



भारत सरकार

Government of India

राष्ट्रीय अनुसूचित जन जाति आयोग

National Commission for Scheduled Tribes

(A Constitutional Body set up under Art. 338A of the Constitution of India)

Case File No. NCST-17013(MH)/4/2020-RU4

Dated: 18.08.2021

- | | |
|--|---|
| <p>1. The Chief Secretary,
Government of Maharashtra,
Mantralaya,
Mumbai- 400 032
E.mail: cs@maharashtra.gov.in</p> | <p>2. The Secretary,
Tribal Development Department,
Government of Maharashtra,
Mantralaya,
Mumbai – 400 032
E.mail. sec.tribal@maharashtra.gov.in</p> |
| <p>3. The Additional Chief Secretary,
Department of Forest,
Government of Maharashtra,
Mantralaya,
Mumbai – 400 032
E.mail: sec.forest@maharashtra.gov.in</p> | <p>4. The District Collector & District Magistrate,
District – Palghar
Chintupada Road,
Udhyog Nagar, Palghar,
Maharashtra – 401 404
E.mail: collector.palghar@maharashtra.gov.in
rdcpalghar@gmail.com</p> |

Subject: Representation dated 29.06.2020 received from Shri Milind Thatte, Social Worker and nominated Member, Tribal Advisory Council, Maharashtra, R/O Village Jambhulvihir, Tehsil - Jawhar, District - Palghar, Maharashtra regarding atrocity on scheduled tribe farmers (FRA land holders) of District Palghar by misuse of powers by Forest officials.

Sir,

I am directed to enclose herewith a copy of the Proceedings of the Sitting held on 13.07.2021 under the Chairmanship of Shri Harsh Chouhan, Hon'ble Chairperson, National Commission for Scheduled Tribes on the above mentioned matter for necessary action and submission of compliance report to this Commission within one month period positively for placing the same before the Hon'ble Chairperson, NCST.

(Encl: as above)

3909-13
18/8/21
जारी किया
ISSUED

Yours faithfully,

(Dr. Lalit Latta)
Director

E.mail: director@ncst.nic.in

Copy to:

Shri Milind Thatte,
Social Worker and Nominated Member,
Tribal Advisory Council, Maharashtra,
Vayam Lokshahi Jagar Kendra,
Village Jambhulvihir, Tehsil - Jawhar,
District – Palghar – 401 603, (Maharashtra)
E.mail: milindvayam@gmail.com

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Case File No. NCST-17013(MH)/4/2020-RU4

PROCEEDINGS OF SITTING HELD ON 13.07.2021 CHAIRED BY SHRI HARSH CHOUHAN, HON'BLE CHAIRPERSON, NATIONAL COMMISSION FOR SCHEDULED TRIBES (NCST) IN THE CASE OF SHRI MILIND THATTE, SOCIAL WORKER AND NOMINATED MEMBER, TRIBAL ADVISORY COUNCIL, MAHARASHTRA, R/O VILLAGE JAMBHULVIHIR, TEHSIL - JAWHAR, DISTRICT - PALGHAR, MAHARASHTRA REGARDING ATROCITY ON SCHEDULED TRIBE FARMERS (FRA LAND HOLDERS) OF DISTRICT PALGHAR BY MISUSE OF POWERS BY FOREST OFFICIALS.

Date of Sitting: 13.07.2021

List of officers present in sitting is Annexed.

Shri Milind Thatte, District Palghar vide his representation dated 29.06.2020 has submitted regarding atrocity against Scheduled Tribes of Jawahar and Mokhada Tehsils of District Palghar by the Forest officials.

