



BY
H. D.

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या/ No.- 1/9/09-Coord

दिनांक/ Date: 27/11/2009

To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member

Sub: Summary record of the 16th meeting of the National Commission for Scheduled Tribes held on 17/11/2009.

Sir,

I am to refer to the above subject and to say that 16th meeting of the National Commission for Scheduled Tribes was held at 1200 hrs. on 17.11.2009 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,


(R. S. Durga)
Director

Copy with a copy of the Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit/ Office may be furnished to Coordination Unit by 15.12.2009 positively:

- (i) Director (RU-I & RU-II)
- (ii) Director (RU-III & Coord.)
- (iii) Dy. Secretary (Admn.)
- (iv) Dy. Director (RU-IV)
- (v) AD/ RO In-charge-RU-I/ RU-II/ RU-III/ RU-IV/ Coord/ SO (Admn.) / AD(OL).

Copy with a copy of the Summary Record of the meeting forwarded for information to:

1. PS to Chairperson/ PPS to Secretary/ PS to Joint Secretary.
2. Director/ Assistant Director/ Research Officer in Regional Offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi / Shillong.
3. Sr. System Analyst (NIC Cell, NCST) for uploading on the website.


(Director)

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Sub : Summary record of the 16th meeting of the National Commission for Scheduled Tribes held at 12:00 hrs. on 17.11.2009.

The 16th meeting of the National Commission for Scheduled Tribes was held at 12:00 hrs. on 17/11/2009 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi and was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. List of participants is annexed.

2. Initially 6 Agenda Items were listed for discussion. With the permission of Chair, three other items of urgent nature were discussed on priority. Summary record of the discussions held in the meeting, **item-wise**, is given below:

Agenda Item I Guidelines for dealing with cases relating to matters/ complaints received in the Commission

In view of other urgent items needing priority discussion, consideration of this item was deferred till the next meeting.

Agenda Item II The Scheduled Castes and Scheduled Tribes (Reservation in Posts and Services) Bill 2008 as passed by Rajya Sabha.

In view of other urgent items needing priority discussion, consideration of this item was deferred till the next meeting.

Agenda Item III Comments on Draft Bill to regulate the issue of Community Certificates to persons belonging to SCs / STs / OBCs as per directions of Supreme Court of India in CA No. 4545 of 1994 – Proposal of the Ministry of Social Justice & Empowerment received from the Ministry of Tribal Affairs

Secretary, NCST apprised the Members that though the title of the draft Bill included regulation of issue of community certificates, the Clauses of the Bill largely deal with verification of certificates and the action to be taken in the cases of fraud against those involved. Some clarificatory drafting also seems to be required. After discussion, the Commission recommended that

- (i) Eligibility criteria for issue of Community Certificate should also be included in the Bill so that the same is not dependent on understanding of instructions issued from time to time/ legal pronouncements (Section- 4);
- (ii) In the interest of transparency and to facilitate verification of genuineness of certificates issued, a proper registration mechanism should also be conceived in collaboration with Unique ID/ other identity – verification systems for citizens (Section – 4);
- (iii) In some of the States, like Maharashtra, all the caste certificates have to be compulsorily verified and validated by the Scrutiny Committee before any benefit can be claimed by the Certificate holder. It is, however,

practically not possible for any body/ committee to verify and validate all issued certificates without inflicting harassment on the certificate holders besides causing undue delays; and, therefore, no general revision exercise should be contemplated.

- (iv) The power to grant stay should not be conferred to the Committee as it often leads to arbitrary actions and delay in disposal of cases, besides diluting the accountability of the concerned authorities to take timely and reasoned decision [Section – 9(2)]. On the contrary, a time limit of 3 months should be stipulated for disposal of cases.
- (v) In some of the Clauses in the Bill, the word 'Government' is used, which possibly refers to the State Government since the Bill does not contemplate Central authorities for issue/ verification of certificates. To avoid ambiguity the appropriate Government should be clearly specified.
- (vi) Ordering of Sections of the Bill should be systematic. For instance functions & powers of the Scrutiny Committee are mentioned in Sections 6 & 7 before its composition is explained in Section 8(A). The authorities subordinate to it have also not been defined [Section 9(1)].

Agenda Item IV Summary of Report of the Committee on draft Policy on Criminal Justice along with the copy of Chapter 8.4 of the Report titled "Criminal Justice involving Dalits and Tribals" for comments.

