

AGENDA NOTE

For 12th Meeting of the National Commission for Scheduled Tribes to be held on 24.06.2009

Comments of the National Commission for Scheduled Tribes on the Writ Petition (S) No.6337 of 2008 in Chhattisgarh High Court at Bilaspur, filed by Shri M.K. Chaudhary & Others Vs. State of Chhattisgarh & 12 Others regarding denial of promotion to SCs and STs Officers of Chhattisgarh State Electricity Board after bifurcation of Madhya Pradesh State Electricity Board, consequent to re-organisation of MP State in the year 2001.

BACKGROUND

The National Commission for Scheduled Tribes has received a Writ Petition on the above mentioned subject filed in the Chhattisgarh High Court at Bilaspur. There are 6 petitioners who are employees of the Chhattisgarh State Electricity Board and the main Respondent in the WP is the State Govt. of Chhattisgarh and the Chhattisgarh State Electricity Board. The National Commission for Scheduled Tribes is the 5th Respondent. As mentioned in para 8.21 of the WP that the Chhattisgarh Rajya Vidyut Mandal Aarakshit Varg Adhikari/ Karmachari Sangh (**राज्य विद्युत मंडल आरक्षित वर्ग अधिकारी/ कर्मचारी संगठन**), (hereinafter referred to as Sangh), had submitted a representation to the National Commission for Scheduled Tribes (Respondent No. 5) alleging that the SC/ST Officers/ Employees of the then existing Madhya Pradesh State Electricity Board, who were allocated to Chhattisgarh State Electricity Board after re-organisation of the Madhya Pradesh State into MP and Chhattisgarh States in the year 2000, were denied promotion because they were not having caste certificates issued by the Chhattisgarh Govt. As the matter called for action, primarily by the Chhattisgarh State Electricity Board, the representation was forwarded to the Chhattisgarh State Electricity Board (Respondent No.2) for taking necessary action in the matter. The WP was heard on 14.11.2008 for grant of interim relief. While granting the relief the Hon'ble High Court directed for issuing notice to the remaining Respondents. As per information available on the Website of the Chhattisgarh High Court this petition has not been listed thereafter, for hearing.

2. While no relief has been sought from the National Commission for Scheduled Tribes as evident from the contents and issues raised in the WP, the main issue of the WP relates to status of migrants and in particular the status of Scheduled Tribe persons after re-organisation of the Madhya Pradesh State into MP and Chhattisgarh States. It may be recalled that the NCST has dwelt upon this issue in detail in the 2nd Report of the Commission and made certain recommendations to ameliorate the conditions and problems of such Scheduled Tribe people (Para 4(vii) below). It is, therefore, felt that having already advocated for according ST status to the persons affected due to re-organisation of the States of Bihar, Madhya Pradesh and Uttar Pradesh the views of the Commission on the issue may be made known to the High Court enabling the Court to arrive at a justifiable decision. Accordingly, background material and related matters for inclusion in the draft Affidavit proposed to be filed on behalf of National Commission for Scheduled Tribes in the Hon'ble High Court of Chhattisgarh at Bilaspur is discussed below for consideration and approval by the Commission.

4. Examination of issues.

(i) The National Commission for Scheduled Tribes has been created w.e.f. 19.02.2004 by amending Article 338 of the Constitution of India and inserting a new Article 338A in the Constitution of India vide the Constitution (89th Amendment) Act, 2003. This Commission has been included as Respondent No.5 in the above Writ Petition. Respondents No. 6 to 13 are the affected Respondents, but the text of the WP mistakenly refers Respondents No. 5 to 12 as the affected Respondents. Comments of the Commission on the Writ Petition are as under.

(ii) The Respondent Commission would like to submit that the National Commission for Scheduled Tribes is vested with the following duties:-

- (a) To investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) To participate and advise in the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

(iii) This does not empower/ mandate the Commission with any authority to implement and enforce the various laws made for the Scheduled Tribes under the Constitution of India or under any other law for the time being in force or under any order of the Government. The Commission is, however, vested with the duty primarily to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes and to advise or make recommendations to the Union and State Govts. in the matters related to the safeguards provided for the Scheduled Tribes and the major policy matters affecting the Scheduled Tribes.

