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BY SPEED
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10/8/11

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.

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Yours faithfully,

(Aditya Mishra)

Joint Secretary

Encl: As above. (Total 3 pages)

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

52

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

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

**National Commission for
Scheduled Tribes (NCST)**

**Deptt. 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



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: 3rd November, 2011

To

✓ The Secretary,
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, Ministry of Rural
Development on 03.11.2011

Madam,

The Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Rural Development on
03.11.2011 are enclosed.

Yours faithfully,


(Aditya Mishra)

Joint Secretary

Encl: As above. (Total 3 pages)

N.O.O.

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**Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Rural Development
on 03.11.2011**

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

2. Joint Secretary, NCST mentioned that the Secretary, Ministry of Rural Development was called to submit the position, as under, in accordance with para 5 of NCST letter No. No.NCST/2008/REHAB/01 dated 14th October, 2011 as the Secretary, MoRD had shown the obdurate avoidance in respect of the obligation to consult the Commission in a meaningful manner on the MMDR Bill, as mandated under Article 338A(9) of the Constitution:

- (a) Produce a chronological record of the action taken on the requests made by the Commission regarding (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011.
- (b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and
- (c) Explain why legal action should not be instituted against the Secretary, Deptt. of Land Resources, MoRD, for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

Chairman, NCST mentioned that the Commission, in particular, desired a chronological statement of the manner in which the request of the Commission had been dealt with by different officials at different stages so that the cause can be included in the Annual Report of the Commission and appropriate legal action taken against the delinquents.

3. Chairman, NCST also asked the Secretary to explain why he had disregarded his obligation under Rule 11 of the Transactions of Business Rule to ensure proper transaction of business and failed to observe due diligence in the discharge of his duties according to the Rule of Law.

4. Chairman, NCST also questioned the Secretary, MoRD about his failure to understand the problem of STs and deal with them sympathetically as expected of all India Service officers.

5. Secretary, MoRD briefly submitted the position in the matter. Chairman, NCST desired that the Secretary, MoRD should submit his comments on all the points mentioned in paragraph 2 to 4 above with documentary evidences, within a fortnight.

डॉ० रामेश्वर ड्राॉन / Dr. RAMESHWAR DRAON
अध्यक्ष / Chairman
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Rameshwar Oraon
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Annexure

List of the officials present in the meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Rural Development on
03.11.2011

National Commission for Scheduled Tribes (NCST)	, Ministry of Rural Development
1 Sh Aditya Mishra, Joint Secretary	1 Shri B.K. Sinha, Secretary
2 Sh S.P. Meena, Asstt. Dir.	2 Shri Prabhudayal Meena Addl. Secretary
	3. Shri Surendra Kumar, Joint Secretary
	4. Shri N.K. Srivastava, Deputy Secretary.

Rameshwar Oraon

डा० रामेश्वर उराँव / Dr. RAMESHWAR ORAON
अध्यक्ष / Chairman
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

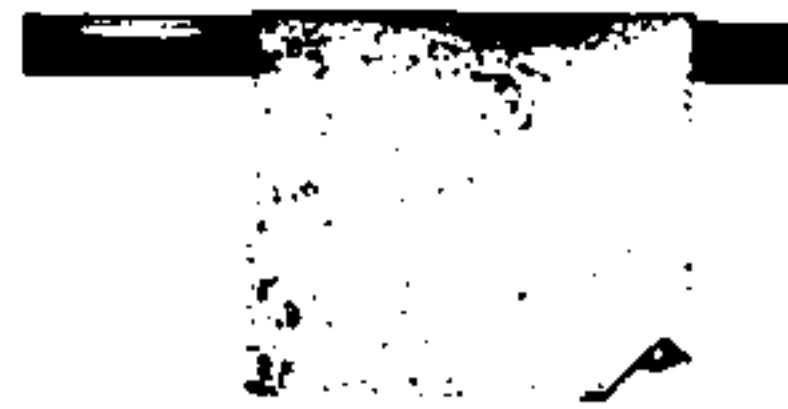
Annexure

List of the officials present in the meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Rural Development on
03.11.2011

National Commission for Scheduled Tribes (NCST)	, Ministry of Rural Development
1 Sh Aditya Mishra, Joint Secretary	1 Shri B.K. Sinha, Secretary
2 Sh S.P. Meena, Asstt.Dir.	2 Shri Prabhudayal Meena Addl. Secretary
	3. Shri Surendra Kumar, Joint Secretary
	4. Shri N.K. Srivastava, Deputy Secretary.

Rameshwar Oraon

डा० रामेश्वर उराँव / Dr. RAMESHWAR ORAON
अध्यक्ष / Chairman
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi



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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.)

