

Minutes of the Meeting of the Forest Advisory Committee (FAC) held on 28.10.2021

Agenda Item No. 1

F. No. 8-93/2013-FC (Pt.)

Sub: Proposal for non-forestry use of 255.3 ha of forest land under Forest (Conservation) Act, 1980 in favour of Dy Director Achanakmar Tiger reserve for relocation of villages in Mungeli Forest Division from the core area of Achanakmar Tiger Reserve (ATR) in Bilaspur District (Chhattisgarh)

The above stated agenda item was considered by FAC in its meeting on 28.10.2021. The details of the proposal may be seen at www.parivesh.nic.in. During the meeting, all the facts and background of the proposal, alongwith examination of the proposal in the DSS were presented by Member Secretary before the FAC for their examination and analysis. FAC after through deliberation and discussion observed that:

1. The State Government of Chhattisgarh vide their letter No. F 5-13/2020/10-2 dated 14.10.2020, submitted the above proposal seeking prior approval of the Central Government under the Forest (Conservation) Act, 1980.
2. The Proposal envisages relocation and rehabilitation of 3 villages namely Tilalibara, Birarpani and Chhirhatta (133 families) from the core area of Achanakmar Tiger reserve to Compartment No. 96, 557 and 558 of Lorami Forest Range of Mungeli Forest Division.
3. The Proposal involves relocation of total 133 families for which an area of 255.3 ha of forest land been proposed for rehabilitation of three villages. It is further reported that 963.775 ha area will be vacated from ATR.
4. Vegetation density of the forest area proposed for rehabilitation of the villages is 0.4 with 9,862 project affected trees.

5. Provision of the compensatory afforestation are not applicable in the instant case in view of the fact that area proposed to be vacated will be used for further enhancement of ecosystem goods and services by undertaking management prescription appropriate to the said area.
6. It was also observed that similar proposal was received from Government of Chattishgarh earlier. The same was considered by the FAC held on 29th January, 2014 and the FAC, after detailed discussion, recommended the proposal for diversion of 706.10 ha of forest land out of 839.50 ha after excluding 133.40 ha (75.90 and 57.50) of good Sal forest areas of Tawadbara in PF 1254& PF 1255. The FAC also recommended that the Stage-I approval to the proposal will be considered only after obtaining compliance of FRA. Recommendation of the FAC was conveyed to the State Government and complete reply from the State has not been received so far.
7. Pending reply, as per the observations of the FAC, the State Government has now submitted a new proposal involving three villages namely Tilalibara, Birarpani and Chhirhatta out of five proposed in the old proposal.
8. The present proposal along with additional information and site inspection report was placed before FAC in its meeting held on 25.06.2021. FAC observed that the proposed rehabilitation area involves an ESZ area and decided to defer the proposal seeking following information to take a comprehensive view on the proposal.
 - i. A confirmation letter from the Government of Chhattisgarh that the restrictions related to ESZ within which the villages are to be relocated, have been discussed with the villagers.
 - ii. Comments of CWLW on the issues related to human–animal conflict in the area selected for proposed relocation.

On receipt of the above information, a view may be taken also considering the details of regulated, prohibited and permitted activities in the ESZ.

9. Ministry vide its letter dated 23.07.2021 requested the State Government to submit above information. The State government has provided following reply

S. No.	Observation made by the MoEF&CC	Reply from the State Government
1	A confirmation letter	Three villages that are proposed to be relocated are

	<p>from the Government of Chhattisgarh that the restrictions related to ESZ within which the villages are to be relocated, have been discussed with the villagers.</p>	<p>Tilaidabra, Birarpani and Chirhatta falling within core area of Achanakmar Tiger Reserve. The administration of Achanakmar Tiger Reserve conducted a meeting with the villages of Tilaidabra on 03/07/21 and that with the villagers of Birarpani and Chirhatta on 04/07/21. During this meeting the villagers were informed that the area that they are being relocated into falls within the ESZ demarcated around the tiger reserve. They were informed of the provisions of the ESZ and were read out and explained about the different activities that falls under the categories of prohibited, regulated and permitted.</p> <p>The villagers then agreed to adhere to the conditions applicable in the ESZ and did not have any objection to be relocated into the existing proposed area. The copy of 'Panchnama' for all the three villages stating that the villagers have been explained the provisions of ESZ and that they have no objection in moving to the proposed area duly signed by them are submitted.</p>
2	<p>Comments of CWLW on the issues related to human-animal conflict in the area selected for proposed relocation.</p>	<p>In this regard, the State Government informed that there has been not a single case of human Wildlife Conflict recorded in last five years in the proposed site of relocation.</p>

Decision of the FAC:

After thorough deliberation with Nodal officer Chattishgarh and representative of Chief Wild life Warden, Chattisgarh, **FAC recommended the proposal** with general, standard and following specific conditions.

- i. State Government shall take effective steps to ensure that the villagers who are being relocated from the core area, do not return to the area.

- ii. State Government shall submit the certificate of compliance under FRA, in both the areas i.e the area being vacated and the area where the people will be relocated.
- iii. The area to be vacated shall be mutated in the name of State Forest Department and notified as RF/PF.
- iv. State Government shall ensure that the area under the three villages that are proposed to be shifted outside the Achanakmar Tiger Reserve (ATR) will become inviolate after the shifting and no families are left with in these villages for further relocation.

