (in Chair)
2. Shri Tsering Samphel, Hon'ble Member
3. Shri R.C. Durga, Director
4. Smt. K.D. Bhansor, Deputy Director
5. Shri N. Balasubramanian, Research Officer.

Govt. of Tamil Nadu

1. Smt. S. Malathi, Principal Secretary , Deptt. of Home
2. Smt. Letika Saran, Director General of Police
3. Shri Vishwanath Shegaonkar, Principal Secretary, Adi Dravidar & Tribal Welfare
4. Shri Alexander Mohan, IGP, Police, Social Justice & Human Rights.

The Commission mentioned delay in furnishing of comments by the Police authorities and the Distt. Officials of the TN Govt. on the representations received/ cases dealt in the Commission pertaining to atrocities on the STs. In almost all the cases, while the reply has not been received within the stipulated period of 30 days, in some cases the reports furnished by the Police Authorities have also not been found to be comprehensive with specific comments on the issues raised by the Commission.

2.0 IGP, TN mentioned that the complaints lodged by the STs are taken cognizance by the Police without any delay and a copy of the FIR was also given to the complainant free of cost. As per the Rule 7(1) of POA Rules, 1995, the cases registered under the SCs and STs (PoA) Act 1989 are being investigated by the Police Officer not below the rank of Deputy Superintendent of Police in the Districts and Assistant Commissioner of Police in the cities after the Superintendent of Police/Commissioner of Police issues a proceedings empowering the officer to

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investigate the incidents. Hence, the supervisory level officer monitors the progress of the case closely. Every month cases registered under the PoA Act are being reviewed by the Superintendent of Police of different districts. Inspector General of Police, Social Justice and Human Rights also conducts review meetings every month to watch the progress made in each and every case and gives instructions regarding the avoidance of delay in getting community certificate, wound certificate and legal opinion. Moreover, Daily Situation Report about incidents of atrocity all over the state are being collected and analyzed. IG, TN also mentioned that the delay in finalization of investigation report also occur due to the time involved in verification of the castes of the accused as well as the complainants. The Vice Chairperson observed that the time-frame of 30 days for investigation has been specified in the POA Rules, 1995 and is, therefore, required to be strictly adhered to.

Action: Govt. of TN

3.0 The Commission mentioned that, in respect of the complaints against the Police personnel, it was necessary that investigation reports should pass through internal verification mechanism in the Police Deptt. The Commission also emphasized that suitable guidelines/instructions/procedures should be formulated by the State Government for handling such cases. Principal Secretary, Deptt. of Home assured that necessary action would be taken by the State Government in this regard.

Action: Govt. of TN

4.0 Hon'ble Member(TS) observed that in respect of the reported atrocity cases. the acquittal rate was on higher side and the conviction rate was at a low level. It was noted from the information furnished by the State Govt. that from 2006 to 03/2010, 108 cases were registered against the members of STs under the SCs and STs (POA) Act, 1989. Among these 108 cases, 66 cases were charged and 33 cases were referred as Mistake of Fact by the Police and got the approval of the District Vigilance and Monitoring Committee and only 9 cases are under Investigation for want of medical reports/legal opinion. Out of 66 cases which were chargesheeted 12 cases ended in acquittal and 3 cases were convicted by the Court while 51 cases were pending trial in the Courts. Among the total cases disposed by the Court (Acquittal + Conviction), 80% of cases were acquitted and 20% of the

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cases were convicted. The State Govt. have explained the reasons for low conviction of cases under the Act as under:

