

MINUTES OF THE SECOND MEETING OF FIFTH NATIONAL COMMISSION FOR SCHEDULED CASTES HELD ON 15.09.2017 AT 12.00 NOON.

Second Meeting of the Fifth National Commission for Scheduled Castes (NCSC) was held on 15.09.2017 under the Chairmanship of Dr. (Prof.) Ram Shankar Katheria, Chairman, NCSC. List of participants is at Annexure-I. The following Agenda items were taken up for discussion & decisions were taken thereon:

Agenda Item No. 5.2.1: Confirmation of minutes of the 1st meeting of the Commission held on 13.07.2017.

Decision Taken: Minutes of the 1st meeting of the Commission were approved unanimously.

Agenda Item No. 5.2.2: Action Taken Notes on the minutes of the 1st meeting of the Commission.

Decision Taken: Action Taken on decisions of the 1st meeting held on 13.07.2017 was noted and approved. It was directed that decision taken in agenda item no.5.1.2 during the last meeting regarding purchase of 5 new Staff Cars for NCSC Hqrs. New Delhi & additional budget thereof may be followed up with the Ministry. Further it was also apprised that Taxi being provided to the Hon'ble Member (SV) by the GeM vendor is in very bad condition and also the vehicle is not of the category agreed in by the vendor under GeM. It was decided that for violating the contract and placing the Hon'ble Member (SV) in hardship and causing great inconvenience resulting in hampering of the work of the Commission, DCP (South) may be asked to lodge an FIR against the vendor. Further regarding agenda item no.5.1.4 taking benefits of reservation in services on producing false caste certificate, it was decided that letters may also be written to all Chief Ministers of the States/UTs. (Action: Genl. Admn. & SSW-I)

Agenda Item No.5.2.3: Implementation of the Scheme of Dr. Ambedkar Chair in the Central Universities.

Decision Taken: The Commission approved the agenda item & decided that Commission may take up this issue with HRD Ministry to issue instructions to all the Central Universities/Institutions for constitution of Dr. Ambedkar Chair under the

scheme as per its objective of research and learning of socio economic and cultural life of the marginalized groups and others weaker section of the society. (Action: ESDW)

Agenda Item No. 5.2.4: Difficulties in obtaining caste certificate for the children without name of father.

Decision Taken: It was informed to the Commission that the issue was earlier considered in the NCSC meeting of fifth Commission held on 13.07.2017 under Agenda Item No. 5.1.7 and the Commission had decided that "the draft statute, in the line with the judgment of Hon'ble Supreme Court dated 19.08.2003 is to be formulated by the Ministry of Social Justice & Empowerment and any comments can be offered by the Commission only after examination of the draft statute so formulated".

The Commission's views were also intimated to the Ministry of Social Justice & Empowerment vide Commission's letter No. 38/Misc-3/2017/SSW-I dated 03.08.2017.

The Ministry of Social Justice & Empowerment vide its letter no. 17020/27/2017-SCD (R.L. Cell) dated 08.08.2017 stated that "the Ministry vide its letter dated 06.07.2017 had sought comments of the Commission on the issue raised by Smt. Manekaa Gandhi, Hon'ble Minister of Women Child Development (WCD) in her letter dated 11.04.2017 on the problems being faced by the children of women separated from their husband in getting caste certificates in the name of the mother. In paras 3 & 4 of the letter of this Ministry under reference legal position with regard, to issuance of caste certificate was enumerated, wherein observation of the Hon'ble Supreme Court in the case of Punit Rai Vs. Dinesh Chaudhary was quoted. At present there is no proposal in the Ministry to formulate a draft statute in line with the judgment of Apex Court in the aforesaid case. It is requested that the Commission may examine the issue raised by Hon'ble Minister (WCD) in her letter dated 11.04.2017 and offer their considered comments, whether under the existing guidelines governing the issue of Scheduled Castes certificate, the caste certificate can be issued to the wards of separated Women in the name of mother".

Hence, on receipt of Ministry of Social Justice & Empowerment vide its letter no. 17020/27/2017-SCD (R.L. Cell) dated 08.08.2017, the issue was again discussed at length and considered.