Agenda Item No. 2

F. No. 8-31/1999-FC

Sub: Proposal involving non-forestry use of 192.250 ha of forest land in favour of M/s Jayaswal Neco Industries Limited for mining of iron ore located in village Chhote Donger, District Narayanpur (Chhattisgarh) - reg.

The above stated agenda item was considered by FAC in its meeting on 28.10.2021. The details of the proposal may be seen at www.parivesh.nic.in. During the meeting, all the facts and background of the proposal, alongwith examination of the proposal in the DSS were presented by Member Secretary before the FAC for their examination and analysis. FAC after through deliberation and discussion observed that:

1. The proposal was recommended for approval for partial area (91.0 ha) in 2004 by the then FAC in its meeting on 21.4 2004. In the meeting, it was considered as a special policy issue to allow mining in the Bastar area.
2. Stage I was granted only for 91 ha out of 192.250 ha as requested by the State government. Further Out of 91 ha, stage II was granted only for 35.74 ha to be worked in phase I.
3. While granting Stage II approval for only 35.74 ha of forest land, it was observed by the ministry that final approval with respect to 55.26 ha of forest land would be issued on receipt of further compliance report. Meanwhile, the

user agency was asked to protect and maintain the whole area at the project cost and under the supervision of the State forest department.

4. At this stage with regard to approval granted under the FC Act, the following were noted:

- i. Out of total lease area of 192.50 ha, Stage I approval was granted for 91.0 ha.
- ii. Out of 91.0 ha having Stage-I approval, Stage-II approval was granted for 35.74 ha only while remaining 55.26 ha of forest land is covered under Stage-I approval since 2006
- iii. 101.25 ha of forest land out of total lease area is yet to be granted Stage-I approval under the FC Act
- iv. Approval under FC Act was considered in phase wise manner by the Ministry based on the phase wise plan of mining submitted by the State
- v. State government has now submitted the compliance of Stage I approval of balanced area of 55.260 ha (out of 91 ha) and requested for Stage-II approval in respect of 55.26 ha and Stage-I approval for balance area of 101.25 ha.
- vi. The user agency has paid the NPV for the entire forest area involved in the mining lease of the user agency.
- vii. Due to acute problem of Naxalism in the area, the user agency could not do any work till recently. However, with the intervention of State Govt/Paramilitary forces, the user agency has resumed mining operations recently.
- viii. Analysis using DSS tool revealed the area falling in to High Conservation Value Zone

Decision of FAC:

After thorough deliberation and discussion with the Nodal officer Chhattisgarh and in view of the fact that after following due process of approval given under the Act. the MoEF&CC has already granted Stage-I approval over part of the total forests in the lease area and also justification submitted by the State Government for not able to do work on the diverted forest area of the State Government was considered plausible. Accordingly, **FAC recommend the proposal for the**

Stage II approval for 55.260 ha (for which Stage I approval has been obtained 21.4.2004) with General and Standard conditions. The balance area of 101.25 ha will be considered on merit later on.

Agenda item No. 3

Sub: Proposal for renewal of approval granted under the Forest (Conservation) Act, 1980 for non-forestry use of 16839.40 ha of Reserve Forest land in favour of Indian Army for Asan Field Firing Range (Sector 1, 3 and 5 as safety zone in District Dehradun (Uttarakhand) under Dehradun District of Uttarakhand

The above stated agenda item was considered by FAC in its meeting on 28.10.2021. The details of the proposal may be seen at www.parivesh.nic.in. During the meeting, all the facts and background of the proposal, alongwith examination of the proposal in the DSS were presented by Member Secretary before the FAC for their examination and analysis. Nodal Officer (FCA), Uttarakhand and Regional Officer, IRO, Dehradun were also present in the meeting. FAC after through deliberation and discussion noted the following:

1. Asan Field Firing Range (AFFR) of Indian Army was notified in August, 1995. Total area of the AFFR is 42,725.04 ha spread over two States viz. Uttarakhand (Dehradun District) and Uttar Pradesh (Saharanpur District). Forest area of the AFFR falling in Uttar Pradesh and Uttarakhand is 25,885.64 ha and 16,839.40 ha, respectively. Approval for part of forest area of 25,885.64 ha of AFFR falling in Uttar Pradesh was granted approval by the Central Government vide letter no. 8-20/2016-FC dated 10.04.2018 read with letter dated 15.10.2019 for a period of 30 years.
2. Part of forest area of AFFR, falling in the Dehradun District of Uttarakhand has been earmarked as Sector 1, 3 and 5 Safety Zone). In the past, approval under the FC Act, 1980 for the part of forest area falling in safety zone in Uttarakhand was granted vide Ministry's letter dated 8.01.2007 read with letter dated 1.10.2007
3. State Government has now submitted the proposal for renewal of approval granted under the Forest (Conservation) Act, 1980. Proposal for renewal was submitted after a gap of almost of 4 years.

