

ORDER

The Constitution of India under Articles 81, 82 and 170 requires the earmarking of territorial constituencies and their readjustment on the basis of 2001 census figures. Article 327 empowers the Parliament to make law in regard to delimitation of constituencies. The Delimitation Commission has been constituted under Section 3 of the Delimitation Act, 2002 and is functioning since July 2002. The basic task entrusted to the Commission under the Act is to readjust the territorial extent of all the Parliamentary and Assembly constituencies throughout India (except Jammu and Kashmir). For the purpose of its functioning, the Commission is required by Section 5 of the Act to associate with itself 10 persons, 5 of whom shall be the Members of the House of People (Lok Sabha) representing the State concerned and 5 shall be Members of the Legislative Assembly (Vidhan Sabha). Where the number of first category is less than five, all the Members (M.Ps.) of the State will be associate with the commission.

2. The procedure to be followed by the Commission is laid down in Section 9 (2) of the Act, which reads 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.”

3. The Commission, after inviting the views and comments of the State Election Commissioners and ex-officio Member of the Commission in each of the States and Union Territories (except Jammu and Kashmir) and after considering the same, framed detailed guidelines and methodology for the delimitation of Parliamentary and Assembly constituencies, and circulated the same to all the State Election Commissioners and ex-officio Members of the Commission by its letter dated March 17, 2004. Separate guidelines for public sittings were also formulated.

4. In regard to the State of Jharkhand, the Commission held four rounds of discussions with the Associate Members at New Delhi on November 9, 2004, December 5, 2006, January 19 and 20, 2007, and March 14, 2007 and drew up the draft proposals for the delimitation of assembly and Parliamentary constituencies in accordance with Sections 8 and 9 of the Act. The draft proposals were published in the State Government Gazette and also in two leading vernacular Newspapers and were given widest publicity through electronic and mass media. Copies of the same were made easily available to the public for their reference and a copy of it was also given to the all the sitting MPs and MLAs from Jharkhand. By Notice dated April 30, 2007, the Commission invited objections and suggestions from the public to its proposals and stipulated that such objections and suggestions should reach the Commission on or before 5 p.m. on May 14, 2007 and subsequently extended the date up to May 22, 2007. In the Notice, it was indicated that the Commission would consider their objections and suggestions so received in public sittings to be held on June 8, 2007 at Bokaro and on June 9th and 10th, 2007, at Ranchi. The names of the districts in relation to which the objections and suggestions were to be considered in each of the public sittings were also indicated.

5. The proposal of the Commission for Jharkhand, prepared strictly in accordance with the provisions of the Constitution, Delimitation Act and the guidelines formulated by the Commission, resulted in a reduction in the number of ST seats in the Lok Sabha as well as Assembly Constituencies of Jharkhand. Initially 21 and 4 seats were allotted to STs in Assembly and Lok Sabha respectively from the State of Jharkhand. During the discussion, some Associate Members objected to the proposals with regard to the reduction of ST seats in the Lok Sabha as well as Assembly Constituencies. The Commission reconsidered the matter and issued an Order dated 23rd January, 2007, increasing the number of seats in the Assembly Constituency from 21 to 22 which is reproduced as follows:

“The State of Bihar has been re-organised under the Bihar (re-organised) Act, 2000 and a new State of Jharkhand is formed out of the erstwhile area of the State of Bihar. In Bihar, the earlier delimitation was done on the basis of the 1971 census figures under the Delimitation Act, 1972. The erstwhile State of Bihar was allocated total of 28 Scheduled Tribes seats under the said Act.

Under the Bihar (re-organisation) Act, 2000, the newly formed State of Jharkhand has been allocated 81 assembly seats. All the 28 Scheduled Tribes seats in the erstwhile State of Bihar came to be allocated to the newly formed State of Jharkhand.