No. NCST/2008/REHAB/01

Date: 14th March, 2012

To

Ms. Anita Chaudhary,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhavan,
New Delhi. - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by the Deptt. of Land Resources, MoRD with reference to (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011.

Sir,

I am to refer to your letter No.21013/01/2011-LRD dated 17/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 16/02/2012 with reference to NCST letter of even number dated 03/02/2012 and accompanying brief.

2. The statement has been examined. The Commission has noted that non-compliance/non-receipt of any response from you to the NCST communication dated 13/10/2011, asking you to produce a chronological record of the action taken on the request of the Commission, has been occasional as a result of your absence on long medical leave during the period. The Commission has, therefore, not proceeding with any action in this regard.

3. The Commission has, however, noted that despite exhortations, the (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and, (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011 were not forwarded to the Commission as mandated under Clause (9) of Article 338A of the Constitution. The draft Land Acquisition and Rehabilitation & Resettlement Bill, 2011 was also not forwarded to the Commission for its views/

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comments even at the time of inter-Ministerial consultations, as assured by you in the meeting taken by the Chairperson on 29/07/2011.

4. The Commission has noted that the treatment of the case in your capacity as the Secretary of the MoRD, reflects lack of proper understanding of Constitutional provisions – in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution. Further, instead of responding substantively to the issues raised by the Commission in the meeting taken by the Chairperson on 29/07/2011, extraneous and illusory questions had been raised regarding the powers of the Commission (para 6 of minutes of the Meeting held on 29/07/2011 refer). These transgressions are viewed as deliberate disregard of the authority vested with the Commission under Clause (8) (b) of Article 338 A, whereby the Commission, while investigating any matter, inter- alia, referred to in sub-clause (a) has all the powers of a Civil Court in regard to production of documents. The Commission has viewed that such perfidious actions on the part of a very senior officer of the level of Secretary to the Government are to be deprecated as deliberate failure to maintain transparency of actions regarding implementation of Constitutional safeguards with respect to Scheduled Tribes; and the same do not exhibit the expected sensitivity of approach/attitude towards weaker sections.

5. However, taking a lenient view of the matter, the Commission has decided to advise the DoPT, which is the Cadre Controlling Authority for the All India Services (IAS), as well as the Cabinet Secretariat, to take appropriate action in the matter; and also take requisite measures to avoid recurrence of such cases in future keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998.

Yours faithfully,

(Aditya Mishra)
Joint Secretary

Encl: As above.

Copy to:

~~The Secretary,
Deptt. of Personnel &
Training,
North Block, New Delhi.~~

For further action keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be advised urgently, positively by 19/03/2012

Copy also forwarded to:
The Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhavan,
New Delhi.

In continuation of NCST letter No. 12/04/Coord. Dt. 29/02/2012, forwarding proceedings of the Sitting taken by the Chairman, NCST on 21/02/2012.

It is requested that appropriate action on the subject

458

may please be taken with requisite measures to avoid recurrence of such cases, keeping in view the instructions contained/ in the DoPT O.M. No.36036/2/97-Estt (Res) dated 01/01/1998 and 30/11/1998. The action taken in the matter may please be communicated urgently, positively by 19/03/2012.


(Aditya Mishra)
Joint Secretary

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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.)

No.NCST/2008/REHAB/01

Date: 29th February, 2012

To


The Secretary
(Kind Attention: Ms. Anita Chaudhary),
Department 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, MoRD on 16/02/2012

Madam,

The proceedings of the meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, MoRD on 16/02/2012 are enclosed.

Yours faithfully,


(S.P. Meena)
Asstt. Director

Encl: As above.



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Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, MoRD on 16/02/2012

A list of the officers present in the meeting is at the Appendix.

2. Joint Secretary, NCST mentioned that Ms. Anita Chaudhary, Secretary, MoRD, was called to submit the position, in pursuance of NCST letter dated 3/02/2012 as, Ms. Chaudhary had shown the obdurate avoidance in respect of the obligation to consult the Commission in a meaningful manner on the i) Land Acquisition (Amendment) Bill, 2007, ii) Rehabilitation and Resettlement Bill, 2007 and iii) Land Acquisition and Rehabilitation and Resettlement Bill, 2011, as mandated under Article 338A(9) of the Constitution and also had not effectively complied with the Commission's directive to produce documents mentioned in NCST communication dated 13/10/2011 to produce a chronological record of the action taken on the request of the Commission to forward the Bill for its views/ comments. The then Secretary, MoRD had also not complied with the directions of the Commission in the Sitting taken on 3/11/2011 to submit comments in the matter with documentary evidence within a fortnight. The Commission also handed over a self-contained brief (Annexure) to Ms. Anita Chaudhary, Secretary, MoRD, which contained concerns of the Commission on the related issues.

