

**COMMITTEE ON PETITIONS
(THIRTEENTH LOK SABHA)**

TWELFTH REPORT

(Presented to Lok Sabha on 19 December, 2001)

**Lok Sabha Secretariat
New Delhi**

December, 2001/Agrahayana, 1923 (Saka)

CONTENTS

Composition of the Committee on Petitions

Introduction

Report

- (i) Petition regarding grievances of the rural people of the State of Meghalaya due to blanket restriction on movement of cut trees.
- (ii) Petition regarding grant of lease of land and sanction of a rehabilitation package for the people living on unused and vacant lands of Northeast Frontier Railway in different areas of Greater Guwahati.
- (iii) Petition regarding inclusion of Gowada, Kunbi, Velip and Dhangar Communities of Goa in the List of Scheduled Tribes.
- (iv) Representation regarding inclusion of Deswali Majhi community of West Bengal in the List of Scheduled Tribes.

COMPOSITION OF COMMITTEE ON PETITIONS

Shri Basudeb Acharia - Chairman

Members

2. Shri A. Narendra
3. Shri Ramakant Angle
4. Shri S. Bangarappa
5. Shri Manibhai Ramjibhai Chudhri
6. Shri Anant Gangaram Geete
7. Shri P.R. Khunte
8. Shri P.R. Kyndiah
9. Shri K. Malaisamy
10. Shri Ashok N. Mohol
11. Shri Sis Ram Ola
12. Shrimati Renu Kumari
13. Dr. Nitish Sengupta
14. Shri V. Ventriselvan
15. Shri Ramjee Manjhi

TWELFTH REPORT OF THE COMMITTEE ON PETITIONS

(THIRTEENTH LOK SABHA)

INTRODUCTION

I, the Chairman, Committee on Petitions, having been authorised by the Committee to present the Report on their behalf, present this Twelfth Report of the Committee to the House on the following matters:

- (i) Petition regarding grievances of the rural people of the State of Meghalaya due to blanket restriction on movement of cut trees.
 - (ii) Petition regarding grant of lease of land and sanction of a rehabilitation package for the people living on unused and vacant lands of Northeast Frontier Railway in different areas of Greater Guwahati.
 - (iii) Petition regarding inclusion of Gowada, Kunbi, Velip and Dhangar Communities of Goa in the List of Scheduled Tribes.
 - (iv) Representation regarding inclusion of Deswali Majhi community of West Bengal in the List of Scheduled Tribes.
2. The Committee considered and adopted the draft Twelfth Report at their sitting held on 18 December, 2001.
 3. The observations/recommendations of the Committee on the above matters have been included in the Report.

BASUDEB ACHARIA
Chairman,
Committee on Petitions.

NEW DELHI;
18 December, 2001
27 Aghrayana, 1923(Saka)

CHAPTER I

PETITION REGARDING GRIEVANCES OF THE RURAL PEOPLE OF THE STATE OF MEGHALAYA DUE TO BLANKET RESTRICTION ON MOVEMENT OF CUT TREES

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On 13 March, 2001, Shri P.R Kyndiah, M.P. presented to Lok Sabha a petition signed by Shri Treling Marwein of Nonglami, Shillong, Meghalaya and 1,228 others regarding grievances of the rural people of the State of Meghalaya due to blanket restriction on movement of cut trees.

1.2 In the petition, the petitioners inter-alia submitted the following points :-

- (i) They are living in the rural areas of Meghalaya alongwith thousands of others whose livelihood depends upon forests, forest produce and individual forest plantation;
- (ii) They are the victims of the blanket restriction of movement of cut trees from State of Meghalaya to other parts of the country. The restriction of movement of cut trees is a result of an order by Supreme Court that totally banned the movement of cut trees from all seven North Eastern States to any State in the country. The effect of this ban is extremely adverse on the economic life of the people in Meghalaya as a vast majority of the people living in the countryside survive on the forests;
- (iii) The direct adverse effect of the ban on the movement of cut trees is enormous for rural people. A large number of people are thrown out of employment and the economic activities of the people in general are thrown out of gear. The people are reduced to poverty and hardships. The multiplying effects of the ban on movement of cut trees has hit lakhs of people and the entire rural economy has been shattered;
- (iv) The economy of the State of Meghalaya is extremely fragile and it is mainly agricultural and forest based. Raising and operation of forest plantation in the State has continued since time immemorial on the basis of time tested ground realities relating to customary, clan, community and individual forestry plantation ownership practices. State of Meghalaya is a non-industrial State and the State has no alternative employment for rural people to earn and sustain their lives excepting the meagre agricultural cultivation and forest plantation;
- (v) The entire territory of the State of Meghalaya with the exclusion of three Municipal Wards of Shillong consists of Autonomous Areas covered by the provisions of the 6th Schedule of the Constitution of India i.e. falling under the governance of the Autonomous District Councils. The land holdings particularly in the Khasi and Jaintia Hills are of three categories:- (i) Private lands (Ri Kynti) which are owned by private individuals; (ii) Clan land (Ri Kur) which is owned collectively by the clan consisting of many Clan Members; and (iii) Community land (Ri Raid) which may further be classified as – (a) Ri Shnong (Village land), which is owned by the village people collectively; and (b) Ri Raid which is owned by the people of more than one village; and
- (vi) The Government and Autonomous District Council Authorities do not by and large own land and have no rights over the ownership and occupation of land. The land-tenural system in Meghalaya is completely different from that of the

rest of the country. The provisions of the Forest (Conservation) Act, 1980 were formulated and enacted in such a way that they failed to take cognizance of the system prevailing in the areas of the Autonomous District of the State of Meghalaya.

1.3 The petitioners, therefore, requested for funding a Comprehensive Economic Package (CEP) for the relief and rehabilitation of the effected people in order to provide them with an alternate source of economic livelihood. The petitioners also requested to devise a special mechanism to regulate felling and plantation of trees in a scientific and commercial way on sustainable lines to enhance timber economy.

1.4 The petition was referred to the Ministry of Environment and Forests on 14 March, 2001 for furnishing their comments on the various points raised in the petition. In response, the Ministry of Environment and Forests vide their letter No. 3-4/NEC/Megha/99 dated 11 April, 2001 stated as follows :-

- (i) Presently there is no blanket ban on movement of timber or timber products from North-Eastern States of other parts of the Country. As per Hon'ble Supreme Court order dated 15.1.1998 in Writ Petition (Civil) No. 202/95, movement of timber to other parts of the Country is permissible through Railways. Detailed guidelines to regulate movement of timber through Railways has already been issued by Ministry of Railways on 31.5.2000.
- (ii) Supreme Court vide its order dated 12.12.1996 in Writ Petition (Civil) No. 202/95 has directed felling of trees from forest including privately owned area shall be done strictly in accordance with the working plans/schemes approved by the Central Government under the Forest (Conservation) Act, 1980. Full powers have been delegated to the Regional Chief Conservator of Forests, for taking necessary decision in respect of working plans/schemes prepared by the concerned State Government to ensure that no undue delay takes place in examination of proposals.
- (iii) The Ministry of Environment & Forests is of the view that there is no need to create separate funds for comprehensive economic package to provide assistance for alternate sources of economic livelihood. Similarly, as detailed procedure has already been laid for felling and plantation of trees in a scientific manner on sustainable basis, separate mechanism for this purpose is not needed.”

1.5 After pursuing the comments furnished by the Ministry, the Committee, decided to undertake on-the-spot study visit to Shillong, State of Meghalaya to gather first hand information. Accordingly, the Committee visited Shillong on 20th June, 2001 and held informal discussions with the officials of State Government of Meghalaya and the petitioners on the petition.

1.6 During the informal discussion, the petitioners informed the Committee that before the ban of the Supreme Court, people could cut trees according to their needs. There was no restriction from any source. Once they had the agreement with the traders and it was final. The traders entered into the land and could cut trees. The agreement could be for 5 or 15 years. There was no restriction. People were cutting trees freely. After the ban, Meghalaya became a Poor State and a non-industrial State. People were unemployed as they were getting employment from cutting trees. As regards land holding system they informed that there were three District Councils namely, Khasi; Jaintia and Garo. Forests belong to Tribal communities or individuals (except preserved forests). 80% to 90% of their income was from the forests. They had thus requested for proper funding to form working schemes. They requested for lifting of ban and provision of assistance from the Ministry to formulate the working plans.

1.7 During the course of informal discussion with the State Government officials of Meghalaya, the Committee were informed that the interim orders of the Court issued on 23.4.2001 had been modified by the Supreme Court by their orders of 12.5.2001 and now movement of timber from North Eastern region to places outside in the country was permitted.

1.8 The Committee were also informed that the Court Order did not affect the agricultural cultivation and the practice of shifting cultivation remained unaffected. In so far as forest plantations were concerned the Court Orders should not affect the rural people since the plantations had been exempted from requirement of working plans. However, because of misinformation campaign by certain trader's lobbies, there was possibility of an apprehension among the people that they may not be able to harvest forest plantations at their will.

1.9 In a subsequent reply dated 28 June, 2001, after the on-the-spot study visit, the petitioners informed the Committee as follows :-
“The contention of the Ministry of Environment and Forests that there is no blanket ban on movement of timbers or timber products in the North East, but the fact remain that till today no tree is allowed to cut or cut trees could be traded anywhere. Of course, in some areas trees are being felled illegally to turn into charcoal or smuggle to Bangladesh. But the condition of the people as a whole is that they are suffering and trade in timber remain a total ban.”

1.10 As regards the land tenural system in Meghalaya, the Committee were informed by the officials of State Government of Meghalaya that the lands in Meghalaya were owned by the tribal communities or individuals (except reserved forests) and the Cadastral survey of

these lands had never been undertaken. District Councils were empowered to legislate with regards to these lands. However, the Forests (Conservation) Act, 1980, which regulates the diversion of forest lands for non-forest purposes makes it imperative that the District Councils, while permitting the non forestry uses of forest lands under the power conferred under the Sixth Schedule, had to seek the permission of the Central Government under the Forest (Conservation), Act, 1980 in each specific case.

1.11 In this context, the petitioners in their reply dated 28 June, 2001 after on-the-spot study visit informed to the Committee that :-

“The government or the District Councils have no right on land except those lands which they have acquired through process of law or outright purchase. For the purpose of development, such as construction of roads, etc., the people use to donate their land by way of gift deeds. In many cases compensation is paid to the land owners. In the past, the land was being preserved and held or alienated by customary practices and usages. But after Meghalaya came into being, the State had adopted the Meghalaya Transfer of Land (Regulation) Act, 1972 where Tribal land in the Scheduled areas of the State is not transferable to non-tribal.

The Forest (Conservation) Act 1980, affect adversely on the land tenure system in the Scheduled Areas of Meghalaya (Sixth Scheduled areas), because the land is owned by the people, hence they freely use the land irrespective of whether it is a forest land or not, either in cutting trees or for cultivation. Therefore, unless these areas are exempted from the Forest (Conservation) Act 1980, it would amount to a total ban forever to the tribal people and would affect the rights of the people over their land.”

1.12 Regarding, the response of the State Government of Maghalaya to the economic hardship being faced by the rural people; the State, Chief Secretary, informed the Committee during on-the-spot study visit that the State Government had filed a writ petition before the Supreme Court appealing for revising the orders in context of the State of Meghalaya keeping in view the situation of people of Meghalaya. The decision of the Court was yet to be pronounced. Central Government had also been approached number of times in the matter and they had been requested for a special economic package for the people of Meghalaya.

1.13 The Committee were also informed by the State Government officials that as per hon'ble Supreme Court order dated 15.1.1998 in writ petition (civil) No. 202/95, movement of timber to other parts of the country was permissible through Railways and detailed guidelines to regulate movement of timber through Railways had been issued by Ministry of Railways on 31.5.2000.

1.14 In their reply dated 28 June, 2001 submitted after on-the-spot study visit the petitioners, however, informed the Committee that Meghalaya had no Railways, hence the Railway Guidelines were not relevant with the problems, faced by the people of Meghalaya as a result of the ban on timber movement in the State of Meghalaya.