(iv) In the above context, as mentioned in para 8.21 of the WP, Chhattisgarh Rajya Vidyut Mandal Aarakshit Varg Adhikari/ Karmachari Sangh (राज्य विद्युत मंडल आरक्षित वर्ग अधिकारी/ कर्मचारी संगठन (राज्य विद्युत मंडल आरक्षित वर्ग अधिकारी/ कर्मचारी संगठन), (hereinafter referred to as Sangh), had submitted a representation to the National Commission for Scheduled Tribes (Respondent No. 5) alleging that the SC/ST Officers/ Employees of the then existing Madhya Pradesh State Electricity Board, who were allocated to Chhattisgarh State Electricity Board after re-organisation of the Madhya Pradesh State into MP and Chhattisgarh States in the year 2000, were denied promotion because they were not having caste certificates issued by the Chhattisgarh Govt. As the matter calls for action, primarily by the Chhattisgarh State Electricity Board. the representation was forwarded to the Chhattisgarh State Electricity Board (Respondent No.2) for taking necessary action in the matter.

(v) The issues raised in the WP primarily rest with the Govt. of Chhattisgarh and the Govt. of India in the Ministry of Social Justice & Empowerment in respect of Scheduled Castes and Ministry of Tribal Affairs in respect of Scheduled Tribes, w.r.t. the provisions contained in Article 341 and 342 respectively, which are reproduced below:

341 Scheduled Castes – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe but save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.

342 Scheduled Tribes – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community but save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.

(vi) The WP highlights the problems of SCs and STs who have been allotted service under the newly created States after bifurcation of the cadres consequent upon division of the State of Madhya Pradesh into the States of Chhattisgarh and Madhya Pradesh.

(vii) The National Commission for Scheduled Tribes had discussed this issue in detail and made a recommendation to the Govt. of India in its 2nd Report for the period 2006-07 submitted to the President of India on 3rd September, 2008. Relevant extracts under Para 3.9 of the Report are reproduced below for information and record:

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3.9 Tribal status of ST families to continue on their migration to other States due to reorganization of the States or due to their resettlement resulting from their displacement on account of acquisition of their land and property for developmental projects.

3.9.1 The National Commission for Scheduled Tribes in its meeting held on 20.12.2006 observed that in terms of the present instructions, persons belonging to Scheduled Tribes specified in relation to a State/UT are eligible to avail benefits of reservation in services and posts under Govt. of India and reservation in admission in any national level colleges and professional/ technical institutions under the control of Central Govt. irrespective of the State/UT to which they belong and also irrespective of the State/UT in which these colleges/ institutions are located. The Commission, however, noted that the above facilities were not available to the children of such ST parents who had been forced to migrate and settle in other States/UTs (i.e. other than the State of their origin) consequent upon their appointment and posting in those States/UTs against Group A or Group B posts under the State Govt. (which are filled on all India basis) or those who while working in Central Govt. offices or CPSUs are transferred and posted to States/UTs other than the State/UT of their origin. The Commission noted that the children of such migrated tribals face severe problems which include denial of the benefits of reservation to them in admission to the State-run educational/professional institutions and in the employment under the State Govt. Also, the children of such migrated ST parents were not eligible to get admission in the institution of their choice even in the State of their origin due to the fact that they had migrated to another State.

3.9.2. The Commission further observed that a similar situation was prevailing in various States in case of those Scheduled Tribe families who had been displaced from their original place of living due to acquisition of their land for taking up various developmental projects and submersion of their land due to construction of irrigation, hydel and power projects. It was noted that the rehabilitation and resettlement of the displaced families in most of these cases had taken place in States other than the States of their origin.