Decision Taken:

The Commission decided that the Commission prima facie does not agree with the tentative proposal of the Ministry of Social Justice & Empowerment sent vide letter number 17020/27/2017-SCD (R.L. Cell) dated 06.07.2017 and again vide the letter number 17020/27/2017-SCD (R.L. Cell) dated 08.08.2017 as the same is not in the interest of the Scheduled Castes. However, the Commission reserves its right to offer detailed comments/views as and when the Ministry sends a complete draft statute/law on the subject as that would be the correct method to decide on the topic and would also be in the line of the judgment of the Hon'ble Supreme Court dated 19.08.2003.

The Ministry of Social Justice & Empowerment may be informed accordingly.
(Action: SSW)

Agenda Item No. 5.2.5: Hon'ble Chairman has desired that Hon'ble Members and Hon'ble VC should present details of their work done in last 3 months during Commission's meeting.

Decision Taken: Work done was examined and decided that summary of work done (in approximately two pages each) with respect to the Hon'ble Chairman, Hon'ble Vice-Chairman & Hon'ble Members respectively may be obtained from the offices of Hon'ble Chairman, Hon'ble Vice-Chairman & Hon'ble Members respectively and circulated to all including State Officers. (Action: C.Cell)

Agenda Item No. 5.2.6: (a) To list the section 377 IPC-Unnatural Offence in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016.

(b) Insertion of word "victim/dependant of victim" is needed to be inserted after the word "widow of the deceased " at Sl.No.46 Annexure-I, Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016.

(c) To include IPC 326A at Sl.No.24 of Annexure-I, Rule 12(4) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016.

Decision of the Commission: The Commission approved the above proposal for writing to the Ministry of Social Justice & Empowerment for appropriate amendments to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act,

2015 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016 as required, on lines of the earlier D.O. letter No.3/2/2007-APCR dated 29.08.2017 for modification to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 2016 sent from Chairman, NCSC to Hon'ble Minister of SJE. (Action: APCR)

Agenda Item No. 5.2.7: Ex-post-facto approval for the Draft Cabinet Note to introduce the Fugitive Economic Offenders Bill, 2017.

Agenda Item No. 5.2.8: Ex-post-facto approval for the comments of the National Commission for Scheduled Castes on the Memorandum for Standing Finance Committee (SFC) for the revision in the existing eligibility criteria and enhancing the scope of the beneficiaries under Credit Enhancement Guarantee Scheme for Scheduled Castes.

Agenda Item No. 5.2.9: Ex-post-facto approval of the proposal of Modifications in the operation guidelines in respect of Venture Capital Funds for Scheduled Castes.

Decisions Taken: (agenda item nos 5.3.7, 5.2.8 & 5.2.9): All three agenda notes were deliberated upon and approved. However it was decided that henceforth, Cabinet Notes or similar notes received from the Ministry of Social Justice & Empowerment or other Ministries/Departments of Govt. of India may be circulated to all Hon'ble Members, Hon'ble Vice-Chairman for information after approval is obtained from Hon'ble Chairman on file on the comments of Commission. (Action: ESDW)

Agenda Item No. 5.2.10: Ex-facto-approval on De-reservation proposals received from the office of Comptroller & Auditor General of India, New Delhi requesting for approval of the NCSC to de-reserve the Scheduled Caste posts filled on promotion in various subordinate offices of CAG.

Decision Taken: The Commission was informed that the NCSC has received 19 de-reservation proposals from the office of Comptroller & Auditor General of India (CAG) for de-reservation of SC post filled on promotion by non SC employees and for approval of the Commission was requested.

These 19 proposals were examined in detail and the Commission has sent its opinion/recommendation that the Commission has not agreed to the de-reservation proposals and the office of Comptroller & Auditor General of India was advised to fill up

the reserved Scheduled Caste posts either on deputation on temporary basis as per requirement or by the eligible Scheduled Caste employees as per eligibility. The Department concerned may also take necessary steps to fill up the reserved vacancies by relaxing the norms of the eligibility from the Scheduled Caste employees.

The Commission approved the same. Necessary action may be taken by communicating the Commission's decision to the office of Comptroller & Auditor General of India accordingly. (Action: SSW)

Agenda Item No. 5.2.11: Dhangar Caste of Uttar Pradesh.

The Commission was informed that the NCSC has received representation from the Convenor, BhartiyaAnusuchitJatiEvamJanjatiMahasabha, Agra, U.P. & President, RastriyaShoshitParishad, New Delhi regarding re- consideration of the Commission's decision dated 03.12.2012 in the matter of Dhangar{English/Dhangad (Hindi)} Caste as SC of U.P. and issuance of Caste Certificate to Dhangar caste of U.P. in English & धंगड़ caste in Hindi.

