

6th Meeting



सत्यमेव जयते

भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

No. 1/7/08-Coord/ Pt.

छठी मंजिल, 'बी' विंग, लोक नायक भवन  
खान मार्केट, नई दिल्ली-110003

6th Floor, 'B' Wing, Lok Nayak Bhawan  
Khan Market, New Delhi - 110 003

07.10.2008

Dated .....


To

- 1) Smt. Urmila Singh, Chairperson
- 2) Shri Maurice Kujur, Vice-Chairperson
- 3) Shri Tsering Samphel, Member
- 4) Shri Oris Syiem Myriaw, Member
- 5) Shri Raghuvendra Singh Sirohi, Secretary

**Sub: Summary record of the meeting of the National Commission for Scheduled Tribes held on 03.10.2008.**

Sir,

I am to refer to the above subject and to say that the meeting of the Commission was held at 3:00 P.M. on 03.10.2008 in the Conference Room of the Commission as scheduled. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. A copy of the Summary Record of the meeting is enclosed for information and record.

  
(R.C. Durga)  
Director (Coord.)

Copy with copy of Summary Record of the meeting forwarded to the following officers with the request that information about action taken on the decision taken in the meeting concerning each Unit/ Office may be furnished to Coordination Unit by 15.10.2008 positively:

- (i) Director (RU-I & RU-II)
- (ii) Director (RU-III & Coord.)
- (iii) Dy. Secretary (RU-IV & Admn.)
- (iv) US (Admn.)
- (v) AD/RO Incharge-RU-I/ RU-II/RU-III/ RU-IV/Coord/ SO (Admn.)/ AD(OL).

Copy for information to:

1. PS to Chairperson/ PS to Joint Secretary
2. Director/ Assistant Director/ Research Officer in Regional Offices of National Commission for Scheduled Tribes at Bhopal/ Bhubaneswar/ Jaipur/ Raipur/ Ranchi/Shillong.

  
(R.C. Durga)

## NATIONAL COMMISSION FOR SCHEDULED TRIBES

**Subject: Summary record of the meeting of the National Commission for Scheduled Tribes held at 3:00 PM on 03.10.2008.**

A meeting of the Commission was held at 3:00 PM on 03.10.2008 in the Conference room of the Commission in Lok Nayak Bhawan New Delhi. The meeting was presided over by Smt. Urmila Singh, Chairperson, National Commission for Scheduled Tribes. List of participants is enclosed at ANNEX. The meeting was originally called to discuss Agenda Item I and II only. However, on the suggestion of Secretary, NCST a 3rd Item (Agenda Item III) was also discussed in the meeting.

2. Brief details of the discussions held in the meeting, **agenda item-wise**, are as given below:

**Agenda Item I** Writ Petition No. 4860 of 2008 filed in the High Court of Judicature of Bombay Bench at Aurangabad in the matter of Vikramsing and Another Vs. the State of Maharashtra and Ors. regarding non-implementation of the provisions of the Panchayats (Extension to Scheduled Areas) (PESA) Act, 1996 in elections to Zilla Parishads and Panchayat Samities in the Scheduled Areas of the State of Maharashtra.

The Commission discussed in detail the issues contained in the W.P. and the proposed para-wise comments on the WP to be sent to the Ministry of Panchayati Raj. Main issues are referred in para 12, 13, and 14 of the WP. It was resolved that the comments should clearly highlight that the provisions of The Panchayats (Extension to the Scheduled Areas) Act, 1996 should be implemented in letter and spirit while making legislation relating to elections of Panchayats at all level in the State. Accordingly, the following comments may be furnished in reply to para 12, 13, & 14.

**Para 12, 13, & 14**

**Article 243D in Part IX of the Constitution relates to Reservation of Seats in Panchayats:**  
It, *inter-alia*, provides that:

"(i) Seats shall be reserved for (a) Scheduled Castes and (b) Scheduled Tribes in every Panchayat and the number of seats so reserved, shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

- (ii) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.
- (iii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.
- (iv) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide."

However, Article 243M provides that nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244. Section 3 of The Panchayats (Extension to the Scheduled Areas) Act, 1996 provides that the provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in Section 4 (of the said Act). In the present context attention is invited to Section 4(g) of The Panchayats (Extension to the Scheduled Areas) Act, 1996 which reads as follows:

- "(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in that Panchayat for whom reservation is sought to be given under Part IX of the Constitution.