1.15 The Committee were also informed during discussion with the Officials of State Government of Meghalaya during on-the-spot visit that working plans for all the reserved forests in the State falling under the control of State Government had been approved. Recently, the State Government also obtained temporary approval for timber harvesting in the private/community forests in the Khasi and Jaintia Autonomous District Council areas. Similar Scheme for private/community owned forest in Garo Hills had not yet been submitted to the Central Government.

1.16 In this context, the petitioners in their reply dated 28 June, 2001 furnished to the Committee after on-the-spot visit informed that:

“There is no working plan/scheme implemented for the Private Forests of the State except for the State Government Reserved Forest and the Autonomous District Councils' Reserved Forest. Even if the Government, the Autonomous District Councils and the Land/Forest Owners Association agree for having working plan for Private Forest, it will take long time before it could materialize and the people will still be suffering for no fault of theirs. It is precisely because of these difficulties that we had prayed to exempt the Autonomous (or Scheduled) Areas of Meghalaya from the operation of the Forest (Conservation) Act 1980.”

1.17 The Committee, thereafter, took oral evidence of the representatives of the Ministry of Environment and Forests on 17 July, 2001. During evidence the Committee pointed out to the witness that the blanket ban on movement of cut trees had adversely affected the economy of State of Meghalaya, which depended mainly on timber trade and desired to know about the impact of ban on movement of cut trees and on people of Meghalaya. To this the Secretary, Ministry of Environment and Forest stated:

“It may not be quite right to say that there is a total ban because the Supreme Court has passed a series of orders from 12.12.1996 onwards. In fact, the Supreme Court, after examining the affidavits filed by the Chief Secretary and after considering the views of the Ministry, has lifted the ban on the movement of timber and timber products w.e.f. 13.5.2001. As per the Supreme Court orders the movement of timber and timber products outside north-east has been permitted if it has been sourced from the High Powered Committee (HPC) cleared unit. The HPC has cleared many units. If a particular unit is cleared by the HPC, then that unit is permitted to take it out.”

1.18 Subsequently, the Ministry of Environment and Forests in their written note furnished after evidence submitted the details of various orders issued by the Supreme Court regarding timber and timber products pertaining to North-Eastern States as follows:-

- “(i) Concerned with the large scale destruction of forest cover in North-East vide Supreme Court order dated 12.12.1996 (i) felling of trees from Tirap and Changlang area in Arunachal Pradesh was banned (ii) movement of timber outside North-East was prohibited (iii) all wood – based units within a radius of 100 km of Tirap & Changlang area were closed (iv) felling from any Forest area was to be allowed only in accordance with working plans approved by the Central Government (v) “Forest” was defined to include legally constituted forest, any area recorded as forest in Government record and also the area having characteristics of forest even if, not recorded as forest in Government records.
- (ii) On 4.3.1997, a High Power Committee was constituted by the Supreme Court to deal with examination of inventory of wood-based units and other related matter under the Chairmanship of Shri T.V. Rajeshwar, Presently Shri S.C. Sharma, Additional Director General of Forests as its Chairman.
- (iii) Based on the perception of Ministry of Environment and Forest, modified orders were issued by Supreme Court on 15.1.1998 (a) allowing movement of timber outside North-East through Railways (b) allowing felling as per working plan / schemes/felling schemes (c) wood-based unit were allowed to restart working after shifting to industrial estates. (d) Ministry of Environment & Forests was to allow movement of timber by road etc. in specific cases of difficulties.
- (iv) Based on intelligence gathered by the Ministry, 50 wagons of timber were physically verified at Tinsukia. It was found that all the wagon contained substantial quantity of illegal timber. Later on, physical verification of wagons at Delhi, Rajpura etc. was also carried out. It was found that (i) practically all the verified wagons contained illegal timber and timber without proper hammer impression (ii) expired transit passes were used (iii) fake/tempered transit passes were used (iv) substantial difference in the dimension of timber was found.
- (v) Supreme Court vide its order dated 13.1.2000, gave powers to the Ministry for investigation, seizure, confiscation, disposal etc. of timber, constituting special team for investigation etc. In exercise of powers, a Special Investigation Team (SIT) has been constituted by the Ministry to deal with individual cases and also for preparation for guidelines for regulating movement of timber. In the guidelines issued by SIT, number of loading station have been restricted to 12 and minimum quantity of timber to be loaded in the wagon has been prescribed.
- (vi) After examining the Action Taken Report of SIT, Supreme Court vide its order dated 23.4.2001 asked the Chief Secretaries of North-Eastern States to file their response on the report as well as on the affidavit filed by the Ministry. In the interim period, movement of timber and veneer from North-Eastern States was temporarily prohibited.
- (vii) After examining the affidavits filed by the Chief Secretaries and after considering the views of the Ministry, the ban has been lifted by the Supreme Court and movement of timber and timber products has been allowed with effect from 13.5.2001. As per Supreme Court orders a) movement of timber and timber products outside North-East is permitted if, it is sourced from an HPC cleared unit b) round and hand sawn timber movement is allowed only on specific approval given by the Ministry c) felling of trees as per approved working plans/schemes is to be done after ensuring that sufficient funds for regeneration are available d) for felling of trees from non-forest area including plantations the concerned State Governments are to frame guidelines/rules e) SIT to prescribe maximum number of railways wagons allowed to be loaded from approved loading stations f) Chief Secretaries to review action taken against persons responsible for significant illegal felling.”

The Ministry further stated as follows :-

“Various orders passed by the Hon’ble Supreme Court dealing with the management of forests, regulating the felling of trees and movement of timber and timber products are in conformity with the National Forests Policy, 1998, Forest (Conservation) Act, 1980 etc. Strict implementation of these orders would help in providing sustainable management of forest resources, optimum utilisation of forest produce, value addition and would result in better employment opportunities and assets creation. However, it is possible that due to misinformation campaign by vested interests deriving benefits from unsustainably large felling of forests, illegal felling and availability of forest produce at very low prices etc, and also due to temporary reduction in employment as a result of reduced felling, there might have been a feeling of discontent amongst some section of the society. It is expected that the factual position would be brought to the notice of the general public by the State Government through proper information campaign and that it would take suitable measures for tackling law and order problem as and when needed.”

1.19 When the Committee desired to know about the procedure being followed by the HPC to grant permission for movement of timber and timber products, the witness stated that:-

“The HPC was constituted by the Supreme Court vide its orders dated 4.3.1997. At that time the HPC was constituted basically to examine the inventory of the wood based units and other related matters. Later on, the powers for imposing penalty, if the inventory was found to be not in order was also given to the HPC and drafting of certain procedures for the movement of timber and timber products was also given to the HPC. In the beginning itself when the HPC was constituted, certain types of forms were devised in which information was sought from all the wood based units in the north-eastern States. The information received from these units was examined. Transparent and detailed guidelines have been laid down by the HPC regarding the out-turn of sawn timber, ply-wood or veneer. In cases where it found that the out-turn of sawn timber or ply-wood or veneer is more than the norm which has been laid down, then the proportionately fine etc. was imposed. As per Supreme Court orders dated 15.1.98, the units in respect of which out-turn has exceeded by more than 15 per cent of the norm fixed by the HPC and which were later ratified by the Supreme Court, such units will not be allowed to shift industrial estates for future working.”

He further added :-

“Report about all the decisions taken by HPC is given to the Supreme Court periodically. So far six reports have been given to the Supreme Court. There is an elaborate procedure for filing of review petitions before the Supreme Court against any decision given by the HPC. There have been a number of petitions filed and a number of orders passed by the Supreme Court modifying the procedure/power of the HPC.”

1.20 Regarding the number of units which have not followed the norms and have been asked to be closed down, the witness stated:

“In all there were 1414 units in the North-eastern States, out of which 1306 units had given inventory to HPC. After examination of the inventory, 956 units have been cleared by the HPC. 135 inventories have been rejected. 38 units have been cleared with penalty and 177 cases have been pending with the HPC as on 15.1.98. They are deemed to have been rejected because in these cases the inventory has not been received in time by the HPC. Out of these rejected units and deemed rejected units and analyzed units, some units have filed appeal before the HPC. So far 87 units have filed appeals before the HPC on which personal hearings are being held.”

1.21 When the Committee desired to know that out of 1306 units, how many units are in Meghalaya, the witness replied that:-

“Out of 1306 units, there 125 units are in Meghalaya. Out of these 125 units, one unit has been cleared with penalty, 110 units have been cleared without penalty, three units have been rejected and 11 units have been deemed to be rejected. Total number of units in Meghalaya was earlier 219 as per the report given by the State Government but HPC received inventory only in respect of 125 units. This matter was taken up with the State Governments a number of times but somehow the figures could never be reconciled.”

1.22 Regarding felling of trees as per the approved working plans and schemes the Secretary, Ministry of Environment and Forests stated that:-

“The Supreme Court has passed a general order all over to country that when you fell forests, you must ensure that there is fresh regeneration for which the States must invest money. What is happening is only one way. People only cut trees. Nobody bothers about regeneration. So, the Supreme Court said that funds must be earmarked for regeneration. This condition is for the entire country and not only for the North-East. We are now clearing all the working plans depending on the funds available with the State Governments. Proportionately, on a priority basis, all these plans have been cleared.”

1.23 When asked if the working plans are incorporated in the Forest (Conservation) Act of 1980, the representatives of the Ministry of Environments and Forests stated that:-

“The concept of working plan is as old as the forestry. The principle is, we should not eat into the capital. We should take out only the interest. Whatever grows annually should be taken out and the capital should not be eaten away so that the forests can continue in perpetuity. Over the years, some State Governments stopped making working plans. So, this issue of working plans was taken up by the Supreme Court. In Meghalaya, there was a particular problem. As it was told to you, only a very small fraction is reserved forests. That portion was covered by working plans. But whatever forest held by councils was not covered by working plans. But there were some rules in place and principles were brought early in place which was being followed while these councils were allowing felling of forests. Over a period of time, these principle were diluted and more areas were converted into private holdings and greater amounts of fellings were going on. So, the Supreme Court decided to have working plans for every area in place.”

1.24 The Committee desired to know if the working plan is applicable to private forests as ordered by the Supreme Court and its position in Meghalaya. To this, the representative of the Ministry of Environment and Forests stated as follows:-

“Working plan or working scheme is not something which has been introduced by the Supreme Court or the Forest Conservation Act. It is exercised since almost 150 years in India. The entire forestry, either privately-owned or Government-owned, has been worked scientifically on the basis of working plans.

Secondly, the concept of working plan legally was recognized in our National Forest Policy, earlier documents issued by the Ministry of Environment and Forests and various State Governments. It has been recognized for almost 150 years as the most important aspect of forest management in India. The basic working plan means only one things, that is, you manage your forests on a sustainable basis. You should not do harvesting in a particular area so that the sustainable nature of the forest is destroyed. That is the basic principle of a working plan or a working scheme. It also includes prescription for regeneration, etc.

Coming to private forests, etc. the basic difference is that, in case of big areas owned by Government, working plans are needed whereas in private areas, for example, in Khasi, Jaintia or Gharo Hills, working plans are not insisted upon. Only working schemes are insisted upon.”

1.25 When the Committee desired to know the difference between working plan and working scheme, the representative of the Ministry of Environment and Forests stated as follows :-

“A working plan is a document where a detailed study about density, prescription, etc. are spelt out. It is a very elaborate document. Working scheme is an abridged version of a working plan. Working plans are normally prepared for ten years whereas working

schemes are prepared for five years. Secondly, working schemes can be prepared on the basis of secondary data though some ground work is needed but it takes very less time.”

He further stated:-

“Coming back to North-East, the Forest (Conservation) Act, 1980, as amended with effect from 1988, required that whenever any natural grown forest is felled, it should be done in accordance with the working plans or schemes. As far as the legal part is concerned, in the case of North-East, working plans or schemes were needed for reserved forests, protected forests and unclassified forests including forests which are owned by the district councils. A peculiar situation exists in the North-East. Out of a total forest area of 1,66,917 square kilometers, almost 78,342 square kilometers, that is 55.8 per cent of the total forest area, are unclassified areas. Before the Supreme Court intervention, most of these areas were not covered under working plans or schemes though Central Government had been repeatedly taking up this issue with the State Governments. The Supreme Court vide its order dated 12.12.1996, reiterated by order dated 15.1.1998 and again reiterated by its order dated 12.5.2001, said that working plans or working schemes should be prepared for harvesting trees from any forest area.

