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SPEED POST

BY SPEED
POST



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.12/12/2009-Coord

Date:10th August, 2011

To


The Secretary,
Ministry of Mines,
3rd Floor, A Wing,
Shastri Bhavan,
New Delhi - 110001

Sub: Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Mines, on
25.07.2011

Sir,

The Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Mines on 25.07.2011 are
enclosed.

Yours faithfully,


(Aditya Mishra)
Joint Secretary

Encl: As above. (Total 5 pages)

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In file
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**Proceedings of Meeting by Dr. Rameshwar Oraon, Hon'ble Chairperson with
Secretary, Ministry of Mines on 25.07.2011**

A List of officers present in the Sitting is at the Annexure.

1.0 ISSUE

Action taken regarding the recommendations of the Commission sent to the Ministry on the draft Mines and Mineral(Regulation and Development) Bill, 2010.

2.0 BACKGROUND

The Constitution of India enjoins upon this Commission to monitor all matters relating to the safeguards provided for the Scheduled Tribes, 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 also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. Clause 5(d) further provides that the Commission shall present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

It is understood from the reports that Group of Ministers (GoM) had approved the new draft Mines and Minerals (Development & Regulation) Bill, 2010 (MMDR Bill, 2010). As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, the Commission is anxious that certain important concerns need to be adequately addressed in the Bill. The concerns of this Commission regarding safeguards of the Scheduled Tribes in the MMDR Bill, 2010 were communicated to Hon'ble Minister vide DO letter No.NCST/2008/REHAB/01 dated 06.08.2010 and DO letter No.12/2/2009-Coord dated 11.10.2010. The comments of the Commission on the related clauses of the Bill have also been forwarded to the Ministry of Mines.

The Ministry have not informed the Commission regarding the action taken on the comments/suggestions made by the Commission. The Commission DO letter No.12/2/2009-Coord dated 13.07.2011 refers in this regard.

Rameshwar Oraon

3.0 DISCUSSION

Initiating the discussion, Joint Secretary, NCST, mentioned that the meeting was convened in pursuance of the observations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report, wherein the Committee had desired feedback regarding action taken by the concerned Ministries/ Departments/Organizations on the recommendations/observations of the Commission of various policy related matters. He further mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/Departments/Organizations to consult the Commission on all major policy matters affecting Scheduled Tribes. However, the Ministry of Mines had not so far sought comments of the Commission on the draft MMDR Bill, 2010. Notwithstanding this, the Commission had, suo moto, communicated its views/suggestions to the Ministry of Mines vide D.O. letter quoted above on the Draft MMDR Bill (version 03.06.2010, available on the web-site of the Ministry).¹⁾

Representative of the Ministry of Mines clarified that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to NCST. However, once the concerns of the NCST were received, the same were considered suitably for incorporation. Secretary, Ministry of Mines clarified that Shri Maurice Kujur, Hon'ble Vice-Chairman, NCST, had written to then Hon'ble Minister of Mines Shri B.K. Handique on 6.8.2010 vide D.O. No.NCST/2008/REHAB/01 on the concerns pertaining to Scheduled Tribes arising out of mining operations. [As the draft MMDR Bill had been referred by the Cabinet Secretariat to a Group of Ministers, and the GoM had held two rounds of meetings, Vice-Chairman, NCST was so informed by Hon'ble Minister of Mines vide his D.O dated 27.9.2010. Draft MMDR Bill, 2010 after consideration by the Group of Ministers (GoM) had been recommended by the GoM to the Cabinet after legal vetting for consideration. The concerns of the Commission on various provisions of the draft Bill had been appropriately taken care of. In this connection, Secretary, Ministry of Mines also submitted point-wise comments with reference to the views/suggestions of

Rameshwar Oraon

the Commission to the draft MMDR Bill, 2010 in the meeting, including the recommendation of NCST on replacing the concept of profit sharing with royalty sharing.

The Commission noted from the position submitted by the Ministry of Mines that the Commission's recommendations in respect of the following areas don't appear to have received attention.

- i. Issue of sweat equity to the land owners, and dividends at par with the other share holders, as part of profit sharing. In the event of closure of operations in a particular mine or operations below a certain optimal level, redemption of the equity of the land owners and fixation of annuity in lieu of the royalty that was being paid while the mine was in operation. (Sl. No.(v) of Ex-Vice Chairperson D.O. letter dated 11.10.2010).

