

**Minutes of the meeting held with the Secretary, Ministry of Tribal Affairs on 10.01.2008 at 2:00 PM in the chamber of Hon'ble Chairperson, NCST.**

SCs & STs (Amendment) Act, 2002 was notified on 08.01.2003 and vide this Act, ten communities in Uttar Pradesh, inter-alia, were transferred from SC list to ST list. This has given rise to many problems which the people from these communities are facing and need to be addressed urgently. The Commission also noted that 'Gonds' in the U.P. were Scheduled Castes in some of the districts and Scheduled Tribes in some others and to that extent the same community was having dual status in the State of Uttar Pradesh. It was also found by the Commission that earlier Gonds were Scheduled Castes in whole of U.P. and were able to contest elections from SC reserved constituencies, but now due to their ST status, they were not eligible to contest from those constituencies nor there were constituencies earmarked for them to contest elections, as the delimitation of the reserved constituencies had not yet been undertaken by the Delimitation Commission on the basis of increased population of Gonds due inclusion of their names in the ST list vide above mentioned Act. The Commission also found that the people belonging to these ten communities were also being denied the benefit of reservation in services of the State due to non-enumeration of their population after 2001 census.

2. In order to discuss the above mentioned issue and certain other issues particularly the difficulties faced by ST people belonging to Gond community in UP and Sawara/ Sawar community in Chattisgarh in getting ST certificates from the District authorities, Secretary, Ministry of Tribal Affairs was called for a discussion in the chamber of Hon'ble Chairperson, NCST on 10.01.2008 at 2:00 PM. Shri G.B. Mukherjee, Secretary, Ministry of Tribal Affairs and Smt. Ruchira Pant, J.S. accordingly attended the meeting as per schedule. Shri Wilfred Lakra, Secretary, NCST, Shri Vinod Aggarwal, Director and Shri K.N. Singh, Consultant assisted the Hon'ble Chairperson during the discussions.

3. It was clarified by the Secretary, MTA that inclusion/exclusion of any community in the scheduled list of ST of a particular State was done as per the modalities approved by the Govt. of India on 15<sup>th</sup> June, 1999. As per these modalities, the State Govt. was required to recommend a case of any inclusion/exclusion with full justification to the Ministry of Tribal Affairs. Based on the State Govt.'s recommendations, the case was referred to the RGI for their comments. In case, RGI recommends favourably, the case is referred by Ministry of Tribal Affairs to the NCST. Only in case the NCST's comments are in favour of the State Govt.'s recommendations, the case is processed for getting the approval of the Govt. for introducing a bill in the Parliament to amend the existing list of Scheduled Tribes in relation to a particular State/Union Territory. It was also clarified that in case RGI do not recommend the proposal of the State Govt., it is sent back to the State Govt. alongwith RGI's observations. In case, the State Govt. even on reconsideration having regard to the observations of RGI maintains its earlier recommendations, the matter is again referred to Ministry of Tribal Affairs and if the RGI, on second reference, decides to hold its earlier views, the Ministry of Tribal Affairs may drop the proposal with the approval of Minister of Tribal Affairs.

4. On a query from the Commission as to how the people belonging to the ten communities in Uttar Pradesh were initially declared as Scheduled Castes and

subsequently in the year 2002 were declared as Scheduled Tribes, Secretary, Ministry of Tribal Affairs stated that the Ministry of Tribal Affairs was not aware of the procedure which was adopted during the initial years for including these ten communities in question in the list of Scheduled Castes. He, however, added that it must have been done on the recommendation of the State Govt. and further that their transfer from SC list to ST list vide the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002, as per the procedure indicated above, was also done on the basis of the recommendations of the Govt. of Uttar Pradesh duly supported by RGI and NCST. The Commission stated that it had been receiving a large number of representations/ petitions from the people belonging to the ten communities in question stating that they were being deprived of their rights to contest election as SC candidates from SC reserved constituencies or ST candidates from ST reserved constituencies in the absence of the delimitation of the constituencies in Uttar Pradesh following the reduction of SC population and consequent increase in the ST population following the transfer of ten communities from SC list to ST list vide the SCs and STs (Amendment) Act, 2002 notified on 08.01.2003 and also that this phenomenon was also resulting in the restriction of reservation benefits (to the extent of ST population as per 2001 census) in services and admission in professional and technical institutions. Shri K.N. Singh former Joint Secretary and now Consultant to the Commission stated the Commission had taken up the matter with the Delimitation Commission who had been requested to take into consideration for the purpose of delimitation of the Parliamentary and Assembly constituencies the tribal communities which had been included in the list of Scheduled Tribes in the year 2002 vide the above Act and which had been shown as non-tribal communities in the Census report, 2001. The Commission was informed by the Delimitation Commission that they had to delimit the Parliamentary and Assembly constituencies on the basis of 2001 Census figures as published by the Registrar General and Census Commissioner of India. It was further stated that for extending the benefits of reservation to the communities declared as Scheduled Tribes vide SCs & STs Orders (Amendment) Act, 2002 in Parliament and Legislative Assemblies, an enabling provision would be required to be made by the Parliament and that the Delimitation Commission could not on its own take into account any other unpublished figures for the purpose of delimitation. The observations of the Delimitation Commission were brought to the notice of Ministry of Tribal Affairs.