4. The Ministry, after scrutiny of the proposal sought additional detail from the State viz. justification of delay in submission of the renewal proposal, status of compliance of approval of earlier approval, status of violation of Act, if any, done by the user agency, detail of CA undertaken in lieu of approval granted in the past, rationale for proposing the term of renewal as 10 years while the same has been proposed for 30 years for the AFFR in the State of Uttar Pradesh, etc.
5. IRO, Dehradun has also conducted an inspection of the area and has recommended the proposal for approval under the FC Act, 1980. IRO in its inspection report has also suggested to examine the possibility to exclude the safety zone area from the FC area and the user agency may be permitted, through an administrative order, for demarcating the safety zone area. Control and management of safety zone area may remain under the control of concerned DFO and DFO may consider grant of temporary permission as and when needed by the user Agency.
6. State Government vide their letter dated 14.09.2021 furnished the reply to the observation of the Ministry and after examination of the reply of the State and SIR of the IRO following is observed:
 - (i) With regards to the non-forestry use of AFFR, the State reported that the same was used with permission of DM for temporary use to avoid any delay in training of cadets/troops who, in turn granted permission after taking necessary clearance from the concerned DFO.
 - (ii) Use of AFFR, during the intervening period from 1.10.2017 onwards without the prior approval of the Central Government under the Forest (Conservation) Act, 1980 amounts to violation of Forest (Conservation) Act, and accordingly, appropriate action as per law should be initiated by the State and IRO of the Ministry.
 - (iii) Partial detail of compensatory afforestation undertaken by the State against approval granted in the past has been made available by the State. Complete detail of the CA land supported with KML/Shape file needs to be submitted to enable the future monitoring of the area by the Ministry and its IRO.
 - (iv) The justification for delay in submission of the renewal proposal stated to be occurred relatively little understanding of procedures is not tenable and

State Government in future needs to ensure the timely processing of such renewal in a consolidated manner.

- (v) The State Government has also requested to make the term of renewal of approval for the period of 30 years instead of 10 years as proposed initially by the State.

(vi) The suggestion by the IRO to allow non-forestry use merely on the basis of an administrative order also seems to be not appropriate as the area is required for firing of various warheads which have conspicuous impacts on the surrounding area i.e. safety zone considerably. Restoration of damage, if any occurs due to firing of heavy warheads/artillery, may not be done on the strength of an administrative order. Moreover, administrative order cannot be equated to the statutory approval of FC Act compliance of which is binding on User agency.

Decision of FAC:

After thorough deliberation and discussion, the **FAC recommended the proposal** for for renewal of approval granted under the Forest (Conservation) Act, 1980 for non-forestry use of 16839.40 ha of Reserve Forest land in favour of Indian Army for Asan Field Firing Range (Sector 1, 3 and 5 as safety zone in District Dehradun, Uttarakhand) under Dehradun District of Uttarakhand **for a period of 30 years** with General, Standard and following specific conditions:

- (i) Use of AFFR, during the intervening period from 1.10.2017 onwards without the prior approval of the Central Government under the Forest (Conservation) Act, 1980 amounts to violation of Forest (Conservation) Act, and accordingly, appropriate action as per law should be initiated by the IRO of the Ministry and State Government;
- (ii) The State Government/User Agency shall ensure that in future, renewal proposal will be processed in time and a consolidated manner;
- (iii) The State/UA shall submit the comprehensive proposal for both States for next renewal of this proposal;
- (iv) The terrain of the area proposed for non-forestry use is hilly requiring special measure for the conservation of soil. Therefore, appropriate soil and moisture conservation measures, at project cost, will be undertaken by

user agency in the area being diverted in consultation with the State Forest Department;

- (v) The Eco-Task force shall take appropriate compensatory afforestation measures at own cost after consultation of the State Forest Department without using of the resources of SFD. A scheme of afforestation, along with financial provisions, shall be submitted along with the compliance of Stage-I approval; and
- (vi) Complete detail of compensatory afforestation undertaken against the approval granted in the past such as KML/Shape files shall be submitted along with the compliance of Stage-I approval. KML/Shape file of the afforestation undertaken in the CA land shall also be uploaded on the e-Green Watch Portal to enable the future monitoring of the area by the Ministry and its IRO and compliance of the same shall be submitted before Stage-II approval.

Agenda No. 4

File No. 8-31/2010-FC

Sub: Proposal for non-forestry use of 1898.328 ha of forest and (1654.109 ha of revenue forest land and 244.219 ha forest land) in favour of Rajasthan Rajya Vidyut Utpadan Nigam Limited, for mining in Parsa East & Kete Basan (PEKB) coal block, District Surguja, Chhattisgarh-reg.

The above stated agenda item was considered by FAC in its meeting on 28.10.2021. The details of the proposal may be seen at www.parivesh.nic.in. During the meeting, all the facts and background of the proposal including chronology of related events, alongwith examination of the proposal in the DSS were presented by Member Secretary before the FAC for their examination and analysis. FAC after through deliberation and discussion observed that:

1. The proposal has been granted Stage-II approval vide Ministry's letter dated 15.03.2012 inter-alia stipulating the following condition:
"8. the mining shall be done in two phases:
 - (i) *During phases-I, covering 15 years, the mining shall be restricted to 762.00 ha of forest land.*

(ii) During phase –II the mining permission over remaining 1136.00 ha will be linked to the reforestation and biodiversity management in phase-I.