Representative of the Ministry clarified that the same is adequately covered by the provision on lease holders sharing a sum equivalent for royalty with the persons affected by mining operations since the project sharing concept has been curtailed.

- ii. Consideration of R&R plan with the mining plan (Sl. No. (vi) of Ex-Vice Chairperson D.O. letter dated 11.10.2010).

The Ministry of Mines mentioned that mining plan is a legal document containing specification on mining matters, which would require techno-economic skills to evaluate, and such skills may not be available in the Gram Sabha/ District Councils, which render the entire exercise futile. Ministry of Mines further clarified that matters relating to R&R would be taken up in accordance with the R&R Policy at the State Government level and would not form a part of the mining plan which is regulated by IBM.

- iii. Utilization of National Mineral Fund and State Mineral Fund (Comments of the Commission against Clause No. 49(2) and 52(4) respectively forwarded vide letter dated 15.7.2011).

Rameshwar Rao

The Commission mentioned that the NCST did not favour District Mineral Fund (DMF) because of the potential for diversion to other proposals and preferred direct payment to the affected people. Secretary, Ministry of Mines mentioned that the concept of DMF had developed out of the consideration that all mines or minerals may not yield similar revenues and that some of the mines may be more profitable, while some may incur even losses leading to differential payments and inequalities. Further, at mine development stage there would be no revenue generation in the mines, thus impacting the beneficiaries. Therefore, to ensure payment to the affected people at a uniform level with respect to the nature of claim, establishment of the DMF had been considered by GoM as appropriate. Moreover, the Sustainable Development Framework which is in the process of being finalized would address to all remaining issues of SIA.

The Commission observed that its recommendations as mentioned at Sr. No. i to iii above, being important, required consideration of the Government, and in case it was not found to be feasible to incorporate Commission's recommendations for general adoption, these may be incorporated as special provisions, applicable to the Vth Scheduled Areas. Secretary, Ministry of Mines mentioned that it was his understanding that all of the issues had been substantially addressed in the draft Bill. However, after approval by the Cabinet, the finalized draft would be made available to the Commission before introducing it in Parliament from where it would be sent to Standing Committee of Coal and Steel for further examination.

4.0 CONCLUSION

The Commission observed that since the draft MMDR Bill, as finalized and being processed had not been referred for comments by the Ministry of Mines, the Commission was not in a position to date, to discharge its mandated function in regard to an important legislation relating to STs like the MMDR Bill, 2010.

Rameshwar Singh

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BY SPEED
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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.)

F.No.12/2/2009-Coord

Date: 20th Sept., 2011

To

The Secretary (Legal Affairs),
Ministry of Law and Justice,
R.No. 404, A Wing,
Shastri Bhavan, New Delhi.
FAX 23384403

Sub: Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Hon'ble Chairperson with Secretary, Ministry of Mines on 15.09.2011 on the MMDR Bill 2010

Sir,

A copy of the proceedings of the meeting taken by Dr. Rameshwar Oraon, Hon'ble Chairperson with the Secretary, Ministry of Mines and the Ministry of Law & Justice on 15.09.2011 on the MMDR Bill 2010 is enclosed for necessary action.

Yours faithfully,


(Aditya Mishra)
Joint Secretary

Encl: As above

Copy to

The Secretary,
Ministry of Mines,
3rd Floor, A Wing, Shastri
Bhavan, New Delhi - 110001

For information and necessary action.

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**Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Hon'ble
Chairperson with Secretary, Ministry of Mines on MMDR Bill, 2010 on
15.09.2011**

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

1.0 Initiating the discussion, Joint Secretary, NCST mentioned that the meeting was convened to ascertain views of the Ministry of Law on the reference made by the Ministry of Mines on the following, as communicated vide their O.M.No. 16/83/2009-MVI (part V) dated 13th September, 2011:

- (i) whether the draft MMDR Bill, 2011, as a legislation based on National Mineral Policy, 2008, qualifies as a policy matter affecting the Scheduled Tribe in terms of the provisions of clause (9) of Article 338A of the Constitution of India, and
- (ii) whether the draft MMDR Bill, 2011, can be shared at this stage with the National Commission for Scheduled Tribes, when the Group of Ministers has recommended the draft Bill to be placed before the Cabinet (since it is a part of the Cabinet process).

2.0 Joint Secretary, Deptt. of Legal Affairs, Ministry of Law and Justice informed that the Ministry of Law was in the process of finalization of its views in the matter and its opinion would be communicated shortly. Hon'ble Chairperson, NCST desired that the Ministry of Law & Justice should urgently communicate their comments on the subject to the Commission, positively within 10 days.