Coming to Meghalaya, since most of the areas are with district councils, here the requirement is not working plans but working schemes. It is technically possible to make schemes very easily for Khasi, Jaintia or Garo Hills. In fact, for a smaller area also, working schemes can be prepared as has been done even in a State like Nagaland.”

1.26 The Secretary, Ministry of Environment and Forests added:-

“One of the serious problems which the Ministry has been facing not only in the North-East but the whole country is that working plan which is the core of forestry has been given a go-by over the years. Without working plans, the forest cannot survive and this is the basic job of the Divisional Forest Officer. He has to really draw up the working plans and act accordingly. So far as cutting a tree or regeneration are concerned, everything has to be done as per the plan. As he said, in Meghalaya, the main core of forestry remains that all the time, you should augment and see that there is a balance maintained.

Apart from this, another issue is that, for felling of trees in respect of non-forest areas including plantations, the State Governments are required to frame guidelines, rules, etc.”

1.27 The representative of the Ministry of Environment and Forests further added that: -

“In the case of Meghalaya, these rules and guidelines have not been framed so far. As and when these rules are framed and sent, they would be examined. But sufficient powers have been delegated to the Regional Chief Conservator of Forests, Shillong. We are quite hopeful that it would be done expeditiously.”

1.28 In a subsequent written note the Ministry of Environment and Forests informed the Committee as follows:-

“Working plans for Government owned Reserved Forest in Khasi, Garo and Jaintia Hills are already approved. Subsequently, the State Forest Department submitted working schemes for forest area belonging to tribal communities in Khasi and Jaintia Autonomous District Council area. These working schemes could not be approved because they did not have any reliable data regarding growing stock and the assessment of availability of timber based thereupon. Instead, more than 8 years old satellite data was used. Further, the proposals were at variance with the provisions of United Khasi – Jaintia Hills Autonomous District (Management and Control of Forest) Act, 1958, in that commercial felling was contemplated even where it was not legally permitted. It may be mentioned here that this Act recognises 12 categories of forests in seven of which no commercial felling are permitted.. For example, the forests categorised as Law Lyngdoh, Law Kyantang and Law Nian are set apart for religious purposes and in Law Adong and Law Shnong the forests are protected for conserving water. Even though the working schemes were not in order, it was decided to allow harvesting in the current year upto 14.6 lakhs cft. (41325 cubic meter) as an emergency measure to minimize hardship to the people pending preparation of revised working schemes. For Garo hills, no working scheme has been received from the state till date.”

1.29 The Committee desired to know about the rules that are required to be framed by the State Government for felling of trees in respect of non-forest area including plantations. To this the representative of the Ministry of Environment and Forests stated:-

“The rules should be so simple that people do not have much problem in felling the plantations. It has been the experience in States like Assam etc. that a lot of time is required in obtaining permission, (what is called that Certificate of Origin in Assam), from the authorities concerned. Even if the trees have been raised by a local tribal, it is almost impossible for him to get the permission for felling the trees because very elaborate procedures are involved. He has to pursue the cases personally at different levels. So, we have been requesting them to evolve some system of registration of plantations. If a plantation is registered, then, there should not be much trouble in felling. Similarly, some system of graded rule should be there. If a specie is not found in the forests, then, its felling should not create much of the problem whereas if a specie is found inside the forests, different set of rules may be framed. Similarly, if felling is to be done from an area far away from the forests where chances of illegal fellings are limited, there, some sort of a liberal rule should be evolved... These are informal suggestions that have been given to the State Government. But it is up to the State Government to decide what type of rules are to be framed. As and when we get the rules from the Government of Meghalaya, we will examine them and give our concurrence on this issue. After giving the concurrence, these rules will come into force immediately.”

1.30 The Committee pointed out that even after modification of Supreme Courts earlier order in May, 2000, there has not been any improvement in movement of timber, and desired to know the basic problems and reasons for no change in the situation

To this, the Regional Chief Conservator of Forests stated:-

“With regard to the movement, I would submit that permission for felling as per the working plan, was given to a limited extent because the working plans submitted by the State Government were technically very defective. They were in contravention with the local laws. But even then in order to ensure that there is no hardship to the local people we have said that they could harvest a certain percentage 14.6 lakh cft in total, as an emergency measure... This is about 10 percent of what they had asked for. The documents were defective and were based on the data of 1993, after which there has been huge fellings.”

1.31 On a query as to when the permission for felling was given, the Regional Chief Conservator of Forests stated that, the order for the Khasi hills has been given on 12th April, 2001; the order for the Jaintia hills has been given on 18th June, 2001.

The Secretary, Ministry of Environment and Forests added :

“The idea was really to minimize the hardship caused to the people. Pending preparation of the revised plans, he has given it as an ad hoc measure. The point is that the forest should be protected.”

1.32 In regard to management of the forests, Regional Manager, Chief Conservator of Forests stated :

“The basic ownership of the forests or land among the Khasi, Jaintia and Garo community is with the communities. There is a very important Act in respect of management of almost the entire land in the Khasis and Jaintia Hills. This is called the “United Khasi, Jaintia Hills (Autonomous District) Management of Forests Act. The rules have also been framed under this Act in 1960. The primary requirement of this Act is that at the commencement of the Act, the lands possessed by the communities, lands possessed by persons, the clan lands and private holdings were to be registered in the name of the owners defining the forests and their boundaries. They should also provide the details of the forests. This is the basis for management. It is called registration which is in Chapter I of these rules framed under this Act called “the United Khasi, Jaintia Hill (Management of Forests) Act, 1958. The rules were made in 1960. But this has not been done except in extremely small number of cases. So, basically, they claim that these are private forests and have no legal basis.

The working plan in respect of the Khasi Jaintia and Garo communities had a legal basis in 1958 whereas in the case of the rest of the country, the Supreme Court made this into a law only later on. That was done only in 1996.”

He added:-

“As per the Act, the rules would have been framed by the District Council because these Councils are also executive bodies. These are legislative bodies and also executive bodies. It is the District Council that enacted the Act and framed the rules thereunder. It is their own rules that are being violated. The working plans should have got the legal basis automatically. In fact, the mother of all legal plans in the country has become a place where there are no working plans at all, where there have been excessive felling... So, there was a sharp decline between 1987 to 1997. It was also the period when excessive felling took place without any reference to either this law or the scientific management plan as has been the rule elsewhere in the country. It was only after the Supreme Court intervened in 1997 that the felling stopped. Between 1997 and 1999, the dense forest cover has increased from 4,044 square kilometres to 5,925 square kilometres.”

At this point, the Secretary, Ministry of Environment and Forests added:-

“The Supreme Court has granted exemption to private plantations from mandatory requirement of working plans. This would have applied automatically to the Khasi-Jaintia Hills also had they followed the rules. Unfortunately, as explained, had they followed this, the Supreme Court order would have exempted even the working plans for these plantations. Secondly, the Khasi-Jaintia Hill Forest Act recognizes 12 categories of forests. You would be surprised to hear that in the case of seven of them, no commercial fellings are permitted. The reasons are that forests are categorised into three categories. I do not want to name them here. But they are set apart for religious purposes. In two cases, the forests are protected for conserving water. They say that the law is so well taken care that all these are inherent there. But unfortunately, we have not been following this. Hence, the problems are there.”

1.33 Subsequently, in a written note the Ministry of Environment and Forests informed that full powers have been delegated to the Regional Chief Conservator of Forests, Shillong, to decide the working plans/schemes received from the State Government. The working schemes for the area under the District Councils are decided on priority basis as and when these are received through the State Government. The harvesting of forests, however, has to be done in accordance with the approved working schemes after ensuring that adequate funds are available for regeneration commensurate with harvesting.

1.34 On the question of the request of the State Government of Meghalaya to allow harvesting of timber by traditional practices and the order of Supreme Court dated 12.5.2001 that directed the Ministry for its response the Ministry of Environment & Forests informed the Committee in their written note that, Para 13 of the Supreme Court order dated 12.5.2001 dealing with the issue reads as under:-

“State of Meghalaya wanted that the natural forests including artificially generated pine plantations on private holdings in Meghalaya may be allowed to be harvested in accordance with the time honoured customary and traditional rights subject to the rules and regulations framed by the concerned Autonomous District Councils under the provisions of their Management and Control of Forest Act, 1958 read with the provisions of the Meghalaya Forest (Removal of Timber) Regulation Act, 1981, and prescribed norms as per duly approved working schemes. Ministry of Environment & Forests will give its response to this request at the next date of the hearing”

1.35 Subsequently, the Ministry in their latest written note have informed that the Ministry had filed an affidavit in response to the hon'ble Supreme Court Order dated 12.5.2001. Wherein it had been mentioned that the Ministry of Environment and Forests in order to remove hardship of the local people had prepared the model guidelines without waiting for the proposal from the State Government of Meghalaya.

These guidelines had been sent by the Ministry to the State Government on 25.10.2001.

1.36 The Committee pointed out that Meghalaya should be taken as special case and a comprehensive Economic Package should be made for the people who have been displaced from their vocation and following the practice of regeneration of forests, the Secretary, Ministry of Environment & Forests stated as follows:-

“We have the budget of Rs. 800 crore this year. Now, we have mandatorily kept 10 per cent for the North-East. We found from our past experience that the expenditure is very slow because of the working season. The working season is restricted. You have just six months from October to April as main working season. But we have very good schemes. As you have offered us that the Meghalaya be taken up as a special case, I would submit before you, Sir, that we are willing to help you. As regards funds, there is no problem. We have got special schemes. For plantation, we have special schemes. Bamboo is one of our thrust areas. I think, we can take bamboo in a particular way. We have medicine plant as the second thrust area. Then, we have mangroves also. About the bamboo and medicine plants, I think, Meghalaya can take them up in a particular way.”

He further stated:-

“We have given the minimum of ten per cent but we can give you much more if there is a response. In fact, this year, I can tell you that for the first time in the history of the Ministry, for the first three months we have already released more than Rs. 300 crore; sanctions have been issued. Now, I am sending my officers to the States to make sure that the funds released to the States goes to the place for which it is meant. One of the serious problems that I have been facing is that when we release funds for the forest, the States are not releasing it, they are using it for other purposes because of other pressures and forest gets the low priority. Therefore, I am releasing this money directly to the agencies, FDAs and others. We say now, please spend the money. We will give the money directly to you to ensure that funds that are released actually reach the implementing agency. This is one of the serious problems that I am facing now. I am sending my people to see that funds that are released by the States reaches the actual implementing agency.”

1.37 In their subsequent written note, the Ministry of Environment & Forests further added that, the State Government is of the opinion that alternate employment opportunities/livelihood is required to be provided in place of agriculture cultivation and forest plantation, a suitable action plan in this regard may be formulated by the State Government for which all possible help would be provided subject to resource availability.

1.38 On the issue of incidents of fake forest fire, the Secretary, Ministry of Environment and Forests stated as follows:-

“One of the important things in fake forest fire is to have people watch. Now, watchers must be there in the forest. I have sent a letter to all the Chief Secretaries of all the States asking them to please employ the local tribal irrespective of age and educational qualification.”

He further added:-

“ We have forest plans. In the case of forest fire, money must reach the State Governments so that they can use it between December and March. That is the time when all these steps have to be taken. March and April are the dry months. The funds do not reach them in time. We have this problem. We are ensuring that the funds are reaching them in time. We are giving them a lot of funds both for equipment, vehicles and other things. We have got a very special scheme...”

1.39 When the Committee desired to know the role being played by the Ministry of Environment and Forests in the degradation of forest especially in Khasi hills by indiscriminate quarrying of coal by the people; the Regional Chief Conservator of Forests stated :-

“This problem of coal is mostly in Jayantia hills. This is also there in Khasi hills and Garo hills but it is concentrated in Jayantia hills. There is no terrestrial survey of land and there is no definite system as to how much area has been affected. But one of the reports that I was reading recently says that at least 100 square kilometer area has been affected in Jayantia hills. This is the area where either it has been dug up for coal or coal has been stored here or vehicles going for bringing the coal, and because of road opening up, this area has been destroyed. But possibly the area which has been affected is more, in the area where the Coal dust spreads, the regeneration is severely affected. If we take that area also into consideration, it will become even larger. So, this is broadly the picture as far as Jayantia hills are concerned. In Khasi and Garo hills, it is certainly much less than Jayantia Hills.”

