

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 12th JULY, 2022

IN THE MATTER OF:

+ **W.P.(C) 1542/2020**

SHRI SALEK CHAND JAIN

..... Petitioner

Through: Mr. Jitender Kumar, Advocate
(Through VC).

versus

MINISTRY OF SOCIAL JUSTICE AND ORS. Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Shubham Gupta for R-1 to R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, CHIEF JUSTICE

1. The instant writ petition under Article 226 of the Constitution of India read with Article 14, 21, 16(4), 38, 46 of the Constitution of India has been filed with the following prayers:

“a) To make proper scheme and implementation so that the each and every member of the de-notified nomadic and semi-nomadic tribes enjoy the fundamental rights guaranteed in the Constitution of India.

b) To form the de-notified nomadic and seminomadic tribes making special categories in the schedule tribe category of the Constitution of India giving them special facilities for their upliftment.

c) To make schemes and proposals to bring the de-notified nomadic and semi-nomadic tribes in the mainstream of the country.

d) To make schemes and proposals for the basic education of the de-notified nomadic and semi-nomadic tribes as provided in the Constitution of India.

e) To make schemes and proposals for the permanent housing schemes with other basic amenities with the facility of BPL Card and other benefits for de-notified nomadic and semi-nomadic tribes.

f) To make schemes and proposals for the denotified nomadic and semi-nomadic tribes to get the, identity card and Aadhar Card for identification.

g) To make schemes and proposals for the upliftment and empowerment of women, girl child of de-notified nomadic and seminomadic tribes.

h) To make schemes and proposals for the medical facilities, economic development and rehabilitation to the de-notified nomadic and semi-nomadic tribes.

i) To make a separate academy or some other instituting with the sole motive to preserve their art, culture, sports and indigenous knowledge, handicraft, handlooms etc. of de-notified nomadic and seminomadic tribes

j) Any other or further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed.”

2. It is the contention of the Petitioner that the members of the De-notified Nomadic Tribes, Semi-Nomadic Tribes and Nomadic Tribes like Banjare, GadiaLuhar, Bawaria, Nat, Kalbelia, Bopa, Sikligar,

Singiwai, Kuchbanda, Kalander etc. are being neglected and have not been properly brought into the mainstream. It is stated that prior to Independence, under the Criminal Tribes Act, 1871, the members of the abovementioned tribes were named in the said Act and were treated like criminals by birth for the reason that they participated in the first War of Independence in the year 1857. It is stated that, due to this fact, these tribes were not allowed to settle at one place and were forced to move from one place to another. It is stated that the impression which is generated regarding members of these tribes is that they are criminals and indulge in crimes. It is stated that even though after Independence in the year 1952, the Criminal Tribes Act, 1871 has been abolished and the Tribes mentioned in that Act have been de-notified, but the perception amongst people that members belonging to these tribes are criminals has yet not changed. It is stated that several Committees and Commissions like the Criminal Tribes Inquiry Committee, 1947; the Ayyangar Committee have been constituted and they have given suggestions for improvement of the conditions of the members of these tribes. The Kalelkar Commission which was constituted in 1953, gave its report in 1955; the Lokur Committee was formed in 1965; the Mandal Commission; Justice Venkatachaliah Commission etc. were constituted for suggesting measures to ameliorate the hardships faced by the members of these tribes. It is stated that a Commission called National Commission for De-Notified, Nomadic and Semi-Nomadic Tribes has also been constituted on 14.03.2005 which gave its report on 30.06.2008. It is stated that despite the recommendations of these Commissions and Committees, constitutional and legal rights, as guaranteed in the Constitution of India, have not been provided to the members belonging to these tribes and, therefore, the present petition has been filed for a writ,

order or direction to the Respondents formulating appropriate schemes for the members of these tribes. The Petitioner also prays for a direction for these tribes to be included in the Scheduled Tribes so that they can be brought into the mainstream.

3. Notice in the instant petition was issued on 12.02.2020. A counter affidavit has been filed. In the said affidavit it has been stated that the Government, both at Union and State level, are implementing schemes for the welfare of De-Notified Tribes. It is further submitted that a welfare scheme namely Scheme for Economic Empowerment of De-Notified Tribes (hereinafter referred to as "SEED") with a budget of Rs.200 Crore for next 5 years starting from Financial Year 2021-22 has been approved by the Department of Social Justice and Empowerment and it is likely to be launched very soon. It is stated that the scheme has the following components, (i) Good quality coaching for De-Notified Tribes candidates to enable them to appear in competitive examinations (ii) Health Insurance (iii) Facilitate livelihood initiative at community level and (iv) Financial assistance for construction of houses for members of these communities. It is further stated that the Ministry of Social Justice and Empowerment has constituted Development and Welfare Board for De-notified Nomadic and Semi-Nomadic Communities (hereinafter referred to as "DWBDNC") for welfare of De-notified Tribes on 21.02.2019 for a period of three years, which is extendable upto 5 years, with following terms of reference:-

- (i) To formulate and Implement Welfare and Development programme as required, for De-notified, Nomadic and SemiNomadic Communities;
- (ii) To identify the locations/areas where these communities are densely populated;

- (iii) To assess and identify gaps in accessing existing programmes and entitlements and to collaborate with Ministries/Implementing agencies to ensure that ongoing programmes meet the special requirements of De-notified Nomadic and Semi-Nomadic Communities;
- (iv) To monitor and evaluate the progress of the schemes of Government of India and the States/UTs with reference to De-notified Nomadic and Semi-Nomadic Communities;
- (v) To redress the grievances of DNTs communities and fulfill their expectations.

