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**Minutes of the meeting of the National Commission for Scheduled Tribes held on 10.11.2006 at 11.00 A.M. in the Conference Room of the Commission.**

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A meeting of the National Commission for Scheduled Tribes was held on 10.11.2006 at 11.00 A.M. in the Conference Room of the Commission under the Chairmanship of Shri Kunwar Singh, Chairperson. Ven. Lama Lobzang, Smt. Prem Bai Mandavi, & Shri Buduru Srinivasulu, Members attended the meeting. Shri Gajendra Singh Rajukhedi, Vice-Chairman, being on tour, could not attend the meeting. Shri K.K. Gupta, Secretary, Shri K.N. Singh, Joint Secretary, Shri R.S. Garg, and Shri R.C.Durga, Director, Shri Sohan Lal, Asstt. Director and Shri Tripurari Rai, Asstt. Director were in attendance during the meeting and Shri R.P. Meena, PS to Chairman was also present in the meeting. The gist of the discussions, item-wise, is as given in the paragraphs which follow.

**Item No. 1: The Wild Life (Protection) Amendment Act, 2006:**

1.1 The Commission noted that the Wild Life (Protection) Act, 1972 had been amended vide the Wild Life (Protection) Amendment Act, 2006 and that the amended provisions of the Act had already come into force w.e.f. 4.9.2006 vide the Ministry of Environment and Forests' Notification dated 4 September, 2006. The Commission made the following observations:-

- (a) The Wild Life (Protection) Amendment Act, 2006 at the draft stage was never sent to the Commission for its comments by the Ministry of Environment and Forests, as mandatorily required by Clause (9) of Article 338A of the Constitution of India which provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes".
- (b) The Ministry of Environment and Forests did not solicit the prior consent of the Chairperson of this Commission before nominating him as the Member of the National Tiger Conservation Authority.
- (c) The Commission, therefore, would like to convey its serious reservations to the Ministry of Environment and Forests about the mode of completing the process of enactment in view of (i) above, as also its objections with respect to (ii) above.

1.2 Therefore, the Commission recommends the following amendments in this existing "THE WILD LIFE (PROTECTION) AMENDMENT ACT, 2006 No. 39 OF 2006":

- (a) The Chairperson of National Commission for Scheduled Tribes have been made member of National Tiger Conservation Authority under Chapter 38 L (2)(i) without consent of the Commission. The Chairperson of the National Commission for Scheduled Tribes conferred the status of Union Cabinet Minister and has to discharge his constitutional duties assigned under Article 338A of the Constitution of India. Therefore, in place of Chairperson "Secretary to National Commission for Scheduled Tribes" should be a member in place of Chairperson in National Tiger Conservation Authority.

Additional saving clause need to be added under Chapter 38 O function of National Tiger Conservation Authority as section 3 under this Chapter replacing



2nd para of Sec.38 O (2) i.e. "Provided that no such direction shall interfere with or affect the rights of local people particularly the Scheduled Tribes".

As Section 38 O (3) "Save as no above function of mentioned in Section 1&2 shall interfere with or affect the right of Scheduled Tribes."

- (b) Section 38 V (4) needs to be omitted in view of addition of Section 380 (3) because tribals are governed by various constitutional provisions for their socio-economic developments and interface with the surrounding. Therefore, to avoid contradiction with the various acts relating to tribes rights, the Section 38 (v) (4) need to be omitted.

**Item No.2: The judgment of the Hon'ble Supreme Court dated 19.10.2006 in Writ Petition (Civil) No. 61of 2002 in M. Nagaraj and others V/s. Union of India and others:**

2. The Commission desired that a copy of the judgment may be sent to all the Central Ministries and Departments and the State Govts. and UT Administrations for information and compliance with the following recommendation of the Commission.

- (a) In this Writ Petition, the petitioners had sought the quashing of the Constitution (85th Amendment) Act, 2001 inserting Article 16 (4A) of the Constitution retrospectively from 17.06.1995 providing reservation in promotion, with consequential seniority, in services/ posts in favour of Scheduled Castes and Scheduled Tribes. The broad issues discussed by the apex Court in this judgement relate to the (i) validity (ii) interpretation and (iii) implementation of
- (i) The Constitution (77th Amendment) Act, 1995.
  - (ii) The Constitution (81st Amendment) Act, 2000.
  - (iii) The Constitution (82nd Amendment) Act, 2000.
  - (iv) The Constitution (85th Amendment) Act, 2001 and
  - (v) Action taken in pursuance of these amendments which sought to reverse the decisions of the Supreme Court in matter relating to promotion and their application with retrospective effect.