3.9.3 The Commission observed that there was another category of Scheduled Tribe families who suddenly become non-ST pursuant to re-organisation of the States. It was recalled by the Commission that large scale re-organisation took place in 1956 due to the States Reorganization Act, 1956 (37 of 1956), and Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956). The list of Scheduled Tribes in respect of each State/ UT (as it existed after re-organisation) was notified vide the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, which inter-alia, mentions that "Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the 1st day of November, 1956."

3.9.4 The Commission observed that for the purpose of issuing the caste certificate to a person, he/she is asked to give details about his place of ordinary residence as on the date of original notification of Constitution (Scheduled Tribes) Order, 1950 or Constitution (Scheduled Tribes) Order, 1951. It was observed that since new States emerged in 1956 and the new Government of each State/ UT started functioning in the capitals of the such new States, the condition of ordinary residence as in 1950 or 1951 should have ceased to have any validity and the place of residence after re-organisation should have been the only criteria for the purpose of issue of ST certificates and grant of special benefits meant for the Scheduled Tribes. The Commission took special note of the problems of such STs who were Govt. servants in the States which existed before re-organisation and who were compelled migrate to other States (i.e. after reorganization) because their services were transferred to the new State Governments. For instance, the Offices of Government of Madhya Pradesh, C.P. and Berar, which were functioning at Nagpur in 1956 were divided into two separate Secretariats in respect of newly constituted States of Madhya Pradesh and Maharashtra. The Commission noted that those ST employees who earlier belonged to the combined State and were transferred to Madhya Pradesh were still being asked to produce evidence about their place of residence, as in 1950. It was observed that the same situation prevailed in respect about those STs who belonged to a place

which is part of present Madhya Pradesh, but were allotted duty in Maharashtra. The Commission found that the children of all those Government servants who were rendering service on the basis of ST certificates prior to notification of the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, were being denied the safeguards and other benefits admissible to the Scheduled Tribes for no fault of theirs.

3.9.5 The Commission also observed that similar situations had arisen after re-organisation of Punjab State in 1966 leading to creation of the States Haryana, Himachal Pradesh and Chandigarh Union Territory and again in November, 2000 on account of re-organisation of the States of Bihar, Madhya Pradesh and Uttar Pradesh. The ST residents of these States as well as of newly created States of Jharkhand, Chhattisgarh and Uttarakhand have been facing difficulties in obtaining ST certificates on account of the position enumerated in paras 3.8.3 and 3.8.4 and as a result thereof they were being denied the benefits of special schemes and programmes which are exclusively meant for Scheduled Tribes.

3.9.6 The Commission noted that the above problem prevailed due to the Hon'ble Supreme Court's judgment in Action Committee vs. Union of India (1994) in which the Hon'ble Court upheld the validity of the instructions issued by the Govt. of India (Ministry of Home Affairs) during 1975 and 1977, according to which a person continues to be a SC or ST in respect of the State of his/her origin and he or she will not be treated as SC or ST in the State to which he/she has migrated. It was noted that this decision had been causing undue hardships to the Scheduled Tribe persons (as also Scheduled Castes) on their migration to another State. The Commission felt that as these migrations took place on account of circumstances over which the ST persons had no control and not on account of their own volition driven by any commercial or other considerations, it would be unfair not to recognize them as Scheduled Tribes by not issuing ST certificates to them thereby not allowing them to continue to avail the benefits available to them in the State of their origin or in the State, in which they resided before the re-organisation of that State. The Commission strongly felt that the Govt. must address to this burning problem and find out immediate solution at the earliest to save the STs

from continued harassment. It was noted that the Commission had also taken up the matter with the Ministry of Personnel & Training, Department of Secondary and Higher Education, Department of Health and Family Welfare and Ministry of Tribal Affairs vide its d.o. letter No.6/7/2007- C.Cell dated 3.1.2007 and that it had not heard anything in this regard.