4. It is further stated that several schemes have been brought out by the Government to ensure that proper education is given to the children belonging to these tribes under the Samagra Shiksha which is a Scheme which has been launched for providing education to under-privileged children including the children from the tribes which is the subject matter of the instant petition. It is further stated that schemes have been launched by the Ministry of Social Justice and Empowerment for these tribes with the following objectives:

- (i) To provide coaching of good quality for DNT candidates to enable them to appear in competitive examinations;
- (ii) To provide health insurance to DNT Communities ;
- (iii) To facilitate livelihoods initiative at community level to build and strengthen small clusters of DNT/NT/ SNT Communities institutions; and
- (iv) To provide financial assistance for construction of houses to members of the DNT Communities

5. It is also stated that the Ministry of Tribal Affairs has in-principle agreed to include De-notified Tribes as one of the categories in the priority list of 10% non-ST category for admission in Eklavya Model Residential School. It is further stated that the Idate Commission in its report has given names of 269 communities based on the visits/interactions made to the States and Union Territories. It is also stated that a Committee under the Chairmanship of Vice Chairman NITI Aayog is constituted to complete the task of identifying De-notified, Nomadic and Semi-Nomadic communities which have yet not been formally classified. It is also stated in the reply that the Anthropological survey of India, under guidance of NITI Aayog, is already conducting ethnographic study of said communities which have been identified in the Idate Commission report.

6. A Status Report has also been filed. The same reads as under:

**“STATUS REPORT ON BEHALF OF
THE RESPONDENT NO. (MINISTRY OF SOCIAL
JUSTICE AND EMPOWERMENT) IN TERMS OF
ORDER DATED 05.04.2022”**

**A. SCHEME FOR ECONOMIC EMPOWERMENT
OF DNT'S (SEED)**

1. That the Hon'ble Minister of Social Justice and Empowerment has launched the Scheme for Economic Empowerment of De-notified Nomadic and Semi Nomadic Tribes (hereinafter referred to as "SEED") on 16.02.2022

2. That the objectives of the aforesaid SEED are as under:

i) To provide coaching of good quality for candidates belonging to De-notified Nomadic and Semi Nomadic Tribes (hereinafter referred to as

"DNT") to enable them to appear in competitive examinations.

- ii) To provide health insurance to DNT communities,
- iii) To facilitate livelihoods initiative at community level to build and strengthen small clusters of DNT/NT/SNT community Institutions
- iv) To provide financial assistance for construction of houses to members of the DNT communities.

3. That prior to the approval of the scheme, a D.O. Letter from Secretary, Social Justice and Empowerment was issued to the Secretary Rural Development for adding the target of the ONT beneficiaries in their existing scheme of two components namely:

- i) Livelihood initiative
- ii) For providing Houses.

4. That in order to implement the scheme components, the Technical Support Group (hereinafter referred to as "TSG") has developed the online portal for the use of persons intending to seek the benefits under the SEED, which is open for seeking benefit under the scheme components. There were some discrepancies found in the Portal and these discrepancies will be discussed with TSG and National Informatics Centre (NIC) and resolved at the earliest.

B. TO INCLUDE, IN ETER-ALIA DNT/NT/SNT/ AS ONE OF THE CATEGORIES IN THE PRIORITY LIST OF 10% NON-ST CATEGORY FOR ADMISSION IN EKLA VYA MODEL RESIDENTIAL SCHOOL

5. That the DNT/NT/SNT have been included in the Admission Guidelines for admission in Eklavya Model Residential Schools (hereinafter referred to as "EMRS") as one of the categories in the priority list of 10% non-ST category. However, the Admission Guidelines for admission in EMRS are yet to be approved by the Academic Committee of the National Education Society

for Tribal Students, Ministry of Tribal Affairs, Government of India.

C. ETHNOGRAPHIC STUDY OF DNT COMMUNITIES

6. *That the Department of Social Justice and Empowerment has authorized the Anthropological Survey of India (hereinafter referred to as "AnSI") Rs. 2.26 Crore in the year 2019 for conducting evaluation study of 64 DNT communities out of which approximately 1.71 Crore was spent by AnSI and approximately Rs. 70 Lakh was surrendered by AnSI. That thereafter, Rs. 15 Lakh was again sanctioned to the AnSI on 26.11.2022. That out of 62 communities, AnSI has submitted the report of 48 communities.*

7. *That the list of Annexure -II of the Idate Commission Report comprises of 267 communities out of which 12 communities have been allotted to respective Tribal Research Institutes (hereinafter referred to as "TRI") (Odisha - 05, Gujarat-04, Kerala-03) for conducting ethnographic study. Hence, AnSI is supposed to study the remaining 255 communities, out of which 24 communities have already been studied by AnSI and report has been submitted to the Department of Social Justice and Empowerment.*

8. *That in the Financial Year 2021-2022, AnSI has sent the proposal of Rs. 8.02 Crore for conducting ethnographic study of 226 DNT Communities, out of which Rs. 1.5 Crore was authorized to AnSI on 04.10.2021 and Rs. 2 Crore was authorized on 03.12.2021.*

9. *That AnSI informed that out of 226 DNT communities, AnSI has already completed the study of 161 communities across the country and remaining 65 communities and additional 5 communities from Arunachal Pradesh will be studied during the year 2022.*

10. *That for conducting ethnographic study by TRI, Rs 7.6 Lakh was sanctioned to TRI, Kerala on 31.03.2022 and Rs. 20.80 Lakh has been sanctioned to TRI, Gujarat on 30.03.2022.”*

7. A perusal of the counter affidavit and the Status Report filed by the Respondents shows that the prayers of the Petitioner herein in the instant writ petition have been answered inasmuch as steps have been taken by the Government to bring these De-Notified Tribes into the mainstream of the country. No further Orders/directions are necessary in this case.

8. Accordingly, the writ petition is disposed of, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 12, 2022

Rahul