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Annexure

List of officials present in the meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Mines and Ministry of Law &
Justice on 15.09.2011

National Commission for Scheduled Tribes (NCST)	Ministry of Mines,	Ministry of Law & Justice, Deptt. of Legal Affairs
1 Sh Aditya Mishra, Joint Secretary	1 Shri S. Vijay Kumar, Secretary 2. Shri Anil Subramaniam, Under Secretary	Shri M.K. Sharma, Joint Secretary

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Annexure

List of officials present in the meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, Ministry of Mines and Ministry of Law &
Justice on 15.09.2011

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

1 Sh Aditya Mishra,
Joint Secretary

Ministry of Mines,

1 Shri S. Vijay
Kumar, Secretary
2. Shri Anil
Subramaniam,
Under Secretary

**Ministry of Law &
Justice, Deptt. of
Legal Affairs**

Shri M.K. Sharma,
Joint Secretary

S/No. 41(R)

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POST SPEED POST

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.12/2/2009-Coord

Date:3rd November, 2011

To


The Secretary,
Ministry of Mines,
Room No.320, 'A' Wing,
Shastri Bhavan,
New Delhi.

Sub: Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Chairperson, NCST with the Secretary, Ministry of Mines on 03.11.2011.

Sir,

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

Yours faithfully,


(Aditya Mishra)
Joint Secretary

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Encl: As above. (Total 2 pages)

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**Proceedings of the Meeting taken by Dr. Rameshwar Oraon, Chairperson,
NCST with the Secretary, Ministry of Mines 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 Mines was called to submit the position, as under, in accordance with para 4 of NCST letter No. 12/2/2009-Coord dated 13th October, 2011, as the Secretary, Ministry of Mines 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 the MMDR Bill, 2010.
- (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, Ministry of Mines, 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, Ministry of Mines about his failure to understand the problem of STs and deal with them sympathetically as expected of all India Service officers.

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

Rameshwar Oraon

डॉ० रामेश्वर कर्मा / 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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Annexure

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

National Commission for Scheduled Tribes (NCST)	Ministry of Mines
1 Sh Aditya Mishra, Joint Secretary	1 Shri S. Vijay Kumar, Secretary
2 Sh S.P. Meena, Asstt.Dir.	2 Shri Anil Subramaniam, Under Secretary,

Rameshwar Oraon

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



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BY
FAX/
SPEED
POST

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.12/2/2009-Coord

Date: 29th February, 2012

To

**The Secretary,
(Kind Attention:)Shri S. Vijay Kumar
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhavan,
New Delhi - 110011**

**Sub: Proceedings of the Meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, MoRD on 13/02/2012**

Sir,

The proceedings of the meeting taken by Dr. Rameshwar Oraon,
Chairperson, NCST with the Secretary, MoRD on 13/02/2012 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 13/02/2012**

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

2. Joint Secretary, NCST mentioned that the Secretary, MoRD, the then Secretary, Ministry of Mines, was called to submit the position, in pursuance of NCST letter dated 3/02/ 2012 as the then Secretary, Ministry of Mines, 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 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 and 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 Shri S. Vijay Kumar, Secretary, MoRD, which contained concerns of the Commission on the related issues.
3. Shri S. Vijay Kumar, Secretary, MoRD mentioned that he would separately submit his statement 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

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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. Mines and Minerals (Development & Regulation) Bill, 2010/11 is an important legislation, concerning the STs, as mining 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, Ministry of Mines had not sought the comments of the Commission on the draft MMDR Bill. The Commission also noted that the Secretary, Ministry of Mines was requested on several occasions to submit the Draft MMDR Bill, 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 Letter Secretary, Ministry of Mines
12/2/2009-Coord dt. Mines apprised of the mandatory
21/05/2010 consultation on all major policy matters affecting Scheduled
Tribes under Clause 9 of Article 338A and requested to
forward the draft regulation as soon it is finalized.

NCST Letter Secretary, Ministry of Mines
12/2/2009-Coord dt.28/06/2010 again requested to forward the
new Draft MMDR Act, as soon as it is finalized for
comments/views of the Commission.

Minutes of the In the meeting taken by the Hon'ble Chairperson with the
Meeting held on Secretary, Ministry of Mines, it was emphasized that the
25/07/2011, circulated Ministry of Mines had not sought comments of the
vide NCST Letter Commission on the draft MMDR Bill, 2010.