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats;

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;"

The Panchayats (Extension to the Scheduled Areas) Act, 1996 does not make any mention about rotation of reserved constituencies

The Commission observed that various Articles in the Constitution provide for taking special and suitable measures by the State for the development of Scheduled Tribes and also adequate representations of Scheduled Tribes in political governance. Articles 244, 275 and the 5th Schedule of the Constitution of India relate to special provisions for control and administration of Scheduled Areas in the country. Article 164 (1) further provides that in the (Scheduled Area) States of Bihar, Madhya Pradesh, and Orissa, there shall be a Minister-in-Charge of Tribal Welfare who may in addition be in charge of the Welfare of the

*Ukendra Singh*

Scheduled Castes and Backward Classes or any other work. Keeping in view the spirit of this provision, most of the States have a Minister-in-Charge of Tribal Welfare and in many cases, the Minister in-charge of Tribal Welfare belongs to a Scheduled Tribe community. According to the Fifth Schedule a Tribes Advisory Council is also required to be established in the States having Scheduled Areas, 3/4 th of whose Members shall be representatives of the Scheduled Tribes in the Legislative Assembly of the State. The same spirit has been incorporated in the Panchayats (Extension to the Scheduled Areas) Act, 1996 in relation to the governance of Scheduled Areas at sub-State levels; and the same can not be overlooked while deciding the framework for holding elections to the Panchayats at various levels and giving adequate representations to the tribals living in a Panchayat area, particularly those living inside the Scheduled Areas.

It was felt that due to their shy nature, Scheduled Tribes have more confidence in the Scheduled Tribe leaders in the matter of representation of their needs and problems. Rotation of reservation of constituencies is, therefore, not very desirable in Scheduled Areas. The Commission observed that keeping in view these facts and the spirit of The Panchayats (Extension to the Scheduled Areas) Act, 1996, the second proviso under Section 12(2)(b) and also second proviso under Section 58 (1B)(b) of this Act needed further explanation in view of the provision under Section 4(g) of the Panchayats (Extension to the Scheduled Areas) Act, 1996. The Panchayats (Extension to the Scheduled Areas) Act, 1996 assumes that the boundaries of Panchayats at each level will be co-terminus with the Scheduled Areas. As the State Govt. has not undertaken this exercise and areas under a Zilla Parishad or a Panchayat Samiti in the State may not be co-terminus with the Scheduled Areas in a particular district, the general provisions regarding rotation of seats in Article 243D as well as the provision under Section 4 (g) of the Panchayats (Extension to the Scheduled Areas) Act, 1996 were adopted by the State Govt. while stipulating the framework for electing representatives from the Scheduled Areas falling within a Zilla Parishad or a Panchayat Samiti. The Commission, therefore, felt that the seats need to be reserved for Scheduled Tribes in proportion to the overall population of the Scheduled Tribes in the Zilla Parishad or the Panchayat Samiti as the case may be and at least 50% of the seats shall be reserved for Scheduled Tribes in the Scheduled Areas (even though population of Scheduled Tribes in the Scheduled Areas may be less than 50% of the total population). Further, as the population of the Scheduled Tribes may be spread throughout the Zilla Parishad/ Panchayat Samiti Area while at the same time the ST population may be concentrated in the Scheduled Area under the same ZP/ PS Area, it was necessary that out of these reserved seats within ZP/PS, the number of seats may be earmarked in relation to the Scheduled Area which is part of the Zilla Parishad or the Panchayat Samiti as the case may be and thereafter, the process of rotation may be made applicable to the seats calculated to be reserved for areas outside the Scheduled Area while rotation should not be applied to the seats earmarked for

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Schedule Areas within a ZP/PS. In other words, the process of rotation of seats reserved for Scheduled Tribes in a ZP/PS may be restricted to the number of seats that are required to be reserved in respect of the ST population in the areas outside the Scheduled Areas within a ZP/PS and not inside the Scheduled Areas.

**Agenda Item II** Writ Petition (Civil) No. 393 of 2008 in Supreme Court of India, filed by Shri Vineeth K. and Others vs State of Kerala and Ors. Regarding admission of ST students into MBBS courses in Kerala.

The Commission noted that the issue raised in the WP related to the removal of the condition of minimum qualifying marks of 40% in the Common Entrance Examination (CEE) conducted by the Commissioner, CEE, Kerala in respect of ST candidates for admission to MBBS and BDS courses. The Commission further noted that the existing procedure has resulted in a large number of such seats remaining unfilled and diversion of infrastructure available for Scheduled Tribes for use by other category candidates. The petitioners had pointed out that out of 51 seats reserved for ST candidates in these two courses, only two seats had been filled by ST candidates and the remaining seats had been diverted to non-ST candidates.

The Commission further noted that the State of Kerala (represented by Principal Secretary, Deptt. of Higher Education) (Respondent No. 1), the Commissioner for Entrance Examination, Kerala and the Medical Council of India, New Delhi (Respondent No. 3 & 4) were primarily concerned with the subject matter in WP. The National Commission for Scheduled Tribes was Respondent No. 7.

The WP came up for urgent hearing on 26.09.2008. The Hon'ble Supreme Court of India in its interim Order dated 26.09.2008, *inter-alia*, observed that "this has been experience in the previous years also and many State were unable to fill up the seats reserved for Scheduled Castes and Scheduled Tribes candidates. It is high time that the State should take up steps for giving some proper orientation course to the SC/ST students or to set up some other formula so that sufficient number of candidates should be admitted in the course. MCI and Union of India will have to suggest appropriate remedy to find out and work out the solution". The Hon'ble Court also directed the States of Jharkhand, Maharashtra, Gujarat, Orissa, West Bengal, Uttar Pradesh, Madhya Pradesh and Karnataka to be impleaded.

