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Sub **Minutes of the meetings of National Commission for Scheduled Tribes held on 20.12.2006.**

A meeting of the National Commission for Scheduled Tribes was held under the Chairmanship of Shri. Kunwar Singh, Chairperson of the Commission at 11.00 A.M on 20.12.2006 in the Conference Room of the Commission. The meeting was attended by Shri. Gajendra Singh Rajukhedi, Vice- Chairman and Smt. Prem Bai Mandavi, Shri Lama Lobzang, and Shri. Buduru Srinivasulu, Members, Shri. K. K. Gupta, Secretary, Shri K. N. Singh, Joint Secretary, Shri. R.S.Garg, Director, Shri. R.C. Durga, Director, Shri. R.P. Meena, PS to Chairman and Shri. Sohan Lal, Assistant Director. The gist of the discussions/ decisions taken in the meeting, item-wise, are given in the paragraphs which follow:-

Item No:- 1 Draft Public Services Bill, 2006

2 The Commission was informed that the Ministry of Tribal Affairs vide their letter dated 01.09.2006 had sent a copy of the DoPT's letter dated 18 August 2006 along with a copy of the Draft Public Services Bill 2006, and had requested to this Commission to offer its comments on the Bill. The Commission decided that the following amendments may be suggested in the Bill:

- (i) The words 'Article 212' appearing in section 2(a) may be replaced with 'Article 312' which is the correct Article in relation to All India Services
- (ii) The following may be added below section 2 (m) as section 2(n):

"The National Commission for Scheduled Tribes" means the Commission set up under Article 338A of the Constitution.
- (iii) The following may be added as Section 2(o):

" Reservation" as provided in the Constitution
- (iv) The existing section 2(n) may be re-numbered as section 2(p)
- (v) The following may be added at the end of section 13 (1)(a):

The Annual Performance Plan of the department and target for each functionary of the department should include the targets about likely flow of benefits to Scheduled Tribes out of the Schemes of the Department including implementation of reservation instructions for their appointment in services / posts of the Department as also the filling up of backlog vacancies reserved for Scheduled Tribe.
- (v) The composition of the Central Public Service Authority should include one member belonging to Scheduled Tribe or Scheduled Caste by rotation.
- (vi) The following may be added in continuation of section 18(j):

" ... without prejudice to the duties and functions assigned to the National Commission for Scheduled Tribes in clause (5) of Article 338A of the Constitution".

(vii) Section 33 may be reworded as below:

" Saving of powers of the Union Public Service Commission, National Commission for Scheduled Tribes, National Commission for Scheduled Caste and Central Vigilance Commission: Nothing contained in the Act or any rule or regulation made under the Act shall in any manner affect the exercise of the powers and functions of the Union Public Service Commission, National Commission for Scheduled Tribes, National Commission for Scheduled Castes and the Central Vigilance Commissioner and other authorities of the Central Vigilance Commission under the Central Vigilance Commission Act, 2003."

Item No:- 2 Action taken by the Government on the recommendations contained in the Fourth Report (14th Lok Sabha)- Atrocities on Scheduled Castes and Scheduled Tribes and pattern of social crimes towards them.

3.1 The Commission noted that a reference had been received from the Ministry of Tribal Affairs asking for comments of the Commission on the recommendations in 14th Report of Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes on the Ministry of Home Affairs, Ministry of Social Justice & Empowerment and Ministry of Tribal Affairs. In this report, the Committee recommended that the two Commissions namely, National Commission for Scheduled Castes, and the National Commission for Scheduled Tribes should be powerfully armed with making their recommendations mandatory for effective implementation of safeguards provided for the SCs and STs. The Committee further observed that while the Commissions had been entrusted to present report giving recommendations as to the measures that should be taken by the Union or any State for effective implementation of the safeguards mentioned in the Constitution, it would be all the more justified to empower the two Commissions to statutorily oversee the implementation of Protection of Civil Rights Act, 1955 and the SCs & STs (Prevention of Atrocities) Act, 1989.