(iii) The project proponent will submit the application for permission for mining in phase – II along with compliance report of phase-I.”

2. The condition regarding carrying out mining in two phases was stipulated by the competent authority in speaking order dt 23.06.2011 wherein recommendation of FAC for rejecting the proposal were overruled by competent authority and proceeded to grant stage-I approval to the proposal.
3. Now the State Government has submitted a proposal mentioning that User Agency vide their letter no 1708 dated 24.04.2019 has requested for permission to carry out mining in balance 1136.0 ha of forest land prior to completion of 15 years as stipulated. It is informed that due to enhanced production capacity the mining activities of Phase-I would be over in 2021. Accordingly, permission for Phase-II has been sought before the expiry of Phase-I.
4. It is informed that the Compensatory afforestation has been completed in the year 2012-13, 2013-14 and 2014-15 as per APOs approved by the administration over 3797.656 ha of degraded forest land.
5. Detail of maintenance of Safety Zone: Safety zone comprising 7.5 meter wide strip over a length of 9.80 km has been fenced and planted with local species.
6. Reclamation has been undertaken in the PEKB Coal Mining Project. Overburden has been used for backfilling and levelling the mined out areas. The user agency has planted 4,93,689 seedlings in the reclaimed areas.
7. The user agency has deposited Rs. 22 crores into the CAMPA account for the implementation of the Wildlife Management Plan. Implementation of works approved under the Wildlife Management Plan is under progress.
8. A total of 8,145 local trees have been transplanted by the user agency till 31.03.2020. Regeneration of sal trees is being undertaken by the user agency.
9. State Government has reported that felling of trees over an area of 753.804 ha has been carried out by the User Agency.
10. It has also been mentioned by the State Government that as per demand raised by the user agency so far i.e. upto 30.04.2020 an area of 612.290 ha of forest land out of 762 ha has been handed over to the user agency.

11. Differential GPS map of the forest area used for mining and other infrastructural facilities by the User agency has been made available by the user agency.
12. The State Government has also mentioned that following two cases pertaining to the approval granted for PEKB Coal Block are pending in the various Courts of law:
 - i) Civil Appeal No. 4395/2014 in the matter of Rajyasthan Rajya Vidyut Utpadan Nigam Limited vs Sudiep Srivastava is pending in the Hon'ble Supreme Court.
 - ii) W.P. (C) No 1346/2016 in the matter of Forest Right Committee, Ghatbarra vs Union of India and others is pending in the Hon'ble High Court of Chhattisgarh at Bilaspur.
13. Pursuant to Stage-II approval dated 15.03.2012, Government of Chhattisgarh vide their letter dated 28.03.2012 issued the final order of diversion of forest land.
14. Order of the State Government was challenged in NGT in Appeal No. 73/2012 in the matter of Shri Sudiep Srivastava and Other. Hon'ble NGT vide its order dated 24.03.2014 disposed of the said appeal inter-alia directing that:

“the case is remanded to the MoEF&CC with directions to seek fresh advice of the FAC within reasonable time on all aspects of the proposal discussed herein above with emphasis on seeking answers to the following questions: (i) What type of flora and fauna in terms of biodiversity and forest cover existed as on the date of the proposal in PEKB Coal Blocks in question. (ii) is/was the PEKB Coal Blocks habitat to endemic or endangered species of flora and fauna. (iii) Whether the migratory route/corridor of any wild animal particularly, elephant passes through the area in question and, if yes, its need. (iv) Whether the area of PEKB Block has that significant conservation/protection value so much so that the area cannot be compromised for coal mining with appropriate conservation/management strategies. (v) What is their opinion about opening the PEKB Coal Blocks for mining as per the sequential mining and reclamation method proposed as well as the efficacy of the translocation of the tree vis-a-vis the gestation period for regeneration of the flora? (vi.) What is their opinion about the Wildlife Management Plan finally prescribed? (vii.) What conditions and restriction do they propose on the mining in question, if they favour such mining?”

Liberty is granted to the FAC to seek advice/opinion/specialised knowledge from any authoritative sources such as Indian Council of Forestry Research and Education Dehradun or Wildlife Institute of India including the sources indicated in the present case by the parties. All work commenced by the respondents no. 3 project proponent and Respondent no. 4 pursuant to the order dated 28th March, 2012 passed by Respondent No. 1 State of Chhattisgarh under Section 2 of the FC act, 1980, except the work of conservation of existing flora and fauna, shall stand suspended till such further orders are passed by the MoEF in accordance with law”.

15. In compliance of the order of the Hon'ble National Green Tribunal, the matter was taken up in the meeting of FAC held on 29.04.2014. During the meeting, it was learned that the user agency i.e. Rajasthan Rajya Vidyut Nigam Ltd. has filed a Civil Appeal in the Hon'ble Supreme Court and an interim order of stay on the direction of the NGT order dated 24.03.2014 was passed by the Hon'ble Supreme Court. The FAC, which reviewed the whole matter and after examination of the issue, recommended that since the matter is sub-judice, decision on the matter may be deferred.
16. In the meantime, order of Hon'ble NGT was challenged by the User Agency by way of Civil Appeal No. 4395 of 2014 in the matter of Rajasthan Rajya Vidyut Nigam Ltd. Vs. Sudiep Srivastava. Hon'ble Court vide its order dated 28.04.2014 (Pg 1939/c) passed the following order:

“.....we stay the direction in the impugned order that all works commenced by the appellant pursuant to the order dated 28th March, 2012 passed by the State of Chhattisgarh under Section 2 of the Forest Conservation Act, 1980 shall stand suspended till further orders are passed by the Ministry of Environment and Forests”.