The present Delimitation Commission is to re-determine the number of seats to be reserved for the STs in Jharkhand on the basis of the 2001-census. According to the published figures of the said census the total population of the State of Jharkhand, is 2,69,45,829 including the ST population which is 70,87,068. Thus, the proportion of the ST population to the total population in Jharkhand comes to 0.2630. Calculating in proportion to the ST population, the entitlement of the ST seats works out to 21.30 out of the total 81 seats in the State. Going by the normal method of calculation where the fraction is less than 0.50 are reduced to the lower figure, the total number of seats to be reserved for the STs should normally be 21, which would mean a reduction of 7 ST seats in the State. This has given rise to a lot of resentment in the minds of the STs in Jharkhand. Even the State Government is feeling agitated over the matter and the Chief Minister of the State, alongwith several members of his cabinet and other prominent leaders of the opposition parties, including the Leader of the Opposition in the Jharkhand Legislative Assembly, called on the Commission of 18.01.2007 and asked for restoration of the existing number of 28 seats for the STs in the State Assembly. Its was made clear to the delegation led by the Chief Minister that the Commission is bound to follow Article 332 of the constitution which provided that the number of seats to be reserved for the STs in Jharkhand should, be as nearly as may be, in proportion to the ST population. However, they were assured that the Commission would give utmost consideration to the interest of the ST population of Jharkhand and given them the maximum number of seats as may be admissible to them having regard to the provisions of Article 332.

The State of Jharkhand has been carved out of the unified State of Bihar under the Bihar (Reorganisation) Act, 2000. Before such reorganization, the unified Bihar Legislative Assembly had 324 seats including 28 seats were reserved for the STs on the basis of the 1971 census. At the time of the reorganization, all the 28 seats for the STs fell in the areas now forming the State of Jharkhand, having total of 81 seats in its State Assembly, and the net result is that there is no ST seat in the reorganized State of Bihar which has been allocated 243

seats in the new State Legislative Assembly. As per the 2001-census, the ST population in the State of Bihar is 7,58,351 out of total population of 8,29,98,509. On the basis of the said ST population in 2001, the entitlement of ST seats in the State of Bihar works out to 2.22. Had the unified State of Bihar not been reorganized into the State of Bihar and Jharkhand in 2000, the total population of unified Bihar State based on 2001-census would be 10,99,44,338 [8,29,98,509 (Bihar) + 2,69,45,829 (Jharkhand)] and the total ST population in the unified Bihar State would be 78,45,419 [7,58,351 (Bihar) + 70,87,068 (Jharkhand)]. In that event the entitlement of the ST seats would work out to be 23.52 or 24 seats, out of the total 324 seats in both the States. As seen above, by working out the entitlement of ST seats separately in respect of Bihar and Jharkhand, their total entitlement comes to 23 seats (21 in Jharkhand and 2 in Bihar). Thus, there is a loss of one seat for the STs on the basis of the 2001-census in two States taken together.

The grievance of the State of Jharkhand can be mitigated to a small extent if the number of ST seats in the State is increased from 21 to 22 and two (2) seats are reserved for STs in Bihar, thus giving 24 seats to the STs in both the States as per their combined entitlement on the basis of 2001-census. This increase of one seat in the ST quota should in the opinion of the Commission, go in favor of Jharkhand on the ground that the actual entitlement for Jharkhand works out to 21.30 and for Bihar to 2.22, which is a lower fraction vis-à-vis the Jharkhand fraction, and also on the ground that the Bihar Assembly will have 2 ST reserved seats, whereas no seat is reserved for the STs in the existing Bihar Legislative Assembly.

Having regard to all these considerations, the Commission hereby decides that 22 seats shall be reserved for the STs in the State of Jharkhand in the delimitation of Assembly Constituencies now under progress in the State”.

6. The Commission received a large number of representations in response to the Commission's Notice which were due to be considered by the Commission during the public sittings at Bokaro and Ranchi on 8th, 9th and 10th June, 2007. Some Associate Members requested the Commission to postpone the public sittings. Similar request was also received from the Chief Minister of Jharkhand State. The Commission considered the said requests and decided not to postpone the schedule public sittings, as delimitation exercise is time bound. Moreover the schedule of public sittings had already been notified in the local newspapers in the State and the Commission did not consider it appropriate to cause inconvenience to the public.