- i) Witnesses turning hostile
- ii) Discrepancies in the evidence given by witnesses.
- iii) Absence of independent witnesses
- iv) Witnesses not identifying the material objects in Court at the time of giving evidence due to lack of briefing by the Investigating Officer.
- v) Economic dependence of the victims.
- vi) Delay in Court proceedings. There are about 13 stages in the Court procedure. For each stage at least a minimum of one month is taken. By the time the case is taken up for trial, the memory of the witnesses fade away and even if its is refreshed, their deposition is not effective.
- vii) Delay in (a) furnishing of copies, (b) framing charge, (c) committal proceeding , (d) taking the cases for trial, (e) sending the case properties to Sessions Court
- viii) The major reason for acquittal is that the complainants turn hostile in the Court as they are gained over or influenced otherwise, mostly because of economic reasons and the fact that they have to continue to live in that society.. Under the Scheduled Castes and STs (POA) Act, 90 % of the cases are reported under Section 3(1)(x) of SCs/STs (POA) Act, 1989 for verbal abuse on grounds of caste. On account of the lesser gravity of cases, the victim often tends to take a lighter view with the passage of time and make amends with the accused. This is one of the main reasons for the cases ending in acquittal. The complainants after getting monetary relief when the cases are charged, (80%) under 3(1)(x) of the Scheduled Castes and STs (POA) Act effect compromise outside the court and later turn hostile in the court. This explains the reasons for low rate of conviction.
- ix) Many of the complainants are not interested in preferring a complaint in most of the wordy altercation cases. They prefer the complaint belatedly after the interference or influence of politicians and members of caste associations.
- x) The specific word used by the accused to defame the complainant is not mentioned in the complaint/FIR, but during investigation, the PW1 and

- witnesses state the abusive term used by the accused to defame the complainant/victims. However, it leaves room for doubt.
- xi) Address of the victims in the community certificate and the complaint often differs. The complainant sometimes lives in an unknown locality in pursuit of his job. But the Community of the victim could be assessed only in his native place and thereafter, it is issued mentioning his native address. But this fact is not relied upon by the Court.
- xii) In all the true cases, 164 CrPC statements of all the witnesses should be invariably recorded by the Magistrate to avoid retraction. Sometimes this is not followed in Scheduled Castes and STs (POA) Act cases which are being tried by a Sessions Court and as a result, the depositions and statements show wide variations.
- xiii) The PW1 and other witnesses normally belong to SC and ST community and they are easily implicated by the defence side as interested witnesses. Other community people appear as witnesses only when their farm servants and casual workers are affected. Political affiliation or business partnership of witnesses also play havoc in destabilizing the prosecution case thereby casting a doubt in the mind of the Presiding Officer. Hence their evidence would not be fully relied upon by the Judge.
- xiv) Some of the procedural defects such as delay in issue of proceedings by Superintendent of Police through which the Investigating Officer is nominated are shown as legal obligations by the defence and ultimately leads a case into acquittal.
- xv) The cases are not taken on file in the Court immediately after receipt of charge sheets in the Court. The undue delay in commencing the trial and the subsequent delay in commencing the examination of witnesses in the trial Court leads to out of Court settlements between the accused, complainant and other witnesses.
- xvi) In cases of disputed percentage a minimum period of 6 months is required to collect DNA sample from the new-born child. Hence the investigating officer has to wait for along time to obtain the result.
- xvii) In cases of outraging the modesty of women, no material objects like torn pieces of garments or eye witness statements could be collected. Hence, it becomes difficult to prove the guilt of the accused.

Hon'ble Vice Chairperson, NCST desired that quality of investigation should be Improved and necessary steps to cut down in time involved in various stages of investigation and filing of charge-sheet should be curtailed to avoid delay in processing of such cases.

Action: Govt. of TN

5. It was informed by the IG, TN that 4 Special Courts have been set up at Trichy, Thanjavur, Madurai and Tirunelveli, which cover only 9 Districts and 3 Commissionarates. In the remaining Districts, the regular District Sessions Courts, which are designated as Special Courts, are trying the cases registered under the Scheduled Castes and STs (POA) Act 1989 in addition to other cases. Since, the designated Special Courts are already over burdened with other cases, the trial of cases in these courts is extremely slow as compared to the Special Courts, which are exclusively trying the cases registered under the SCs and STs (POA) Act, 1989. It was also informed that the creation of 2 more Special Courts in Villupuram and Sivagangai and appointment of 6 more Special Public Prosecutor was the need of the hour to reduce high pendency of cases under the SCs and STs (POA) Act. Moreover, there are about 13 stages in the Court procedure. For each stage, at least a minimum of one month is taken; particularly delay occurs in a) furnishing of copies, b) framing charge, c) committal proceeding d) taking the cases for trial and e) sending the case properties to Sessions Court. These are the vital factors resulting in high pendency of cases under the PoA Act. IG, TN informed that a proposal for formation of two more Special Courts in Villupuram and Sivagangai has been submitted to the State Govt. in Nov. 2009 from the Office of the IG Police, Social Justice and Human Rights. Hon'ble Vice-Chairperson desired that Special Courts should be urgently set up in the identified Distts. and also in atrocity prone areas duly strengthened with the appointment of additional Special Public Prosecutors.

