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भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

संख्या/ No.- 1/2/10-Coord

दिनांक/ Date: 09/03/2010

To

- 1) Shri Maurice Kujur, Vice-Chairman
- 2) Shri Tsering Samphel, Member
- 3) Shri Oris Syiem Myriaw, Member

Sub: Summary record of the 18th meeting of the National Commission for Scheduled Tribes held on 22/02/2010.

Sir,

I am to refer to the above subject and to say that 18th meeting of the National Commission for Scheduled Tribes was held at 1100 Hrs. on 22/02/2010 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Shri Maurice Kujur, Vice-Chairman, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

Yours faithfully,


(Aditya Mishra)
Joint Secretary

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 22.03.2010 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 Vice-Chairman/ 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 18th meeting of the National Commission for Scheduled Tribes held at 11:00 AM on 22/02/2010.

The 18th meeting of the National Commission for Scheduled Tribes was held at 11:00 AM on 22/02/2010 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Shri Maurice Kujur, Vice-Chairperson as the post of Chairperson remains vacant. List of participants is enclosed at **ANNEXURE**.

2. There were 5 Agenda Items on the list for discussion and all the Agenda Items were discussed. 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.

Secretary, NCST informed the Commission that the guidelines for dealing with various cases/matters received in the Commission were proposed with a view to equipping officials of the Commission to examine and process the matters/ issues and complaints in the right perspective, in a standard fashion and in a time bound manner. Hon'ble Member (OSM) expressed that it was useful to have guidelines but at the same time it may be difficult to follow the guidelines in the absence of requisite staff in the Commission. Hon'ble Vice-Chairperson mentioned that the issue relating to shortage of staff in the Commission had also come up in the earlier meeting of the Commission and it was decided that the matter would be taken up at the level of the Minister through a letter from the Hon'ble Vice-Chairperson. This letter may be sent expeditiously. Hon'ble Member (TS) pointed out that the tribal characteristics mentioned in the guidelines relating to inclusion/ exclusion of ST communities in the list of Scheduled Tribes may also include distinctive forms of apparel worn by them. Secretary, NCST assured that the draft guidelines would be edited/ refined in the light of the accumulated experience since the time they were prepared before dissemination. The Commission desired that edited/ refined guidelines be submitted to the Commission for consideration.

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

The Commission was informed that the Scheduled Castes and Scheduled Tribes (Reservation in posts and services) Bill 2008, which was passed by the

Rajya Sabha on 23/12 /2008, is now to be tabled in the Lok Sabha for consideration. The Commission noted that the Bill in its present form, varies in its contents from the earlier draft Reservation Bill, 2004 received from the Department of Personnel and Training for comments of the Commission (furnished in December, 2004). The Commission also noted that views of the Commission have not been sought on the draft Bill, 2008. The Commission, therefore, desired that the concern of the Commission in this regard may be communicated to the concerned Ministry/ Department; and it be suggested to them that the updated version of the Bill should be referred to this Commission also for comments before it is introduced in the Lok Sabha.

Agenda Item III **Grant of reservation to migrant SCs/ STs in civil posts under the Government of NCT of Delhi – Proposal of MHA received vide their letter dated 27.11.2009 for inclusion of all Scheduled Caste & Scheduled Tribe communities in the list of Scheduled Castes and Scheduled Tribes respectively in relation to the NCT of Delhi and all other Union Territories - consequent to the judgment dated 04.08.2009 of Hon'ble Supreme Court of India in Civil Writ Petition No. 507/2006 titled Sarv Rural & Urban Welfare Society Vs. Union of India.**

(i) Secretary, NCST informed the Members that the Government of NCT of Delhi had been following the All India pattern in providing reservation in appointments to Civil Posts under them, irrespective of nativity. Separately, the Government of NCT of Delhi had issued instructions for giving reservation of 1% only to the Scheduled Tribes in the matter of admission to Professional Educational Institutions which are under the control of Government of NCT of Delhi. The National Commission for Scheduled Tribes had taken objection to this step by taking up the matter with the Ministry of Home Affairs. Thereafter, the Government of NCT of Delhi had prepared a draft Bill to provide for reservation for migrated Scheduled Castes, Scheduled Tribes, and OBCs in the matters of admission to Professional Educational Institutions in Delhi, which was discussed in the 15th meeting of the Commission held on 06/11/2009. The Commission had recommended that the reservation for Scheduled Tribes for admission to educational institutions under the control of Govt. of NCT of Delhi should be 7.5% irrespective of the nativity of the Scheduled Tribes in order to provide them due access to the educational facilities of a high order which have been created in the national capital with Central Revenues..