**The Constitution (77th Amendment) Act, 1995** provides for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of SCs and STs which, in opinion of the State, are not adequately represented in the services under the State. **The Constitution (81st Amendment) Act, 2000** added a new Article 16 (4B) in the Constitution of India. It provides that the vacancies of the year in which they are being filled up will not be clubbed with the unfilled vacancies of a previous year (which will be treated as separate class of vacancies to be filled up in any succeeding year or years) for the purpose of determining the ceiling of 50% reservation on the total number of vacancies of that year. **The Constitution (82nd Amendment) Act, 2000** relates to addition of a proviso below Article 335 of the Constitution of India. This proviso relates to providing relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of posts in the services in favour of the members of SCs and STs. **The Constitution (85th Amendment) Act, 2001** relates to substitution of the words " in matter of promotion to any class" by words " in matters of promotion, with consequential seniority, to any class" in

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Article 16 (4A) of the Constitution of India (inserted vide the 77th Amendment Act) with retrospective effect from 17 June, 1995 i.e. the date of the addition of this Article.

(b) The Division Bench of the Supreme Court comprising Chief Justice of India and four other Judges has upheld the constitutional validity of the above mentioned amendments with the following observations:-

" These amendments do not obliterate any of the constitutional requirements namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand and the concept of post-based roster with inbuilt concept of replacement."

In view of the above constitutional provisions being upheld by the Hon'ble Supreme Court, commission desired to suggest center, States and UTs including PSUs to take necessary measures in accordance with the above provisions, therefore, call detailed status reports for perusal of the Commission within a month so that it may also be included in the next report.

**Item No.3: Seeking information/material in respect of various schemes/programmes being implemented by the State Govts. in respect of (i) education, (ii) health & nutrition and (iii) land alienation in the prescribed Questionnaires already sent to the Chief Secretaries on 1.11.2006 for the purpose of preparation of the next/special report of the Commission:**

3. Commission decided to include the following in addition already sent Questionnaire for preparing the special report, therefore, suitable Questionnaire to elicit requisite information with respect to following to be put up for approval so that comments/reports may be called all state/Center/UT's.

- (a) Measures to be taken to check increasing Naxalite activities in various States.
- (b) Assessment of land alienation problems including land allotment to landless tribals from enactment of protective legislation by various States/UTs till date.
- (c) Action taken on implementation of various favourable judgments passes by Supreme Court/High Court regarding rights on Scheduled Tribes by Central and State Government.
- (d) Commission also directed all concerned officer to collect and collate data's of various information pertaining to health, education, service and socio economic developmental scheme from reports of Ministries concerned and RGI for comparative analysis of developmental parameters with respect to general category people so that commission may recommend to Government for suitable policy formulation for advancement of tribals.

**Item No.4: Bringing out a revised edition of the Commission's Handbook published in June, 2005:**

4. Pursuant to Clause (4) of Article 338A of the Constitution of India which provides that the Commission shall have the power to regulate its own procedure, the Commission's Handbook which was published in June, 2005, inter alia, containing the Rules of Procedure of this Commission, needs to be suitably revised. The Commission decided that the Rules of Procedure of the Commission need to be changed for effective functioning of the Commission because present rules are very old and same

was adopted by new Commission without any change, therefore, suggestion from all officers of the Commission may be invited at earliest for improving the Rules of Procedure of Commission, so that the Commission may consider such suggestions in the next meeting for necessary review of Rules of Procedure.

6. Secretary informed the Commission that in the review meeting undertaken by the Planning Commission under the Chairmanship of Dr. B.L. Mungekar, Member (PC) about tribal affairs budget of various Central Ministries/Departments, it has been revealed that there are no specific schemes in most of the Central Ministries targeted for the tribal welfare and development and that the achievement of financial targets is being notionally attributed in an adhoc manner. Therefore, the suggestion that the budget concerning the tribal welfare schemes need to be placed centrally with Ministry of Tribal Affairs for distribution as per submission of specific schemes/projects by the respective Ministries/Departments was fully endorsed by the Secretary, NCST pursuant to the views of the Commission already made by it in its report for the year 2004-05 and 2005-06.

The meeting ended with a vote of thanks to the Chair.

*Handwritten signature and date:*  
27/4/06