Pursuant to the above Order of Hon'ble Supreme Court, Ministry vide its letter dated 27.05.2014 requested the Standing Counsel of Government of India in Supreme Court to furnish his considered legal opinion in the matter regarding further course of action, if any, to be taken by the Ministry. That the Standing Counsel, furnished his opinion through email dated 24.07.2014, which is reproduced as under:

'I have perused the documents mailed to me. In my opinion, the Supreme order is unambiguous. The order of NGT has been stayed in toto. Therefore, no action need to be taken by the MoEF till the disposal of Civil Appeal by the Supreme Court.'

17. The Ministry in light of above opinion took no further action in the matter.
18. Subsequently, the State Government vide their letter dated 03.05.2017, forwarded a proposal for change in land use of 29.09 ha of forest land out of already diverted forest land of 1898.328 ha in favour of Rajasthan Rajya Vidyut Nigam Limited, in villages Parsa and Kete, Tehsil Udaipur, District Surguja, Chhattisgarh. Simultaneously, the User Agency had also moved an application to MoEF&CC for grant of Environment Clearance to the expansion project of **“Parsa East and Kete Basan (PEKB)”** Opencast Coal Mine from 10 MTPA to 15 MTPA along with the expansion of Pit Head Coal Washery from 10 MTPA to 15 MTPA. The MoEF&CC on the said proposal of EC observed that since the Supreme Court has stayed the part (4) of the order of the Hon'ble National Green Tribunal whereby the ongoing operation of mining was suspended, the matter should be placed before the FAC in compliance of the order dated 23rd March, 2014 of the Hon'ble National Green Tribunal wherein the Hon'ble Tribunal directed to seek advice of the FAC on the whole issue.
19. That the FAC in its meeting held on 25.01.2018 considered the whole issue and analysed the existing condition of the mining lease area using the shape file on the Decision Support System (DSS” for short) of the Ministry and satellite images. FAC observed that the mining in the area is under process and forest has been cut as per the mining plan after the stay order granted by the Hon'ble Supreme Court vide order dated 28.04.2014. The mining cannot be stopped now due to the stay order on suspension of mining operation. Since the matter has become a *“fait accompli”* situation, the Petitioner has to comply with the mitigation measures as recommended in the Stage – II granted by the Ministry. Relevant recommendations of the FAC are reproduced hereunder:
 - i. *The mining shall be restricted to the area proposed in Phase I area i.e. 762 ha only without any change in mining plan till the final order of the Supreme Court in Civil Appeal No. 4395 of 2014.*

- ii. *A biodiversity assessment study based on the criteria fixed by NGT in its order in Appeal no 72/2012 in the matter of Sudieep Srivastava versus state of Chhattisgarh, shall be undertaken by State Government through ICFRE Dehradun in consultation with Wildlife institute of India Dehradun for the whole Hasdeo- Arand coalfields comprising of Tara, Parsa, Parsa East, Kante. The study is to be awarded by State Government by associating the Indian Council of Forestry Research and Education (ICFRE), Dehradun and Wildlife Institute of India (WII) Dehradun and integrated wildlife management plan (IWMP) will be prepared and conservation area will be identified and mitigation measures will be recommended by the expert committee. The cost of study and cost of implementation of recommendations shall be borne by M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd (RRVUNL). The report will be submitted within two years.*

20. In the meantime, an IA No. 53863 of 2019 was filed Shri Sudieep Srivastava in Civil Appeal no. 4395 of 2014 alleging that Ministry has considered the approvals under the FC Act and EP Act in contrary to order of NGT and also to the conditions stipulated in the earlier approvals granted by the Ministry on 15.03.2012. The said IA came up for hearing in the Hon'ble Supreme Court on 28.01.2019 wherein Hon'ble Supreme issued following directions:

“Ms. Madhvi Divan, learned Additional Solicitor General, is requested to seek instructions and to file affidavit on the compliance effected by the Ministry of Environment & Forest and Climate Change in regard to the directions contained in Clause 2 of the operative part of the order of the National Green Tribunal dated 23th March, 2014. The Ministry of Environment & Forest and Climate Change shall file its response within four weeks from Today”.

21. The MoEF&CC, in pursuant to the above directions filed a detailed affidavit in the Hon'ble Supreme Court in April, 2019. In the said affidavit details regarding action taken by the MoEF&CC so far for the conservation and protection of biodiversity were also highlighted. The matter was last listed for hearing on 30.04.2019 wherein taking cognizance of the fact that applicant has

sought time to file rejoinder, the matter was listed for 15.07.2019. However, thereafter no effective hearing in the matter took place.