3.9.7 The Commission would like to make the following recommendations for urgent consideration of the Government to resolve the problems of tribal families on their migration to other States due to their resettlement resulting from their displacement in the State of their origin or due to reorganization of States for urgent consideration of the Government:

There is need to advise the State Governments that

- (a) **they should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents due to the resettlement in another State following displacement from his State of origin will continue to enjoy the same status in the State where they are resettled after displacement in case the community/ communities to which they belong has/ have already been notified as Scheduled Tribe/ Scheduled Tribes in that State and avail the benefits admissible to the Scheduled Tribes in that State.**
- (b) **In case the community/ communities to which the resettled tribals belong has/ have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate action to get that/ those community/ communities notified as Scheduled Tribe/ Scheduled Tribes effective from the date of resettlement and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State.**
- (c) **There is also need to advise the State Govts. that they should issue instructions to provide that in the context of creation of new States or transfer of territories from one State to another State following re-organisation of States, the Scheduled Tribes notified for the undivided States will continue to enjoy the same status in the successor States depending upon the place of their residence in the new State on the date of the notification of the State Reorganisation Act.**

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5. Para-wise comments, proposed to be furnished to Counsel to draft affidavit to be filed in the Hon'ble High Court of Chhattisgarh at Bilaspur, on the basis of the position explained above, is enclosed as **ANNEXURE –I**.

IN THE CHHATTISGARH HIGH COURT AT BILASPUR

IN THE WRIT PETITION (S) NO.6337 OF 2008

Between

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|---|-------------------|
| 1. Shri M.K. Chaudhary,
S/o Shri R.K. Chaudhary,
Executive Engineer, Office of the Superintendent Engineer
(O and M) HBHPS, Machadoli,
Distt.-Korba (Chhattisgarh) | Petitioner |
| 2. Shri Kailash Narnawre,
S/o Shri Gowind Rao Narnawre,
Executive Engineer (City Division),
Durg, (Chhattigarh) | Petitioner |
| 3. Shri Ram Avtar Verma,
S/o Shri Badri Prasad Verma,
Executive Engineer (General),
Office of the Superintendent Engineer (H.R.D.),
H.T.P.S., Korba West (Chhattisgarh) | Petitioner |
| 4. Shri V.R. Maurya,
S/o Shri G.R. Maurya,
Executive Engineer (Vigilance),
Office of the Superintendent Engineer (O and M) Circle,
Chhattisgarh State Electricity Board, Janjgir,
Distt. Jangir-Champa (Chhattisgarh) | Petitioner |
| 5. Shri Waman Raw Wankhede,
S/o Shri S.R. Wankhede,
Executive Engineer,
Office of Chief Engineer,
Chhattisgarh State Electricity Board, Rajnandgaon
(Chhattisgarh) | Petitioner |
| 6. Shri I.N. Kaithwas,
S/o Shri Lallu Kaithwas,
Executive Engineer (O and M), Pendra Road,
Distt. Bilaspur (Chhattisgarh) | Petitioner |

Versus

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|--|-------------------|
| 1. State of Chhattisgarh,
Through Secretary,
Department of Energy,
D.K.S. Bhawan, Mantralaya,
Raipur (Chhattisgarh) | Respondent |
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2. Chhattisgarh State Electricity Board,
Through its Chairman,
Danganiya, Raipur (Chhattisgarh) **Respondent**
3. Secretary,
General Administration Department,
D.K.S. Bhawan, Mantralaya,
Raipur (Chhattisgarh) **Respondent**
4. Chhattisgarh Rajya Anusuchit Jan Jati Ayog,
Through its Chairman,
61, Jal Vihar Colony,
Raipur (Chhattisgarh) **Respondent**
5. Chairman,
National Commission for Scheduled Tribes
6th Floor, Lok Nayak Bhawan,
Khan Market New Delhi **Respondent**
6. Shri Jamulkar,
SE (O&M) C.S.E.B.,
Rajnandagaon (CG) **Respondent**
7. Shri Bhim Singh Nagotiya,
SE (STRE) Circle, C.S.E.B.,
Cudhiyari,
Raipur **Respondent**
8. Shri Sahdeo Kumar Thakur,
SE (STORE) Circle, C.S.E.B.,
Cudhiyari, Raipur (C.G.) **Respondent**
9. Smt. Sharada Sonwani,
SE Office of CE (T&C), C.S.E.B.,
Danganiya, Raipur (C.G.) **Respondent**
10. Shri M.L. Kerketta,
SE (Operation)-III, C.S.E.B.,
Korba (East) (C.G.) **Respondent**
11. Shri Rajan Lakra,
SE (RENOVATION), C.S.E.B.,
Korba (East) (C.G.) **Respondent**
12. Shri S.K. Banjara,
SE (MP), C.S.E.B.,
Korba (East) (C.G.) **Respondent**
13. Shri S.P. Chelkar,
SE (HBHP), C.S.E.B.,
MACHADOLI, Korba (C.G.) **Respondent**

