

MINUTES OF 29th MEETING OF NATIONAL COMMISSION FOR SCHEDULED CASTES (NCSC) HELD ON 03.12.2012 at 1.30 PM.

29th Meeting of the National Commission for SCs (NCSC) was held on 03.12.12 at 1.30 PM under Chairmanship of Dr. P. L. Punia, Chairman, NCSC in his office. List of participants is at **Annexure – I**.

2. After deliberations following decisions were taken:

2.1. Agenda No. 29.1: Confirmation of minutes of 28th meeting of the Commission held on 10.9.2012.

Decision: Minutes of the 28th Meeting held on 10.9.12 were confirmed.

2.2 Agenda No. 29.2: Action taken on minutes of 28th meeting of the Commission.

Decision: Action taken reports were noted.

2.3 Agenda No. 29.3: The Constitution (Amendment) Bill, 2012 (Amendment of Article 25) by Dr. Rattan Singh Ajnala, MP.

Decision: It was not agreed to. This may be communicated accordingly. **(Action: ESDW)**

2.4 Agenda No. 29.4: The Delhi Commission for SCs and STs Bill, 2012.

Decision: The proposal regarding constitution of Delhi State Commission for SCs and STs was being agreed to. **(Action: C.Cell)**

2.5 Agenda No. 29.5: Access to justice by SC life convicts, under trial prisoners and juveniles.

Decision: In future information may be obtained on SC convicts on the suggested parameters. **(Action: C. Cell)**

2.6 Agenda No. 29.6: Comments of the National Commission for Scheduled Castes on the Memorandum for Expenditure Finance Committee (EFC) under 'Self-Employment Scheme for Rehabilitation of Manual Scavengers- Proposal for Revision of the Central Sector Self-Employment Scheme for the Rehabilitation of Manual Scavengers (SRMS).

Decision: Following changes may be suggested from NCSC.

Sl. No	Component	Existing	Proposed Revision	Comments of NCSC
2	Cash Assistance	No Provision	One time cash assistance of Rs. 50,000/- immediately after the identification of manual scavengers	One time cash assistance of Rs. 1,00,000/- immediately after the identification of manual scavengers
3	Maximum	Rs. 5 lakhs	Rs. 15 lakhs	Rs. 25 lakhs
5.	Rate of interest to be charged from beneficiaries	4-6% based on the amount of loan	No change	4% Rate of interest be charged from beneficiaries
9.	Stipend during training	Rs. 1,000 p.m	Rs. 3,000 p.m	Rs. 5,000 p.m
10.	Repayment period	Upto 5 years	The period of repayment of loans, in case of project costing exceeding Rs. 5 lakh would be seven years.	The period of repayment of loans, in case of project costing exceeding Rs. 5 lakh should be Ten years

(Action: ESDW)

2.7 Agenda No. 29.7: Comments of the National Commission for Scheduled Castes on the Memorandum for Expenditure Finance Committee (EFC) for revision of the schemes of Special Central Assistance (SCA) to Scheduled Castes Sub-Plan (SCSP).

Decision: Copy of the Report from MoSJE may be obtained and put up after analysis of the same. **(Action: ESDW)**

2.8 Agenda No. 29.8: Case of Shri Panna Lal Bharti, Village-Hisoti, P.O. Surjawali via Khurja, District.

Decision: Being an individual case, it didn't have approval for being put up as agenda. Hence deleted. **(Action: C. Cell)**

2.9 Agenda No. 29.9: Inclusion of Peruvannan as synonym of Mannan, Pathiyan, Perumannan, Vannan, Vela (Sl. No. 37) in the list of Scheduled Castes of Kerala State.

Decision: NCSC has already decided on 16.7.2012 in its 27th meeting as under:

A final view by NCSC would be taken after holding public hearing in concerned States. This would be adopted in all cases referred for inclusion/exclusion in future. Simultaneously, report may be called for from concerned NCSC State Office.

It was brought to notice that practice adopted in case of OBC (by NCBC) is as under:-

- (i) Atleast 3-4 weeks notice is given to concerned State Government.
- (ii) State Government publishes an advertisement in print media atleast two weeks in advance indicating castes/sub-caste details to be consulted.
- (iii) Any body interested can participate in Commission's public hearing.
- (iv) Hearing is generally initiated with a case presentation by a Principal Secretary / Secretary to State Government.

Above course of action must be adhered to.

2.10 Agenda 29.10: Proposal for replacement of the existing entry "Malyan (in the areas comprising the Malbar District)' by "Malayan (in the area comprising Kozhikode, Wayanand and Kasaragod)" in the list of Scheduled Castes of Kerala.