2. The petitioner stated that the Deputy Conservator of Forest, Jawahar Division, District Palghar and his subordinate forest officials have harassed Forest Right holders belonging to ST community by way of mischievous interpretation of law and by misusing his powers. He also stated that the Forest officials have destroyed house and properties of the Scheduled Tribes of Jawahar and Mokhada Tehsils of District Palghar, Maharashtra where they live for many years. The Forest officials have also registered more than 60 criminal cases against 200 ST farmers under Forest (Conservation) Act, 1980 despite having individual forest rights for building of huts and legally cultivating traditional farming on the land. But these ST families have been evicted from the land and destroyed their huts and cultivated crops have been destroyed. No compensation have been paid to the affected ST farmers and they have to force to live on the road. In this regard, several complaints have been made before the District Collector, Palghar and higher authorities in Govt. of Maharashtra. But the District Administration as well as Govt. of Maharashtra have not taken any action against defaulter

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अध्यक्ष/Chairperson
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NATIONAL COMMISSION FOR SCHEDULED TRIBES
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Forest officials to protect the interest of Scheduled Tribes families. The petitioner has requested the Commission to intervene in the matter and to protect the interest of Scheduled Tribes.

2. As per procedure, a report was called from the Chief Secretary, Govt. of Maharashtra, Additional Chief Secretary, Forest, Maharashtra, Secretary, Tribal Development Department, Maharashtra and the District Collector, Palghar vide NCST notice dated 06.07.2020 and followed up reminders dated 02.11.2020, 08.04.2021 and 11.06.2021. However, no report has been received from any of the authority concerned.

3. Since, no report was received from the authorities concerned, the Commission fixed for a sitting in the case on 13.07.2021 wherein summons for appearance on 13.07.2021 before the Commission were issued to the Chief Secretary, Govt. of Maharashtra, Additional Chief Secretary, Forests, Maharashtra, Secretary, Tribal Development Department, Maharashtra and the District Collector, Palghar. The Secretary, Tribal Development Department, Govt. of Maharashtra sought exemption vide its letter dated 07.07.2021 and 09.07.2021 and requested for permission to depute the Commissioner, Tribal Research and Training Institute, Pune to appear before the Commission. Similarly, the Principal Secretary, Forest Department, Govt. of Maharashtra sought exemption from personal appearance vide letter dated 09.07.2021 and requested for permission to depute the Additional Principal Chief Conservator of Forests (Conservation). Accordingly, in the sitting, Shri Naresh Zurmure, Addl. PCCF (Conservation), Maharashtra, Ms. Pavneet Kaur, Commissioner, Tribal Research Training Institute, Maharashtra and Shri Manik Gursal, Collector & District Magistrate, Palghar appeared. The petitioner was also present.

4. In the sitting, the petitioner submitted that the Govt. of Maharashtra has issued Individual Forest Rights to the Scheduled Tribes under Forest Rights Act, 2006 (FRA). Accordingly, the Scheduled Tribe IFR holders were living in the forest for last several years. In this regard, the Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006, Rules, 2008 and revised Rules, 2012 (Section 3(1) (a)) clearly stipulated - right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation, for livelihood by a member or members of a forest dwelling Scheduled Tribes or other traditional forest dwellers STs. Further Rule (16) of the Act states that the State Govt. shall ensure through its Departments especially Tribal and Social

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Welfare, Environment and Forests, Revenue, Rural Development, Panchayat Raj and other related Departments involved in upliftment of forest dwelling Scheduled Tribes and other Traditional Forest Dwellers, that all government schemes including those relating to land improvement, land productivity, basic amenities and other livelihood measure are provided to such claimants and communities whose rights have been recognized and vested under the Act. Despite this, the forest officials of the Jawahar and Mokhada Taluka of District Palghar violated the provisions of Forest Right Act, 2006 and committed atrocity against the Scheduled Tribe IFR holders by way of destroying their huts and cultivated crops. They were evicted from their land also. Further, the Forest officials has registered criminal cases in the Court against the ST families alleging that they cut trees and steel wood from the forest and subsequently charge sheeted then in the Court. The list of offences presented mentions "jhopdi" as the crime. The fact was that the Forest official have destroyed their huts and cultivated crops and there was no case of cutting of tree by the ST people. No compensation was paid and no huts were made under the Pradhan Mantri Awas Yojna, as per Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006. The petitioner has cited one example of case of ST person Shri Rama Soma Bartan, Village, Chinchwadi, District Palghar. The said ST person was given an Individual Forest Right Title and he had planted 50 mango saplings provided by the Forest Department under the Crore-Trees-plantation programme. He made a small hut in the forest to protect trees. But the Forest Officials had destroyed his hut. This forced the person to flee from his land and his crops and young trees were destroyed by stray cattle. He has lost his only livelihood. His wife deserted him and the village because of stress. After two years of incident, he is still without a stable source of livelihood. His forest rights title is in vain. The ST person has made a Police complaint of atrocity against him and there was no action taken by the District Administration as well as Police authorities. There were similar several cases wherein hut of the ST families have been destroyed.