1.40 When asked about the control on illicit felling and movement of timber, the witness stated as follows:-

“We had definite information that many forest officers, railway officers and others were actively involved not only by their non-action but they were actually involved in propagating these things. A pro-active role was being played in the illegal felling. That is why this Special Investigating Team was constituted under the powers vested with the Ministry vide the Supreme Court Order dated 13.1.2000. The results which have come are very shocking ones. It is in single order of SIT.”

1.41 In a subsequent written note, Ministry of Environment & Forests submitted the details of illicit felling and movement of timber as follows:-

“The responsibility for controlling illegal felling and smuggling timber lies with the state government, which is expected to take effective steps in this regard and to ensure that sufficient deterrent action is taken against the offenders. However, under the supervision of High Powered Committee (HPC) constituted by Supreme Court vide its order dated 4.3.1997 inventory of illegal timber confiscated as per Supreme Court orders dated 12.12.1996 was carried out in the North Eastern States. In Meghalaya 3094 Cubic meter timber was confiscated.

On the basis of intelligence report gathered by the Ministry of Environment & Forests, about 202 wagons of timber in transit were physically verified. During verification, it was found that practically all the wagons contained substantial quantities of illegal timber. The details of the verification are as under:-

| | |
|-----------------------------------|-----------|
| Volume as per Transit Pass | 7658 cum. |
| Actual Volume | 9487 cum. |
| Timber without Hammer mark | 1635 cum. |
| No. of expired transit pass used | 225 |
| No. of Tampered transit pass used | 99 |
| No. of Fake transit pass used | 36 |

Though there was no confiscated consignment which had come directly from Meghalaya (due to non compliance with para 7 (c) of Supreme Court order dated 15.1.1998, processing and movement of private timber in Meghalaya was not allowed at the relevant time) the above seizure indicate the trend of illegal felling in entire North East. In Meghalaya no. of times timber has been seized by the Border Security Force at Indo-Bangladesh Border.”

1.42 When asked about the steps taken to control illicit felling and movement of timber the DIG forests stated:-

“In a single instance 222 expired transit passes were found to be used. 99 timber transit passes were used. As many as 36 fake transit passes were found in these 202 wagons. This was the situation when from 12.12.1996 upto 15.01.1998, all the movements of timber were banned. Then, the Ministry intervened. We played a pro-active role in the Supreme Court. We said that economy of the North-East would be shattered if timber movement was not allowed. Based on our perception – that is there in the written judgement itself – the movement of timber outside the North-East was allowed. And very strict rules were laid down by the Supreme Court that the timber movement would be under the strict supervision of the Forest Department. Guidelines were issued that each wagon would be sealed and the genuineness of the timber would be ascertained before allowing such movement.

After all these things were done, after more than 1000 units were punished by the High Powered Committee in the past for being involved in illegal felling, after the Supreme Courts specific judgement against the forest officers and others who were involved in the significant and illegal felling, when the SIT checked, it was found that cent per cent of the wagons contained illegal timbers.”

He further stated:-

“I would submit that the orders passed by the Supreme Court on 23.4.2001 where again timber movement was temporarily banned was as a result of Action Taken Report submitted by the SIT to the Supreme Court giving details. On 23.4.2001, when the movement of timber was banned, it was basically, as an interim measure asking the Chief Secretary of the concerned State Governments to give a report to the Supreme Court as to what action had been taken by them against the officials who were found to be involved in the past in the illegal felling and movement of timber, as also why these orders of the Supreme Court had been flouted and how such a large quantity of timber had been allowed to be moved outside the North-East in the grab of legal timbers. After these responses were received the ban remained in force only for about 18 days. Once, we gave a working solution to the Supreme Court that yes, under these guidelines, it would be possible to check the illegality, again by the Supreme Court Order dated 12.5.2001, the movement of timber has been allowed.”

He further added:-

“I would like to submit that as of today, there is no blanket ban on the movement outside the North-Eastern and there is no blanket ban on felling of trees in the North-East. What is required to be done is that rules have to be framed in such a manner that the illegality could be controlled by the system itself. That is why the system of not allowing the round timber by the Railways or not allowing the hands sawn timber by the Railways has been prescribed.”

Secondly, I would like to submit that orders which have been passed by the Supreme Court whether it is the order of 12.12.1996 or 04.03.1997 or 15.1.1998 or 23.4.2001 or the latest order of 12.5.2001, all are in conformity with the National Forest Policy, 1988, Forest (Conservation) Act, 1980, Indian Forest Act, 1927, and Environmental (Protection) Act, 1986 for the social justice because it seeks only one thing that the large scale illegalities which were going on in the past, should not be allowed to continue and the checks and counter checks should be placed in order that the system itself ensures that the illegality does not take place.”

1.43 When the Committee desired to know about the Supreme Court Judgement of 12.5.2001, the representative (DIG) of the Ministry stated that:

“The judgement which was given on 12.5.2001 by the Supreme Court, after examining the affidavit filed by the Chief Secretaries of all the States and after hearing, in person, the Chief Secretaries or representatives of the Chief Secretaries of Assam, Tripura and Arunachal Pradesh, and Forest Secretaries of other States, and after taking into consideration perceptions of the Ministry of Environment, two-three things had been reiterated by the Supreme Court. One is that if a person who is found to be responsible for significant illegal in the past, for which order was issued by the Supreme Court on 15.1.1998, a strong action should be taken against him, howsoever high or mighty he may be. That was one point.

The second thing which was reiterated was the need to preparation of the working plans or working schemes for felling so that the forests can manage on a sustainable basis in a scientific manner, so that the maximum possible benefit accrue to the local masses.

The third thing which they said was that whenever a forest is felled, as per working scheme, sufficient financial provisions must be made for regeneration of the forest so that it does not happen that only one part of the working plan, that is, the felling part, is implemented and when it comes to planning part or regeneration it remains unimplemented because of non-availability of funds.

The fourth thing which they had reiterated was that timber movement will be allowed through the Railways only because of our experience in the past. Incidentally, I would like to submit that we have the details of all the wagons which have moved after 15.1.1998 and before it was temporarily banned by the Supreme Court on 23.4.1999. If you see the total quantity of timber in each wagon, it kept on changing. When the SIT started investigating, before that each wagon was containing 15 to 20 cubic metres. Actually, it used to contain 40 cubic metres. After the SIT started investigating, the quantity increased to about 30 to 32 cubic metres. After we checked the timber, which came from Nagaland and other parts suddenly the timber quantity which was being loaded, again increased to 40 cubic metres. This difference between 15 cubic metres to 40 cubic metres was actually the illegal timber which was regularly being mixed with the legal timber and being sent. If you do the supervision of all the wagons which have moved under so-called strict control of the Forest Department in the intervening period the total value of such timbers comes to more than Rs. 100 crore.”

1.44 When asked whether transport of all the raw materials have been stopped, the representative of the Ministry stated as follows:-

“No Sir, it has probably been restricted, in the sense that wherever specific case is there and if the Ministry feels that it is not for the purpose of transporting legal timber and there is no genuineness, then the Ministry is authorised to restrict it.

The other restriction reiterated was transportation by road. There also, permission is required to be obtained specifically from the Ministry if something is to be transported by road. We have given this permission in two cases.

Then, another important principle which has been laid down by the Supreme Court, is that whenever you do any felling, from non-forest area you prescribe detailed guidelines for felling of trees from non-forest area so that it is not left to the whims and fancies of the individual officers.

Then, another important thing is that since a large number of fake transit passes were seized by the SIT, it was decided that in future transportation of timber should only be done on the basis of watermark transit passes counterfeit copies which cannot be easily prepared. Since it would have taken about six months or so, in the intervening period, timber has been allowed to be moved on the basis of normal transit pass with a rider the SIT would provide station-wise details of loading of wagons. These were the basic conditions in which transportation of timber outside the North East has been allowed and felling of trees from the forest has been allowed.”

He further added:-

“Just for the sake of record, I would submit the blanket ban on felling was in place only for a very limited period of time, hardly for about 20 days or so blanket ban on movement of timber was in place from 12.12.1996 to 15.1.1998 and afterwards from 23.4.2001 to 12.5.2001. That too, it applied only for timber. At no point of time there was blanket ban or any ban at all on movement of value added products of timber, that is veneer or plywood. For veneer, of course, there was a limited ban for about 20 days or so. But by and large, it has been there and even when ban was there high powered committee was separately authorised by the Supreme Court to give permission in specific cases.

The Secretary Ministry of Environment and Forests further added that the Supreme Court order has given the Chief Secretary 60 days to get back to them about the action taken against all the officials, including the Railway Board. The Supreme Court has viewed it very seriously.”

1.45 The Committee pointed out about the Resolution of Meghalya Legislative Assembly to obtain orders of the President of India in exercise of powers under the provisions of para 12 A of the Sixth Schedule to the Constitution for exemption of the State of Meghalaya from the operation of the Forest (Conservation) Act, 1980 with a view to enable the raising, regulation and control of forest plantations in the

State to be carried on in accordance with the provisions of the United Khasi and Jaintia Hills Autonomous District (Management & Control of Forest) Act, 1958, and the Garo Hills District (Forest) Act, 1958, and desired to know about the reaction of Central Government To this, the Secretary of the Ministry stated:-

“There is nothing specific to Meghalaya. This is about the Forest (Conservation) Act, which is applicable to the entire country. If there is any specific problem about Meghalaya, we can have a look at it.”

1.46 In the written note, the Ministry of Environment & Forests clarified that exact position in this regard is being ascertained from the Ministry of Home Affairs. However, the Forest (Conservation) Act, 1980, had been enacted by the Parliament in the larger interest of the common people and to ensure that the forest resources and the forest lands were properly managed in the larger interest of the community.

1.47 The Ministry of Environment & Forests also informed that under the provisions of the 6th Schedule of the Constitution, the district councils had the powers to make laws with respect to the allotment, occupation, use or setting apart of lands, except in respect of Reserved Forests, for the purpose of agriculture, grazing and for purposes likely to promote the interest of the people. They were also empowered to make laws for the management of any forests except Reserved Forests and for regulating shifting cultivation. The Reserved Forests were managed by the State Government. All Acts of Parliament apply to the 6th Schedule areas except in cases where exceptions were made by a Presidential Notification. Since Forest (Conservation) Act, 1980, applies to all forest area irrespective of its ownership, approval of the Central Government would be needed for using any forests area for non forestry purposes falling within the jurisdiction of District Councils also. Similarly, as per the Forest (Conservation) Act, 1980, the working plans/working schemes were also required to be approved by the Central Government for such areas.

OBSERVATIONS/RECOMMENDATIONS

1.48 The main grievance placed before the Committee by the Petitioners is that they are the victims of the blanket restriction of movement of cut trees from State of Meghalaya to other parts of the country. The restriction of movement is a result of an order by Supreme Court, that totally banned the movement of cut trees from all seven North Eastern States to any State in the country. The effect of this is an extremely adverse on the economic life of the people in Meghalaya, as a vast majority of the people living in the countryside survive on forest.

1.49 The petitioners have prayed to the Committee for funding a comprehensive economic package for the relief and rehabilitation of the effected people in order to provide them with an alternate source of economic livelihood. They have also requested to devise a special mechanism to regulate felling and plantation of trees in a scientific and commercial way on sustainable lines to enhance timber economy.

1.50 The Committee note from the submissions made by the Ministry of Environment and Forests that based on the perception of the Ministry modified orders were issued by Supreme Court on 15.1.98 stating inter-alia (a) allowing movement of timber outside North-East through Railway if it is sourced from an HPC cleared unit; (b) allowing felling as per working Plan/Schemes/felling schemes; (c) wood-based unit were allowed to restart working after shifting of industrial estates; (d) Ministry of Environment & Forests was to allow movement of timber by road etc. in specific cases of difficulties.

