

DELIMITATION COMMISSION OF INDIA

No. 282/AS/2007

Date: 18th June, 2007

ORDER

The Delimitation Commission has been constituted under the Delimitation Act, 2002 (Act) read with Articles 81, 82 and 170 of the Constitution of India. The Commission is required to readjust the territorial extents of all the Parliamentary and Assembly constituencies in India on the basis of the published 2001 census figures. Under the Act, five Members of Lok Sabha nominated by the Lok Sabha Speaker and five Members, Legislative Assembly of each State nominated by the Speaker of the concerned Assembly are Associate Members with the Commission to assist the Commission in readjusting the constituencies. Section 9 (2) of the Act, which is relevant in the context of the present order, is as under: -

“9. (2) The Commission shall-

- (a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazettes of all the States concerned and also in such other manner as it thinks fit;
- (b) specify a date on or after which the proposals shall be further considered by it;
- (c) consider all objections and suggestions which may have been received by it before the dates so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit; and
- (d) thereafter by one or more orders determine-
 - (i) the delimitation of parliamentary constituencies; and
 - (ii) the delimitation of assembly constituencies, of each state.”

The Commission held fourteen sittings with the Associate Members during the period May 2005 to March 2007 and thereafter prepared draft proposals regarding the readjustment of constituencies in the State of Assam. The draft proposals were sent to the Associate Members on April 26, 2007 for their consideration and submitting to the Commission dissenting proposals, if any, by any of the Members.

The draft proposals were published in the State Government's Gazette and Gazette of India and also in two leading vernacular newspapers in the State of Assam and were given wide publicity through electronic and mass media. The copies of the draft proposals were made easily available to the public, political parties and were also sent to all the sitting Members of Parliament and Members, Legislative Assembly from the State of Assam. By notice dated May 22, 2007, the Commission invited objections and suggestions from the public to its proposals and fixed June 6, 2007 as the last date for submitting the suggestions and proposals to the Commission. The date was subsequently extended up to June 11, 2007. It was further notified in the newspapers that the Commission would consider all the objections and suggestions so received by holding public sittings to be held at Jorhat on June 16, 2007 and at Guwahati on June 18 & 19, 2007.

Meanwhile, the Delimitation Commission issued a Press Note on May 10, 2007. The Press Note is reproduced hereunder:

"There have been reports in the newspapers that a few sections of the public in Assam have agitated over the draft proposals which have been sent to the Associate Members for their consideration and dissenting-note, if any. The Delimitation Commission would like to clarify that the proposals, which have been sent to the Associate Members, are not final. The media has wrongly reported it as "Final draft". As per the procedure followed by the Delimitation Commission, after receipt of the views and dissenting notes, if any, from the Associate Members, the Commission will publish its draft proposals for Assam in the local newspapers, for public to send their objections and suggestions within a stipulated date. After that, public sittings will be conducted by the Delimitation Commission in the State of Assam during the second fortnight of June to consider the objections and suggestions received from the public. The draft will be finalized after considering the suggestions given by the public.

The Delimitation Commission, therefore, appeals to the people of Assam not to agitate over the tentative "draft proposals". The Commission would like to assure the people of Assam that all their genuine concerns and suggestions will receive full consideration before the delimitation order is finalized is consultation with the Associate Members".

The Chairman of the Commission received a letter dated May 16, 2007 from Shri Tanka Bahadur Rai, Speaker, Assam Legislative Assembly. Along with the letter three Resolutions adopted in the All Party Meeting of Assam Legislative Assembly held on 11th May 2007 were annexed. The first Resolution, inter alia stated that in the

working paper published by the Commission the population pattern of the State was not found to be reflected in a just and proper way for which all party delegation urged for delimitation in the State only after updating the NRC. Resolution No. 2 is reproduced hereunder: -

“Resolution No. 2: As a repercussion of the publication of the draft proposal the situation in the State became volatile culminating from various kinds of agitational programme like Dharna, Bandh, Rail Roko, Rasta Roko, Hunger Strike etc. in almost all the Assembly and Parliamentary Constituencies. The latest report hurt the sentiments of the people so much so that it has created hatred and ill feelings between different Castes and Communities. It has also led to social unrest and it is apprehended that it may lead to ethnic clashes also, tackling of which will be a major law and order problem for the State in the coming days. Today’s all party meet expressed deep concern in the state of affairs resulting from the publication of the draft proposal and discussed threadbare and entire gamut. The meeting after thorough discussion decided to authorize the Hon’ble Speaker of Assam Legislative Assembly to apprise the Delimitation Commission and other concerned authorities about the fall out in the State”.