3. Ms. Anita Chaudhary, Secretary, MoRD briefly mentioned that she had been on leave from August 2011 to February 2012. Ms. Chaudhary also clarified that copies of the relevant documents had already been enclosed to the Department's letter dated 21/11/2011. However, if NCST wishes to peruse any other records in this regard, DoLR will be willing to provide the same. Ms. Chaudhary also submitted that a written statement in this regard would be submitted shortly.

Rameshwar Oraon

डॉ० रामेश्वर उराँव / Dr. RAMESHWAR ORAON
अध्यक्ष / Chairman
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

ANNEXURE

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BRIEF

1. The Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, any law for the time being in force and under any order of the Government, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article, the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

2. In accordance with Clause 8 of the Article 338A, the Commission, while investigating any matter referred to the safeguards provided for the STs under the Constitution or any other law or any order of the Govt. and to evaluate their working have **all the powers of a civil court, inter alia**, in respect of requisitioning any public record or copy thereof from any court or office

3. Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and (iii) Land Acquisition and Rehabilitation and Resettlement Bill, 2011 are an important legislations, concerning the STs, as displacement affects tribals in a large measure, particularly their livelihood, settlements, environment, culture etc. The Commission was, therefore, anxious that certain important concerns need to be adequately addressed in the Bill. It was, however, noted that notwithstanding the mandatory provision in the Constitution to consult the Commission in such matters, MoRD had not sought the comments of the Commission on the draft Bills. The Commission also noted that the Secretary, MoRD was requested on several occasions to submit the Draft Bill(s), as finalized by the Ministry, for obtaining the views/comments of the Commission under Article 338A(9) of the Constitution, as detailed below:

Reference No./Date

Contents in brief

NCST : MoRD had not sought the comments of the Commission
/2008/REHAB/01 dt. on the draft Rehabilitation and Resettlement Bill, 2007
06/08/2010 and Land Acquisition (Amendment) Bill, 2007.
Notwithstanding this, the Commission had, suo-moto, communicated its views/suggestions to the Minister of Rural Development on the both the Draft Bills vide D.O. letter dated 6th August, 2010. Minister, MoRD apprised of the mandatory consultation on all major policy matters affecting Scheduled Tribes under Clause 9 of Article 338A and requested to forward the draft legislation as soon it is finalized.

Minutes of the : Secretary, Deptt. of Land Resources, MoRD informed

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Meeting held on
29/07/2011, circulated
vide Letter NCST
/2008/REHAB/01
dt. 10/08/2011

that an integrated Bill covering both land acquisition and rehabilitation and resettlement- Land Acquisition and Rehabilitation & Resettlement Bill, 2011, was being processed.

The Commission emphasized that the rights of Scheduled Tribes needed special consideration through a separate Chapter in the Bill keeping in view the provisions of the Constitution applicable to the Scheduled Tribes and the Scheduled Areas. 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 the 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 Cabinet.

The Secretary, Deptt. of Land Resources, MoRD mentioned that the MoRD would consider the observations of the NCST and, if considered necessary, the matter will be decided in consultation with the Ministry of Law.

Deptt. of Land
Resources, MoRD
Letter
11015/10/2010-LRD
dt. 19/08/2011

Additional Secretary, Deptt. of Land Resources, MoRD, vide letter dated 19th August, 2011 (received on 29th August, 2011) sought comments of the Secretary, NCST on the Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011 as available in the public domain. (It was noted from the website that Ministry of Rural Development had given the public time till August 31 to send their comments).

NCST /2008/
REHAB/01 dt.
30/08/2011

Deptt. of Land Resources, MoRD requested to forward the draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011, after its finalization by the MoRD, for views/suggestions of the Commission under Article 338 A(9) of the Constitution.

NCST
/2008/REHAB/01
dt. 09/09/2011

Secretary, Deptt. of Land Resources, MoRD, requested to forward a copy of their reference to the Ministry of Law and their views, if received, to the Commission urgently.

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Deptt. of Land Resources, MoRD Letter 11015/10/2010-LRD dt. 13/09/2011 : MoRD informed that the Land Acquisition and Rehabilitation and Resettlement Bill, 2011 after approval by the Cabinet on 05/09/2011 had been introduced in the Lok Sabha on 07/09/2011.

4. It is evident from the above that the Deptt. of Land Resources, MoRD have faulted in respect of lack of proper understanding of the Constitutional provisions - in particular, the obligation to consult the Commission in a meaningful manner, as mandated under the Constitution, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to STs and failed to exhibit expected sensitivity of approach/attitude towards weaker sections.