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12/2/2009-Coord
dt.27/07/2011 Rep. Ministry of Mines mentioned in the meeting that since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to National Commission for Scheduled Tribes for consultation.

NCST Letter Secretary, Ministry of Mines requested to forward the Draft
12/2/2009-Coord dt MMDR Bill 2010, as finalized by the Group of Ministers for
27/07/2011 Commission's views/suggestions to enable the Commission
discharge its mandate in the spirit of the Constitution.

NCST Letter Secretary Ministry of Mines was informed that the Commission
12/2/2009-Coord dt was not agreeable to the contention of the Secretary, Ministry
10/08/2011 of Mines that legislation was not a policy matter within the
ambit of Article 338A (9) of the Constitution. Ministry of Mines
was also apprised of the concern of the Commission regarding
non-furnishing of the Draft MMDR Bill, 2010 inspite of NCST
letter dated 27/07/2011 for Commission's views/suggestions in
the matter. Secretary, Ministry of Mines also requested to
produce copy of the draft MMDR Bill, 2010 in the meeting
scheduled to be held on 17/8/2011.

Min. of Mines Letter Ministry of Mines informed that views of the Deptt. of Legal
16/83/2009-MVI)Part Affairs, Ministry of Law have been sought inter-alia, on the
v) dt. 11/08/2011 need to consult the Commission on the MMDR Bill, 2010
(signed by Shri. G. legislation (Draft MMDR Bill, 2011 was submitted for the
Srinivas, Joint consideration of the Cabinet on 30/08/2011)
Secretary)

NCST Letter Secretary, Ministry of Mines apprised of the need to forward
12/2/2009-Coord dt - the draft Bill finalized in the Ministry to the Commission.
09/09/2011

Ministry of Law letter Ministry of Law furnished their opinion in the matter to the
dated 22/09/2011 Ministry of Mines

Ministry of Mines Ministry of Mines forwarded a copy of the Draft MMDR Bill,
Letter No. dated 2011 (Cabinet approved the draft MMDR Bill, 2011 on
30/9/2011 30/9/2011).

4. Ministry of Law, based on a reference from the Ministry of Mines regarding need to consult the Commission on the Bill had opined that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may be no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet. However, the draft MMDR, Bill 2011 was not forwarded by the Ministry of Mines to the Commission until after it was considered by the Cabinet on 30/09/2011 in the process denying the Commission opportunity to place its views before the apex decision making body.



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5. It is evident from the above that the Secretary, Ministry of Mines had faulted in 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, in the process, also failed to exhibit expected sensitivity of approach/attitude towards weaker sections.

6. Therefore, in view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, a Notice dated 13/10/2011 was issued to Shri S. Vijay Kumar, then Secretary, Ministry of Mines to:

- a) produce a chronological record of the action taken on the request made by the Commission regarding the MMDR Bill, 2010,
- 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 him 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.

7. In response to the Notice, the Ministry of Mines vide their OM dated 24/10/2011 furnished a background brief on the observations of the NCST with the action taken on various references from the NCST in the matter, in which they urged that neither the Ministry nor the Secretary, Ministry of Mines sought to deny the NCST a finalized copy of the MMDR Bill, as approved by the Government. Further, neither the Ministry nor the Secretary Ministry of Mines had any intention to disregard the NCST or avoid meaningful consultations with the NCST and Secretary, Ministry of Mines had, in fact, appeared before the Commission three times and explained in detail the extent to which the concerns of the Commission were being addressed.

8. In the Sitting held by the Chairperson on 3/11/2011, Shri Anil Subramaniam, Under Secretary, Ministry of Mines also handed over a letter enclosing a modified version of the background brief (para 3.4 added) as the statement of the Secretary, Ministry of Mines to be taken on record. Para 3.4 stated that Cabinet Sectt., with reference to a similar reference from the MoRD regarding mandatory consultations with the Commission, had informed (Cabinet Sectt. letter dated 2/10/2011) that the sponsoring Ministry may consult the administrative Ministry/ Department dealing with the relevant Constitutional Body/ Commission. Chairman, NCST had again clarified to Shri S. Vijay Kumar, then Secretary, Ministry of Mines 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. In the meeting, Shri S. Vijay Kumar, Secretary, Ministry of Mines was requested to furnish his

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comments on points mentioned at para 6 (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.