The petitioner further stated that on behalf of the affected ST persons, a complaint was lodged before the higher authorities of Forest department, District Administration and Police authorities. But no action was taken by the Department concerned. Thereafter, they have approached the Hon'ble Governor of Maharashtra and requested for protection of the interest of the Scheduled Tribes IFR holders. On 04.02.2020, the Hon'ble Governor of Maharashtra visited the affected village and held a meeting with all the officers concerned and affected ST persons. During the meeting, the Hon'ble Governor clearly instructed the Forest officials that the destroyed huts be reconstructed and adequate compensation under Pradhan Mantri Awas

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Yojna be paid in time bound manner. The Forest Department may also ensure that no such incident should happen in future and all the field officers of the Forest department be directed to not stop the construction of the house on the land belonging to Scheduled Tribe IFR holders. Subsequently, the Forest Department held a meeting on 03.07.2020 with the all stake holders including all concerned officers in the District. During the meeting, the petitioners were informed by the Forest Department that according to Forest (Conservation) Act, 1980, there is prohibition of any activities on the forest land. However, if any activities are to be made, then a permission will be obtained from the Govt. of India. Thus, the Forest officers did not implement the Hon'ble Governor's order, but they continue committing atrocity against the STs. The petitioners have demanded (i) immediate restoration / reconstruction of the houses demolished in IFR land or in pending-claim-lands, (ii) be paid compensation equivalent to Pradhan Mantri Awas Yojna grant (iii) Immediate stay of demolition orders on the land of Scheduled Tribe IFR holders. The petitioner also requested for conducting an enquiry from an independent panel and order of enquiry against Forest Officials who committed atrocity against innocent STs.

5. The Additional Principal Chief Conservator of Forests (Conservation) informed the Commission that under the Indian Forest (Conservation) Act, 1980 it has been clarified that despite providing Patta to the individual forest rights holders, the legal rights on the forest land remained with Govt. of India. In addition, the objective of the Forest (Conservation) Act, is to protect the forest, trees and its wildlife. In the instant case, there was confusion about interpretation of provisions of Indian Forest (Conservation) Act, 1980 and provisions of Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006. Hence, the Forest Department has referred the matter in July, 2020 to seek a Legal Opinion from the Advocate General, Maharashtra to clarify about rights to live on forest land and implementation of provisions of Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006. However, Legal Opinion is yet to be received. In the meanwhile, during the meeting held on 30.06.2020, the Forest Department has decided that the they (Forest Department) would not undertake any prohibitive / penal action and the Forest Right holders should maintain the Status-quo. The Additional Principal Chief Conservator of Forests (Conservation) further informed that the Forest Department may be granted two months time to get Legal Opinion in the matter. Consequent upon receipt of the Legal Opinion, compensation and right to live to the Scheduled Tribes IFR holders will be given.