1.51 The Committee also note that on 4.3.1997 a High Powered Committee (HPC) was constituted by the Supreme Court to deal with examination of inventory of wood-based units and other related matter such as imposing penalty, if the inventory was found to be not in order and drafting of certain procedures for the movement of timber and timber products. Report about all the decisions taken by HPC is given to the Supreme Court periodically.

1.52 The Committee further note that transparent and detailed guidelines have been laid down by HPC regarding the out-turn of sawn timber, ply-wood or veneer. The units in respect of which out turn has exceeded by more than 15 per cent of the norm fixed by the HPC and which were later ratified by the Supreme Court, such units will not be allowed to shift industrial estates for future working.

1.53 The Committee have also been informed that in Meghalaya total number of Units were earlier 219, as per report given by the State Government, but HPC received inventory only in respect of 125 units. The Committee are concerned to note that despite taking up of this matter a number of times with the State Government these figures could never be reconciled. The Committee expect that the centre would persuade the State Government to take expeditious action and submit the inventories for the remaining units without further delay so that they out turn of units can be examined by HPC as per norms laid down by it. The Committee would also like to be apprised of the total number of inventories received and of these the number of units cleared and closed by the HPC after examination.

1.54 The Committee have been informed that 89% of the total forest cover in Meghalaya, is unclassified forest, which is part privately and part community owned and lies under the control of District Councils. The management of these forests was generally not based on scientific principles, with no area being covered by forest working plans or schemes, which resulted in serious loss of forest covers over the years. The Supreme Court vide its order dated 12.12.96, reiterated by order dated 15.1.98 and again reiterated by its order dated 12.5.2001, said that working plans or working schemes should be prepared for harvesting trees from any forest area. The Committee have also informed in Meghalaya, that since most of the areas are with District Councils, here the requirement is not working plan but working schemes and it is technically possible to make schemes very easily for Khasi, Jaintia or Gharo Hills.

1.55 During evidence the Committee have been informed that various orders passed by the Hon'ble Supreme Court dealing with management of forests, regulating the felling of trees, movement of timber and timber products are in conformity with the National Forest Policy, 1998, Forest (Conservation) Act, 1980. Strict implementation of these orders would help in providing sustainable management of forest resources, optimum utilisation of forest produce, value addition and would result in better employment opportunities and assets creation.

1.56 The Committee have also been informed that the Supreme Court in its order dated 12.5.2001 had also directed Ministry of Environment and Forests to give its response to the request of the State Government of Meghalaya to permit identification and harvesting of the artificially regenerated forests on private lands as private plantations in accordance with the para 10 of the Hon'ble Court order dated 15.1.1998.

1.57 The Committee have been further informed that the Hon'ble Court vide order dated 15.1.98 and 12.5.2001 directed that all forests shall be worked only in accordance with the working plans/working schemes approved by the Ministry and all non-forest areas shall be worked according to the Rules/guidelines framed by the State.

1.58 The Committee note with satisfaction that the State Government of Meghalaya has submitted the working schemes for Jaintia and Khasi Hill District Council to the Ministry of Environment and Forests which have been approved by the Ministry. The Committee are happy to note that the Ministry of Environment & Forests have in order to remove hardship of the local people prepared model guidelines without further waiting for the proposal from the State Government and the same have been sent to the State of Meghalaya vide letter dated 25.10.2001. The Committee desire that appropriate measures are made by the State Government of Meghalaya and the Ministry of Environment & Forests under this new set of guidelines to protect the interest of the local timber harvestors and suppliers.

1.59 The Committee wish to point out that a periodic review may also be carried out by the Ministry of Environment & Forests as to keep track that the timber harvesting in the forest areas is carried out as per the working plans/working schemes approved by the Government and steps are taken for regeneration of cut forests..

1.60 The Committee also expect that the Ministry would pursue the matter with the State of Meghalaya for finalisation of model guidelines sent by them by the State Government in conformity with the local laws, rules, regulations, customs, etc. The Committee also recommend that concerted efforts should be made by the Centre for expeditious finalisation and implementation of the final guidelines for non-forest areas by the State Government and would also like to be apprised of the final outcome in due course.

1.61 In respect of the management of forests under the “United Khasi, Jaintia Hills (Autonomous District) Management of Forest Act” and the Rules made there under in 1960, the Committee observe that the primary requirement of this Act was that the lands possessed by the communities, persons, clan lands and private holdings were to be registered in the name of the owners defining the forests and their boundaries. The Committee, however, deeply regret to note that there is complete absence of registration under the United Khasi-Jaintia Management of Forest Rules, 1960, except in very rare cases. This is despite the fact that had these Rules been followed, then as per Supreme Court judgement, there would not have been any mandatory requirement of working plan for private plantations. While the Committee agree that as per the Act, the rules were to be framed by the District Council, because these are the executive and legislative bodies of the State, the Committee would urge the Government to take up the issue with the State Government to frame the rules without any further loss of time. They also recommend that a cadastral survey may be done in the State, which would identify the forest boundaries enabling their management an easy task and stopping encroachment of forests and giving them the status of private properties. This may be done expeditiously.

1.62 The Committee are contended to note that in this year there is 10 percent of Rs.800 crore of budget allocation specially earmarked for forests of North-East. Special schemes have been made for Meghalaya and the funds are being released directly to the agencies, FDAs and others so that they are not misused and would reach actually to the implementing agency. The Committee desire that the schemes may now be implemented without any further delay under strict vigil of the Centre and expect that the funds should not be misused.

1.63 Another aspect which was brought to the notice of the Committee was about fake fire in the forest. The Committee are of the firm opinion that appropriate measures including action to get the appropriate number of Range Officers appointed, should be taken expeditiously to stop the incidents of fake fire in the forest. The Committee desire that suitable measures are taken in coordination with State Government of Meghalaya to curb the incidents of fake forest fire.

1.64 The Committee are deeply perturbed to learn that many forest officials, railway officers and others were actively involved in illegal felling and movement of trees.

Between October, 1999 and May, 2000, the Ministry seized 202 railway wagons all of which contained large quantities of illegally obtained timber. The Committee have been informed that, concerned with this, the Supreme Court vide its order dated 13.1.2000 constituted a Special Investigating Team (SIT). On examination of Report submitted by SIT, the Supreme Court again banned movement of timber asking Chief Secretary of the concerned State Government to give Report to Supreme Court as to what action had been taken by them against the officials found guilty within 60 days in illegal felling and movement of timber.

1.65 The Committee were further informed that on examination of SIT Report the Court issued further orders on 12.5.2001 by which movement of timber was allowed thereby reiterating that-stringent action to be taken against those responsible for illegalities, requirement of working plan/schemes for felling the forests on sustainable basis whenever forest is felled, it should be felled, sufficient financial provisions must be made for regeneration of the forest, framing of guidelines for felling of trees and plantations raised in non-forest areas by respective State Government, periodic reconciliation of records of timber harvesting, processing and disposal, and use of special water marked transit passes to avoid counterfeiting.

1.66 While notifying the orders of Supreme Court, the Committee take a serious view of the issue and reiterate that stringent action against all the officials, including the Railway Board be taken and the Committee be apprised of the action taken within 60 days. The Committee also strongly recommend that the Supreme Court orders dated 12.5.2001 may strictly be implemented without further delay, and the Committee apprised of the same within 3 months.

1.67 The Committee have been informed that there is a Resolution of Meghalaya Legislative Assembly to obtain orders of the President of India in exercise of powers under the provisions of para 12 A of the Sixth Schedule to the Constitution for exemption of the State of Meghalaya from the operation of the Forest (Conservation) Act, 1980 with a view to enable the raising, regulation and control of forest plantation in the State to be carried on in accordance with the provision of the United Khasi and Jaintia Hills Autonomous District (Management and Control of Forest) Act, 1958, and the Garo Hills District (Forest) Act, 1958.

1.68 The Committee have been also informed that the position in this regard is being ascertained from the Ministry of Home Affairs. The Committee expect that the Ministry would expedite the issue with the Ministry of Home Affairs and apprise the final decision taken in this regard to the Committee in due course.

CHAPTER-II

PETITION REGARDING GRANT OF LEASE OF LAND AND SANCTION OF A REHABILITATION PACKAGE FOR THE PEOPLE LIVING ON UNUSED AND VACANT LANDS OF NORTHEAST FRONTIER RAILWAY IN DIFFERENT AREAS OF GREATER GUWAHATI.

2.1 On 15 May, 2000 Shri Basudeb Acharia, MP presented to Lok Sabha a petition signed by Shri Kali Sankar Dhar resident of Pvt. House Rest Camp, Bara Bazar, Pandu, Guwahati (Assam) and others regarding grant of lease of land and sanction of a rehabilitation package for the people living on unused and vacant lands of Northeast Frontier Railway in different areas of greater Guwahati.

2.2 The petitioners submitted the following points in their petition:-

- (i) They are the citizens of India, living on railway lands in different areas of greater Guwahati since several decades;
- (ii) A large number of people including the petitioners migrated from erstwhile East Pakistan, now Bangladesh, to Assam after partition of the country in 1947 and settled themselves on vacant, unused and low-lying lands of Northeast Frontier Railway spreading over different areas of greater Guwahati including Pandu-Maligaon. They built huts on railway lands through their own initiative and efforts and started life afresh;
- (iii) In the year 1967, with the intervention of the then Union Railway Minister a committee was formed with the officials of Northeast Frontier Railway and the representatives of the unauthorised people living on Railway land to find out an alternative site at Amingaon for the purpose of rehabilitation. Some progress was made in this respect but suddenly the project fell through;
- (iv) They were the unfateful victims of partition and eviction from this land of the people had continued unabated. Under the banner of Anti Eviction Committee the matter was raised several times to keep successive eviction orders in abeyance. In 1987, an all-party delegation from Assam including the representatives of the Anti Eviction Committee met the then Prime Minister at New Delhi and an assurance was made in this regard that no eviction would be made without making alternative arrangement;
- (v) No positive steps towards rehabilitation had been taken till date. Further, a large number of people of lower income groups of different communities had been living on the railway land since long; and
- (vi) In a massive convention held on 26 January, 1997 at Pandu a resolution was passed urging upon the Government to grant lease/licence to, and/or realize rent from, and provide electric connection on payment of usual tariffs to the people living on unused and vacant lands of Northeast Frontier Railway in different areas of greater Guwahati.

2.3 The petitioners, therefore, requested that the appropriate authorities might be directed to accept their demands and to consider their rehabilitation and non-eviction from the land occupied by them on humanitarian grounds.

2.4 The petition was referred to the Ministry of Railways (Railway Board) on 17 May, 2000 for furnishing their comments on the various points raised in the petition. In response, the Ministry of Railways (Railway Board) vide their O.M. dated 6 July, 2000 stated as follows:-

“The petitioners have admitted that they have occupied the railway lands unauthorisedly without any sanction or authority from the Railways. It may be appreciated that mere period of stay in an unauthorised manner on public/private land should not/does not confer upon the encroachers any right of getting compensation and relief/rehabilitation benefits. Railways land wherever vacant is required for their own developmental projects and other operational requirements and cannot be handed over to such encroachers.

In order to free their land from encroachment, Railways are engaged in a continuous drive against the encroachers. This, however, invariably leads to a law and order problem. Railways have, therefore, to depend upon the State Government machinery for carrying out such eviction drives. Such help from the State Government is not readily forthcoming leading to the addition of more encroachments on railway area. Railways, therefore, cannot be held responsible for long stay of unauthorised persons on its land nor for its inability to free its land from encroachments.

Housing is a State subject and it is the duty of the concerned Municipal/State Authority to provide means for settlement and residence to the people. Railways alone cannot take on this responsibility as their primary duty is towards transportation of passengers and goods from one part of the country to another. It is for the State Government to take up the rehabilitation of persons in need of a dwelling. However, if any request is received from the concerned State Government for relinquishment of the same railway land to the State Government, it can be considered at the market value prevailing at the time of transfer in accordance with the rules in this regard.”

