



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No.17/5/2009/STGDH/DEEDUC/RU-I

छठी मंजिल, 'बी' विंग, लोक नायक भवन  
खान मार्केट, नई दिल्ली-110003  
6th Floor, 'B' Wing, Lok Nayak Bhawan  
Khan Market, New Delhi - 110 003

Dated .....13:11:2009.....

To

The Director,  
Directorate of Higher Education,  
Govt. of NCT of Delhi,  
'B' Wing, 2<sup>nd</sup> Floor, 5, Sham Nath Marg,  
Delhi.

[ Kind Attn : Shri A. K. Singh, Dy. Director (Hr.Edn.) ]

**Sub: Comments on the Delhi Educational Institutions (Reservation in Admission) Bill, 2009**

Sir,

I am to refer to your letter No.DHE.6(79)/2007-08/Part File-I/4346 dated 16.10.2009 vide which the subject draft bill was forwarded for comments of the Commission on the subject matter. The Commission deliberated on the subject in its meeting held on 06.11.2009 and recommended as follows:-

"The Secretary, NCST mentioned that besides elegance of drafting there were two issues involved in the revised draft Bill, which needed consideration and comments of the Commission: -

- (i) The first issue related to the definition of the Scheduled Tribes in Section 2 of the Bill in the context of reservation for them for the purpose of their admission in the educational institutions controlled by Delhi Govt. Section 2(l) of the draft Bill provides that the "Scheduled Tribes" means the Scheduled Tribes notified under Article 342 of the Constitution in relation to any State or Union Territory migrated in the NCT of Delhi due to transfer or movement of their father or guardian on account of business or service.
- (ii) The second issue related to the percentage of reservation for STs. Section 3(1) of the Bill states that out of the annual permitted strength in each branch of study or faculty, the percentage of seats reserved for ST shall be prescribed by

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the Govt. from time to time but shall not exceed 7.5% of the annual permitted strength.

The Commission noted that the criteria for deciding the percentage of reservation for Scheduled Tribes for admission in the educational institutions under the control of Govt. of NCT of Delhi had not been specified; and to that extent it embedded the potential for arbitrariness by Delhi Govt. besides legal infirmities. It was also noted that the methodology for implementing the flexible percentage of reservation for Scheduled Tribes mentioned under 5(1) of the draft Bill had also not been specified.

Secretary mentioned that Section 3(ii) of the Central Educational Institutions (Reservation in Admission) Act, 2006 provided 7.5% reservation for STs. The Supreme Court had also ruled that the Union Territory Administration of Pondicherry had not erred in considering Scheduled Castes from all over the India for the posts of Sr. Teachers reserved for Scheduled Castes in the Pondicherry Administration, as they were administered under Central regulations. Members observed that Delhi being the National Capital of the country and the fact that the educational facilities of high order have been created through use of Central revenues, it was quite desirable to extend the benefit of reservation to the Scheduled Tribes from all over the country, irrespective of their nativity. It was also pointed out that Section 2(i) of the Bill contravened the provisions of Article 342 of the Constitution of India as this Article does not talk about such STs, as have migrated to the NCT of Delhi due to transfer in movement of their father or guardian on account of business or service. Therefore, the Commission strongly felt that the restriction of benefit of reservation only to the migrants to the NCT of Delhi as provided in Section 2(i) of the draft Bill was not in order.

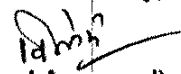
The Commission noted that the percentage of reservation for Scheduled Tribes in Government of India for all purposes is 7.5%, and the Govt. of NCT of Delhi, being a UT was providing similar reservation to Scheduled Tribes irrespective of their nativity in posts/ services under their control as per the letter of the Govt. of NCT of Delhi dated 30/06/2005. The Commission accordingly observed that Delhi being a Union Territory and capital of the country and also considering the fact that percentage of reservation for Scheduled Tribes in service and posts in Govt. of NCT of Delhi was 7.5%, the percentage of reservation for Scheduled Tribes in admission to educational institutions under the control of Govt. of NCT of Delhi should also be fixed at 7.5%.

The Commission also observed that Section 5(1) of the Bill provided that the number of seats in any academic session excluding those reserved for Scheduled Castes, Scheduled Tribes and OBCs should not be less than that available for the immediately preceding session. The Commission felt that the flexible percentage of reservation for Scheduled Tribes in admission to educational institutions under the control of Govt. of NCT of Delhi may lead to problems in case of increase in percentage of reservation of STs.

In view of the above, Commission expressed the view that reservation for Scheduled Tribes for admission to educational institutions under the control of Govt. of NCT of Delhi should be 7.5% (and not upto 7.5% as stated in the Bill) and that all the STs irrespective of their nativity (on the line of reservation in services/ posts under control of Delhi Govt.) should be eligible to avail of the benefit of reservation. The Commission accordingly felt that the Govt. of NCT of Delhi should take immediate action:

- (i) To amend Section 2(l) of the Bill to delete the words "migrated in the NCT of Delhi due to transfer or movements of their father or guardian on account of business or service" with a view to make the contents of this Section to conform to the provisions of Article 342 of the Constitution and extend the benefit of reservation to all the Scheduled Tribes irrespective of their nativity instead of restricting it only to the ST migrants to the NCT of Delhi.
- (ii) To amend Section 3(1) (ii) of the Bill to provide that out of the annual permitted strength in each branch of study or faculty, 7.5% seats shall be reserved for the Scheduled Tribes.
- (iii) To amend Section 5(1) of the Bill to make it applicable only for implementation of the reservation for OBCs."

2. You are requested to kindly intimate the final outcome of the draft bill w.r.t. the recommendations of the Commission.

Yours faithfully,  
  
(Vinod Aggarwal)  
Director