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8/8/2021
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6. The Commissioner, TRI, Pune, Maharashtra informed the Commission that the Ministry of Tribal Affairs, Govt. of India vide its letter dated 15.01.2019 addressed to the Chief Secretary, Govt. of Maharashtra has clearly advised about undertaking of activities on lands of individual forest right holders in convergence of schemes of different department. The Ministry of Tribal Affairs stated that the Rule – 16 of Forest Rights Act, 2007 should be adhered to. The need for dovetailing all development and welfare programmes in tribal areas for a coherent strategy and coordinated approach involving all Departments had been stressed by the then Prime Minister, in his address during the conference of Chief Ministers and State Ministers convened by this Ministry in November, 2009. It was duly conveyed to the State Governments vide MoTA letter dated 19.11.2009 and 18.02.2010. The need for convergence of Government Developmental Programmes so as to improve the standard of living of Forest Right Holders, was reiterated in D.O. letter dated 27.09.2010. She further informed the Commission that as per the Govt. of India's instructions, there is no bar upon construction of huts and cultivation of crops on the forest land. The Forest Department should be given instructions / directions for implementation of Forest Rights Act, 2006 in toto. In addition, the Forest Department has also booked cases against the Officers of other Departments like PWD, Water, Revenue etc. to run EGS and other activities in the forest area for the development of Scheduled Tribes.

7. The District Collector, Palghar informed the Commission that in Palghar District from Maharashtra, a total of 47189 individual forest rights (IFR) and 437 community forest rights have been issued so far, which is about 25% of total IFR issued in the Maharashtra. The present grievance pertains to atrocity by the Forest Department and the District Administration does not have any role in the matter.

8. The case was discussed in detail. The Commission observed that the Ministry of Tribal Affairs, Govt. of India has issued clear cut directions about Forest Rights of the Scheduled Tribes under FRA, 2006, Rules, 2008 and revised Rules, 2012. This should be implemented in true spirit. But, in the name of Forest (Conservation) Act, 1980 the Forest officials has destroyed huts and crops of individual forest rights holders and then filed criminal cases against them (Scheduled Tribes IFR holders) for cutting of trees. This was violation of the Govt. rules and the Forest officials have not kept in mind the provisions of right to live and constitutional rights of the Scheduled Tribes. The Commission has also noted that there is long delay in obtaining Legal Opinion from the Advocate General by the Forest Department thereby depriving the legitimate rights of the Scheduled Tribes. The Commission also took serious

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note of the fact that the Chief Secretary, Govt. of Maharashtra has not personally appeared before the Commission nor personally requested exemption from personal appearance and permission to depute a Senior Officer to represent him before the Commission vide Summons issued to him on 06.07.2021.

9. After detailed discussion, the Commission recommended that:

- The Forest Department promised that it will get the legal opinion from Advocate General within 02 months from the date of sitting and act accordingly. However, all legal matters concerning Forest Right Act remain with the Ministry of Tribal Affairs.
- The Chief Secretary, Govt. of Maharashtra shall conduct inquiry of officers responsible for these atrocities and take appropriate action under the Prevention of Atrocities Act.
- Provide adequate compensation to the affected individual rights holders equivalent to Pradhan Mantri Awas Yojna.
- Ensure complete status-quo and stay on demolition orders against Scheduled Tribe IFR holders.
- Take necessary action to withdraw all the criminal cases filed against Scheduled Tribes in various Courts.
- The Tribal Welfare Department will monitor the matter and ensure safety and livelihood of the Scheduled Tribes.
- An action taken report in the matter may be submitted to the Commission within two months period from the date of sitting.

Harsh Chouhan

(HARSH CHOUHAN)

HON'BLE CHAIRPERSON

National Commission for Scheduled Tribes

हर्ष चौहान/HARSH CHOUHAN

अध्यक्ष/Chairperson

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NATIONAL COMMISSION FOR SCHEDULED TRIBES

Annexure

(File No. NCST-17013(MH)/4/2020-RU4)

List of participants

NCST

1. Shri Harsh Chouhan, Hon'ble Chairperson (In Chair)
2. Shri Ananta Nayak, Hon'ble Member
3. Shri K. Touthang
4. Dr. Lalit Latta, Director
5. Shri Y.K. Bansal, Research Officer

Officers from Government of Maharashtra

1. Ms. Pavneet Kaur, Commissioner, Tribal Research & Training Institute, Pune
2. Shri Naresh Zurmure, Additional PCCF (Conservation), Maharashtra
3. Shri Malik Gursal, Collector & District Magistrate, Palghar

Petitioner

Shri Milind Thatte