2.5 After perusing the comments furnished by the Ministry of Railways (Railway Board), the Committee undertook on-the-spot study visit to Guwahati on 30th January, 2001 to gather first hand information. The Committee held discussions with the petitioners and the officials of the State Government of Assam on the petition.

During the discussion with the petitioners, the Committee were informed that the occupants of the Railway lands in greater Guwahati including Pandu and Maligaon had been residing in ‘Pucca’ building built by themselves and they were actually submitting the payments against the electricity bills, municipal taxes etc. to the appropriate authorities in the State Government of Assam. In the land occupied by them provisions for basic amenities and a Higher Secondary School had already been built up by their own efforts. Hence, the eviction drives against them should be stopped on humanitarian grounds and appropriate measures may be taken for the rehabilitation/relief of the affected people who were destitutes after the partition of the country in 1947.

During the discussion with the officials of the State Government of Assam, the Committee were informed that due to almost open border, a large number of people had been entering into Assam since 1947 from the then East Pakistan (now Bangladesh). Such people had occupied land in many areas of the State of

Assam. However, the exact number of people who had migrated into Assam after partition of the country in 1947 was not available. The registered/recognised refugees had been rehabilitated in camps established at Boko, Matia and in some other districts in the State of Assam by the State Government. Such people had also been provided the basic amenities.

Regarding, the question of relinquishment of surplus Railway lands from the Ministry of Railways (Railway Board); the officials of State Government informed the Committee that the State Government had made a request to Northeast Frontier Railway for relinquishment of land in the abandoned railway line at Ambari for the purpose of construction of a motorable road in the interest of public service. The Chief Engineer, Northeast Frontier Railway vide his letter No.W/214/GHY/28/PV/IV-4 dated 6.1.1999 had put some conditions and they were under consideration of the State Government of Assam.

On the issue of rehabilitation of the displaced persons from erstwhile East Pakistan who have settled on the Railway lands in greater Guwahati, the officials of the State Government of Assam informed the Committee that rehabilitation of people, if found eligible for rehabilitation could be considered in areas other than urban land as per provisions of Assam Land Policy, 1989. Under Assam Accord the people who migrated from 25 March, 1971 onwards had been put for examination under the Illegal Migrants (Determination of Tribunals) Act, 1989.

2.6 During the on-the-spot study visit of the Committee to Guwahati, the Northeast Frontier Railway also apprised the Committee that as on 1.4.2000, the summarized position of encroachments on Northeast Frontier Railway lands was as follows:-

| <u>Total No. of Encroachments</u> | <u>Hard Type</u> | <u>Soft Type</u> |
|--|-------------------------|-------------------------|
| 23495 | 20984 | 2511 |

Out of the above, in 15724 Nos. of cases, eviction orders had been passed by the Estate Officer/Court, but eviction had not yet been effected due to lack of co-operation from the State Government.

Regarding, the encroachments on railway lands in Pandu area, the Northeast Frontier Railway informed that during partition of erstwhile East Pakistan (now Bangladesh), people had migrated to India to Karimganj, Silchar and border areas of Tripura and West Bengal but not to Guwahati area. The State Government of Assam had set up camps also for the migrants at Jagi Road etc. where warranted on State Government lands. There were 4636 Nos. of encroachments on railway land in Pandu. Out of this, eviction orders had been passed in 1447 cases by Estate Officer, but eviction could not be effected and 2189 cases of eviction proceedings were in different stages of the process.

2.7 The Committee, thereafter, took oral evidence of the representatives of the Ministry of Railways (Railway Board) on 3rd July, 2001. During the course of evidence, the Committee desired to know the total area of land at Maligaon, Pandu and Amingaon being actually utilised by the Railways. To this, the representatives of the Ministry of Railways (Railway Board) stated as follows:-

“The total area that is available and is being treated as vacant is 173 acres. It is not being utilised at present but some of that has been identified.”

2.8 Subsequently, in a written note the Ministry of Railways (Railway Board) informed that a total of 154.460 hectares of railway land was lying vacant at present, out of which 62.60 hectares land had been encroached upon. The proposed utilization of vacant land in Greater Guwahati was as follows:-

“Land is required for training center of Signal & Telecommunication Department; Regional Centre for Scout & Guides; Coach Maintenance Depot, Expansion of Station/yards for passengers and goods; Welfare activities of Staff; Protection and improvement of environment; and Maintaining healthy and pleasant, surroundings etc.”

2.9 On the question of number of people residing on the unused, vacant and low lying lands of Northeast Frontier in greater Guwahati, the Ministry of Railways (Railway Board) informed in the written note as follows:-

“As per information available with the Railways no refugee who migrated in 1947 settled on Railway land. However, approximately 9000 encroachments are there on Railway land in greater Guwahati at present and these are mostly fresh or about 10-15 years old. Approximately 62 hec. of land is under encroachment in different pockets. The unauthorized occupation is not continuous. The Railways keep on removing the encroachments and new encroachments again come up.”

2.10 On the question of the eviction drives carried out by the Northeast Frontier Railway in the railway lands in greater Guwahati, the Ministry of Railways (Railway Board) informed in the written note as follows:-

“While implementing the process of removal of encroachments from railway lands, the provisions sanctioned in the Railway Act, 1989 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 are followed. The process of removal of encroachments, sometimes leads to a law and order problem and this slows down the process of removal. Railways have, therefore, to depend upon the State government machinery for carrying out such eviction drives. Such help from the State Government by way of providing Police/Magistrates, is not readily forthcoming leading to the addition of more encroachments on railway area. Railways, therefore, cannot be held responsible for long stay of unauthorized persons on its land or for its inability to free its land from encroachment.”

2.11 Regarding, the position of removal of encroachments from railway lands, the Ministry of Railway (Railway Board) in the written note informed that a total of 4753 such encroachments had been removed. Orders of eviction had been passed in more than 2500 cases, but eviction could not be carried out because of

non-availability of magistrate and local police. In Assam there was a problem of illegal migrants. The law and order situation had not been good in Assam because of insurgency problem. Railways had taken up the issue of removal of encroachments with State Government of Assam time and again and followed it up every three months with them. This had been going on since last 30-40 years.

2.12 The Committee pointed out that the Ministry of Railways (Railway Board) follows a perspective plan of 15 to 20 years for development or expansion of Railways. The land which was required 200 years back may not be needed in future for railway purposes. To this, the representative of Ministry of Railways (Railway Board) stated as follows:-

“As far as the Railways are concerned, they cannot have a separate policy for different places, therefore, when the Railways have to take a decision for a particular area, they have to take a decision which will be applicable to encroachments all over India.”

2.13 When the Committee desired to know as to whether the Ministry of Railways would give positive consideration to a request of the State Government of Assam for relinquishment of the unused, vacant and low-lying railway lands in greater Guwahati ; the representative of the Ministry of Railways (Railway Board) stated as follows:-

“We have no enmity with anyone and we are not trying to be unduly harsh on anything. All that we are trying to do is to protect the interest of the Railways from a problem which has come to our notice. May be the problem has come due to inability of the people down the line or due to their negligence or due to pressures being put on them.”

OBSERVATIONS/RECOMMENDATIONS

2.14 The Committee note that a total of 154.460 hectares of railway land of Northeast Frontier Railway has been lying vacant in greater Guwahati, Assam. Out of this vacant land in 62.60 hectares of land about 9000 migrants are residing. These people are living on this railway land in ‘Pucca’ buildings built by themselves for the last few decades. In the land occupied by them provisions for basic amenities and schools etc. have been built up by these migrants with their own efforts.

2.15 One of the main demand of the petitioners who are the occupants of the railway lands in greater Guwahati is that no positive steps towards the rehabilitation of these people belonging to lower income groups have been made. They have contended that these people had migrated from erstwhile East Pakistan (now Bangladesh) to Assam after the partition of the country in 1947 and had settled themselves on the vacant, unused and low-lying lands of the Northeast Frontier Railway spreading over different areas of Greater Guwahati including Pandu-Maligaon. The occupants of the railway lands in Greater Guwahati

including Pandu-Maligaon have also been making payments against electricity bills, municipal taxes etc. to the appropriate Governmental authorities in the State Government of Assam. However, the eviction of these poor migrants is being continued unabated by the railway authority.

2.16 In this context, the Committee are informed by the Ministry of Railways (Railway Board) that the Northeast Frontier Railway have taken up the issue of removal of encroachments on the railway lands with the State Government of Assam time and again during the last 30 to 40 years based on the provisions of the Railway Act, 1989 and Public Premises (Eviction of Unauthorised Occupants) Act, 1971. As on 1.4.2000 there were 23495 encroachments (20984 of hard type and 2511 of soft type) on their railway lands. In 15724 cases eviction orders had been passed by the Estate Officer/Court. There were 4636 number of encroachments on railway land in Pandu area of Guwahati and eviction orders had been passed in 1447 cases by the Estate Officer, but eviction could not be effected.

2.17 In their latest communication, the Committee are informed by the Ministry of Railways (Railway Board) that this land in greater Guwahati is required for training centre for Signal & Telecommunication Department; Regional Centre for Scout & guides; Coach Maintenance Depot; Expansion of Station/yards for passenger and goods; Welfare activities of Staff; Protection and improvement of environment and maintaining healthy and pleasant surroundings etc. The Committee are, however, deeply constrained to learn that this land acquired by the Railways almost 200 years back has not been utilized for expansion of the railway network although a perspective plan of 15 to 20 years is followed by the Railways for development/expansion of railways.

2.18 The Committee cannot but express their distress over the fact that these railway lands have been allowed to remain unused or vacant by the railways eventually leading to the alleged encroachments on these railway lands. The Committee feel that if the surveillance on all these lands had been carried out regularly and earnestly such encroachments could have been easily avoided. Moreover, a timely and comprehensive survey regarding the usage of acquired land for railway projects in greater Guwahati could have shown a clear picture of any surplus land as the lands in greater Guwahati including Pandu-Maligaon were acquired almost 200 years back. The Committee hope that the proposed utilisation of these vacant railway lands as submitted to the Committee by the Ministry of Railways (Railway Board), lately, should be made in a specific time frame. The Committee also expect that a positive consideration may be given by the Ministry of Railways (Railway Board) towards the relinquishment of the unused, vacant and surplus railway lands in greater Guwahati to the State Government of Assam for social benefits as well as for rehabilitation of people of Assam.

2.19 The Committee note that rehabilitation being a State subject, the State Government of Assam had rehabilitated the registered/recognised refugees in camps established at Boko, Matia and in some other districts in the State of Assam and they were provided the basic amenities. The State Government of Assam had also set up camps at Jagi Road etc. for the migrants in Assam during the partition of East Pakistan (now Bangladesh). However, after 27 March, 1971 the migrants have been put for examination under the Illegal Migrants (Determination of Tribunals) Act, 1989. The Committee, therefore, recommend that coordinated and comprehensive efforts may be made to verify the legal migrants to the State of Assam and these migrants should be rehabilitated with a positive perspective. The Committee also desire that the needs of a dwelling unit of the people residing on the unused railway lands in greater Guwahati are met based on the principals of natural justice and on humanitarian grounds. The people who are residing for more than 20 years should not be thrown away without any alternative arrangement.

CHAPTER III

PETITION REGARDING INCLUSION OF GOWADA, KUNBI, VELIP AND DHANGAR COMMUNITIES OF GOA IN THE LIST OF SCHEDULED TRIBES.

3.1 On 14 August, 2001 Shri Ramakant S. Angle, MP presented to Lok Sabha a petition signed by Shri Antonio Gauncar of 130/A, Arlem Raia, Salcete, Goa regarding inclusion of Gowada, Kunbi, Velip and Dhangar communities of Goa in the list of Scheduled Tribes.

3.2 The petitioner in their petition submitted that the Portuguese who ruled over Goa for over 500 years, considered the Gowada, Kunbi, Velip and Dhangar communities as Tribu, which means tribes and hence were considered to be outside the scope of Hindu Religious Order. These four communities do not fall either in the Chaturvarna System or Pancham Varna like Scheduled Caste or Out Castes. The Gowada, Kunbi, Velip and Dhangar communities from Goa, have been categorised as tribes by sociologists and historians from time immemorial. In fact, Gowadas, are the first settlers of Goa. Social historians and researchers on Goa have emphasised that custom, rituals and religious patterns of Gowada, Kunbi and Velip communities are similar to Gonda and Kol Tribes and other descendant tribes in other parts of the country.