Resolution No. 3 stated that Assam is the abode of various ethnic groups from time immemorial. All ethnic groups were happy with the earlier Parliamentary and Assembly Constituencies, which are in existence on this date. The North Eastern Region is situated in a vulnerable and strategic point. It has International Borders with China, Bhutan, Myanmar and Bangladesh. Besides, the State of Assam has been facing insurgency problems for the last three decades. The foreigners’ issue has also its impact in the social –political as well as economic scenario of the State. The All Assam Students’ Union started agitation way back in 1979 on the foreigners’ issue and the agitation ended with the signing of historic Assam Accord in 1985. One of the major clauses of the Assam Accord is to update the NRC. The students’ organisations and various non-political organisations including Assam Sahitya Sabha are unanimous that the first step should be updating the NRC and thereafter delimitation. The fourth Resolution stated that the All Party meet, therefore, urged upon the Delimitation Commission as well as the Central Government that the task of updating the NRC may be taken up with all seriousness which can fulfill the aspirations of all sections of people. Till completion of this task the delimitation process may be stopped in the State.

Dr. Sarangi, IAS, Deputy Election Commissioner (Delimitation) wrote a letter dated 25th May 2007 to Shri P.C. Sharma, Chief Secretary, Assam bringing to his notice the contents of the Speaker's letter addressed to the Chairman (referred and quoted above). The last para of the letter is as under: -

"It is also of paramount importance to us that the public sittings should be conducted in a peaceful and orderly manner with full security for the public as well as for the Delimitation Commission. The Commission would, therefore, like to request you to take all necessary measures to maintain law and order at the venues of the Public Sittings and to ensure security for all concerned at the public sittings including the members and officers of the Delimitation Commission".

The Chairman, Delimitation Commission wrote a letter to Shri Tarun Gogoi, Chief Minister, Assam dated May 29, 2007 bringing to his notice the contents of the letter received by the Chairman from the Speaker of the Assam Assembly. In the letter Resolution No. 2 passed by the All Party meet was quoted verbatim. The last para of the letter of the Chairman to the Chief Minister is as under: -

"The State Election Commissioner, Shri C.K. Sharma, who met me on 25th May, 2007 has informed me that the All Assam Students Union has announced 'Bandh' during the days when the Commission is holding public sittings at Jorhat and Guwahati.

The main demand of the All Party Meet is that "the task of updating the NRC may be taken up with all seriousness which can fulfill the aspirations of all sections of people. Till completion of this task, the delimitation process may be stopped in the State". The issue regarding updating of NRC is solely the concern of the Government of India and the Delimitation Commission has no role, at all, to play.

Recently, there have been some bomb blasts in different cities of Assam including Guwahati. Resolution No.2 by the All Party Meet (reproduced above) also shows a grim picture in this respect. I, therefore, seek your kind advice in this respect especially regarding Commission's visit to hold the public sittings at Jorhat and Guwahati. The delimitation work is time bound and as such there no alternative with the Commission but to go ahead with the public sittings, however, at the same time the Commission have no intention to create any embarrassing situation for the State Government. We, therefore, seek your kind advice in this respect urgently".

The Chairman, Delimitation Commission also wrote a D.O. letter dated May 29, 2007 to Shri Shivraj V. Patil, Home Minister, Government of India, New Delhi. The letter is reproduced hereunder: -

“The Delimitation Commission is holding public sittings on 16th June, 2007 at Jorhat and on 18th and 19th June, 2007 at Guwahati in the State of Assam. Keeping in view, recent bomb blasts in different cities of Assam including Guwahati and overall situation resulting from the demand of various political parties for updating of NRC, I have written a letter to the Chief Minister, Assam which is self explanatory. I am enclosing copy of the letter for your kind consideration.

I seek your kind indulgence to ensure the security of the Commission-members and staff during their visit to the State of Assam for holding the public sittings.”

The following reply was received from Shri Patil: -

“This is to acknowledge your letter dated 29.5.2007 regarding grant of security to members and staff of Delimitation Commission during their visit to the State of Assam.

I am getting the matter examined for appropriate action”.

Thereafter, no written communication was received from the Home Ministry.

