

**Sub: Application of Sri Satyajit Pradhan (Legal heir of Late Dr. S. Pradhan and authorized applicant on behalf of all other legal heirs of Late Dr. S. Pradhan) of K-1, Kalpana Area, BJB Nagar, Bhubaneswar-751014 seeking approval of MoEF&CC under Section 2 (iii) of Forest Conservation Act, 1980 over entire forest land of 146.545 ha within total applied Mining lease area of 152.927 ha in Kalparbat Iron and manganese ore mines in Keonjhar district, Odisha.**

1. The State Government of Odisha vide their letter No.10F (Cons)-528/2011/22132/F&E dated 28.11.2016 has forwarded an application of Sri Satyajit Pradhan (Legal heir of Late Dr. S. Pradhan and authorized applicant on behalf of all other legal heirs of Late Dr. S. Pradhan) of K-1, Kalpana Area, BJB Nagar, Bhubaneswar- 751014 seeking approval of MoEF&CC under Section 2 (iii) of Forest Conservation Act, 1980 over entire forest land of 146.545 ha. within total applied Mining lease area of 52.927 ha. in Kalaparbat Iron and Manganese ore mines in Keonjhar District, Odisha.
2. The proposal was placed before **FAC in its meeting held on 26.12.2016** and the FAC recommended that:
  - a. The proposal shall be considered by FAC after Site Inspection report (SIR) from Regional Office is received in MoEF &CC. The matter stands deferred till such time.
  - b. State Government shall submit complete compliance of FRA.
3. Ministry vide its letter dated 16.12.2016 was requested to the Regional Office, Bhubaneswar of this Ministry to carry out site inspection of the proposed area. Regional Office, Bhubaneswar vide their letter no. 8-308-FCE dated 09.01.2017 has submitted Site Inspection Report (SIR).
4. The said proposal with SIR done by RO, Bhubaneswar was placed before **FAC in its meeting held on 16.05.2017** and the FAC, after examination of the proposal and discussion with user agency, observed as below:
  - (i) The Stage-II approval for diversion of 52.002 ha of forest land in Mining lease area of Kalaparbat Iron and Manganese ore mines in Keonjhar District in favour of Dr. Sarojini Pradhan in Keonjhar District was accorded vide letter no. F. No. 8-177/1997-FC dated 15.01.2007.
  - (ii) It is located in Keonjhar Forest Division of Keonjhar District of Odisha
  - (iii) Area of forest requested under section 2(iii) is 146.545 ha
  - (iv) **Legal status of the forest is**
    - i) Reserved Forest – 133.579 ha.
    - ii) Revenue Forest – 12.193 ha.
    - iii) Non-forest recorded as on 25.10.1980 -0.773 ha.

**Total: 145.545 ha**
  - (v) Density of Vegetation : 0.7
  - (vi) Eco class -I
  - (vii) The area do not forms part of National Park, Wildlife Sanctuary, Biosphere Reserve, Tiger Reserve, Elephant Corridor
  - (viii) It is reported that no protected archaeological/ heritage site/ defense establishment or any other important monument is located in the area.
  - (ix) It is reported that forest land as proposed by the User Agency is unavoidable and bare minimum for the project.
  - (x) No work in violation of the Act has been reported
  - (xi) FRA certificate has not been given by the user agency
  - (xii) Nodal officer of the state had recommended the proposal.
  - (xiii) State government had recommended the proposal for consideration by Govt. of India for purpose of assignment of lease.
  - (xiv) It is also reported by the State Govt. of Odisha that this ML application, being covered under Section 10A(2)(C) of MMDR Amendment Act, 2015 for grant/execution of mining lease as per Rule 8(2) or Minerals (Other than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016 is to be disposed by 11.1.2017. The legal heirs of Dr. S. Pradhan

have authorized one of the legal heir i.e. Sri Satyajit Pradhan to take required follow up action concerning ML application and statutory clearances required.

- 5. Recommendation of FAC on 16.05.2017:** FAC considered the reply of state government regarding validity of letter of intent into consideration.

It is observed that the matter is sub-judice and Hon'ble High Court of Odisha in its interim order in W.P. (C) No. 284/2017 had directed as follows:

- 1. The submission of Mr. Ashok Parija learned Senior Counsel for the petitioner is that the petitioner had applied for grant of mining lease for which Letter of Intent was issued by the State Government on 24.05.1990. The application however kept pending and in the meantime the Act was amended and certain provisions have been inserted by Act 10 of 2015 with effect from 12.1.2015. Under the new provision of Section 10A lease deed is to be granted within a period of two years from the date of the amendment of the Act i.e. with effect from 12.1.2015. Besides several prayers which have been made the grievance of the petitioner at this stage is with regard to the provision of Rule 8(4) of Mineral (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 which provides that in case the mining lease is not executed on or before 11.1.2017 the rights of the applicant shall be forfeited.*
- 2. The submission of the learned counsel for the petitioner is that because of the lapses on the part of the opposite parties the mining lease has not been granted for which the petitioner cannot be made to suffer. The petitioner further contends that the provision of sub-rule (4) of Rule 8 is contrary to the provisions of Section 10-A (2)(c) of MMDR Act 1957 and as such the same cannot be sustained in the eye of law.*
- 3. In our view the matter requires consideration.*
- 4. Mr. A.K.Bose learned Asst. Solicitor General accepts notice on behalf of opposite parties no. 1 and 2 and Mr. B.P.Pradhan learned Addl. Government Advocate accepts notice on behalf of opposite party no.3. They pray for and are granted four weeks time to file counter affidavit and the petitioner shall have two weeks thereafter to file rejoinder affidavit.*
- 5. List this matter immediately after six weeks.*
- 6. Considering the facts and circumstances of the case and keeping in view the submissions made by the learned counsel for the parties as an interim measure it is directed that the provisions of Rule 8(4) of Mineral (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules 2016 shall not be made applicable in the case of the petitioner till the next date of listing.*