7. The Commission observed the news reports that appeared in the local newspapers and the electronic media in Jharkhand State indicating that there was a large-scale resentment among the people of Jharkhand regarding reduction of ST seats in the State. It also appeared in the newspapers and electronic media that the people might demonstrate against the Delimitation Commission and the public sittings might be disrupted by the agitators. There were also reports that demonstrators would not allow the team of the Commission to proceed to the venue of public sittings from the Ranchi Airport itself. The Commission also received the information from other sources that there might be a large-scale demonstration against the Commission's public sittings, which might cause serious law and order problem in the State. There was also indication in the news reports that people would try to disrupt the public sittings as and when the team would visit the State for the purpose of public sittings. The Chairman had talked to D.G.P., Jharkhand over phone in this regard, who confirmed such reports though he assured that contingency arrangements shall be made.

8. In view of the above, the Commission reconsidered the issue of holding the public sittings in the State as under:

“The Delimitation Commission was scheduled to hold public sitting at Bokaro and Ranchi on June 8, 2007 and June 9 and 10, 2007, respectively. On 6th June, 2007 the Chairman received a letter from Sh. Madhu Kora, Chief Minister, Jharkhand requesting for the postponement of the public sitting on the ground that June 9 is the Matrydom Day of Birsa Munda. The Chairman replied to the Chief Minister that it would not be possible to postpone the public sitting. Thereafter, it was brought to the notice of the Chairman that different parties were planning to organize agitations and bandhs with a view to stop the public sittings on the ground that the Scheduled Tribe seats in the Legislative Assembly/Parliament on the State of Jharkhand are being reduce.

Dr. Sarangi, DEC (D), thereafter, had telephone talks with Sh. Debasish Gupta, CEO, Jharkhand and Mr. Mohapatra, DGP, Jharkhand several times during the day. The Chairman also personally spoke to the DGP and CEO. The DGP informed Dr. Sarangi and the Chairman that there was likelihood of demonstrations by the tribals and they may go to the extent of

blocking the roads and resorting to dharnas at the airport thereby blocking all roads leading to the town. The DGP suggested that the Commission Members and staff should travel from Ranchi airport to Bokaro by the State Chopper. According to him, traveling by road or train may cause law and order problem. The CEO was also of the view that there would be agitations by the tribals. The DGP also informed the Chairman that at the public sittings there would be strict screening and security check. He, however, assured that no untoward incident would be permitted to happen.

After taking into consideration, all the circumstances and assessing the situation from every possible angle the Chairman took the decision at about 9.30 p.m. on 6-6-07 that the public sittings in the State of Jharkhand be deferred. The main consideration, which weighed with the Chairman, was that even if no untoward incident happens the very purpose of holding the public sitting would be defeated, if it is held under strict security and surcharged atmosphere thereby restricting the entry of the public. The CEC was informed who concurred with the decision”.

9. The team of the Commission was scheduled to leave New Delhi for Bokaro in the morning of 7th June, 2007 to conduct the said public sittings but considering the alarming situations, the Commission was forced to postpone the public sittings at the eleventh hour.
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 tribals 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 an 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.....”

The atmosphere where thousands of people are blocking the roads and streets and even possibly indulge in violence would render the delimitation exercise impracticable, if not impossible. The procedure to be followed by the Delimitation Commission depends on the given circumstances of each case. As discussed above, the Jharkhand Government and the law and order maintaining authorities have advised the Commission that there would be agitations outside the venue of public sittings and even the roads leading to the town from the airport would be blocked. The Commission was also advised that the entry of the public will be strictly screened at the venue of the public sittings. In this view of the matter, no useful purpose will be served in physically holding the public sittings. 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 requirements 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 Jharkhand 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 grievance of the people. As indicated above the Commission had already increased one ST seat in the State Assembly. 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 the public 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 Jharkhand 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 might have been 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 as the case may be the, clarifications should reach or as the case may be the Commission by post within Fifteen days of the publication of the notice. The individuals 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 Jharkhand. The office will work out the dates for giving this further opportunity and workout the details.

M.K. MANDAL
MEMBER

N. GOPALASWAMI
MEMBER

KULDIP SINGH
CHAIRMAN