(ii) The Secretary further mentioned that in the meanwhile, the Hon'ble Supreme Court of India in its judgment dated 04/08/2009 in the WP(C) No. 507 of 2006 has differed with the judgment of the three-Judges Bench in the case of S. Pushpa & Ors. and opined in para 40 of its judgment that the Central/ State

Governments "may lay down a policy decision in regard to reservation having regard to provisions under Article 15 & 16 of the Constitution, but such policy cannot violate other Constitutional provisions (Article 341 & 342)." The Hon'ble Court in para 41 of the judgment has observed that "if the members of the SC and ST in other States are to be treated as backward classes for Delhi, intensive studies were required to be made in regard to question whether they would come within the purview of the definition of "Backward Classes" so as to answer the description of socially and educationally backward; and held in para 46 that:

..... we are bound by a Constitution Bench decision. We have referred to Constitution Bench decisions, namely Marri Chandra Shekhar Rao and E.V. Chinnaiah. Marri Chandra Shekhar Rao, had been followed by this Court in a large number of decisions including three Judges Bench decisions. Pushpa, therefore, could not have ignored either Marri Chandra Shekhar Rao

Following Dayanand (supra), therefore, we are of the opinion that the dicta in Pushpa is an obiter and does not lay down any binding ratio.

(iii) Keeping in view this judgment, the Ministry of Home Affairs has proposed inclusion of the names of the communities of migratory Scheduled Castes and Scheduled Tribes in the lists of Scheduled Castes and Scheduled Tribes of Delhi and other Union Territories notified under Article 341 and Article 342 of the Constitution. The Ministry is also looking at the possibility of a common reservation policy for all UTs in respect of migratory SCs/ Scheduled Tribes.

(iv) The Commission expressed the view that Delhi is a National Capital Territory and a large number of people had migrated to Delhi after independence in 1947. The huge increase in population from 1951 (17.44 Lakhs) to 2001 (137.83 Lakhs) can not be attributed to normal growth only, but also combines the effect of continuous migration of people from other regions in search of opportunity or employment. While no STs have been specified in relation to Delhi, the number of ST migrants from other States who have settled in Delhi, is also not available to indicate possible reservation requirements. The ST migrants may unwittingly face discrimination in the matter of reservation vis-à-vis SC migrants whose communities were also included in the list of SCs specified in relation to Delhi and may have been returned as SC of Delhi in various Census enumerations; and also secured Caste certificates mentioning that they were ordinary residents of Delhi, entitling them to the benefits meant only for the original SC communities of Delhi. The position of Delhi is quite unique as being the National Capital Territory, it has facilities and services created/ supported with Central Funds and Revenues. Therefore, it is quite appropriate that the migrant ST population settled in Delhi

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should not be discriminated against whether it is a matter of service or admission to educational institutions under the Government of NCT of Delhi

(v) The Commission also expressed the view that, since there are significant differences in the relative backwardness of different tribal communities living in different geographical regions of the country, it will be difficult to prevent marginalization of local tribal communities and monopolization of benefits by more advanced (migrant) communities if a common reservation policy/ order is contemplated for all (disparate) UTs (which are also home to Vulnerable Tribes of Jarawas, Shompens, and Nicobarese etc. in A & N Islands, and all the native tribal inhabitants of Lakshadweep Islands).

(vi) In view of above the Commission recommended as follows:-

- (a) While refraining to comment on the merit of the Hon'ble Supreme Court judgment since Commission does not have any legal expertise, the Commission recommend that a common list of ST communities may not be notified under Article 342 in respect of all UTs including Delhi as this may lead to marginalization of the original tribal inhabitants of the concerned UT beside compromising the sanctity of Article 342.
- (b) Keeping in view the unique status of NCT of Delhi, being the National Capital of the Country and existence of various offices of the Union Government in Delhi and the fact that the employment opportunities and educational facilities of high order have been created in the NCT of Delhi through the use of central revenues, it is desirable to extend the benefit of reservation, to the STs resident in Delhi irrespective of their nativity and period of residence while retaining the reservation level of 7.5% for Scheduled Tribes as admissible at National level.
- (c) A constitutionally valid scheme of reservation may, however, be evolved to extend benefits of reservation to migratory STs living outside their original place of nativity as indicated in para 41 of the judgment of the Hon'ble Supreme Court of India in SLP (C) 24327 of 2005 (WP (C) No. 507 of 2006).