Agenda 29.12: Writ petition No. 18243/2012 (GM-CC) between Karnataka Rajya Asprush, a Samaj Mahasabha Vs Others – received from Assistant Register, High Court of Karnataka.

Agenda No. 29.14: W.P. No. 28110/2012 filed by Shri S. Samuel Paraiyar, S/o Shri Simson, Rajapalayam, Virudhunagar District Vs. Chief Secretary to State Govt. of T.N. and Others regarding declaring null and void to Tamilnadu Arunthathiyars (Special Reservation of seats under educational institutions including private educational

Decision:

Sub: - Judicial proceedings in different courts regarding Inclusion & Exclusion of castes in SC list.

1. Constitution of India Provides as under:-

"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 purposes 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”.

(The Constitution of India)

2. In this regard the 5-Judge Bench of Supreme Court (**AIR 2005 Supreme Court-162**) has laid following guidelines.

2.1 “The State Legislature or its executive has no power of disturbing” (term used by Dr. Ambedkar) the Presidential List of Scheduled Castes for the State. Therefore, any executive action or legislative enactment of States which interferes disturbs rearranges regroups or reclassifies the various castes found in the Presidential List will be violative of scheme of the Constitution and will be violative of Article 341 of the Constitution.”

(Para 19, 21)

2.2 “Article 341 provides that the President may with respect to any State or Union Territory 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 purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory. This indicates that there can be only one List of Scheduled Caste in regard to a State and that List should include all specified castes, races or tribes or part or groups notified in that Presidential List. Any inclusion or exclusion from the said list can only be done by the Parliament under Article 341(2) of the Constitution of India. In the entire Constitution wherever reference has been made to “Scheduled Castes” it refers only to the list prepared by the President under Article 341 and there is no reference to any sub-classification or division in the said list except, may be, for the limited purpose of Article 330. It is also clear that except for a limited power of making an exclusion or inclusion in the list by an Act of Parliament there is no provision either to sub-divide, sub-classify or sub-group these castes which are found in the Presidential List of Scheduled Castes. Therefore, it is clear that the Constitution intended all the castes including the sub-castes, races and tribes mentioned in the list to be members of one group for the purpose of the Constitution and this group could not be sub-divided for any purpose”.

(Para 13)

3. Furthermore Supreme Court (Division Bench) laid down (**2007 Supreme Court 2056**) as following:-

3.1 “341 of the Constitution authorized lent to specify the castes, race or tribes or parts of or groups within castes, races or tribes which shall for the purposes thereof be deemed to be Scheduled Castes in relation to that State or Union

Territory by public notification. If power can be exercised by President not only for a caste or part of group within the caste, it can include a part of the State”.

(Para 4)

3.2. “The President of India alone in terms of Art.341(1) of the Constitution of India is authorized to issue an appropriate notification therefore. The Constitution (Scheduled Castes) Order, 1950 made in terms of Art. 341(1) is exhaustive. It is, therefore, not for the Court to render its opinion on the Presidential Order”.

(Para 9, 10)

3.3. “By reason of the aforementioned provision, the Constitution authorized the President to specify the castes, race or tribes or parts of or groups within castes, races or tribes which shall for the purposes thereof be deemed to be Scheduled castes in relation to that State or Union Territory by public notification. Such notification issued under Cl.(1) shall not be varied by any sub-sequent notification as provided by Cl. (2)of Art.341 except by the President. As and when States were formed, the President had power to issue notification as for that State such notification would not be a variation of the existing notification, but a fresh notification which could, after its issuance, not be varied by the President. It provides for a composite scheme. The modalities for issuance of public notification under Art. 341 have been prescribed to enable the President to exercise his power in relation to a State where for consultation with the Governor is required to be done. Scheduled Castes are specified for the purpose of the Constitution. If power can be exercised not only for a caste for a part of group within the caste, in our opinion, it can also include a part of the State”.

(Para-4 in Justice S.B. Sinha’s Judgment)

4. Constitutional provisions read with above judicial pronouncement imply as under:-

(i) It is only by Presidential order that inclusion and exclusion can be given effect to.

(ii) Any changes like synonyms, punctuation mark like coma etc. also amounts to change in scheduled list. Hence the same also can only be done by the prescribed procedure by Parliamentary, enactment.

(iii) The President in this case would imply Government of India (concerned nodal Ministry) within the over all Cabinet System.