After going through the judgement in the matter, FAC observed that petitioner had contended that the provision of sub rule (4) of rule 8 is contrary to the provisions of section 10-A (2) (c) of MMDR Act and same could not be sustained in the eye of law. In this regards FAC referred to FCA guidelines 2.1(vi) vide which *state government are advised not to consider/process cases, which are pending in various courts or sub-judice to avoid all sort of administrative and legal complications.*

In this backdrop FAC recommended not to grant permission to the state Government under section 2(iii) of F.C. Act till the final order of the Hon'ble High Court and clarification regarding the applicability of provisions of section 10-A (2) (c) of MMDR Act.

6. Taking into consideration the recommendation of FAC as stated above and its acceptance by the Hon'ble Minister of EF&CC, the approval of competent authority was communicated vide this Ministry's letter dated 07.07.2017(Pg.185/c) for not to grant prior approval under section 2(iii) of Forest (Conservation) Act, 1980 concerning entire forest land of 146.545 ha within total applied Mining lease area of 152.927 ha in Kalparbat Iron and manganese ore mines in Keonjhar district, Odisha, till the final order of the Hon'ble High Court.
7. The user agency vide their letter dated 09.05.2018 (F/X) submitted a representation stating that the Ministry of Law and Justice, Department of Legal Affairs had given their advice on dated 16.01.2015 after due consultation jointly with the MoEF&CC, CEC and obtaining the opinion of the Ld. Attorney General as to "can the Central Govt. have different approach in old and new cases in respect of the mining leases where approval under FC Act of part forest land has been obtained and to grant general approval under FC Act of part forest land has been obtained and to grant general approval u/s 2 (iii) of FC Act for this remaining part of forest land"

It is further mentioned that the Ministry of Law & Justice have clearly stated in their advice that "Mining leases having part forest land approval under FC Act the remaining part of forest land for grant u/s 2 (iii) of FC Act general approval in-principle is accorded" Hence there is no differentiation made between old & new mining leases for applicability to all the mining leases for consideration of grant u/s 2 (iii) of FC Act under general approval category.

Further based on the advice of Ministry of Law & Justice dated 16.01.2018, the MoEF&CC issued the guidelines dated 01.04.2015 where in the word "existing" mining lease has been inserted in para 3 (v), which is not in conformity to the advice.

The user agency, therefore, requested that the word "existing" mining leases in para 3 (v) of guidelines dated 01.04.2015 may be deleted so that all mining leases having obtained part of the forest land approval and for the remaining part of forest land the Central Government accords general approval for grant u/s 2 (iii) of the FC Act. Since the grant u/s 2 (iii) is only for assignment of forest land on lease purpose only.

8. In the instant matter, the Hon'ble High Court of Orissa vide their order dated 24.04.2018 (F/y) directed that:
  3. *In our view, in our order dated 11.01.2017 there was no direction with regard to the consideration of the application of the petitioners for forest clearance. The submission of learned counsel for the petitioners is that this Court may not issue a direction to give the order/decision to the petitioners on their application for grant of forest clearance filed by the petitioners may be considered in accordance with law and the decision on the same by kept in sealed cover, so that in case this writ petition is allowed, there may not be any further delay.*
  4. *Since we are of the view that our order dated 11.01.2017 can in no way be interpreted as if we have expressed any opinion with regard to consideration of the application of*

*the petitioners for grant of forest clearance, the opinion given by the Forest Advisory Committee while dealing with Agenda No. 7 on 18.09.2017 regarding not granting permission to the State Government to consider the application of the petitioners for grant of forest clearance is not justified, as there was no such observation even made in our order dated 11.01.2017.*

***As such, we allow this application and direct the opposite parties to consider the application of the petitioners for grant of forest clearance under Section 2 (iii) of the Forest Conservation Act, 1980 expeditiously and in accordance with law, and the same be kept in sealed cover to be opened as per the direction of this Court in this writ petition. We make it clear that we have not expressed any opinion with regard to merits of the application of the petitioners, which shall be considered by the concerned authority while considering the application of the petitioners.***

In view of the above, the facts related to this proposal may be placed before FAC in its forthcoming meeting scheduled to be held on 19.06.2018 for its consideration.

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