

## AGENDA NOTE

**Subject:** Writ Petition No.3528 of 2009 filed by Shri Purushottam Vs Delimitation Commission, New Delhi & others in the High Court of Bombay, Nagpur Bench challenging the list of Assembly constituencies reserved for STs in the Maharashtra Legislative Assembly.

**Issue:** Reservation of ST constituencies in the Maharashtra Legislative Assembly according to the comparative tribe-wise population rather than the proportion of the ST population to the total population.

### **Background:-**

The Assistant Registrar, High Court of Bombay, Nagpur Bench has sent a copy of the above Writ Petition No. 35828 of 2009 (**Annex-I**) to the Commission as one of the Respondents – (Respondent No.7). The Delimitation Commission (through Secretary, Election Commission), Chief Election Commissioner of India, Election Commissioner, Maharashtra and the Registrar General of India have been listed as Respondent No.1,2,3 and 6 respectively (Respondent Nos. 4&5 have been deleted). The National Commission for Scheduled Tribes, Ministry of Law and Justice and the Ministry of Tribal Affairs have been listed as Respondents No.7,8 and 9 respectively.

2. 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. The Commission had forwarded the representation of the petitioner 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. A copy of the Election Commission's letter, dated 09-03-2009 (**Annex-II**) alongwith a copy of the list of constituencies was forwarded by this Commission to the petitioner on 20-03-2009. There is a mention of this correspondence between the petitioner and this Commission in para 16 of Writ Petition.

### **Examination:**

3. The petitioner has made the following main prayers:-
- i) Quash and set aside the impugned list of Scheduled Tribes dated 09-03-2009 issued by the Respondent No.1 being against the provisions of Delimitation Act and overreaching the provisions of Delimitation Act while carving the reserved constituencies, amounts to arbitrary exercise of power on the part of respondent No.1 i.e. Delimitation Commission through its Secretary.

- ii) Call for the actual constituency wise Scheduled Tribes population of (1) Gond Rajgond (2) Koli (3) Koli Mahadev (4) Mana (5) Halba, Halbi (Marathia) (6) Dhor Koli and 25 reserved seats from the Respondent No.1,2 in the interest of Justice.
- iii) It be declared that the Constituency comparatively having more Scheduled Tribes wise voters than the constituency be declared reserved for Scheduled Tribes instead of present seats reserved for Scheduled Tribes in accordance with the Delimitation Act, 2002 and respondent be declared to cause such reservation according to law.

4. It would be observed that the subject matter of the Writ Petition is primarily the concern of the Delimitation Commission (Election Commission of India). The Ministry of Tribal Affairs and Registrar General of India are also concerned with prayer (ii) above.

5. The contention of the petitioner in challenging the list of assembly constituencies reserved for STs is not clear. It appears that the petitioner has, inter-alia, contended that the tribe-wise population in the actual ST population of the constituencies in descending order should form the basis of reserving the constituencies for ST category. In other words the petitioner seems to hold the view that once a particular constituency is treated as reserved for ST on the basis of the proportion of ST population to the total population the constituency it should be reserved for the ST community having largest population among the STs in that constituency and thereafter, in descending order of tribe-wise population in that constituency in subsequent elections.

**Proposed Suggestions:**

6. The relevant provisions of Article 81 of the Constitution and the Delimitation Act, 2002 are annexed. The Constitution requires that the ratio between the population of each constituency and the number of seats allotted to it should remain the same throughout the State. Since all constituencies are single-member constituencies, this implies that the population of each assembly constituency in a State be nearly uniform; and a higher number of ST population will also imply a comparatively higher proportion. The contention of the petitioner as explained above does not seem to be practicable in the event of multiple-member constituencies. Also, it may create unnecessary divisions in the tribal community. The Commission may therefore not agree to the contention of the petitioner and leave the matter for decision by the Hon'ble High Court.

**Draft**

**No.....  
Government of India  
National Commission for Scheduled Tribes**

**6th Floor, 'B' Wing,  
Loknayak Bhawan,  
Khan Market,  
New Delhi-110003**

**Dated:**

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constituencies reserved for STs in the Maharashtra Legislative  
Assembly**

1. Shri Maurice Kujur, Vice Chairperson, NCST
2. Shri Tsering Samphel, Member, NCST
3. Shri Oris Syiem Myriaw, Member, NCST

Sir,

I am directed to say that the Assistant Registrar, High Court of Bombay, Nagpur Bench has forwarded a copy of aforesaid Writ Petition to the Commission which has been listed as Respondent No.7.

2. The petitioner has raised a policy issue relating to earmarking Assembly Constituency for the Scheduled Tribes in the Maharashtra Legislative Assembly. A copy of Agenda Note on the issue alongwith the copy of the Writ Petition is circulated herewith.

3. It is requested that the comments/views in the matter may please be furnished within 5 days as the issue is likely to be discussed in the next meeting of the Commission.

Yours faithfully,

**(Aditya Mishra)  
Joint Secretary**

Copy with copy of enclosure for information and necessary action to:-

1. Secretary, NCST
2. Joint Secretary, NCST
3. Dir.(VA)
4. Dir.(RCD)
5. DS(RPV)
6. DD(KDB)