

To

10/08/2018

The Chairperson,
National Commission for the Scheduled Tribes
New Delhi

The Director,
Regional Office of NCST,
Jaipur

Sub - Regarding atrocities faced by us as members of Gujjar community in Solan District, Himachal Pradesh

Sir,

We, the residents of Kenduwal, Sandholi Village, Tehsil Baddi in Solan District, Himachal Pradesh, are writing this letter to you to in great urgency to bring to your attention the serious nature of atrocities faced by us. There are 32 members in our family and we belong to the Gujjar community recognised as Scheduled Tribes. Since 2016, the area adjacent to our place of residence has been used as a garbage dumping site by the Municipal Council of Baddi and Baddi Barotiwala Nalagarh Development Authority (BBNDA) to dispose off the municipal waste collected from the Baddi town.

The open dumping of municipal waste has been a nuisance for us and the rest of the village as it emanates a foul smell, has led to infestation of flies, poor health conditions for our family and livestock, as well as blockage of the path that we use for our daily commute. We the members of the Gujjar community practice their traditional livelihood of cattle rearing and are dependent on the public lands for purpose of grazing. The dumping site, which is behind the Common Effluent Treatment Plant (CETP), used to be a common land where their cattle grazed. Ever since the dumping started, because the cattle end up consuming garbage, over 20 buffaloes and 4 cows have died. Also, the dumping site is also a breeding ground for flies, mosquitoes, rats, etc. and it has caused alarming increase in the incident of illnesses even to people who live in the neighboring villages.

The key problems faced by us, the most affected members of Gujjar community can be summed up as :

- The only path which connects their residence to the outside world goes right through the dump site. Owing to the dumping, the path gets blocked and particularly in the rainy season, obnoxious smelling water submerges the path and renders it unusable.
- The source of fresh water, which is a pipe, often gets broken because of garbage trucks plying over it.
- The children and the elderly frequently fall ill, their skins have developed rashes causing great discomfort, itchiness and pain.

On an average, 40 MT of municipal waste is dumped daily at the site and over the two years, the garbage being dumped has spread across an area of over 1.5 Hectares in piles as high as 10ft (**Annexure 1**). This dumping is completely unauthorised as it violates the Solid Waste Management Rules (2016), the Environment Clearance obtained by BBNDA in 2015, and more importantly, it violates the provisions in the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act as well. Every time we have raised grievances we have either been ignored or treated with disdain by the authorities. The municipal officials in July this year even went to the extent of filing charges against us for stopping the dumpers of the garbage which were destroying our access route.

On the 9th of July, the SDM of Nalagarh was approached to raise a complaint about the inconveniences we've been experiencing and the pathetic attitude of the officials of Municipal Council of Baddi (**Annexure 2**). The SDM, based on our complaint, issued a notice to the Municipal Council under the section Cr. PC 133 on the 10th of July and subsequently hearings were organised on the 24th of July and the 27th of July, 2018. These hearings did not take place and the next hearing is on 10th of August. (**Annexure 3**). We bring to your notice that we learnt about the hearings from the SDM office after inquiry, where as we were complainants in the case and we were never informed or intimated by the court about the hearings.

It is evident that the concerned local authorities, including the SDM of Nalagarh, the Chairperson of BBND, the Executive Officer of Municipal Council of Baddi, the Pradhans of Sandholi and Malpur Panchayats, the Executive Engineer of Regional Office, Pollution Control Board, Baddi, despite having known the seriousness of the issue, have not taken the requisite action to address the same. On the 19th of July submissions (**Annexure 4**) were sent to the District Collector of Solan, the Urban Development Department of Himachal Pradesh, the Central Pollution Control Board, the Ministry of Environment & Forests, highlighting the violations and demanding that:

- Halt the dumping of waste at Kenduwal immediately and order for relocation of the site
- The area should be cleaned up and cleared out immediately and restored to the Panchayat
- BBND and MC Baddi to be directed to make a Solid Waste Management Plan with all the necessary steps from source to disposal
- Punitive Action be taken against the BBND for the violations
- Members of the affected community be adequately compensated for the harassment and inconvenience faced
- Carry out a complete financial audit of the dumping site related work so far and make it public

The Constitution (eighty ninth Amendment) Act, 2003, which added a new Article - 338A, directs that there be a commission formed comprising of Chairperson, Vice-Chairperson and three other members, and under clause 5 of the Act, it shall be the duty of the commission to :

- Investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- Inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- Participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- Make such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and
- Discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

The clause 8 of the Act grants the commission all the powers equivalent to that of a civil court trying a suit and when investigating any matter related to safeguarding the rights of Scheduled Tribes or inquiring into complaint received in this regard, the Commission has authority for :

- Summoning and enforcing the attendance of any person from any part of India and examining them on oath;
- Requiring the discovery and production of any document;
- Receiving evidence on affidavits;
- Requisitioning any public record or copy thereof from any court or office;
- Issuing commissions for the examination of witnesses and documents;

The unlawful dumping of municipal waste is thus a gross violation of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which can be noted from the chapter 2 : Offenses of Atrocities. The amendment of the Act which came in 2016, specifies under the Section 3, the punishable offenses, among which the following offenses have been committed in this context :

3(l)(b) - dumps excreta, sewage, carcasses or any other obnoxious substance in premises, or at the entrance of premises occupied by the member of Scheduled Caste or Scheduled Tribe;

3(l)(c) - with the intent to cause injury, insult or annoyance to any member of Scheduled Caste or Scheduled Tribe, dumps excreta, waste matter, carcasses or any other obnoxious substance in his neighborhood;

3(l)(g) - wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom

3(l)(p) - institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of Scheduled Caste or Scheduled Tribe;

3(l)(u) - by words either written or spoken or by signs or visible representations or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against member of Scheduled Caste or Scheduled Tribe;

3(l)(x) - corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of Scheduled Caste or Scheduled Tribe, so as to render it less fit for the purpose for which is is ordinarily used.

In the principal Act, the Section 4 states that being a public servant but not being member of SC/ST, who willfully neglects his duties required to be performed by him under this Act, is punishable.

We thus appeal to you to do the needful under your duty bound obligations and take an action to call to account the responsible authorities (i.e. BBND, Municipal Council of Baddi, Pollution Control Board) at the earliest, so that justice can be delivered to us. Also, please appeal to the Ministry of Environment, Forests and Climate Change to take action against the breach of environment clearance by BBND.

Thank You,

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