The Commission discussed the recommendations and opined that:-

- (i) Recommendation already made by the Commission, regarding amendment of the PoA Act to provide for a time limit of 6 months for disposal of atrocity cases by the Courts and for setting up Exclusive Special Courts for trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 may be reiterated as comments on para 8.4.1 of the Report of the Committee.
- (ii) The suggestions in para 8.4.2 is agreed. However, it needs to be examined as to how the "public defender system" will be different in practice from the notification of special panel of Public Prosecutors / engagement of senior Advocates in Special Courts under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the SC & ST (PoA) Rules, 1995.
- (iii) As regards para 8.4.3 of the Report, the Commission observed that as per Constitutional provisions all laws (affecting Scheduled Tribes) may not apply/ be extended to Scheduled Areas by the Governor or may be extended with certain modifications (Clause 5/ Fifth Schedule, Clause 12/ Sixth Schedule). Under this provision, the Cr.P.C., 1973 does not apply to

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अध्यक्ष

राष्ट्रीय अनुसूचित जातों की आयोग
भारत सरकार, नई दिल्ली.

some Scheduled Areas. This runs counter to the general principle of separation of judiciary / executive since Executive Magistrates still wield judicial authority in these areas (as per the earlier Cr.P.C.). The Committee seems to favour continuation of existing arrangements; though in the prevailing culture of mis-governance, it is difficult to cite advantages. The Commission favours separate Judicial Courts, so that judicial cases receive due attention and proper consideration.

Agenda Item V Increase of representation of Bhutia and Lepcha from 12 to 16 in case of increase of Assembly seats in the Sikkim from 32 to 40

The Commission noted the constitutional provisions regarding the number of seats in State legislatures (Art.170), and the special provisions relating to the State of Sikkim in Article 371F of the Constitution which have been upheld by the Supreme Court as being such as not to negate the fundamental principles of democracy/ not unconstitutional given the situation and permissible latitude. The Commission was of the view that keeping in mind the provisions of Article 332(3) of the Constitution, it would be appropriate that:-

- (i) The number of seats in the State Legislature should be increased from 32 to 40 to provide fair share to all the Scheduled Tribes in the State.
- (ii) The increased seats (8) in the Sikkim Legislative Assembly should firstly be reserved for Scheduled Tribes according to their population, in order to safeguard the political rights of all the Scheduled Tribe Communities, (including Bhutia-Lepcha).

Agenda Item VI Preliminary discussion on Draft Chapters of 3rd Report of the NCST for the period 2007-08.

The Secretary, NCST presented a revised Chapter outline/ time schedule for the Annual Report and informed the Commission that a few changes would have to be carried out in the material contained in each Chapter, in order to update the contents. The Secretary requested the Members to furnish suggestions, if any, relating to issues/ sub-titles covered/ mentioned in each Chapter and the contents therein. These draft Chapters will be revised keeping in view the suggestions received from the Members and final draft resubmitted for approval by the Commission. The observations of the Commission in respect of each Chapter submitted for discussion are given below:

(i) Chapter on Organisational Set-up and Functioning of the Commission

As per Secretary, NCST's suggestion the contents of the Chapter may be updated keeping in view the report period. In the context of ATR on the

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recommendations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes, a statement of such matters has been prepared and concerned Ministries have also been asked to inform the Commission about the action taken on (acceptance or non-acceptance of) the advice/ comments/ views rendered by the Commission. This information may also be included in the Chapter, after receipt from the concerned Ministries.

(ii) Chapter on Service Safeguards

Secretary, NCST suggested that in the context of implementation of reservation for Scheduled Tribes in services under Universities, the UGC guidelines and minorities status of Aligarh Muslim University, Aligarh and the Jamia Millia Islamia, Delhi may be indicated.

(iii) Chapter on De-reservation

Secretary explained that reservation for Scheduled Tribes is a Constitutional right which the Commission has to safeguard, while de-reservation is an interim indulgence granted to the concerned Department to carry on its business. Therefore, it is necessary to mention the indulgence granted to various Ministries/ Departments/ Organisations seeking de-reservation of posts reserved for Scheduled Tribes and the views of the Commission on such proposals. Each Ministry/ Deptt./ Organisation may, therefore, be asked to indicate the present position of the proposals received and processed in the Commission during the year 2007-08 and ATR on the advice, if any, given by the Commission. The views expressed by the Secretary were accepted and it was decided that the present position of the proposals may be ascertained from the concerned Ministry/ Deptt./ Organisation in a time bound manner so that the information could be incorporated in the draft Chapter and submitted to the Commission during the subsequent consideration meeting. It was also agreed that the material relating to De-reservation may be amalgamated into the main Chapter on Service Safeguards.