5. Taking above into account, Government of India/(Ministry of Social Justice and Empowerment) have issued vide letter No. 12016/36/96-SCD(R. L. Cell)-Vol.III dated 30-7-2002 (Copy annexed – Appendix ‘A’)for ready reference). “Modalities for deciding claims for inclusion from and other modifications in the orders specifying Scheduled Castes and Scheduled Tribes list”.

6. As per above order, the procedure for inclusion/exclusion consists of following steps.

6.1. "Cases favoured by both the State Governments and the Registrar General of India (RGI) in their most recent reports would be referred to the National Commission for Scheduled Castes and Scheduled Tribes for their opinion. They would be forwarded to the Commission individually or in batches, as may be practicable, along with the comments of the State Governments and the RGI as well as any relevant material/information furnished by them or by representations".

[Para(a)]

6.2 "It may be suggested to the Commission that, while examining the above cases, they should associate, through panels or other means, expert individuals, organizations and institutions in the fields of anthropology, ethnography and other social sciences, in addition to the State Governments, RGI and the Anthropological Survey of India, on a regional basis. They may also consider holding public hearings in areas relevant to the claim under examination. These guidelines cannot be binding on the Commission, but may be suggested in the interest of fuller examination of the cases. The Commission would also be requested to give priority to cases in which the Courts have given directives regarding decision within a stipulated time period. (In such cases, extension of time would be sought from the courts where necessary, citing these modalities for the determination of claims). Such cases would be separately processed and sent for earlier decision".

[Para(c)]

6.3 "Claims for inclusion, exclusion or other modifications that neither the RGI nor the concerned State Governments have supported would not be referred to the National Commission. These would be rejected at the level of the Minister for Social Justice and Empowerment".

[Para (e)]

6.4 "In the case of claims recommended by the concerned State Governments/Union Territory Administrations, but not agreed to by the Registrar General of India, the concerned State Government/Union Territory Administration would be asked to review and further justify their recommendations in the light of RGI. On receipt of the further clarification from the State Government/Union Territory Administration, the proposal would be referred to the RGI for comments. In such cases, where the RGI does not agree to the point of view of the State Government/Union Territory Administration on a second reference, the Government of India consider rejection to the said proposal."

[Para (f)]

7.1. Above mentioned modalities imply that

(a) View of following government/department/organizations would be taken in sequential order as follows:-

- (i) State Government
- (ii) RGI
- (iii) NCSC/NCST
- (iv) Government of India (Nodal Ministry-MoSJE).

(b) NCSC comes in only after positive view/recommendations of State Government plus RGI are available.

(c) This applies both for inclusion/exclusion.

7.2. As obvious, the National Commission for Scheduled Castes (NCSC) has a well defined role in the scheme of procedure outlined

8. The Commission observes that it may be premature for NCSC to express its advice unless the first two steps (Para 7.1) are gone through and matter is referred by MoSJE to NCSC. Therefore the view/recommendations of State Govt. and RGI must be considered by MoSJE, Government of India and the proposal should be is duly forwarded by MoSJE, Government of India to NCSC for its advice/ observations.

9. Accordingly, replies to all pending judicial proceeding / court cases may be filed before Hon'ble Courts on behalf of NCSC on the above lines.

(Action: SSW)

2.11 Agenda No. 29.11: Taking a decision on complaints received from OBC communities.

Decision: Commission would address in matters of direct recruitment in services, admission in educational institutions. As regards other petitions (totaling to about 2000) although POA Act is not applicable to OBCs, NCSC should follow up these cases through its State Offices to ensure police action under IPC provisions. Such complaints whether received from NCBC or from complainant can be forwarded to the NCSC State Offices for necessary action, to start with. **(Action: SSW / ESDW / APCR)**

2.12 Agenda No. 29.13: Action on recommendation / suggestions of the Standing Committee on Social Justice & Empowerment in its Twenty Eighth Report on " The Constitution (Scheduled Castes) Orders (Amendment) Bill, 2012.

Decision: 6 months' time frame may be suggested from NCSC side as it includes a public hearing with 4 to 6 weeks notice, under procedure decided as at para 2.9 above.