Shri. S. Vijay Kumar, then Secretary, Ministry of Mines was also requested to submit his comments on the above mentioned issues with documentary evidence within a fortnight. In response to this, Ministry of Mines vide OM dated 21/11/2011 again forwarded a Statement on behalf of the Ministry of Mines on the issues raised by the Chairperson, NCST regarding consultation with the Commission. Alongwith the Statement was attached a revised Note with addition of para 3.4 in, and modification of para 4 of their earlier brief communicated vide their OM dated 24/10/2011. The OM dated 21/11/2011 mentioned that Secretary, Ministry of Mines in the meeting taken on 3/11/2011 had affirmed that he did not disregard obligations under Transactions of Business Rules, nor did he fail to observe due diligence since instructions on the subject referred for Cabinet process were duly followed; and that he had also elaborated the provisions included in the draft MMDR Act which showed adequate understanding of the problems of STs, especially in relation to mining sector. In the (further) modified para 4 of their communication dated 21/11/2011, the Ministry of Mines expressed that consultation through Administrative Ministries would lead to not only a comprehensive coordinated and meaningful consultation, but would also ensure that the administrative Ministry viz. MTA and the Commission (NCST) do not work at cross-purposes. Ministry of Mines did not furnish any documentary evidence as emphasized in the meeting taken by the Chairperson on 3/11/2011.

9. The reply of the Ministry of Mines vide their OM dated 24/10/2011 in the matter has been examined and following comments are offered (by NCST):

(i)	Though the letter was addressed by name to Shri S. Vijay Kumar, then Secretary, Ministry of Mines, reply has been received from some other person (Shri Anil Subramaniam, US, Ministry of Mines), which was not even authenticated by Shri S. Vijay Kumar, then Secretary, Ministry of Mines. Vide letter No. Secy(RD)/Misc/2012(NCST) dated 09-02-2012, he has subsequently affirmed that the same was "my written statement for taking it on record but refused to comment "on any official action which occurred during my tenure in the Ministry of Mines".
(ii)	The reply furnished by the Ministry of Mines vide OM dated 3 rd October, 2011 24/10/2011 and 21/11/2011 details only the action taken by the Ministry of Mines in the matter and doesn't furnish any related record/ documentary evidence, as requested. Therefore, in its absence, 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 cannot be ascertained for documenting the factual

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position in this regard, and also for recommending action against the delinquents and remedial measures to avoid recurrences of such cases in future.

(iii) No reasons have been stated by the Under Secretary, Ministry of Mines or Shri S. Vijay Kumar the then Secretary, Ministry of Mines as to why a copy of the Bill was not sent to the NCST immediately after receiving opinion of the Ministry of Law on 21/09/2011. The gratuitous opinion of the Ministry of Mines (para 4 of their modified Note received alongwith OM dated 21/11/2011) that the clarification given to Department of Land Resources by the Cabinet Secretariat (vide their OM dated 21/10/2011) that "the sponsoring Ministry for any draft legislation or policy should consult the concerned administrative Ministry/ Department dealing with the relevant Constitutional body/Commission is appropriate for the reason this would lead to not only a comprehensive, coordinated and meaningful consultation but would also ensure that the Administrative Ministry (here Ministry of Tribal Affairs) and the Commission (here National Commission for Scheduled Tribes) do not work at cross purposes" is not only an insolent afterthought, but also doesn't reflect proper understanding of the role of the Commission; as observations and views of the NCST on various issues concerning the STs may often be at variance with the views of the MTA. Also Cabinet Secretariat guidelines can't supersede NCST's request for production of documents which has the force of law as a direction from a Civil Court.

(iv) Shri S. Vijay Kumar, currently Secretary, Department of Land Resources (then Secretary, Ministry of Mines) has not effectively complied with the directions in the meeting taken on 3/11/2011 to submit his comments in the matter with documentary evidence within a fortnight, preferring to raise extraneous and illusory questions of procedure instead of reporting to substantive points. It is debatable whether he would take these please when giving witness before regular court !

10. In the sitting scheduled on 13/02/2012 vide NCST letter dated 3/02/2012, Shri S. Vijay Kumar former Secretary Ministry of Mines (now Secretary, Ministry of Rural Development) has been offered a final opportunity to discuss his reply and explain his 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-Rest.(Res) dated 01/01/1998 regarding considering the directions given by the NCST.