The petitioner informed that in 1966, a study group recommended that the Gowada, Kunbi, Velip and Dhangar communities be considered as Aboriginal Tribes of Goa. The Research Wing of Ministry of Welfare has agreed to the demand to include Gowada, Kunbi, Velip and Dhangar communities in the List of Scheduled Tribes. However, over the last few years, the Scheduled Castes/Scheduled Tribes Revision Bill could not be taken up. A grave injustice continues to be meted out to these Tribal communities in Goa as the Centre failed to extend the Constitution (Scheduled Tribes) Order 1950 to the Union Territory of Goa, Daman and Diu immediately after the liberation of Goa in 1961. Although in the year 1968 the Goa, Daman and Diu (Scheduled Tribe) Order 1968 was promulgated, it declared only tribes from Daman and Diu as Scheduled Tribes while those from Goa were excluded. Under the Goa, Daman & Diu Reorganisation Act in 1987, the tribes from Daman and Diu were considered to be tribes from Goa while the ethnic Goan tribes were excluded.

3.3 The petitioner prayed to issue the necessary instructions to the effect that the Gowada, Kunbi, Velip and Dhangar communities of Goa be included in the list of Scheduled Tribes without delay.

3.4 The petition was referred to the Ministry of Tribal Affairs on 16 August, 2001 for furnishing their comments on the various points raised therein. In response, the Ministry of Tribal Affairs vide their communication dated 5 September, 2001 stated as follows:-

“The Scheduled Tribes are specified in accordance with the provisions of Article 342 of the Constitution. The first list in relation to a State/UT is by a notified Order of the President, after consultation with the State Government concerned. Any subsequent modification can only be effected through an Act of Parliament. In June 1999 Government have approved modalities for deciding cases for inclusion, exclusion and other modifications in the list of Scheduled Castes and Scheduled Tribes. According to this procedure only those cases that have been agreed to by the concerned State Government and Registrar General of India as well as National Commission for SCs and STs are only to be taken for amending legislation. The recommendation of the State Government is forwarded to the Central Government. Thereafter proposals received from State Government are sent to the Registrar General of India (RGI).

in the form of Bill. In case a proposal is not supported by RGI it is referred back to the State Government for reviewing or further justifying their recommendation in the light of the State Government for reviewing or further justifying their recommendation in the light of the observations of the RGI and these proposals remain under consideration till an agreement is reached between the concerned State Government and the RGI as to fulfillment of the criteria by the community concerned.

The criteria for determining tribal character of a community are:

- (1) Indications of primitive traits;
- (2) Distinctive culture;
- (3) Geographical isolation;
- (4) Shyness of contact with the community at large; and
- (5) Backwardness

Government of Goa has recommended inclusion of Gowada, Velip, Kunbi and Dhangar communities in the list of Scheduled Tribes of the State. With regard to Gowada, Velip and Kunbi communities the Registrar General of India and National Commission for SCs and STs have concurred in the proposal of the State Government. In so far as Dhangar community is concerned, the Registrar General of India has not favoured its inclusion. As per approved modalities the Government of Goa have been requested to review its recommendation or further justify that this community fulfils the criteria for its scheduling as ST. The report of the State Government is awaited. The above proposal is being processed as per modalities approved for deciding such claims.

It is also mentioned that this matter has to be placed before Union Cabinet for decision, and thereafter further action will have to be taken as per procedure.”

3.5 After perusing the comments furnished by the Ministry, the Committee undertook on-the-spot study visit to Goa on 17 October, 2001 to gather first hand information. The Committee held discussions with the petitioners and the officials of the State Government of Goa.

The Committee were informed by the petitioners that it is well known that Kunbis-Gowadas-Velips & Dhangars are the Adivasis & Tribes of Goa. A Parliamentary Group in 1967 and the Goa Legislative Assembly in 1994 also confirmed and identified that these communities as adivasis of Goa. The Union Government has been requested to include them in the Constitution Order 1950 as Scheduled Tribes of Goa. However, these Tribes of Goa have been neither specified for the purpose of Article 342(1) of the Constitution nor included in the Constitution Order 1950 and they are deprived of Constitutional rights and benefits

as Tribes of Goa. The petitioners requested to bring the amendment to the Constitution (ST) Order, 1950 to include Gowada, Kunbi, Velip and Dhangar communities in the list of Scheduled Tribes.

During the discussion with the officials of State Government of Goa, the Committee were informed by the Secretary (Scheduled Caste Commissioner, Deptt.), Government of Goa stated that the State Government of Goa have recommended for inclusion of Gowada, Kunbi, Velip and Dhangar Communities in the List of Scheduled Tribes to the Union Government.

3.6 The Committee took, thereafter, oral evidence of the representatives of the Ministry of Tribal Affairs on 22 November, 2001. The Committee desired to know the position regarding inclusion of Gowada, Kunbi, Velip and Dhangar Communities in the List of Scheduled Tribes. To this, the Secretary, Ministry of Tribal Affairs explained as under:-

“Out of those four communities, except Dhangar, in the case of all the other three, there has been a consensus opinion and recommendation by the State Government, the RGI and the National Commission. So, we are now in the process of including this in our note for the Cabinet. So, this is being done. There is no problem about these three. With regard to Dhangar, RGI had not agreed with the State Government’s recommendation. The views of the RGI had been referred back to the Government of Goa. Once the State Government’s views are taken, we will go back to the RGI.”

3.7 When the Committee desired to know the grounds on which the proposal of the State Government of Goa for inclusion of ‘Dhangar’ Community was not accepted, the witness stated as under:-

“We actually do not go into the details because RGI is supposed to be the authority. Normally 4-5 characteristics are there to include a community in the list of STs. I will list them out. The first is that there should be some indication of a primitive trait in that particular community, secondly, they should also possess a distinctive culture of their own; third is that there should be some kind of a geographical isolation. They should not mix with other communities or be the part of the mainstream. There should be shyness of contact with the community at large. Finally, there should be some backwardness, be it social backwardness or economic backwardness. These are the prime characteristics which if prevalent in any particular community makes it a tribal community. These are the characteristics based on which RGI went into the details and made recommendations.”

3.8 When the Committee desired to know whether the Ministry had a machinery of their own which could independently assess the proposals for inclusion of certain communities in the List of Scheduled Tribes; the witness stated as under:-

“We do not have any independent agency to put in operation to find out what RGI or the State Government has recommended is correct or not but the National Commission on SC/ST has its own regional offices and has got its own officers. RGI has got its own agencies, which can really check the records. We do not have any independent agency to do this. We have not really felt the need. We are thinking of setting up a National Commission for ST. We are still contemplating to have it and as and when we can have an institute of that kind we can collect necessary material, independently gather more information and cross-check as to whether what the RGI and others have said is correct or not.”

3.9 The Committee pointed out that at least at Ministry’s level there must be some kind of a will to go into all these matters, particularly to prepare the Cabinet memorandum or recommend to the Cabinet. They must be totally satisfied, otherwise, RGI becomes a coordinating body. Replying to this, the witness stated as under:-

“As I submitted earlier, our role mainly is that of a post office. In case RGI and the State Government do not recommend accordingly, we refer them back. If both of them do not agree, we simply reject it.”

RECOMMENDATIONS/OBSERVATIONS

3.10 The Committee note that the Gowada, Kunbi, Velip and Dhangar communities from Goa, have been categorised as tribes by sociologists and historians from time immemorial. The Portugese who ruled over Goa for over 500 years, considered the Gowada, Kunbi, Velip and Dhangar communities as Tribu, which means tribes. Certain communities from Daman and Diu have been notified as Scheduled Tribes in relation to Goa whereas local ethnic communities of Goa have been left out .

3.11 The Committee are informed that the State Government of Goa have recommended inclusion of Gowada, Velip, Kunbi and Dhangar communities in the list of Scheduled Tribes of that state. With regard to Gowada, Velip and Kunbi communities the Registrar General of India and National Commission for Scheduled Castes and Scheduled Tribes have concurred in the proposal of the State Government. So far as Dhangar community is concerned, the Registrar General of India has not favoured its inclusion. As per approved modalities the Government of Goa have been requested to review its recommendation or further justify that this community fulfils the criteria for its scheduling as Scheduled Tribe. The Committee, therefore, recommend that the matter regarding inclusion of Gowada, Velip and Kunbi communities may be placed before the Union Cabinet without further loss of time and an amending legislation be placed before the Parliament. The Committee desire that earnest survey may be carried out in coordination with the State Government of Goa to justify the inclusion of the Dhangar community in the list of Scheduled Tribes and give the legitimate rights to this community. The Committee hope that Ministry of Tribal Affairs does not work merely as a post office in finalisation of such claims for inclusion of certain communities in the List of Scheduled Tribes & Scheduled Castes.

CHAPTER IV

REPRESENTATION REGARDING INCLUSION OF 'DESWALI MAJHI' COMMUNITY OF WEST BENGAL IN THE LIST OF SCHEDULED TRIBES

4.1 Shri Alhad Chandra Majhi, Secretary of West Bengal Deswali Majhi Samaj Unnayan Samity, Purulia, West Bengal and others submitted a representation on 8th July, 2001 regarding inclusion of 'Deswali Majhi' community of West Bengal in the List Scheduled Tribes.

4.2 The petitioners, in their representation submitted that the Deswali Majhi community of West Bengal belong to the Santal Aboriginal Race from the primitive era of the ancient history.

The petitioners contended that in the year 1941 Deswali Majhi was declared as "Tribes". In the year 1952 and 1955 all these tribes were accepted as Santal Aboriginal in West Bengal and all facilities and legitimate dues laid down by the Government of India were given to them. In the year 1961, again the Deswali Majhi's were declared as "Primitive Body." Also, the students belonging to the Deswali Majhi race were provided with book grants and other aids duly issued by "Advasi Kalyan Vibhag" of the State Government of West Bengal. However, In the year 1964, the concerned Government Authorities recorded certain persons of the Deswali Majhi community as Majhi-Majhilaya and Bouri" and favoured certain tribes.

The petitioners further contended that the people of Deswali Majhi community celebrate the same festivals and rituals as of "Santals". It had also been proved through valuable discoveries that eleven Deswali Majhis' came from the "Santal Aboriginal Race". Moreover, certain members of Deswali Majhi Community were permitted to contest elections against the posts reserved for scheduled tribes.

4.3 The petitioners, therefore, requested that all the Deswali Majhi's may be accepted as Scheduled Tribes and provided with all the facilities duly intended for adivasis as included in the List of Scheduled Tribes of West Bengal.

4.4 The Ministry of Tribal Affairs were requested on 13 August, 2001 to furnish their comments on the points raised in the representation. The Ministry of Tribal Affairs vide their communication dated 23 August, 2001 furnished the following comments :-

"The Scheduled Tribes in relation to different States are specified by the Presidential Order under Article 342 (1) of the Constitution and such Order may be modified by an Act of Parliament. The first list of Scheduled Tribes in relation to the State of West Bengal was notified vide the Constitution (Scheduled Tribes) Order 1950 promulgation on 6.9.1950. It comprised 7 communities including Santal. The list underwent changes on account of the Scheduled Castes and Scheduled Tribes Lists Modification Order 1956 and the Scheduled Castes and Scheduled Tribes, Orders (Amendment) Act, 1956 and Santal community continued to be listed as Scheduled Tribe. Deswali Majhi's of West Bengal were not included in the list of Scheduled Tribes.

The Supreme Court through a catena of 3 judgments has laid down that Presidential Orders specifying the lists of Scheduled Castes and Scheduled Tribes will have to be taken on their face value. Since Deswali Majhi's do not figure in the list of Scheduled Tribes of West Bengal, members of this community are not entitled to Scheduled Tribe status and consequential benefits.

So far as inclusion of Deswali Majhi's as a sub-group of Santal is concerned, it is stated that before a community is included as a Scheduled Tribe the concerned State Governments are consulted. The views of Registrar General of India and the National Commission for Scheduled Castes and Scheduled Tribes are also obtained with regard to whether or not a community satisfied the criteria for inclusion as Scheduled Tribe.