**MATERIAL FOR PREPARING COUNTER AFFIDAVIT ON BEHALF OF NATIONAL
COMMISSION FOR SCHEDULED TRIBES (RESPONDENTS NO. 5)**

1. The National Commission for Scheduled Tribes has been created w.e.f. 19.02.2004 by amending Article 338 of the Constitution of India and inserting a new Article 338A in the Constitution of India vide the Constitution (89th Amendment) Act, 2003 (**ANNEX R-1**) This Commission has been mentioned as Respondent No.5 in the above Writ Petition. Respondents No. 6 to 13 are the affected Respondents (but the text of the WP mistakenly refers Respondents No. 5 to 12 as the affected Respondents).

2. The National Commission for Scheduled Tribes is vested with the following duties and functions:-

- (a) To investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- (c) To participate and advise in the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- (d) To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

3. This does not empower/ mandate the Commission with any authority to implement and enforce the various laws made for the Scheduled Tribes under the Constitution of India or under any other law for the time being in force or under any order of the Government. The Commission is, however, vested with the duty primarily to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes and to advise or make recommendations to the

w.r.t. the provisions contained in Article 341 and 342 respectively, which are reproduced below:

341 Scheduled Castes – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be.
(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe but save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.

342 Scheduled Tribes – (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be.
(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community but save as aforesaid, a notification issued under the said clause shall not be varied by any subsequent notification.

- (c) This WP highlights the problems of SCs and STs who have been allotted service under the newly created States after bifurcation of the cadres consequent upon division of the State of Madhya Pradesh into the States of Chhattisgarh and Madhya Pradesh .
- (d) The National Commission for Scheduled Tribes had discussed in detail, the issue relating to the Tribal status of ST families on their migration to

other States due to reorganization of the States or due to their resettlement resulting from their displacement on account of acquisition of their land and property for developmental projects, in its meeting held on 20.12.2006. The Commission observed that in terms of the present instructions, persons belonging to Scheduled Tribes specified in relation to a State/UT are eligible to avail benefits of reservation in services and posts under Govt. of India and reservation in admission in any national level colleges and professional/ technical institutions under the control of Central Govt. irrespective of the State/UT to which they belong and also irrespective of the State/UT in which these colleges/ institutions are located. The Commission, however, noted that the above facilities were not available to the children of such ST parents who had been forced to migrate and settle in other States/ UTs (i.e. other than the State of their origin) consequent upon their appointment and posting in those States/ UTs against Group A or Group B posts under the State Govt. (which are filled on all India basis) or those who while working in Central Govt. offices or CPSUs are transferred and posted to States/UTs other than the State/ UT of their origin. The Commission noted that the children of such migrated tribals face severe problems which include denial of the benefits of reservation to them in admission to the State-run educational/ professional institutions and in the employment under the State Govt. Also, the children of such migrated ST parents were not eligible to get admission in the institution of their choice even in the State of their origin due to the fact that they had migrated to another State and they had not studied in the State of origin.