5. Therefore, in view of the obdurate avoidance manifest by the Deptt. of Land Resources, MoRD in respect of the obligation to consult the Commission on the (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and (iii) Land Acquisition and Rehabilitation & Resettlement Bill, 2011 as mandated under the Constitution, a Notice dated 14/10/2011 was issued to Ms. Anita Chaudhary, Secretary, MoRD to:

- (a) produce a chronological record of the action taken on the request made by the Commission regarding (i) Land Acquisition (Amendment) Bill, 2007, (ii) Rehabilitation and Resettlement Bill, 2007 and (iii) Land Acquisition and Rehabilitation and Resettlement Bill, 2011
- (b) explain the reasons to avoid meaningful consultations with the Commission on the important legislation concerning the STs; and
- (c) Explain why legal action should not be instituted against the Secretary, Deptt. of Land Resources, MoRD for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.

6. In the Notice dated 14/10/2011, it was also mentioned that the Deptt. of Legal Affairs, in response to a reference by the Ministry of Mines have opined vide letter No.FTS/2878/LS/11 dated 22/09/2011 that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet. However, the Land Acquisition and Rehabilitation and Resettlement Bill, 2011 was not forwarded by the MoRD to the Commission in the process denying the Commission opportunity to place its views before the apex decision making body

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7. In the Sitting held by the Chairperson on 3/11/2011 (attended by the then Secretary), MoRD was requested to furnish his comments on points mentioned at para 5 (a), (b), (c) above and also in respect of the following:

- (i) Why he had disregarded to his obligation under Rule 11 of the Transactions of Business Rules to ensure proper transaction of business and failed to observe due diligence in the discharge of his duties according to Rule of Law.
- (ii) Reasons of his failure to understand the problem of STs and deal with them sympathetically as expected of all India Service officers.

Chairman, NCST had also clarified to the then Secretary, MoRD that the Commission, in particular, desired a chronological statement of the manner in which the request of the Commission for submitting a copy of the draft Bill had been dealt with by different officials at different stages so that the case can be included in the Annual Report of the Commission and appropriate legal action taken against the delinquent. The then Secretary, MoRD was also requested to submit his comments on the above mentioned issues with documentary evidence within a fortnight.

8. The Ministry of Rural Development vide letter dated 21/11/2011 furnished a reply, inter- alia stating that the Department had followed the guidelines/ instructions of the Cabinet Secretariat regarding inter-ministerial consultations. It was also highlighted in the letter that the Cabinet Secretariat vide its letter dated 21/10/2011 has informed that "the sponsoring ministry/ department may consult the administrative Ministry/ Department dealing with the relevant Constitutional body/ Commission/ Statutory body etc. except in cases where there is no administrative Ministry/ Department specified for such bodies/Commission etc." MoRD did not communicate details of their reference to the Ministry of Law, if any, in the matter as mentioned in the meeting held on 29/07/2011.

9. The reply of the MoRD vide their OM dated 21/11/2011 in the matter has been examined and following comments are offered (by NCST):

(i)	Though the letter was addressed by name to Ms. Anita Chaudhary, Secretary, MoRD, reply has been received from some other person (Shri Surendra Kumar, Joint Secretary, MoRD) vide MoRD OM No. 210111/04/2011-LRD dated 21/11/2011, which does not even purport to be authorized by her. Thus, Ms. Anita Chaudhary, Secretary, MoRD, has not complied with the directions contained in the NCST Notice dated 14/10/2011. It is debatable whether she would take such action when giving witness before regular court ! The other course of action left for the Commission was to refer the matter to the Magistrate for contempt.
(ii)	MoRD's reply is a clear afterthought, since the Bill was introduced on 7/9/2011 and the advice of the Cabinet Secretariat was issued on 21/10/2011.
(iii)	No reasons have been stated vide MoRD letter dated 21/11/2011 as to why a copy of the Bill, as finalized before submission to the Apex Committee have been

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communicated to the Commission

The case reveals that the MoRD has disregarded the provision under Article 338A(9) of the Constitution, despite several communications from the Commission, and also contravening the advice of the Ministry of Law that Ministries are obligated by the Constitution to consult the Commission on the provision of the draft Bill affecting STs.

10. The sitting was earlier scheduled on 13/02/2012 vide NCST letter dated 3/02/2012, to offer a final opportunity to Ms. Anita Chaudhary, Secretary, Ministry of Rural Development) to explain her position on the above issues before discussing with the DoPT regarding appropriate action against the delinquent(s) and measures to avoiding recurrence of such cases in the light of their O. M No. 36036/2/97-Res.(Res) dated 01/01/1998 regarding considering the directions given by the NCST. However, MoRD vide OM dated 7/02/2012 has informed that Ms. Anita Chaudhary had been on long leave due to her illness since 17/8/2011 and was expected to join duties on 10/02/2012. Taking into consideration this position, the sitting has been re-scheduled on 16/02/2012 at 1500 hrs.