The Government of West Bengal under its letter dated 30th August, 1999 has inter-alia stated that the Deswali Majhi might have some association with the Santals in the long past but at present it is a separate community. The Registrar General of India in its report dated 11.5.1981 did not favour such inclusion on the ground that Deswalis in West Bengal have given up Santal language and are not considered by Santals as belonging to their community. Hence they should not be included in the list.

In view of above, the request of the West Bengal Deswali Majhi Samaj Unnayan Samity, District Purulia to treat its members as belonging to Santal community can not be acceded to. However, the Government of West Bengal under its letter dated 30th August, 1999 has recommended inclusion of Deswali Majhi's in the list of Scheduled Tribe of West Bengal as an independent entry. This request of the Government of West Bengal is being examined as per approved modalities."

4.5 Subsequently, the Ministry of Tribal Affairs vide their communication dated 1st October, 2001 informed the Committee as follows :

"The criteria for determining tribal character of a community are :

- a) Indications of primitive traits;
- b) Distinctive culture;
- c) Geographical isolation;
- d) Shyness of contact with the community at large; and
- e) Backwardness

In the case of Deswali Majhi, though the State Government has recommended its inclusion but a detailed report as per the above criteria has not been furnished, however, the Ministry has treated the request of the State as recommendation and a report thereon has been sought from the Registrar General of India who was last reminded on 21.9.2001. In the meanwhile the State Government has also been asked to furnish a detailed report in the matter. Further, action would be taken in the matter after receipts of reports of the State government and RGI. As such the Ministry is not in position to indicate by when decision on the recommendation of the Government of West Bengal for inclusion of Deswali Majhi in the list of Scheduled Tribe would be taken."

4.6 After perusing the comments furnished by the Ministry of Tribal Affairs, the Committee undertook an on-the-spot study visit to Kolkata-Adra (West Bengal) on 5th and 7th November, 2001 to gather first hand information. The Committee held discussions with the petitioners and the officials of the State government of West Bengal on the representation.

4.7 During the discussion with the petitioners, the Committee were informed that the word 'Deswali' indicates to those people who removed woods from forest hills and made clear and open space for dwelling and cultivations. The total population of their race is about 3 lakhs 50 thousand. In West Bengal, the Deswali Majhi community belongs to districts of Purulia, Bankura, Midnapore, Burdwan, Howrah and Hoogli. The different identities of the Deswali Majhi as found were as follows :-

1. Deswali
2. Majhi
3. Deswali Majhi
4. Deswali Kharowar
5. Deswali sut
6. Deswali Gunju
7. Deswali Santal

The petitioners stated that The Deswali Majhi community has been neglected community from the very primitive era. The economic condition of this race is very poor. The people of Deswali Majhi community also bore the 'Sika' mark as preferred by Santal Tribe. They also had the lineage like of the Santal Tribe as Hansda, Tudu, Soren, Murmu, Kisku, Mandi

Hrubram etc. Their movement for the inclusion of the Deswali Majhi community in the List of Scheduled Tribes was continuing since 1957.

4.8 During the discussion with the officials of the State Government of West Bengal, the Committee were the detailed specifications of the Deswali Majhi community as per prescribed criteria of the Ministry of Tribal Affairs as follows :-

Indication of Primitive Traits: Deswali Majhi was a section of Santal Tribe but during the middle of 19th century (i.e. after the great Santal rebellion) they appeared as a separate group having no socio-religious connection between them. At present, they possess in Vestigial form of past clan structure similar to the tribals which still regulates their marital relations. They use Majhi, Boars, tudu, Soran, Kisku as their surnames. They practice clan endogamy and clan exogamy. The practice of brideprice is still in vogue. Divorce and remarriage is practiced along with junior sororate.

Distinctive Culture: They have no distinctive culture of their own. From scrutiny of their rites and rituals it is seen that they have imbibed a good deal of Hindu beliefs and practices though retaining some traits of their traditional animistic rites, rituals and festivals. They worship Manasa, Kali alongwith Baram, Karam, Sahrul, etc.

Geographical Isolation: They do not live in isolation. They live in multiethnic villages, which are inhabited by caste Hindus also.

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Shyness of Contact with the Community at large: Question does not arise.

Backwardness: They are small landholders and wage labourers and the literacy rate is low among them.

4.9 Regarding the association of the Santal Aboriginal Race with the Deswali Majhi Community, the officials of the State Government of West Bengal clarified to the Committee that the Deswali Majhis might had some association with the Santals in the long past but now at present this community is passing through a transitional phase and has established an independent identity of their own. Many of the little communities separated from their original group came nearer to the fold of culture and ultimately became a separate unit. The Deswali Majhi community should, therefore, be considered for inclusion in

Cabinet decision of 1999 lays down a particular procedure to be followed with regard to the process of inclusion or exclusion of any community in the list that exists under the constitution. It requires an amendment to the Constitution of India and Parliament has to be approached for this. Before a Bill is introduced in Parliament for this purpose, the Cabinet has laid down that, any representation on these matters will be first sent to the State Government for comments. If the State Government recommends that the request be acceded to, the proposal with the recommendation of the State Government will be sent to the Registrar General of India. The Registrar General of (RGI) is supposed to be the repository of knowledge with regard to all the tribes and communities in India and their ethnicities, etc. So, the RGI considers the proposal and gives its comments on the subject. If the RGI agrees with the comments of the State Government the proposal is then sent by the Ministry of Tribal Affairs to the National Commission for Scheduled Castes and Scheduled Tribes.

In case the State Government recommendation, the RGI comments, the National Commission of Scheduled Castes and Scheduled Tribes opinion are found to be on the same frequency, and all of them agree to the inclusion of that community in the list, the Ministry approaches the Cabinet. Once the Cabinet approved this, we prepare a Bill. After the Bill is approved by the Cabinet, it is sent to Parliament.

In case the State Government agrees but the RGI does not agree for inclusion, the proposal is sent back to the State Government along with the comments of the RGI for reconsideration of the proposal by the State Government, so that the State Government can come up with new facts and figures which may change the opinion of the RGI.

Where the State Government and the RGI both agree but if the National Commission for SCs&STs does not agree, in that case, modality provides that the Ministry of Tribal Affairs has to reject the proposal. So, even if the two bodies are in agreement and the third body does not agree, then the proposal

has to be rejected. This is the modality being followed which was decided in 1999 Cabinet decision. The role of the Ministry is very minimal in this regard. Normally, we do not take a view or do not resort to any kind of conclusion. Normally, when the three bodies – the State Government, the RGI and the National Commission on SCs&STs – agree, then we prepare the note and then it goes to the Cabinet. But if there is disagreement by any body, then this problem arises.”

The Secretary, Ministry of Tribal Affairs added :-

“In case of Deswali Majhis, the background is that at one time the Government of West Bengal did not recommend it. Initially, when the representation was to them, their comments came. At the very first instance they did not recommend. As a result, there was no question of our further consideration. It was the subsequent development that the State Government indicated their agreement. When the State Government recommended, we sent the proposal to the RGI. The RGI made certain observation. Then, we referred it back to the State Government.

This month we have received their comments. The background is that earlier the Deswali Majhis community, in their representation, has been requesting that they should be considered as ST on the pattern of Santal community. They think that they are part of the Santal, historically.

Now, as explained, they may be calling themselves Santal but they do not use its language, now the State Government has changed its recommendation and said that they should not be treated as Santals but they should be treated as a separate community, and should also be treated as a separate tribe.

So, there has been a change of track even from the Government of West Bengal. Earlier they were part of the Santal. Now, they are saying that since they are distinct and different from the Santal community, they should be treated as Majhis tribe. Their view has been received, and we have sent the comments to the RGI.”

4.11 On a query regarding the time normally taken by RGI for giving its report; the Secretary, Ministry of Tribal Affairs stated as follows :

“They (comments) were sent on 16th November, 2001 to RGI. In fact, there is no stipulated time. Of course, we keep on reminding that this is an old case and it should be expedited. But there have been cases where they have taken between two to six months. In certain cases, they have perhaps taken a year also.”

4.12 On a query regarding the number of proposals received for inclusion of particular communities in the List of Scheduled Tribes and Scheduled Castes; the Secretary, Ministry of Tribal Affairs informed as follows :-

“Right now, about 970 proposals are in various stages. They are being circulated between the State Government, the National Commission and the RGI.”

OBSERVATIONS/RECOMMENDATIONS

4.13 The Committee are informed that the ‘Deswali Majhi’ community was a section of the Santal Aboriginal Tribe but during the middle of 19th Century (i.e. after the great Santal rebellion) they had appeared as a separate group. At present, they possess in vestigial form the past clan structure similar to the tribals which still regulates their marital relations. They practice clan endogamy and clan exogamy and they celebrate festivals alike to the festivals of “Santal Aboriginals”. Also, they practice divorce or remarriage alongwith junior sororate.

4.14 The Committee are also informed that in the year 1941, ‘Deswali Majhi’ had been declared as a ‘Tribe’ and in the year 1952-1959 accepted as a part of “Santal Aboriginal”. It has been a declared ‘Primitive Body’ The students belonging to this community had been provided with the necessary grants by “Adivasi Kalyan Vibhag” of State Government of West Bengal. Moreover, certain members of this community had been permitted to contest election against posts reserved for Scheduled Tribes. However, in the year 1964 the ‘Deswali Majhis’ had been excluded from the status of “Tribe” by the Government without any justification in this regard.

4.15 One of the main demands of the petitioners is that the “Deswali Majhi” community which has a total population of 3 lakh 50 thousand in West Bengal should be recognized as a “Tribe”. The petitioners have contended that the Deswali Majhi” community has been a neglected community from the very primitive era. The Deswali Majhi community consisted of different entities viz. Deswali; Majhi; Deswali Majhi; Deswali Kharowar; Deswali Sut; Deswali Gunju; and Deswali Santal. They follow the rituals and social culture of the Santal Aboriginals and are a primitive tribe. The economic condition of this community is very poor. The petitioners have, therefore, requested for inclusion of the Deswali Majhi community in the List of Scheduled Tribes of West Bengal.

4.16 In this context, the Committee are informed that the State Government of West Bengal in their communication dated 30th August, 1999 to Ministry of Tribal Affairs have recommend for inclusion of the ‘Deswali Majhi’ community in the list of Scheduled Tribes as a separate entity. The State Government has stated that Deswali Majhis might have some association with the Sandals in the long past but now at present this community is passing through a transitional phase and it has established an independent identity of their own. The State Government has, clarified to the Ministry of Tribal Affairs that many of the little communities that separated from their original group came nearer to the fold of culture and ultimately became a separate unit.

4.17 The Committee note that the Government has approved on 15.06.1999 the “Modalities for inclusion, exclusion and other modifications in the Scheduled Castes and Scheduled Tribes Lists.” According to these modalities, cases favoured both by the State Governments and Register General of India (RGI) would be referred to the National Commission for Scheduled Castes and Scheduled Tribes for their opinion. As regards, the “Deswali Majhi” community, the

recommendation of the State Government of West Bengal for inclusion of this community in the List of Scheduled Tribes has been sent to RGI for its opinion on 16 November, 2001 by the Ministry of Tribal Affairs.

4.17 The Committee recommend that the Ministry of Tribal Affairs impress upon RGI to furnish its report, expeditiously on the matter. The Committee desire that the issue of inclusion of 'Deswali Majhi' community in the list of Scheduled Tribes may be examined within a specific time frame by the National Commission of Scheduled Castes and Scheduled tribes and the 'Deswali Majhi' community be included in the list of Scheduled Tribes of West Bengal and an appropriate proposal may be placed before Cabinet in this regard.

4.18 The Committee are surprised to learn that around 970 proposals of inclusion of communities in the lists of Scheduled Tribes and Scheduled Castes are pending finalisation in various stages before the concerned Governmental Authorities. The Committee recommend that necessary steps are taken to remove such dead lock in finalisation of the proposals of the State Government for inclusion of various communities in the lists of Scheduled Castes and Scheduled Tribes and an appropriate amending legislation is brought before Parliament without further loss of time.