(iv) Chapter on Educational Development of Scheduled Tribes

Commission was informed that after collection and analysis of the material for this Chapter, draft recommendations were prepared. These recommendations were discussed with the Officers of Ministry of Human Resource Development (Deptt. of Education) as well as Ministry of Tribal Affairs so that preparation of ATR on the recommendations made in the report does not take much time. The Chapter therefore, contains material and the recommendations as refined after the discussion with both the Ministries. Member (TS) mentioned that he has mentioned certain observations about educational problems of Scheduled Tribes

in his tour reports and also held number of hearings on educational matters. It was decided that the outcome of the hearings/ sittings held during 2007-08 on the subjects relating to Educational matters may also be incorporated in the Chapter. As regards tour reports it was informed that those tours were undertaken during 2008-09. It was, therefore, decided that observations of Members on various matters contained in their tour reports may also be suitably incorporated in the report for the period 2008-09. These observations on various issues may be incorporated in the concerned Chapter.

(v) **Chapter on Health & Nutrition**

Regarding the Chapter on Health & Nutrition also it was informed that the recommendations have been included after discussion with the Officers of Ministry of Health & Family Welfare. It was decided that as suggested in the case of Chapter on Educational Development, the observations relating to this sector contained in the tour reports of, and hearings/ sittings held by, the Members may be incorporated in this Chapter.

(vi) **Chapter on Scheduled Tribes and Forest Rights-Retrospect**

It was clarified that the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 came into operation w.e.f. 31/12/2007 and the Rules framed under the Act were notified on 01/01/2008 only and therefore, implementation of the Act and Rules could start mainly from 2008-09 onwards. It was, therefore, decided that the Chapter on Scheduled Tribes and Forest Rights may be dropped from the Report period 2007-08 and updated Chapter on the subject including its implementation status may be included in the Report for the period 2008-09.

(vii) **Chapter on Successful Cases**

It was felt that the name of the Chapter was not appealing and needed renaming. It was decided that the Chapter title could be changed to "Case Studies" as in the previous Report of the Commission.

Additional Agenda Items.

Agenda Item VII Proposal of the Govt. of Orissa for seeking assent of the President of India to the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Amendment Regulation, 2009 – Reference from Ministry of Tribal Affairs.

Secretary, NCST stated that it was not socially or economically desirable that the tribal rights over land be allowed to be extinguished. After auction and transfer of tribal land to a non-Scheduled Tribe, as provided in the proposed amendment, the tribal will not be left with any source of livelihood and, after becoming landless he will soon be reduced to a pauper/ landless labour. The

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भारत सरकार, नई दिल्ली

Commission, in its earlier reports had opposed alienation of tribal land in whatever garb; and the same stand may be reiterated in the interest of the Scheduled Tribes. Hon'ble Vice-Chairman mentioned that tribals were facing difficulties in meeting their special needs like marriages, educational needs and housing etc. He added that the naxalites were provoking the tribals by impressing upon them that the land ownership had no meaning for them as they could not dispose the land. Therefore, permitting recovery of mortgage amount through public auction and payment of higher return of land to the tribals was perhaps in the interest of the tribals, otherwise tribals will not be able get credit to meet their special needs. Secretary explained that the enlargement of purposes of the loan, from existing agriculture purpose only, as proposed by Govt. of Orissa may be acceptable, but alienation of the land to non-Scheduled Tribes through public auction may not be accepted. It should be possible to conceive other solutions to ensure that public financial institutions do not lose their money and the Scheduled Tribes also do not lose their ownership over land. If necessary, the Government should step in as a "purchaser of the last resort" in these cases. On the lines of the Credit Guarantee Fund set up for the comfort of the lenders under the scheme of Ministry of Micro, Small and Medium Enterprises, a scheme may also be considered for the benefit of the tribals. To safeguard the livelihood of tribal farmers, the Government could consider setting up Land Banks comprising lands resumed by the Govt. in cases of mortgage default; and such lands may be leased to the previous ST owners with the opportunity/ right to re-purchase the same at any subsequent stage of time, beside rights to additional potential compensation due to change in land use pattern in future.