2.13 Agenda No. 29.15: Inclusion / Exclusion of caste of Bihar State

Decision: Proposal / communication from Ministry of Social Justice & Empowerment may be awaited before taking a final view. **(Action: SSW).**

2.14 Agenda No. 29.16: Inclusion / Exclusion of castes of Odisha State.

Decision:

- (A) Inclusion of following 5 castes (to the extent that they follow Hinduism as their religion) as SC may be recommended:

- (1) Goudia Kela,
- (2) Adhuria Domb, Adhuria Dom
- (3) Rajak, Rajaka,
- (4) Betra, and
- (5) Khadal, Khodal, Khadala

- (B) In so far as proposal for exclusion of following 3 castes is concerned;

- (1) Bariki,
- (2) Kummari, and
- (3) Patratanti;

Copies of State Reports on the basis of which this has been recommended for exclusion may be obtained from State Government, analyzed thereafter and put up to NCSC meeting for taking a final view.

- (C) In so far as inclusion of castes is concerned, henceforth groups / sub-groups following Hinduism as their religion would only be considered for inclusion as SCs.

(Action: SSW)

2.15 Agenda Item No. 29.17: Inclusion 'Dhangar' in place of 'Dhangad'.

Earlier the Hon'ble High Court of UP has passed order in the writ petition no.40462/2009 of All India Dhangar Mahasbha Vs. Govt. of UP and others that NCSC may decide the controversy over the Hindi version of Dhangar caste of UP.

The Commission asked the State Office, Lucknow to conduct an-on-the spot enquiry and submit a report to the Commission on 17.10.2012.

The State Office, Lucknow conducted an enquiry into the matter. As per report, the State Office visited the areas of Mathura and Agra districts of UP wherein the Members of the Dhangar community are mostly resided. During the inquiry, the evidence of 132 persons of Dhangar community were collected. The evidence shows that the Members of Dhangar community are residing in that area since independence of the country. They have ration card, revenue records, land, electoral registration and other relevant documents mentioning name of the

Dhangar community. During the investigation, it is revealed that only Dhangar community exist in the areas of UP districts of Agra, Mathura and other districts and the practice of untouchability also exists in Dhangar community. No community in the name of Dhangad existed in the districts of UP.

In support of existence of Dhangar community, the State Office found that during the Census from 1961 to 2001, the Registrar General of India, MHA had given Census figures of Dhangar community. The Gazette Notification dated 26.11.2007 issued by the Government of India and Secretary, Welfare of India, letter dated 6.5.1998 also clarified that (Dhangar) community is notified SC community in the list of SC of UP at the S.No.27 of notification. The Government of UP vide its order no. 0744/26-77-17(21) 74 dated 29.8.1977 has issued order that (Dhangar) is listed at serial no.27 in SC list of UP which was also further clarified vide letter dated 15.9.2001. Moreover the Chief Secretary, Govt. of UP dated 21.10.2008 issued instructions to all the Collectors of UP that the Caste certificate in the name of (Dhangar) may be issued to the members of that community. Thus it is observed that only (Dhangar) in UP inhabited and no community in the name of Dhangad is in existence.

Hence, 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' and not to 'Dhangad' (

(Action: SSW)

2.16 Agenda No.29.18:Any other items with the permission of the chair.

Agenda Item No. 29.18.1: Meeting with the MoSJE for disposal of all pending issues.

Decision: Meeting has since been held on 10.12.12. Copies of minutes are annexed (Annexure-II). This needs to be followed up. **(Action: Admn.)**

Agenda Item No. 29.18.2: Ensuring that CMIS and new website are fully operational.

Decision: It must be followed up regularly and progress may be apprised to Hon'ble Chairman frequently on regular basis.

(Action: C.Cell)

The Meeting ended with vote of Thanks to the Chair.

Annexure-1

29th MEETING OF THE NATIONAL COMMISSION FOR SCHEDULED CASTES HELD AT 1.30 PM ON 03.12.12 IN THE CHAMBER OF HON'BLE CHAIRMAN, NCSC.

PRESENCE OF MEMBERS AND OFFICERS

S.NO. NAME & DESIGNATION

1. Dr. P.L. Punia, Chairman
2. Shri Raj Kumar Verka, Vice-Chairman
3. Shri Raju Parmar, Member
4. Smt. Latha Priyakumar, Member

Officers

1. Dr. Shyam Agarwal, Secretary
2. Shri T.Theethan, Joint Secretary
3. Shri C.P. Katyal, Deputy Secretary (Admn.)
4. Shri Jagjit Singh, Addl. PS to Chairman
5. Shri M.R. Bali, Consultant
6. Shri S.N. Meena, Under Secretary (SSW)
7. Shri Lokhan Marandi, Under Secretary (ESDW)
8. Shri Kaushal Kumar, Deputy Director (APCR)
9. Shri A. Bhattacharya, Research Officer (C. Cell)