5. It was also mentioned that the issue raised in the preceding paragraph has been taken to the Hon'ble Supreme Court in Writ Petition (Civil) No.363 of 2006 in the case of Shri Vijay Singh Gond & four Others from district Sonbhadra vs. (i) Union of India (through Cabinet Secretary), (ii) Election Commission of India, (iii) Chief Election Commissioner of U.P. (Lucknow), and (iv) the National Commission for Scheduled Tribes. In this Writ Petition, the petitioners had, inter-alia, prayed for interim relief by way of staying the effect an operation of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 2002. In their interim order judgement dated 13.03.2007, the Hon'ble Supreme Court held that grant of interim relief might create complications. The Hon'ble Court, however, held that since the serious questions of law had been raised by the petitioners, the petition deserved to be admitted. Secretary, Ministry of Tribal Affairs and the Commission felt that as the issue was sub-judice the highest Court of the land, no other action could be taken at this juncture except to await the final verdict of the Hon'ble Supreme Court.

6.1 The second issue which was brought to the notice of Secretary, Ministry of Tribal Affairs, related to the problems/ difficulties being faced by the ST people living in the newly created districts carved out of the old districts in relation to which the communities to which they belonged had been declared as Scheduled Tribes vide the SCs & STs (Amendment) Act, 2002. It was pointed out by Secretary, MTA that as the recognition of the 10 tribal communities as Scheduled Tribes in the State of Uttar Pradesh was area specific (i.e. in relation to certain districts and not the entire State), it would not be correct on the part of the authorities of the newly created districts (i.e. out of those old districts in relation to which certain communities had been recognized as Scheduled Tribes) to issue the ST certificates. He stated that the solution of this problem lay in declaring the tribal communities living in the newly created districts as Scheduled Tribes and for that the State Government of Uttar Pradesh would be required to send a proposal to the Ministry of Tribal Affairs for consideration at their end in terms of the laid down procedure for the purpose.

6.2 Another important issue which was discussed in the meeting also related to the difficulties being faced by ST people in getting community certificates from the authorities from such districts/ State in relation to which certain tribal communities had been subsequently declared as Scheduled Tribes. It was pointed out by the Commission that these problems/ difficulties were being faced as the authorities had been asking the applicants (for ST certificates) to produce proofs of their residences as member of the said communities in the year 1950 when the first Presidential Order declaring certain tribal communities as Scheduled Tribes in respect of certain States was issued. Secretary, MTA stated that the Ministry of Tribal Affairs have since written to the State Govt. of Madhya Pradesh and Chhattisgarh to clarify that as per the Ministry of Home Affairs' guidelines dated 2.05.1975, for the purposes of issue of community certificates the person (applying for community certificate) should be the permanent resident on the date of notification of the Presidential Order applicable in his/ her case and that the Ministry may accept the proposals of the State Government of Madhya Pradesh and Chhattisgarh that the date of Notification will be the date of Reorganisation of the State i.e. 1<sup>st</sup> November 2000 (MP Reorganization Act, 2000). The Commission observed that there was an urgent need to write afresh to the State Governments of M.P. and Chhattisgarh (by the Ministry of Tribal Affairs) to ensure that ST persons applying for community certificates are not asked by the district authorities to produce the proofs of residence in that place in the year 1950.

6.3 Another point relating to issue of community certificates related to the difficulties faced by ST persons belonging to Gond community recognized as Scheduled Tribes in relation to certain districts of the U.P., and Sawar/ Sawara community in relation to the State of Madhya Pradesh. It was mentioned by the Commission that it had been brought to the notice of the Commission that ST persons belonging to Gond community in their applications for community certificates write the name of their community in Hindi as \_\_\_\_\_ while the community recognized as Scheduled Tribes was \_\_\_\_\_ and that the district authorities were rejecting all such applications without verifying whether the applicants actually belonged to Gond community recognized as Scheduled Tribe or not. It was stated that similar difficulties were being faced by ST person belonging to Sawar/ Sawara community in Madhya Pradesh. The Commission observed that such mistakes in correctly writing the names of their communities in their applications were being committed due to their illiteracy or semi or poor level of literacy and the decision of the district

authorities to reject their applications merely on the grounds of spelling mistakes had been harshly operating against them. On the suggestion of the Commission, Secretary, MTA agreed to write to the State Govts. to advise them that they should issue directions to the district authorities to the effect that they should not reject the applications only on the grounds of the incorrect names of these communities as written in the applications and that in such cases they should verify the genuineness of the claims through field inquiries and in case it was found that they really belonged to these communities, they should issue of the community certificates to the ST applicants indicating therein the correct name of the community.

7. At the end of the discussions Secretary, MTA was requested to expedite action on some of the issues with respect to which the proposals had been sent by the Commission to Ministry. These issues relate to (i) amending Section 5 (2) of the NCST, Chairperson, Vice-Chairperson and Members (Conditions of the Service and Tenure) Rule, 2004 to insert the words " and other facilities", (ii) amending the entries under Section 3 (ba) (ii) of the Parliament (Prevention of Disqualification) Act, 1959 so as to provide for the exemption of the holders of offices of Chairperson, NCST for being chosen as, or being Members of Parliament, (iii) upgradation of the scales of pay of certain posts created for the Commission by the Ministry of Tribal Affairs and (iv) upgradation/ creation of certain posts for the Personal Sections of the Chairperson, Vice-Chairperson and Members of the Commission. In this connection, a set of copies of the latest correspondences made by the Commission with the Ministry of Tribal Affairs were given to him to facilitate perusal of these issues.

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