Agenda Item VIII Caste status of the Children of inter-caste married couples- Kerala (Scheduled Castes and Scheduled Tribes) Regulation of issue of Community Certificates (Amendment Ordinance), 2006.

- (i) Secretary, NCST informed the Commission that Addl. Agenda item No. 2 relating to the Kerala (SCs & STs) Regulation of Issue of Community Certificates (Amendment) Ordinance, 2006 was deliberated earlier also on 12.05.08 and 11.07.08 when it was decided to obtain the views of Vth Schedule States & North Eastern States. The different views received from the States of Chhattisgarh, Madhya Pradesh, Himachal Pradesh, Nagaland, Andhra Pradesh and Maharashtra were brought to the notice of the Commission. It was also brought to the notice of the Commission that the Govt. of Kerala had, in the meanwhile, issued Order No. G.O. (MS) No. 109/2008/SCSTDD dated 20.11.2008 about issuing SC/ST certificates to children of inter-caste married couples of which one

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of the parents is SC/ST. The order stated that the Issuing Authority should ensure that :

- (a) each case shall be examined individually in the light of the existing facts and circumstances.
- (b) the claimant has suffered disabilities – socially, economically and educationally.
- (c) the society has accepted the claimant to their original fold as one among them and that the claimant is living in the same social environment.

(ii) The Commission considered and deliberated the issue at length and was of the view that the Goyt. of Kerala seemed to have relied on the extant orders issued by the Government of India. As per the observations of the Supreme Court in Anjan Kumar's case, instructions dated 04.03.1975 of the Govt. of India can't be treated as law under Article 13 of the Constitution of India. "The issue involves the determination of the caste of the children of the inter-caste married couples taking into account whether a particular society is patriarchal or matriarchal, and the environment in which they are brought up by the parents. The twin tests emerging from the relevant Supreme Court decisions viz. community membership as per personal law and disabilities suffered in the course of upbringing as the member of a particular community have to be jointly applied to determine eligibility for issue of Caste certificate. Since customary/ personal laws are not always gender neutral, it is perhaps not possible to have gender neutral definition of caste/ tribal status applicable to children born to couples one of whom is the member of a Scheduled Tribe; and such an offspring may be assigned the community of the father or the mother respectively, depending on the patriarchal/ matriarchal nature of the communities, involved"

Agenda
Item IX Annual Report

- **Action Plan for finalization of Report for 2007-08**
- **Chapter Plan for Annual Report 2008-09**

A. The following time frame in respect of finalization of 3rd Report of the Commission for the period 2007-08 and its submission to the President was agreed

- (i) Receipt of comments from Members for changes, if any. 23 Nov.09
- (ii) Submission of revised draft to Commission : 15 Dec.09
- (iii) Final approval by the Commission/ reference to the President : End of Dec.09



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(iv) Submission of Report to President of India :

31st Jan.10

B. As regards 4th Report of the Commission for the period 2008-09, it was decided that the following 9 Chapters may be compiled for this Report:

- (i) Introduction, Organisational Set-up and Functioning of the Commission
- (ii) Development Planning : TSP
- (iii) Service Safeguards (Incl. status of de-reservation proposals)
- (iv) Relief and Rehabilitation of displacement persons
- (v) Forest Rights; Act and status/ issues of Implementation
- (vi) Caste Certificate
- (vii) Atrocities on STs
- (viii) Case studies
- (ix) Summary of recommendations

C. The time frame in respect of preparation and finalization of the 4th Report and its submission to the President was also agreed as given below:

- (i) Submission of draft to Commission : Feb.2010
- (ii) Discussion on the draft Chapter : 1st week of March, 2010
- (iii) Receipt of comments from Members for changes, if any. 31st March 2010
- (iv) Approval of revised draft by Commission/ reference to the President : 30th April 2010
- (v) Submission of Report to President of India : May/ June, 2010

3. The meeting ended with vote of thanks to the Chairperson.



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F.No. 1/9/09-Coord.

ANNEXURE
(w.r.t. Para 1 of the Summary Record)

National Commission for Scheduled Tribes

Meeting of the Commission held on 17/11/2009 at 1200 hrs. in the Conference Room of the Commission- List of participants.

S.No. **Name and Designation**