The public sittings in the State of Meghalaya (Shillong) concluded on June 1, 2007 and while on way to New Delhi the Chairman along with Deputy Election Commissioner (Delimitation) and Secretary of the Commission, Shri Shangara Ram, met the Chief Minister, Assam at his residence at Guwahati on June 2, 2007. The record of the discussion as prepared by Deputy Election Commissioner (Delimitation) is reproduced hereunder: -

“The Chairman, Delimitation Commission had a meeting with the Chief Minister of Assam at 10.30 a.m. on Saturday, the 2nd June, 2007 at Guwahati. The Chief Secretary (in-charge), the Home Secretary, the Director General of Police, Principal Secretary to the Chief Minister, the State Election Commissioner, Chief Electoral Officer, Assam. The Chairman was accompanied by the Deputy Election Commissioner (Delimitation) and Secretary, Delimitation Commission were present at the meeting. The purpose of the meeting was to discuss the arrangements for the public sittings scheduled to be held in Assam from 15th June to 16th June, 2007.

At the outset, the Chief Minister Assam welcomed the Chairman, Delimitation Commission and thanked him for visiting Guwahati enroute from Shillong to discuss the important issue of public sittings in Assam. The Chairman explained that the meeting has been necessitated by a letter from the Speaker of the Assam Legislative Assembly, conveying the decision of the All Party Meeting requesting the Delimitation Commission not to hold the public sittings in Assam due to public unrest generated by the publication of the Commission's Draft Proposals. The Speaker had also mentioned about the non-completion of the National Registry of Citizens (NRC) which has resulted in undue inflation of population figures for the illegal immigrants. The Chairman wanted to know the Chief Minister's views on the advisability of conducting the public sittings in view of the public unrest and the disturbed situation in the State of Assam due to militant activities.

The Chief Minister briefly narrated the history of disturbances in Assam due to militant activities and informed that the ethnic rivalry between the different tribes of Assam is quite alive and strong. Such rivalry has translated into aspirations for separate seats for each tribe and there is large-scale unrest because of the non-allocation of seats for the different tribes. Moreover, the demand for the National Registry of Citizens is long-standing and without its completion, the authenticity of the census figures is questionable. The Chief Minister said that the public sittings can cause embarrassment to the State Government and even create law and order problem. However, the Chief Minister mentioned that he is aware that the Delimitation Commission is an independent and autonomous body and will have to take a decision on the holding of public sittings based on facts and law. He assured that the State Government will take all necessary steps to ensure that the public sittings can be held without any disturbance.

The Chairman, Delimitation Commission thanked the Chief Minister of Assam for his views and explained that the completion of National Registry of Citizens is not in the domain of the Delimitation Commission and it is not clear how long it will take for the Government of India to complete the task. The Delimitation Commission is time-bound and its present tenure is upto 31st July, 2007. Hence, the urgency for holding the public sittings as per the schedule notified. The Chairman also suggested that one of the options available to the Delimitation Commission is to complete its public sittings and the subsequent meetings in respect of Assam and to delay the issue of the final notification for a couple of months pending the completion of the National Registry of Citizens.

On the issue of discontentment among the people of Assam and the tribes on the draft proposals published by the Delimitation Commission, the Chairman clarified that the draft proposals are tentative and are liable to be changed to any extent depending on the representations by the public. He informed the Chief Minister that he would be holding a Press Meet later during the day to appeal to the people of Assam not to resort to agitations and to come forward with an open mind with their suggestions and objections which will be discussed during the public sittings. He wanted to assure the people that each and every suggestion will be examined on merit and genuine suggestions will be accepted by the Delimitation Commission before the constituencies are finalized for the state of Assam.

The Chairman informed the Chief that he had written a letter to the Union Home Minister about the security concerns during the public sittings and the Home Minister has replied to the letter, assuring that the matter is receiving his attention for appropriate action. The Chief Minister admitted that law and order problems might occur during the public sittings but reiterated that the State Government will take all necessary steps to ensure that the public sittings conducted in Assam as per the requirement of the Delimitation Commission.

The Chairman thanked the Chief Minister for his assurance and said that on his return to Delhi the Commission will re-examine the issue of holding public sittings in Assam and take an appropriate decision”.

On June 4, 2007 the Commission came to the conclusion that the Public sittings in the State of Assam should go on as scheduled. An order to this effect was taken on the file. It was also felt that a close door hearing may be conducted instead of open hall hearing due to security reasons.