6. The Commission desired to know whether State Govt. has identified atrocity prone areas. IG, TN informed that the Social Justice & Human Rights Wing in the State is the pioneer to identify the atrocity prone villages and initiate measures to bridge the communities together. The untouchability prone areas have been surveyed as per section 154(2) (vi) of PCR Act, 1955 and Section 17 Section 21(2)

(i) & (vii) of the POA Act, 1989. 174 villages have been identified as atrocity prone villages in the year 2010 so far. Such surveys are conducted every year in these villages. During the survey, the intelligence regarding simmering disputes prevailing in connection with land use, celebration of festival, inter case alliance/marriages, monetary transaction, payment of wages, use of certain pathways, social religious disabilities etc., is being collected and passed on to the District Collectors/local Police/Director of Adi-Dravidar & Tribal Welfare Department for taking preventive and precautionary measures. In addition, the details regarding provision of basic amenities such as drinking water, burial ground/pathway to burial ground, link road, construction of group houses etc., are collected and the District Collectors concerned are addressed for redressing the grievances of Adi-Dravidars.

6. The Vice-Chairperson, NCST enquired about functioning of the State/ Distt. Level Vigilance and Monitoring Committee. It was informed by the State Govt. that the State Level Committee had last met on 03.08.2006. The Commission emphasized that under Rule 16 of POA Rules, two meetings of the State Level Vigilance & Monitoring Committee were required to be held in a year. The Commission noted with great concern that the stipulated frequency of meeting was not adhered and therefore desired that the stipulated frequency of such meeting in the PoA Rules should be strictly adhered.

Action: Govt of TN

8. The Sate Govt also informed that in each Distt., the Distt. Magistrate/ Collector has also set up a Vigilance and Monitoring Committee to review the implementation of the provisions of the Act, relief and rehabilitation to the victims and matters relating to prosecution of cases etc as per provision to Rule 17 of the PoA Rules,. The meetings of the DVMC are being held regularly under the Chairmanship of District Collectors. It is desirable that if the Committee meets more often than once in three months than the decisions will be taken to drop all the false cases under this Act.

Action: Govt of TN

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9. Regarding monetary relief and compensation, it was informed by the State Govt. that the number of beneficiaries and the amount paid as relief and compensation under the Act from the year 2006 to 2009 were as under:

Sl.No.	Year	Sanctioned cases	Beneficiaries	Amount paid (Rs. in Cr.)
1.	2006	23	37	5.75
2.	2007	20	45	4.98
3.	2008	15	83	6.13
4.	2009	17	84	7.06

Hon'ble Member desired that the compensation to the victims should be paid in accordance with the stages specified in the PoA Rule. IGP, TN assured that necessary steps in this regard were being taken.

10 Regarding payment to the witnesses, who come for trial in the Court, the State Govt. informed that Courts were paying to the witnesses @ Rs. 100 per day. The Commission advised that the amount should be reviewed in line with the payment being made by other States. The State Govt. assured to examine the issue to strengthen the victim's witnesses support system.

12 The State Govt. intimated that there had not been any case of custodial deaths of tribals in the State.

13 The Commission desired to know special mechanism in the State to monitor atrocity cases under the PoA Act. In this connection, the State Govt. informed that the Social Justice & Human Rights Units are also declared as Police Stations. These Units register cases as well as monitor the cases registered at various Police Stations in the Districts. The Social Justice & Human Rights Unit is functioning under the direct control of the District Superintendent of Police and their work in respect of enforcement of P.C.R and the SCs and Scheduled Tribes (POA) Act is monitored by the Inspector General of Police, Social Justice & Human Rights and Deputy

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Inspector General of Police, Social Justice & Human Rights at the State Level and 11 Deputy Superintendents of Police at the zonal level.

14. The Commission desired that the State Govt, should also provide legal assistance to the victims and engage special prosecutor(s) as permissible under the POA Rules.

Action: Govt of TN

15. Regarding involvement of NGOs for conducting awareness programmes, it was informed by the State Govt. that such programmes were being conducted regularly with support from the State Govt.

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