Similarly the Commission has received a letter no. 12018/1/2011- SCD (R.L cell) dated 07.09.2017 from the Ministry of Social Justice & Empowerment forwarding there with representation of Shri Jai BhagawanJatav, President, RashtriyaShoshitParishad, New Delhi for the consideration of the Commission.

These issues raised in the representations have been re-examined in light of the representation and letter received from Ministry of Social Justice and Empowerment letter number 12018/1/2011-SCD (R.L. Cell) dated 07.09.2017 and it is seen that;

- i) The Commission's decision dated 03.12.2012 is challenged before the Hon'ble High Court of U.P. judicature at Allahabad and the opinion sought on the issue is under consideration of the Hon'ble Supreme Court of India.
- ii) There is also another Court case vide Writ Petition (C) No. 34423 of 2013 in the matter of Indrajeet and 8 others Vs. NCSC and 10 others on Dhangar caste of U.P. The aforesaid case was heard by the Hon'ble High Court of U.P. on 08.07.2013 and directed to issue notice for submission of counter reply. However, the Commission's reply on the Court case is yet to be submitted before the Hon'ble High Court.

- iii) The Commission had considered the matter in its meeting under Agenda Item No. 29.17 held on 03.12.2012 and decided that;

“This is neither a case of deletion or addition to the list. This is rather a matter of clarification resulting into replacement of an entry (with no inhabitants) by clarifying another entry (which is in practice). Accordingly, it is decided that SC certificates can be given only to ‘Dhangar’ धनगर and not to ‘Dhangad’ धंगड़/ धनगढ़/ धनगड़ |”

The Commission’s decision was intimated to the Hon’ble High Court and the Ministry of Social Justice & Empowerment accordingly vide letter number 6/Inclusion & Exclusion-12/2012/SSW-I dated 16.01.2013.

- iv) The Ministry’s vide its letter number 12018/1/2011-SCD (R.L. Cell) dated 13.02.2013 had sent its comments and requested to the Commission to review its decision dated 03.12.2012. The same was put up to Commission in its meeting as per Agenda No.31.5 of the 31st meeting of NCSC held on 29.04.2013 where it was decided that NCSC has already given its views and the Ministry of Social Justice and Empowerment has to take a decision in the matter.

On receipt of the letter number 12018/1/2011-SCD (R.L. Cell) dated 07.09.2017 of the Ministry of Social Justice and Empowerment and representations received , the matter was re-examined by the Fifth National Commission for Scheduled Castes in its meeting dated 15.09.2017. The Commission observed that:

As per the English Version of Gazette Notification of the Constitution (Scheduled Castes) Order 1950, the Dhangar Caste is notified as Scheduled Caste at Sl.No.27 in the list of Uttar Pradesh. The Hindi Version of the Gazette Notification of 1950 is not available. However, in the Gazette Notification namely Scheduled Caste & Scheduled Tribes Orders, (Amendment), Act 1976, (English version) “Dhangar” caste is notified as Scheduled Caste at Sl.No.27 of the list of Uttar Pradesh and as per Hindi version of the Scheduled Caste & Scheduled Tribe Orders, (Amendment), Act 1976, the caste notified at Sl.No.27 is धंगड़ in the list of Uttar Pradesh.

Thus, it is clear that धंगड़ caste is the Scheduled Caste in the State of Uttar Pradesh mentioned at the serial no. 27.

The English Spelling of धनगर & धंगड़ is same i.e "Dhangar" which has been cause of confusion. However it is clear from the Gazette Notification Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 that the Scheduled Caste at Sl.No.27 of Uttar Pradesh is धंगड़ . The Commission also observed that the the third National Commission for Scheduled Castes in its meeting dated 03.12.2012 had taken a decision namely "this is neither case of deletion or addition to the list. This is rather a matter of clarification resulting into replacement of an entry (with no inhabitants) by clarifying another entry (which is in practice). Accordingly, it is decided that SC certificates can be given only to Dhangar धनगर and not to Dhangad धंगड़ / धनगढ़ / धनगड़)", which essentially amounted to modifying the Presidential Order i.e. the Constitution (Scheduled Castes) Order 1950 and Scheduled Castes and Scheduled Tribes Orders (Amendment), Act, 1976 without examining the clause (2) of Article 341 of the Constitution of India.