On June 5, 2007 Shri Tanka Bahadur Rai, Speaker, Assam Legislative Assembly along with some ministers and legislators met the Chairman at New Delhi and handed over copies of the Resolutions which he had already sent by post. The Speaker and other dignitaries along with him reiterated vehemently that holding of public sittings in the State of Assam would create law and order problem. He said that the atmosphere in the State is surcharged because the political parties and various students’ organisations do not want the delimitation till the NRC is updated in accordance with the Assam Accord.

A deputation of the leaders of All Assam Students Union also met the Chairman and reiterated their demand that till the time the NRC is updated the delimitation process in the State should be deferred. A representation of All Assam Students’ Union Leader was also received from the Governor’s Secretariat on June 12, 2007. The operative part of the representation is reproduced hereunder: -

“Resolution 01

The ongoing process of preparing the NRC as per the Assam Accord should be completed within a given time frame.

Resolution 02

The constituencies of Assam should be delimited only on the basis of the NRC to be prepared as per the Assam Accord. Till the completion of the NRC, the process of delimitation should be postponed.

Sir, we urge upon you to use your good offices to persuade the Union Government to defer the process of delimitation of the constituencies of Assam. We request you kindly to convey to the Union Government that the proposed NRC will provide the soundest basis for the Commission to delimit the constituencies”.

Shri Tarun Gogoi, Chief Minister, Assam sent a D.O. letter No. CMO 1/2007 dated 8th June 2007. The contents of the letter are reproduced hereunder: -

“Kindly refer to your letter dated May 29, 2007 regarding holding of the public sittings of the Delimitation Commission on 16th June 2007 at Jorhat and on 18th and 19th June 2007 at Guwahati. The State Government will provide all necessary assistance to the Commission during hearing of the objections/suggestions in respect of the draft proposals in the public sittings at Jorhat and Guwahati on the prescribed dates. The Government will provide adequate security for the Commission, its Members and staff during their visit to Assam for holding the public sittings.

As you will recall, the matter was also discussed extensively with you during your visit to “Guwahati on 4th June 2007 and you are already aware that the draft proposals have evoked strong feelings among the people in the State. The All Party Resolution as quoted by you in your letter has in a way given expression to some of these feelings. Intelligence sources indicate that various organizations in the State have planned to hold protests and give bandh calls everyday when the Commission would be holding public sittings at Jorhat and Guwahati. All the associate members in the Delimitation Commission have been compelled to resign from their membership by the people. Holding of hearings by the Commission is likely to give rise to situations requiring maintenance of law and order by the Government.

However, the State Government remains committed to provide full cooperation, assistance and security to the Commission, its Members and the staff to carry out their constitutional duties”.

A letter dated 6th June 2007, signed by seven Associate Members, was handed over to the Chairman by some of them on June 6, 2007. Wherein they opposed the public sittings or any other proceedings, which are being taken by the Commission.

The Commission after examining all the communications mentioned in paras above and also taking into consideration the prevailing situation in the State of Assam has come to the conclusion that no useful purpose will be served by holding the public sittings in the State of Assam.

All political parties in the State of Assam, AASU and other students organisations, the Associate Members, the Legislators headed by the Speaker and finally the Chief Minister have indicated that there would be agitations and bandhs on the date when the public sittings are scheduled thereby creating difficulty in law and order situation. The Commission and its officers have throughout been explaining to the politicians and leaders in the State of Assam that the demand of updating the NRC in accordance with the Assam Accord is not within the purview or jurisdiction of the Delimitation Commission. It is a matter primarily concerning the Government of India. But despite that they feel that the updating of NRC is directly concerned with the delimitation proceedings which are based on the 2001 census figures. The Commission is of the view that the Commission would not take the risk of holding the Public Sittings specially when the Commission's Members are being confronted with threats of bandhs and agitation which may even turn violent.