3.2 The Commission agreed that there was a justified need to empower the National Commission for Scheduled Tribes by making the implementation of its recommendations in relation to violation of the safeguards provided for the Scheduled Tribes through the following measures:-

- (i) Clause 5 (b) of Article 338A should be suitably amended to provide that where the enquiry discloses any violation of safeguards of the STs or negligence in the prevention of violation of these safeguards by a public servant, the Commission may recommend to the concerned Government or authority for taking corrective remedial measures and that it should be mandatory for the concerned organization of the Central Govt. or the State Govt. to accept such recommendations.
- (ii) On a complaint or suo-moto, the Commission may enquire into non-implementation of the provisions under Section 3 and 4 of the Act to ensure that the police authorities or a public servant perform their duties for proper implementation and investigation within a stipulated period and that the recommendation of the Commission in this regard should be binding on these authorities i.e. the police and civil servants for proper implementation for fair

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3..... trial by special court. The Commission should also be empowered to award
penalty for negligence by these authorities on the lines of the RTI Act, 2005.

- 4..... (iii) The Commission observed that it had submitted its first Report to the President
5..... of India in August, 2006 and that it had not yet been laid on the Table of both
6..... the Houses of Parliament. The Commission further observed that the Reports
7..... of the erstwhile National Commission for Scheduled Castes and Scheduled
8..... Tribes were also laid before the Parliament many years after their submission
9..... to the President. This leads to dilution of the recommendations made by the
10..... Commission. The Commission observed that there was an urgent need to
evolve a mechanism for laying the Reports of the Commission in Parliament
within a reasonable period of time and accordingly felt the need for early
acceptance of its recommendations contained in first Report of the National
Commission for Scheduled Tribes for amending Clause (6) and Clause (7) of
Article 338 (now Article 338A in the context of National Commission for
Scheduled Tribes) as given below:-

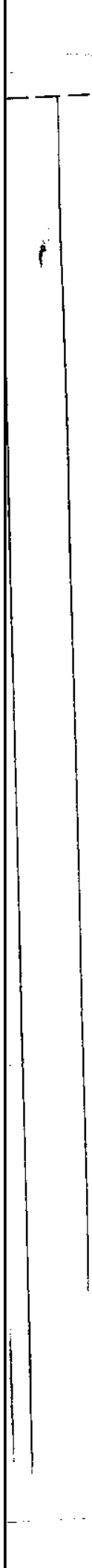
"Clause (6):- The President shall cause all such reports to be laid before each
House of Parliament within three months of such submission and a
memorandum explaining the action taken or proposed to be taken on the
recommendations relating to the Union and the reasons for the non-
acceptance, if any, of any of such recommendations shall be placed before
each House of the Parliament within six months of such submission.

Clause (7):- Where any such report, or any part thereof, relates to any matter
with which any State Government is concerned, a copy of such report shall be
forwarded to the Governor of the State who shall cause it to be laid before the
Legislature of the State within three months and a memorandum explaining the
action taken or proposed to be taken on the recommendations relating to the
State and the reasons for the non-acceptance, if any, of any of such
recommendations shall be laid before the Legislature within six months of such
submission".

- (iv) On the lines of the powers given to the Central Information Commission in the
context of the implementation of the various provisions of the Right to
Information Act, 2005, the National Commission for Scheduled Tribes should
also be given power to impose fine on a public servant for willful delay or
negligence in the discharge of his duties in implementing the instructions of the
Government relating to safeguards available to the members of Scheduled
Tribes.
- (v) The National Commission for Scheduled Tribes has been provided with
skeleton staff only due to which it is not able to perform the constitutional
obligations assigned to it in an effective manner. There is, therefore, an urgent
need for augmentation of its existing strength.

Item No.3 Agenda for the next meeting of the National Integration Council

4. It was noted that a letter had been received from Home Secretary requesting
the Commission to propose agenda items for discussion in the meeting of the National
Integration Council which was likely to be convened shortly under the Chairmanship of
Hon'ble Prime Minister. The Commission observed that inspite of several anti-



alienation legislations prevailing in the States, cases of large scale alienation of land owned by or allotted to Scheduled Tribes had been taking place illegally in tribal areas particularly Scheduled Areas. This problem together with the problem of lack of development of Scheduled Tribes in tribal areas coupled with their displacement in case of acquisition of their land for development purposes and failure of the State Govt. to resettle and rehabilitate them to their satisfaction had led to the spread of Naxalism in tribal areas. The Commission, therefore, observed that the following agenda may be suggested to the Ministry of Home Affairs for the forthcoming meeting of the National Integration Council:-

