



BY SPEED
POST

GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)

F.No.NCST/2008/REHAB/01

Date: 10th August, 2011

To

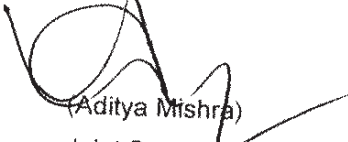
The Secretary,
Deptt. of Land Resources,
Ministry of Rural Development,
'G-Wing', NBO Building,
Nirman Bhavan,
New Delhi - 110001

Sub: Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Deptt. of Land Resources,
Ministry of Rural Development on 29.07.2011

Madam,

The Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Deptt. of Land Resources, Ministry of
Rural Development on 29.07.2011 are enclosed.

Yours faithfully,


(Aditya Mishra)
Joint Secretary

Encl: As above. (Total 3 pages)

N.O.O.

SSA/NIC

National Commission for Scheduled Tribes

**Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Chairperson,
NCST with the Secretary, Deptt. of Land Resources, Ministry of Rural
Development on 29.07.2011**

A list of officers present in the meeting is at the Annexure

2. The Chairperson, NCST extended warm welcome to the Secretary, Deptt. of Land Resources, Ministry of Rural Development and other Officers present in the meeting. He mentioned that the meeting was convened due to non-receipt of action taken report from the Ministry of Rural Development regarding the recommendations of the Commission sent to the Ministry on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007.
3. Initiating the discussion, Joint Secretary, NCST mentioned that the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report had also desired had desired feedback regarding action taken by the concerned Ministries/Deptts./Organisations on the recommendations/observations of the Commission on various policy related matters. He mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/ Deptts/ Organisations to consult the Commission on all major policy matters affecting Scheduled Tribes. However, the Ministry of Rural Development had not so far sought comments of the Commission on the draft Rehabilitation and Resettlement Bill, 2007 and Land Acquisition (Amendment) Bill, 2007. Notwithstanding this, the Commission had, suo-moto, communicated its views/suggestions to the Ministry of Rural Development on the both the Draft Bills vide D.O. letter dated 6th August, 2010.
4. The Commission emphasized that the tribals need special consideration through a special chapter in the Bills considering the following major factors:
 - (i) Special provisions have been made in the Constitution for protection as well as safeguarding the rights of STs and administration in Scheduled Areas. The Constitution also provides for the measures to be taken to ensure that a particular Legislation may not be applicable in the Scheduled Area or a special law may be enacted with reference to good regulation in the Scheduled Areas
 - (ii) Land being the primary means of production in the tribal society, acquisition of tribal land leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to have their livelihood outside their habitat and any activity not involving agricultural land.
 - (iii) Land regulations generally prohibit transfer of tribal lands to others except with the approval of designated competent authorities. Tribal Rights in land are unalienable both by individual as well as State, in the spirit of the

Rameshwar Oraon

Supreme Court Judgement in Samatha vs. Govt. of Andhra Pradesh

(transfer in favour of a person who is member of a Scheduled Tribe or Society is only permitted (person includes both natural persons and constitutional body)).

- (iv) Diligent effort is essential to comprehensively identify all the environmental / displacement risks which tribals would be exposed, consequent to displacement; and to establish the overriding public interest which demands such sacrifice from them.
- (v) The definition of public purpose in the Land Acquisition (Amendment) Bill is covering all sorts of projects which may not necessarily serve public interest. 'Public purpose' should be determined through a participatory and transparent process and should incorporate additional safeguards for tribals. Considering the fact that much larger extents of land than absolutely necessary are being commandeered as a substitute for capital mobilization by the State under the Public Private Partnership (PPP), the Commission is of the view that the definition of public purpose should preferably be restricted for acquisitions of land for re-development as in the British Law, and State owned/managed institutions only.

5. Secretary, Deptt. of Land Resources, Ministry of Rural Development mentioned that an integrated Bill was being proposed now covering both land acquisition and rehabilitation and resettlement. The Integrated Bill has special provisions for the Scheduled Tribes. Secretary, Deptt. of Land Resources, MoRD further apprised the Commission of the salient features of the Bill especially with regard to STs (enclosed) and mentioned that most of the concerns of the Commission relating to STs had been addressed in the draft Integrated Bill. MoRD also informed the Commission that the draft Integrated Bill was being hosted on their website for seeking suggestions/comments of public. After examination of the suggestions/comments, MoRD will initiate inter-Ministerial consultation. At this stage, the view of the Commission would also be invited. The Commission was of the view that that the matters for advice under the provision of Article 338A(9) may be referred to the Commission after completion of internal process of drafting the Bill and before submission to the Apex Cabinet Committee.

6. The Commission observed that in view of the issues discussed above, a separate Chapter, mentioning the manner in which the provisions of the draft Bill will be applicable to the Scheduled Tribes and the Scheduled Areas should be included in the Bill. Further, for the consultation with the NCST, as envisaged under Art. 338A(9) of the Constitution to be meaningful, the draft Bill finalized in the Ministry after inter-Ministerial consultations, may be referred to this Constitutional Commission and the observations of the Commission and views of the Ministry on those observations may also be placed along with the draft Bill for consideration by the Apex Cabinet Committee. The Secretary, Deptt. of Land Resources, MoRD mentioned that the Ministry would consider the observations of the NCST and, if considered necessary, the matter will be decided in consultation with the Ministry of Law. The Commission advised that the MoRD may take appropriate action immediately, before submission of the draft Bill to the Apex Cabinet Committee.

Rameshwar Rao

Annexure

List of officials present in the meeting taken by Dr. Rameshwar Oraon, Chairperson, NCST with the Secretary, Dept. of Land Resources, Ministry of Rural Development on 29.07.2011

National Commission for Scheduled Tribes (NCST)

Dept. of Land Resources, Ministry of Rural Development,

- | | | | |
|---|----------------------------|---|--------------------------------|
| 1 | Sh Aditya Mishra, JS | 1 | Ms. Anita Chaudhary, Secretary |
| 2 | Smt. K.D. Bhansor, Dy.Dir. | 2 | Shri Charanjit Singh, Director |