The clause (2) of Article 341 of the Constitution of India states as follows:

"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 a 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".

On 15.09.2017, the Commission also observed that:

As per the modalities for deciding claims for inclusion in and exclusion from and other modification in the orders specifying Scheduled Castes list of States/UTs, the proposal should have come from Government of Uttar Pradesh, considered by Ministry of Social Justice & Empowerment, comments of Registrar General of India (RGI) taken and then the National Commission for Scheduled Castes would give its comments. Following which Ministry of Social Justice & Empowerment would prepare an amendment in the legislation i.e. Presidential Order the Constitution (Scheduled Castes) Order of 1950.

The above modalities were not carried out when decision of 03.12.2012 of the National Commission for Scheduled Castes was taken. Hence, neither the laid down process as per clause (2) of Article 341 of the Constitution of India was followed, nor were laid down modalities for deciding claims for inclusion in and exclusion from and other modification in the orders specifying Scheduled Castes list of States/UTs, followed to arrive at decision on 03.12.2012.

Decision Taken: Hence, the Commission decided on 15.09.2017 :

To treat the earlier decision of NCSC dated 03.12.2012 as superceeded by the following : " that the Scheduled Caste mentioned at Sl.No.27 for Scheduled Castes of Uttar Pradesh as per the Scheduled Caste and Scheduled Tribes Order (Amendment) Act, 1976 is धंगड़ which is spelled as Dhangar in the english version of the Gazette Notification of Presidential Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976.

- The above decision of NCSC be also informed to the Ministry of Social Justice & Empowerment.
- The NCSC would need to file an affidavit of its revised stand of the above clarification in the Hon'ble High Court of Uttar Pradesh judicature at Allahabad in the W.P. No.34423 of 2013, The copy of the Gazette Notification of Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Hindi) may also be enclosed with our communication.
- To advise the Government of Uttar Pradesh to follow the Government of India's Order i.e. Presidential Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 on Dhangar / धंगड़ caste at serial no. 27 as issued in Hindi & English version of the notification of Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 .
- To advise the Government of Uttar Pradesh to circulate a copy of the Government of India's Gazette Notification, 1976 (Hindi & English Version) to all the Issuing Authorities of the Caste

Certificate for issuance of the Caste Certificate to the genuine धंगड़ community members.

- To also advise the Government of Uttar Pradesh that since there was no action taken to amend the Presidential Order on Scheduled Castes and Scheduled Tribes, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 regarding any change in the entry at Sl.No.27 of "Dhangar" of Uttar Pradesh which is written as धंगड़ at serial no. 27 in the Hindi version of the Gazette Notification, till date, hence any caste certificates issued merely on basis of the decision of the third National Commission for Scheduled Castes dated 03.12.2012 are not as per the Presidential Order, 1950 and Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976. Such certificates issued, if any, would need to be reviewed. The Government of Uttar Pradesh may take all necessary action to get such certificates reviewed as per rules.

Necessary action may be taken by communicating the Commission's decision to all concerned accordingly. (Action: SSW)

Agenda Item No. 5.2.12: Any other items with the permission of Chair.

- (i) It was appraised by the Hon'ble Vice-Chairman and Hon'ble Members that files relating to their allotted States and departments are not coming to them for taking a decision on the cases and for disposing the pending cases. It was directed that an Office Order may be issued to all Directors/ Research Officers/ Section Officers for immediately putting up the files to the Hon'ble Vice-Chairman and Hon'ble Members in respect of their allotted States and Departments. (Action: C.Cell)

The meeting ended with the thanks to the Chair.

Annexure-I

LIST OF PARTICIPANTS IN THE 2nd MEETING OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES HELD AT 3.00 PM ON 15.09.2017 AT NEW DELHI.

PRESENCE OF MEMBERS AND OFFICERS

S.NO. Name & Designation

MEMBERS OF THE COMMISSION

1. Prof. Ram Shankar Katheria, Chairman
2. Shri L. Murugan, Vice-Chairman
3. Shri K. Ramulu, Member
4. Dr. Yogendra Paswan, Member
5. Dr. (Mrs.) Swaraj Vidwan, Member

OFFICERS OF THE COMMISSION

1. Shri Arun Jha, Secretary
2. Dr. (Mrs.) Smita S. Chaudhri, Joint Secretary

Shri Santosh Kumar Dubey, Under Secretary (Admn. & C.Cell)