10. The nature of a public hearing to be afforded when no specific provision is made was considered in ***Mohinder Singh Gill V. Chief Election Commissioner (1978) 1 SCC 405*** where the court held that the cancellation of a poll was required to be done in accordance with the principles of natural justice and after hearing all parties affected. The court went on to hold that the nature of the process to be followed would depend on the specific situation with which the authority was concerned and that no generalization was possible. The court further observed that natural justice would not require that the whole constituency must be given a hearing, as that would be an ineffectual over-kill..... The question that arises is the course to be followed when a public sitting is scheduled but cannot be held because of the agitations by large number of people who act in a disorderly manner by blocking the roads and create a situation of fear and intimidation. The purpose of public sitting is not to enable members of public to make general speeches but address objections or suggestions to the proposals already published to enable the Delimitation Commission to consider the same. In this context, two principles of interpretation are relevant. The first is to avoid a construction that produces unworkable or impracticable results and is stated as follows in *Statutory Interpretation* by Francis Bennion (3rd Edn.) (Section 313). "The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable results, since this is unlikely to have been intended by

Parliament”. This principle was quoted with approval by the Supreme Court in ***Iqbal Singh Marwah V. Meenakshi Marwah*** (2005) 4 SCC 370 (at page 387).

The second principle that is relevant is that of avoiding an inconvenient result. Again, the principle as stated in Bennion (supra at Section 314) is: “the court seeks to avoid a construction that causes unjustifiable inconvenience to persons who are subject to the enactment, since this is likely to have been intended by Parliament.....” Even otherwise the rule making hearing – in terms of administrative law – are informal in nature, resembling hearings before a legislative committee rather than judicial proceedings, the hearing is not similar to a trial in a court. The purpose is not to try a case, but to enable the Delimitation Commission to educate itself. The purpose of the public hearing is to allow interested parties to make useful comments and not allow to assert their “rights” to insist that the rule take a particular form. The Administrative Procedure Act in the U.S. confers discretion on the agency to designate the procedure for public participation. It also provides for an escape clause where the public procedure can be dispensed with by the agency if it is impracticable, unnecessary or contrary to the public interest. The delimitation exercise is itself essentially a legislative function. The stages of notice and public sittings preceding the finalisation of the draft proposals are to be seen in this context. The Act permits the Commission to shaping the procedure in a flexible manner in order to achieve a purpose of such public sittings. The Commission while holding such sittings is not deciding a lis and is expected to take note of the further points that may be made by those whose objections and suggestions have already been received by it. There cannot be, in the very nature of the function being performed, a rigid rule of procedure of hearing each and every objector. Also, it may well nigh be impracticable to do so in certain circumstances. The requirement of fulfilling the principles of natural justice cannot be stretched to the same extent as in the case of exercise of quasi-judicial function. In addition one may also refer to the legal maxim *lex non cogit ad impossibilia* (the law compels no impossibility) which has been recently applied by the Supreme Court of India in **Standard Chartered Bank v. Directorate of Enforcement** (2005) 4 SCC 530 at 549. The Commission has reasonable ground to apprehend that it would not be possible to hold public sittings in the State of Assam without threat of their disruption by the aggrieved political parties. The Commission is also not reasonably certain that there would be adequate

protection against the breakdown of law and order at public sittings. The Commission, however, feels that time limit for receiving further written suggestions and objections can be extended.

11. The purpose of holding public sittings is to consider the objections and suggestions from the public received in response to the draft proposals. In the prevailing circumstances the Commission does not see the possibility of any change in situation with regard to opposition to the Delimitation proposals, as the Delimitation Commission in itself is unable to redress the main grievance of the people for the updating of the NRC. Therefore, in this surcharged atmosphere and in the given situation it may not be of much use to hold the public sittings in the State as even the genuine persons may be prevented from entering the venue of public sitting itself and may be even physically harmed.

12. The Commission, in the interest of justice, is of the considered view that it would be more useful and purposeful to give further opportunity to the public in Assam to amplify their suggestions and objections because there may be some public-men who may be precluded from making their oral submissions at the public sittings because of the anticipated disturbances that may be created by the unruly elements. The Commission, therefore, decides that a short notice be published in the newspapers inviting fresh suggestions and objections, if any, or further clarifications and elaborations to the suggestions and objections already submitted by them, if they so desire. Such further suggestions and objections, or the clarifications should reach the Commission by post within Fifteen days of the publication of the notice. The individuals/groups who have made the suggestions and objections may meet any of the Member of the Delimitation Commission, if they desire to explain in person the suggestions and objections made by them with regard to draft delimitation proposals in respect of the State of Assam. The office will work out the dates for giving this further opportunity and workout the details.

Sd/-
C. K. SHARMA
MEMBER

Sd/-
N. GOPALASWAMI
MEMBER

Sd/-
KULDIP SINGH
CHAIRMAN