4



BY
FAX/
SPEED
POST

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.12/2/2009-Coord

Date: 06 March , 2012

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhawan, New Delhi. - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2011

Sir,

I am to refer to your letter No.Secy (RD)/Misc/2012(NCST) dated 15/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 13/02/2012 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 despite repeated exhortations, the draft Mines and Mineral (Development & Regulation Bill) 2011, as finalized by the Ministry of Mines, was withheld from the Commission till after consideration was completed by the Council of Ministers on 30/09/2011; and, its directions mentioned in the NCST communication dated 13/10/2011 to produce documents/ a chronological record of the action taken on the request of the Commission to forward the draft Bill for its views/ comments, and in the Sitting taken on 3/11/2011 to submit comments in the matter with documentary evidence within a fortnight have not been complied. Further, instead of responding substantively to the issues raised by the Commission, extraneous and illusory questions of procedure have been urged. The Commission has, therefore, viewed these transgressions as a flagrant 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.

3. The Commission has further noted that the treatment of the case in your capacity as the Secretary of the Ministry of Mines, 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; and, in the context of non-production of documents, has been viewed by the Commission as deliberate attempt to evade repeated persuasions by the Commission to submit the draft Bill for Commission's views/comments. The Commission is distressed to observe that inspite of receiving Ministry of Law's unambiguous advice on the subject; the Bill was forwarded to the NCST only on the day it was considered by the Cabinet,



effectively forestalling the consideration of NCST's comments by the Council of Ministers. 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.

4. However, taking a lenient view of the matter, the Commission has, therefore, 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 30/11/1998. The action taken in the matter may please be advised urgently, positively by 12/03/2012

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

In continuation of NCST letter No. 12/04/11-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 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 12/03/2012.



90507
07/3/12
ISSUED


(Aditya Mishra)
Joint Secretary

LaserJet 3390

Fax Call Report



Mar-7-2012 10:51AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
4664	3/ 7/2012	10:50:18AM	Send	01123382408	1:33	2	OK



BY
FAX
SPEED
POST

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.12/2009-Coord

Date: 06 March, 2012

To

Smt S. Vijay Kumar,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhawan, New Delhi - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (3) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2011

Sr,

I am to refer to your letter No Secy (RD)/Misc/2012(NCST) dated 15/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 13/02/2012 with reference to NCST letter of even number dated 03.02.2012 and accompanying brief.

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3. The Commission has further noted that the treatment of the case in your capacity as the Secretary of the Ministry of Mines, 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; and, in the context of non-production of documents, has been viewed by the Commission as deliberate attempt to evade repeated persuasions by the Commission to submit the draft Bill for Commission's views/comments. The Commission is distressed to observe that inspite of receiving Ministry of Law's unambiguous advice on the subject, the Bill was forwarded to the NCST only on the day it was considered by the Cabinet.

HP LaserJet 3390

Fax Call Report



Mar-7-2012 10:48AM

Job	Date	Time	Type	Identification	Duration	Pages	Result
4662	3/ 7/2012	10:45:35AM	Send	<i>cabinet Secd.</i>	2:29	2	OK



BY
FAX
SPEED
POST

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. 12/2/2009-Coord

Date: 08 March, 2012

To

Shri S. Vijay Kumar,
Secretary,
Ministry of Rural Development,
Ground Floor, 'G' Wing, NBO Building,
Nirman Bhawan, New Delhi - 110011

Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2011

Sir,

I am to refer to your letter No.Secy (RD)/Misc/2012(NCST) dated 15/02/2012, submitting your statement in pursuance of the position explained by the Commission to you in the Sitting taken by the Chairperson on 13/02/2012 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 despite repeated exhortations, the draft Mines and Mineral (Development & Regulation) Bill 2011, as finalized by the Ministry of Mines, was withheld from the Commission till after consideration was completed by the Council of Ministers on 30/09/2011; and, its directions mentioned in the NCST communication dated 13/10/2011 to produce documents/ a chronological record of the action taken on the request of the Commission to forward the draft Bill for its views/ comments, and in the Sitting taken on 3/11/2011 to submit comments in the matter with documentary evidence within a fortnight have not been complied. Further, instead of responding substantively to the issues raised by the Commission, extraneous and illusory questions of procedure have been urged. The Commission has, therefore, viewed these transgressions as a flagrant 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.

3. The Commission has further noted that the treatment of the case in your capacity as the Secretary of the Ministry of Mines, 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; and, in the context of non-production of documents, has been viewed by the Commission as deliberate attempt to evade repeated persuasions by the Commission to submit the draft Bill for Commission's views/comments. The Commission is distressed to observe that in spite of receiving Ministry of Law's unambiguous advice on the subject, the Bill was forwarded to the NCST only on the day it was considered by the Cabinet.