Agenda Item IV Amendment to Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995

(i) Secretary NCST informed the Commission that the amendment No. (i) to insert Rule 7-A has been proposed for obtaining timely information in respect of the cases of atrocities, especially pertaining to heinous offences. At present, there is no definition of heinous offences in the Indian Penal Code. It is also not mandatory under the Criminal Procedure Code to register an FIR immediately when a complaint is made.

(ii) The Commission noted that a large number of atrocities against Scheduled Tribes primarily pertain to grabbing of tribal land and crimes against (their) women folk. Therefore, it is advisable to report cases registered under sub-

clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 too for monitoring purposes. The Commission also felt that there should be prompt reporting of all such complaints made to the police, without awaiting the registration of an FIR. The report should preferably be sent through the Superintendent of Police, keeping in view the varying responsibility for criminal administration in different regions.

(iii) After detailed deliberations, the Commission recommended that the phrase "whenever FIR was registered under sub-clause (i), (iv) or (v) of sub-section 2 of Section 3, the concerned District Magistrate" of the proposed Rule 7-A should be substituted as "whenever a complaint is made to a police officer regarding an offence punishable under sub-clause (iii), (v), (xi) or (xii) of sub-section (1) of Section 3 or sub-clause (i), (iv) or (v), of sub-section (2) of Section 3, the concerned Superintendent of Police " in amendment at no. (i) relating to insertion of Rule 7A.

(iv) The Commission endorsed the proposed amendments at S.No. (ii), (iii) and (iv) of the proposal with the observation that the added reference in Item 17 pertaining to mischief by fire etc. is probably unnecessary since it is already subsumed (as life imprisonment exceeds 10 years).

Agenda Item V Writ Petition No. 3528 of 2009 filed by Shri Purushottam Sonkusre Vs Delimitation Commission, New Delhi & Ors. in the High Court of Bombay, Nagpur Bench challenging the list of Assembly constituencies reserved for STs in the Maharashtra Legislative Assembly.

(i) Secretary, NCST informed that the Commission had received a representation, dated 08-05-2006 from the petitioner regarding reconstitution of Assembly segments of Maharashtra Legislative Assembly under the Delimitation Act, which had been forwarded to the Delimitation (Election) Commission of India for necessary action. In response, the Election Commission sent a list of constituencies of Maharashtra Legislative Assembly to this Commission vide their letter dated 09-03-2009, which was forwarded to the petitioner on 20-03-2009. The petitioner has made a mention of this correspondence in para 16 of Writ Petition; and has opposed to the procedure adopted by the Delimitation Commission in identifying the Assembly Constituencies reserved for the Scheduled Tribes in Maharashtra State Assembly.

(ii) The Secretary further mentioned that the contention of the petitioner in challenging the list of assembly constituencies reserved for STs is not clear. The procedure adopted by the Delimitation Commission seems to be in order because

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the highest proportion of tribal population as well as its absolute number would tantamount to the same in the case of single-member constituencies when they are of uniform size. Besides, the subject matter of the Writ Petition is primarily the concern of the Delimitation Commission and the Ministry of Law and Justice. (The Ministry of Tribal Affairs and the Registrar General of India are also concerned with the issue). The Commission may, therefore, not intervene in the case and leave the matter for decision by the Hon'ble High Court. The Commission agreed with the suggestion made by the Secretary and decided that the Ministry of Tribal Affairs and Ministry of Law and Justice be informed accordingly.

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

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

National Commission for Scheduled Tribes

Meeting of the Commission held on 22/02/2010 at 11:00 AM in the Conference Room of the Commission- List of participants.

S.No. Name and Designation

1. Shri Maurice Kujur, Vice-Chairperson (In chair)
2. Shri Tsering Samphel, Member
3. Shri Oris Syiem Myriaw, Member
4. Shri R.S. Sirohi, Secretary
5. Shri Aditya Mishra, Joint Secretary
6. Shri R.C. Durga, Director
7. Shri Vinod Aggarwal, Director
8. Shri R.P. Vasishtha, Dy. Secretary
9. Mrs. K.D. Bhansor, Dy. Director