22. The instant request of the State government for permission for phase II was analysed in the FC division and the State government was asked for comments of the State on various Supreme Court orders wherein State Government forwarded an opinion of State Government's Advocate on record opining that proposal of PEKB may be considered as per law as the issues related to Biodiversity are being addressed in the Biodiversity Assessment Report.
23. In view of the above legal opinion furnished by the State, view point upheld by the Ministry in the past and pending the disposal of the case in the Supreme Court specifically with regards to biodiversity issues, Ministry of Law & Justice was requested to furnish its legal opinion as per law on the following:

Pending the final disposal of Civil Appeal No. 4395 of 2014 by the Hon'ble Supreme Court and after receipt of approved Biodiversity Assessment Study report from the State and its acceptance by the Ministry, whether request of the State Government to allow further mining over an area of 1136 ha which as per approval granted under the FC Act, 1980 was to be commenced after 15 years can be considered by the Ministry?

Legal opinion as sought above, is yet to be received from the MoL&J.

24. In the mean time due to ongoing coal crises, the issue related to approval, to different coal blocks were discussed in the meeting of Secretary (Coal) with Secretary (EF&CC). The proposal of PEKB Coal Block was also discussed and it was decided that since the State Government has submitted the BAR (Biodiversity Assessment Report), MoEF&CC may place the project proposal before FAC, pending opinion of MoLJ, for further decision on phase II.
25. During the meeting, it was also noted that the State government has submitted only draft Biodiversity Assessment Report (BAR) of the Hasdeo Arand Coalfield (HAC). However, It was confirmed by the Nodal officer (FCA), Chattisgarh and the representative of ICFRE, who had attended the meeting, that the report is final and State Government recommend the same.
26. During the meeting, ICFRE also made a detailed presentation on the Biodiversity Assessment study report, wherein, *inter alia*, it was clarified that

HAC has 1879 sq km of area and have 23 different coal blocks that includes Tara, Parsa, Parsa East & Kete Basan (PEKB) and Kete Extension (as on the Study period 2019-2020). These coal blocks in HAC are in 647 forest compartments.

The ICFRE study recommends that in the allotted four contiguous coal blocks falling within the Gej-Jhink watershed viz, Tara, Parsa, PEKB and Kete extension that are either already opened or in advance Stage of getting Statutory clearances/TOR approved, can be considered for mining with strict environmental safeguards including appropriate conservation measures for management of surface water and biodiversity. Further the BAR also suggests that mining in Kete Extension may be decided appropriately with strict environmental safeguards pertaining to the surface water management and biodiversity conservation measures considering the presence of relatively more very dense, moderately dense forest cover and wild life occurrence, particularly elephant movements. The officials of ICFRE also clarified that in remaining 19 coal blocks in the HAC, it is proposed that a cumulative impact assessment of all the coal blocks mining on environment or carrying capacity study involving physical, biological, social environment w.r.t developmental intervention of the entire HAC shall be carried out for decision making and to achieve sustainable development.

BAR submitted by ICFRE also suggests for making of Biodiversity Conservation Area (BCA) by including a total of 337 forest compartments covering an area of 938 sq km in Chorni watershed and 140 forest compartments covering an area of 330.51 sq km in Ton-Teti watershed. The Nodal Officer (FCA), Chattisgarh stated that in order to strengthen the conservation efforts, the State has already constituted Lemru Elephant Reserve.

In view of the ecological considerations made in the ICFRE report, the Committee was of the view that mining activities should be done responsibly with proper safeguards, which need regular monitoring.

Decision of the FAC

Taking all facts related to the case into consideration FAC after thorough deliberation and discussion with the Nodal officer Chhattisgarh and officials of

ICFRE **deferred the proposal** and recommended that a subcommittee of following members shall be formed to visit the PEKB site.

- i) Dr. Sanjay Deshmukh, FAC Member
- ii) Sh Bibhash Ranjan, Regional Officer, IRO, Lucknow
- iii) Rakesh Jagenia, DIG of Forests (WL), MoEF&CC

The Committee shall undertake visit to the Parsa East and Kante Basan coal block in Surguja District of Chhattisgarh to assess the following:

- (i) To assess that status of reclamation measures already implemented/being implemented in the lease area by the user agency in terms of its efficacy and provisions provided in the Mining Plan.
- (ii) Status of compliance of various conditions stipulated in the approval dated 15.03.2012

The Committee may co-opt expert member(s) as they may deem appropriate, to accompany the Committee during their visit to the site.

Agenda No. 5

Policy issue 1

Sub:- Concerns of the People of Goa, whose lands have been identified as Private Forests-Reg

1. Dr. Pramod Sawant, Hon'ble Chief Minister of Goa has sent a D.O. letter no. 1-1-2021/CM/158 dt 16.04.2021 to the Hon'ble Minister EF&CC for informing that 46 sq. km. has been identified as private forests in the state of Goa. Further, for approximately 32 sq.km area process for identification and demarcation of remaining Private Forest is underway as per directions of the National Green Tribunal.
2. It was further stated that since Private Forest attracts provisions of the Forest (Conservation) Act, 1980, the owners of Private Forest are facing hardships, both financial and physical, as well as spend precious time in approaching Central Government for diversion of even a very small part of their private forest area for genuine needs. Similar to other Project Proponents, they are also required to pay applicable cost of Net Present Value, land and cost for Compensatory Afforestation.
3. In view of above, it was requested that appropriate policy interventions and relaxation in the relevant Acts/rules may be considered by the Ministry to provide appropriate relief and financial incentives to people of Goa, whose land have been identified as private forests.
4. The issue is being considered similar to the private forest areas of Mussoorie, Uttarakhand. A Special guideline referred in para 11.9 in comprehensive guideline handbook has been issued by MoEF&CC to deal with specific cases pertaining to private forest area of Mussoorie (Uttarakhand). This guideline permits usage of upto 250 sq m area for residential purpose by homestead owner for bonafide use and not for any commercial ventures.
6. Permission for residential purpose on forest land is generally not entertained under the provisions of FCA 1980. However, In Uttarakhand the homestead owners have been allowed to obtain permission for construction of residential house over 250 sq. m. The applicant has to move his application under the