- (i) Measures to be taken for prevention of alienation of tribal land to non-tribals and the restoration of such alienated land to the tribals.
- (ii) Measures to be taken to check Naxal problems in tribal areas.
- (iii)(a) Non-acquisition of the agricultural and fertile land for setting up industrial, irrigation and other major projects.
 - (b) In case acquisition of tribal land is unavoidable, course of action prescribed for acquisition of land including consultation with the Gram Sabha (with reference to PESA Act, 1996).
- (iv) A comprehensive legislation may be enacted to ensure proper and adequate resettlement and rehabilitation of the tribals likely to be displaced by the major projects having regard to the R&R Policy of Ministry of Rural Development.
- (iii) Ensuring ownership rights of the tribals over collection of minor forest produce and providing reasonable price support for the MFP.
- (vi) Fast and effective implementation of the provisions contained in Scheduled Tribes (Recognition of Forest Rights) Bill which has since been passed by both Houses of Parliament and is awaiting the assent of the Hon'ble President.

Item No.4:- Reservation for members of Scheduled Tribes in services of the State Govts. and UT Administration and in admission to the educational and professional institutions run by the State Govts. on their migration to other States

5.1 It was decided that the Commission should send a proposal to the Ministry of Tribal Affairs, the Ministry of Human Resource Development Department, the Ministry of Health and Family Welfare (Department of Health), and Department of Personnel & Training to issue instructions to the State Govts. and UT Administrations to provide that the children of the migrated ST parents will be eligible to get the benefit of reservation in employment under the State Govt. and in admission in the State-run educational and professional institutions against seats reserved for Scheduled Tribes as also other benefits such as disbursement of post-matric scholarship etc. The Commission, however, observed that while sending the proposal to the above-mentioned Ministries/Departments, their attention may also be drawn to the provisions of (i) Article 366 (25) which defines Scheduled Tribes, (ii) Article 15(4) which provides for making special provisions for educational advancement of Scheduled Tribes and other weaker sections, (iii) Article 16(4) 16(4A) and 16(4B) which provide for reservation in appointment, promotion with consequential seniority and related matters and, (iv) Article 46 which directs that the State shall promote with special care the

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2..... educational and economic interests of the weaker sections, and in particular of
3..... Scheduled Castes and Scheduled Tribes.
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5..... 5.2 The Commission observed that the above-mentioned constitutional provisions
6..... do not make any distinction between Scheduled Tribes residing in the State of their
7..... nativity or in another State consequent upon their migration for the purposes of grant
8..... of the benefits of reservation both in the employment of the State Govts. and in
9..... admission to the educational and professional institutions and, therefore, it is unjust
10..... and unfair to deny them the benefits of reservation on their migration to other States.
The Commission also observed that once a person has been declared as a
Scheduled Tribe on the basis of the conditions stipulated in Article 342, he or she
should continue to enjoy the benefits admissible to Scheduled Tribes irrespective of
the place of his residence including State like Haryana & Punjab where STs are not
notified.

Item No.5 Other Items discussed with the permission of the Chair

6. It was desired that:-

- (i) Action on amending the Rules of Procedure of the Commission may be expedited and efforts made to submit the draft of the amended Rules at the earliest. The officers present in the meeting were requested to send their suggestions for amendment by end of December, 2006.
- (ii) The Department of Personnel & Training, the Ministry of Social Justice & Empowerment and the National Commission for Scheduled Castes who are the cadre controlling authorities in respect of various posts may be requested to fill up the vacant posts in the Commission on priority.
- (iii) The names of the such officers belonging to the Joint Cadre posts working in the National Commission for Scheduled Tribes who have given their consent for encadrement of the posts being held by them in the India Statistical Service/ Subordinate Statistical Service may be sent to the Ministry of Statistics and Programme Implementation for necessary action notwithstanding the decision taken in the meeting held in NCSC on 16.11.2006 against such encadrement.
- (iv) A copy of the judgment of the Hon'ble High Court of Chhatisgarh at Bilaspur in the case of Ajit Jogi in W.P. No.2080/2001 may be obtained, studied and put up for perusal of the Commission.
- (v) The NIC may be requested to accord their clearance to the final draft of the Commission's website.
- (vi) Creation of data bank on various issues related to Scheduled Tribes may be expedited by engaging outside agencies if considered necessary.
- (vii) Office automation and computer networking, by installing a server computer in the control room for monitoring disposal of petitions received in the Commission may be expedited.
- (viii) A copy of the reply received from the authorities in each case should be sent to the petitioner for his information and rejoinder, if any and simultaneously the reply received should be examined and submitted to the concerned Member/VC/Chairman.

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