- (e) The Commission further observed that a similar situation was prevailing in various States in case of those Scheduled Tribe families who had been displaced from their original place of living due to acquisition of their land for taking up various developmental projects and submersion of their land due to construction of irrigation, hydel and power projects. It was noted that the rehabilitation and resettlement of the displaced families in most of these cases had taken place in States other than the States of their origin.

- (f) The Commission observed that there was another category of Scheduled Tribe families who suddenly become non-ST pursuant to re-organisation of the States. It was recalled by the Commission that large scale re-organisation took place in 1956 due to the States Reorganization Act, 1956 (37 of 1956), and Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956). The list of Scheduled Tribes in respect of each State/ UT (as it existed after re-organisation) was notified vide the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, which *inter-alia*, mentions that "Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the 1st day of November, 1956."
- (g) The Commission observed that for the purpose of issuing the caste certificate to a person, he/ she is asked to give details about his place of ordinary residence as on the date of original notification of Constitution (Scheduled Tribes) Order, 1950 or Constitution (Scheduled Tribes) Order, 1951. It was observed that since new States emerged in 1956 and the new Government of each State/ UT started functioning in the capitals of the such new States, the condition of ordinary residence as in 1950 or 1951 should have ceased to have any validity and the place of residence after re-organisation should have been the only criteria for the purpose of issue of ST certificates and grant of special benefits meant for the Scheduled Tribes particularly in view of the provision in Section 4 of the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, which *inter-alia*, mentions that "Any reference in this Order to a State or to a district or other territorial division thereof shall be construed as a reference to the State, district or other territorial division constituted as from the 1st day of November, 1956."
- (h) The Commission took special note of the problems of such STs who were Govt. servants in the States which existed before re-organisation and who were compelled to migrate to other States (i.e. after reorganization) because their services were transferred to the Government of the new State. For instance, the Offices of Government

of Madhya Pradesh, C.P. and Berar, which were functioning at Nagpur in 1956 were divided into two separate Secretariats in respect of newly constituted States of Madhya Pradesh and Maharashtra. The Commission noted that those ST employees who earlier belonged to the combined State and were transferred to Madhya Pradesh were still being asked to produce evidence about their place of residence, as in 1950. It was observed that the same situation prevailed in respect of about those STs who belonged to a place which is part of present Madhya Pradesh, but were allotted duty in Maharashtra. The Commission found that the children of all those Government servants who were rendering service on the basis of ST certificates prior to notification of the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, were being denied the safeguards and other benefits admissible to the Scheduled Tribes for no fault of theirs.

- (i) The Commission also observed that similar situations had arisen after re-organisation of Punjab State in 1966 leading to creation of the States of Haryana, Himachal Pradesh and Union Territory of Chandigarh and again in November, 2000 on account of re-organisation of the States of Bihar, Madhya Pradesh and Uttar Pradesh. The ST residents of these States as well as of newly created States of Jharkhand, Chhattisgarh and Uttarakhand have been facing difficulties in obtaining ST certificates on account of the position discussed above and as a result thereof they were being denied the benefits of special schemes and programmes which are exclusively meant for Scheduled Tribes.
- (j) The Commission noted that the above problem prevailed due to the Hon'ble Supreme Court's judgement in Action Committee vs. Union of India (1994) in which the Hon'ble Court upheld the validity of the instructions issued by the Govt. of India (Ministry of Home Affairs) during 1975 and 1977, according to which a person continues to be a SC or ST in respect of the State of his/her origin and he or she will not be treated as SC or ST in the State to which he/she has migrated. It was noted that this decision had been causing undue hardships to the Scheduled Tribe persons (as also Scheduled Castes) on their migration to another State. The Commission felt that as these migrations took place on account of

circumstances over which the ST persons had no control and not on account of their own volition driven by any commercial or other considerations, it would be unfair not to recognize them as Scheduled Tribes by not issuing ST certificates to them and thereby not allowing them to continue to avail the benefits available to them in the State of their origin or in the State, in which they resided before the re-organisation of that State. The Commission strongly felt that the Govt. must address to this burning problem and find out immediate solution at the earliest to save the STs from continued harassment. The Commission had also taken up the matter with the Ministry of Personnel & Training, Department of Secondary and Higher Education, Department of Health and Family Welfare` and Ministry of Tribal Affairs vide its d.o. letter No.6/7/2006- C.Cell dated 3.1.2007 (**ANNEXURE R-2**) but has not heard anything in this regard.