The Commission also noted that based on the above observations/ directions of the Hon'ble Supreme Court of India, the Govt. of Kerala (Deptt. of Education) had issued an order dated 27 September, 2008 that for the year 2008-09 seats for MBBS and BDS courses for the ST quota in the State lying unfilled for the reason that ST candidates had not secured 40% marks in the Entrance Examination, shall be filled by the Commissioner of Entrance Examination (CEE) from the ST candidates who had

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obtained more than 40% marks in their qualifying examination.

The Commission expressed the view that having regard to the inability of ST candidates to compete along with general candidates in the Medical Entrance Test due to their poor economic conditions and lack of general awareness among them arising from their habitations in inaccessible areas, making arrangements for special coaching/ orientation for Scheduled Tribes, as suggested by the Hon'ble Court, may not be of much help for the present in getting the seats reserved for Scheduled Tribes in these courses filled up through entrance examinations. This inability of ST student to qualify the standards of Entrance Examination despite having passed the qualifying Board examination with high achievements also casts an adverse reflection on the design of the Entrance Examination, and the process should be re-examined as directed by Hon'ble Supreme Court of India in the interim order. The Commission, therefore, decided to support the decision taken by the Govt. of Kerala regarding admission of ST candidates in the MBBS/ BDS courses on the basis of condition of obtaining at least 40% marks in the qualifying Board examinations. The Commission also expressed the view that same procedure may be adopted in other States also where seats reserved for ST candidates have generally remained unfilled in the entrance tests for the year 2008-09 (or alternatively all the eligible ST candidates who have secured minimum prescribed score in the qualifying Board examination may be admitted in order of merit in the Entrance Examination irrespective of any cut-off level).

**Agenda Item III** Recommendations in the Report submitted by National Commission for Denotified Nomadic and Semi-Nomadic Tribes (NCDNSNT),

The Commission was informed that the National Commission for Denotified Nomadic and Semi-Nomadic Tribes (NCDNSNT) constituted by Ministry of Social Justice & Empowerment in March, 2005 has submitted its report on 2.07.2008. The Report contains a number of recommendations for raising the living standards of DNSNT. The Ministry of Social Justice & Empowerment have sought comments of this Commission on recommendations No. 53 and 55 and through Ministry of Tribal Affairs on recommendations No.45,47 and 76.

The Commission was also informed that, as per report of NCDNSNT the estimated population of DT and NTs in the Country is 10.75 Crores, out of which 5.86 crores are already getting benefits as either SC or ST while remaining 4.89 crores were categorized as OBC. The Commission noted that the DNSNT had, *inter-alia*, made the following recommendations which needed to amend the Constitution

- (i) to add a new Article 342A to define DNTs as 'Scheduled Communities' (Recommendation No. 53).

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(ii) to delete DNTs from the list of SC/ST/OBC as the case may be (Recommendation No. 55).

(iii), (iv), & (v) to give electoral reservation to them in (a) Lok Sabha and State Legislatures (b) Panchayati Raj Institutions and (c) Urban Local Bodies.

(vi) to set up a National Commission for DNTs as a permanent Constitutional Body like NCSC and NCST.

(vii) to reserve 10% of Govt. jobs for DNTs even if the ceiling of 50% is exceeded.

The Commission considered the above recommendations and observed as follows:

(i) As entire estimated population of DTs and NTs are stated to be already getting the benefits as either SCs or STs or OBCs, it may not be appropriate to delete them from these categories and put them in a new Constitutional category.

(ii) In case the people belonging to DTs and NTs have not been able to get the benefits as SCs/ STs/ OBCs, as has been stated by the NCDNSNT, the solution lies in addressing those problems and removing them, rather than making large scale amendments in Constitution and subsequent Govt. Orders.

(iii) many of the DTs/ NTs already categorized as SCs/ STs/ OBCs, may not like the existing arrangements to be disturbed as they would have to forgo the benefits already guaranteed to them as SCs/ STs/ OBCs

(iv) Efforts to maintain social harmony will be jeopardized by further dividing the society on caste basis by specifying another Constitutional category viz; "Scheduled Community"

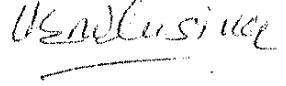
(v) In view of (i) above there is no need to set up a separate Commission for DTs and NTs beside NCSC , NCST and NCBC.

3. The meeting ended with vote of thanks to the Chairperson.

U. Milu Singh

National Commission for Scheduled Tribes

Meeting of the Commission held on 0310.2008 at 03:00 PM in the Conference Room of the Commission-List of participants.

<u>S.No.</u>	<u>Name and Designation</u>	<u>Signature</u>
1.	Smt. Urmila Singh, Chairperson	(In Chair) 
2.	Shri Maurice Kujur, Vice-Chairperson	
3.	Shri Tsering Samphel, Member	
4.	Shri Oris Sylem Myriaw, Member	
5.	Shri R.S. Sirohi, Secretary	
6.	Shri Aditya Mishra, Joint Secretary	
7.	Shri R.C. Durga, Director	
8.	Shri Vinod Aggarwal, Director	
9.	Shri R.P.Vasishth, Deputy Secretary	
10.	Shri K.N. Singh, PS to Chairperson	