provisions of FCA 1980 and guideline para 11.9. The same is reproduced as under:

Residential Projects: *The Central Government will not entertain any proposal for diversion of forestland for construction of residential or dwelling houses. However, the Central Government has accorded permission for construction of residential houses in their private forests land for construction of residential or dwelling houses in the MDDA areas of Uttarakhand subject to fulfilment of following conditions:*

- a) *Construction activity for residential purpose in private forest shall be allowed only for domestic purpose and shall not be extended to any institutional buildings or commercial development*
- b) *The construction activities shall be restricted to a maximum of 250 square meter of built up area in each case.*
- c) *The construction of residential building in private forest is permitted in MDDA areas and other parts of Uttarakhand State only in order to alleviate hardship of homestead owners for constructing/completing their bonafide residential buildings.*

Above stipulation is strictly restricted to construction of residential or dwelling houses in private forest land in MDDA areas of Uttarakhand, where non - forest land is not available.

Decision of FAC:

FAC after thorough deliberation and discussion on the issue, recommended that, one time permission for construction of homestead/ residential houses upto 250 sq m by the owners of the private area (deemed forest) in Goa may be given on similar conditions as specified in the guidelines dated 27.09.2018 issued for Mussoorie Dehradun Development Authority (MDDA).

Policy issue 2

Sub: Coal Mining leases involving forest and non-forest land; Commencement of mining operations in non-forest land before obtaining prior approval under the Forest (Conservation) Act, 1980 for the forest area within the lease – reg.

1. The above stated policy issue was also deliberated in the FAC on 25.11.20 and 25.6.2021.
2. Coal India Limited, vide their letter dated 14.07.2020 and M/o Coal vide their letter dated 14.08.2020 have, *inter-alia*, requested the MoEF&CC to allow commencement of mining operations where Stage-I approval and environment clearance has been obtained and to relax the quorum of Gram Sabha prescribed for ensuring compliance of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Subsequently, a reference was also received from the Secretary (Coal) wherein issued highlighted by the Ministry of Coal was re-iterated.
3. Issue related to commencement of mining operations in the non-forest land after obtaining Stage-I approval for mining in the forest lands in the lease area and deposition of compensatory levies into the account of CAMPA was examined in the FC Division and followings were revealed:
 - (i) As per Forest (Conservation) Rules, 2003, prior approval of the Central Government in obtained in two stages i.e. Stage-I and Stage-II. Stage-I approval is 'in-principle' approval of the Central Government, wherein certain conditions are stipulated, to be complied with by the State/User Agency. After having satisfied with the compliance of conditions stipulated in the Stage-I approval, Stage-II approval is granted by the Central Government under the FC Act, 1980.
 - (ii) Further, with a view to avoid situations where investment made for commencing mining operations become infructuous in case approval under FC Act is finally denied, the MoEF&CC vide its guidelines, as incorporated at para 1.14 of the Handbook, has provided that work on non-forest land should not be started till the final approval (Stage-II

approval) of the Central Government under the FC Act 1980s obtained for forest land.

- (iii) Hon'ble Supreme Court in Lafarge Judgment (06.07.2011) has directed not to create *fait accompli* situations. Hon'ble Court in Common Cause Judgement dated 2.09.2017, citing report dated 26.04.2010 highlighted the following:

"(b) Even otherwise the Rule 24-A(6), MCR, 1960 does not authorize the lessee to operate a mine without the statutory clearances/approvals. Therefore, in respect of a mine covered under the 'deemed extension' clause, the mining operations should be permitted to be undertaken in the non-forest area of the mining lease only if (i) it has the requisite environmental clearance; it has the consent to operate from the State Pollution Control Board under the Air and Water Acts; (iii) Mining Plan is duly approved by the competent authority; and (iv) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund.