- (k) To resolve the problems of tribal families on their migration to other States due to their resettlement resulting from their displacement in the State of their origin or due to reorganization of States for urgent consideration of the Government, the Commission has recommended that there was urgent need on the part of the Ministry of Social Justice & Empowerment and Ministry of Tribal Affairs to advise the State Govts. that

(1) They should issue instructions to provide that the families and children of the in-voluntarily migrated ST parents due to the resettlement in another State following displacement from his State of origin will continue to enjoy the same status in the State where they are resettled after displacement in case the community/ communities to which they belong has/ have already been notified as Scheduled Tribe/ Scheduled Tribes in that State and avail the benefits admissible to the Scheduled Tribes in that State.

(2) In case the community/ communities to which the resettled tribals belong has/ have not been notified as Scheduled Tribes in the State of resettlement, they (i.e. the State Govts.) should immediately initiate action to get that/ those community/ communities notified as Scheduled Tribe/ Scheduled Tribes

effective from the date of resettlement and also ensure that pending the issue of said notification, the resettled tribals are allowed to avail the benefits admissible to Scheduled Tribes in that State.

- (3) That they should issue instructions to provide that in the context of creation of new States or transfer of territories from one State to another State following re-organisation of States, the Scheduled Tribes notified for the undivided States will continue to enjoy the same status in the successor States depending upon the place of their residence in the new State on the date of the notification of the State Reorganisation Act.

The Ministry of Social Justice & Empowerment and Ministry of Tribal Affairs, Government of India have not advised the Commission about the action taken by them on this recommendation of the Commission so far.

(iv) Para 8.24

No comments

(v) Paras 9 Grounds

No comments

(vi) Para 10 Reliefs sought

No relief has been sought from the Commission. Moreover, the responsibility for issuing any instructions or clarifications in respect of the issues raised in the WP lies with the Union of India in the Ministry of Social Justice & Empowerment in respect of Scheduled Castes and the Ministry of Tribal Affairs in respect of Scheduled Tribes.

THE CONSTITUTION (EIGHTY-NINTH AMENDMENT) ACT, 2003

[28th September, 2003.]

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:-

1. Short title and commencement.- (1) This Act may be called the Constitution (Eighty-ninth Amendment) Act, 2003.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of article 338. - In article 338 of the Constitution,-

(a) for the marginal heading, the following marginal heading shall be substituted, namely:-

"National Commission for Scheduled Castes.";

(b) for clauses (1) and (2), the following clauses shall be substituted, namely:-

"(1) There shall be a Commission for the Scheduled Castes to be known as the National Commission for the Scheduled Castes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.";

(c) in clauses (5), (9) and (10), the words "and Scheduled Tribes", wherever they occur, shall be omitted.

3. Insertion of new article 338A. - After article 338 of the Constitution, the following article shall be inserted, namely:-

"338A. National Commission for Scheduled Tribes.-(1) There shall be a Commission for the Scheduled Tribes to be known as the National Commission for the Scheduled Tribes.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and three other Members and the conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the President may by rule determine.

(3) The Chairperson, Vice-Chairperson and other Members of the Commission shall be appointed by the President by warrant under his hand and seal.

(4) The Commission shall have the power to regulate its own procedure.

(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled

Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

(6) The President shall cause all such reports to be laid before each House of Parliament along with 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.

(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 along with 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.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes."

SUBHASH C. JAIN,
Secy. to the Govt. of India.