The mining in the forest land included in the mining lease should be permissible only if, in addition to the above, the approval under the FC Act/TWP has been obtained;"

- (iv) MoEF&CC vide its guidelines dated 10.11.2015, incorporated at para 7.3 (v) of the Handbook of FC Act with a view to allow commencement of mining operations in the mining leases involving forest as well as non-forest land. It has made provisions that: the State Government, if so desires, may execute a separate mining lease for the whole or part of non-forest land falling in such mining lease, once stage-I approval under the Forest (Conservation) Act, 1980 for the entire forest land falling in such mining lease is obtained. The Government, in such cases, shall take all measures to ensure that no violations of the Forest (Conservation) Act, 1980 occurs on the forest land.
4. The proposal of M/o Coal and Coal India Limited was earlier considered by the FAC in its meeting held on 25.11.2020, wherein, after detailed deliberations it had observed that agreeing to the request as such may create *fait accompli*

situations and cannot be agreed as a general principle. For specific cases in which the forest land/non forest land is already broken within an area having approved mining plan, permission for commencement of mining operation in non-forest area may be considered by the State government after obtaining Stage I approval, subject to compliance of the following conditions:

- i) All the compensatory levies stipulated in Stage I approval have been deposited.
 - ii) Environment clearances for the total area have been obtained.
 - iii) Such permission in the non-forest area shall not create any obligation of *fait accompli* with regard to Stage II clearance for the proposed forest area
5. The competent authority in the Ministry, after examination of the recommendation of the FAC, desired to seek legal opinion in the matter from the Ministry of Law & Justice. The opinion received from MoL&J is as follows:
- “From the above, it is very much clear that what may constitute a fait accompli situation is a question of fact and not the question of law and therefore, the administrative Ministry is advised to look into all aspects of a project and while granting clearances of Stage-I or Stage-II take all necessary measures that requires to be taken to avoid a fait accompli situation.”*
6. From the opinion of the M/o L&J, it may be ascertained that decision on the commencement of mining operation in non-forest land (in respect of existing mining leases) after obtaining Stage-I approval, environment clearance and deposition of compensatory levies into CAMPA account, is an administrative decision to be taken by adequately addressing the factor which may create *fait accompli* situations. Cases where such dispensation is proposed, Stage-I clearance and environment clearance already stand obtained by the concerned State/User Agency, i.e. well informed decision/inclination of the Central Government already made, implies that factor attributing to *fait accompli* situations, if any, have been taken care off/addressed.
7. In view of the above, the file was submitted seeking the approval of the competent authority to accept the recommendation of the FAC and to amend the para 1.14 of the Handbook of the Forest (Conservation) Act, 1980 to

consider commencement of mining operations in non-forest land in specific cases having forest land/non forest land already broken up within an area having approved mining plan and in which Stage-I approval has been obtained. The amended para was submitted for approval as under:

"1.14. Projects involving both forest and non-forest lands: Some projects involve use of forest land as well as non-forest land. State Governments/project authorities sometimes start work on non-forest lands in anticipation of the approval of the Central Government for release of the forest lands required for the project. Though the provisions of the FC Act may not have technically been violated by starting of work on non-forest lands, expenditure incurred on works on non-forest lands may prove to be infructuous if diversion of forest lands involved is not approved. Therefore, if a project involves forest as well as non-forest land, work should not be started on non-forest land till approval of the Central Government for use of forest land under the Act has been obtained unless and to the extent permitted by the FC Rules or guidelines issued there under.

However, for specific cases in which the forest land/non forest land is already broken within an area having approved mining plan, permission for commencement of mining operation only in non-forest area may be considered by the State government after Stage 1 approval, subject to compliance of the following conditions:

- (i) All the compensatory levies stipulated in Stage I approval have been deposited.*
- (ii) Environment clearances for the total area have been obtained.*
- (iii) Such permission in the non-forest area shall not create any obligation of fait accompli with regard to Stage II clearance for the proposed forest area*

8. Secretary, EF&CC, after examination of the matter, observed that:

"I don't agree with recommendation of FAC. Even though lease area may include forest area, we are under no obligation to grant Forest clearance. There can be no fait-accompl. If PP undertakes mining operation in non-forest area, it is none of our business to stop it and

certainly casts no obligation on us to grant FC. If some expenditure of PP becomes infructuous, so be it. He is taking that risk. We have absolutely no jurisdiction over non-forest land and shall not indulge in over-reach. We shall restrict ourselves to just what SC order says, nothing beyond it. We shall permit any operations in non-forest area as long as it does not involve use of forest area. Please reconsider it in FAC again”.

9. Based on the above observation of Secretary, EF&CC, the issue was again reconsidered by FAC on 26.6.2021 and FAC after thorough deliberation and discussion with the Nodal Officer Madhya Pradesh, Regional officer IRO Bhopal, IRO Nagpur observed that for reaching a conclusive stand on keeping non-forest area out of consideration of FC proposals it is essential that holistic information is available before FAC so that it could make appropriate recommendation and that the approval doesn't create a *fait-accompli* situation underlined by Hon'ble Supreme Court. Therefore, the FAC decided that IRO, Bhopal to prepare a comprehensive briefing paper on all-India basis on the matter. Accordingly, the DDG, IRO, Bhopal was requested.
10. DDG, Integrated Regional Office, Bhopal submitted their reply in response to Ministry's letter dated 23.07.2021, made an analysis of the issue and submitted the following recommendations:
 - i. In case of violation they should forego a bank guarantee which may be prescribed, for such cases.
 - ii. Relevant State Forest Act/Revenue Forest Act/IFA, 1927 whatever prescription is available for such violation may be made applicable. Penal NPV for violation of guidelines may be prescribed.
 - iii. In this case only an undertaking that he will not claim *fait accompli* plea in case of rejection of forest area for diversion may be obtained from UA.

Decision of FAC

FAC after thorough deliberation and discussion with DDGs who attended the meeting, observed that in cases where the mining area involve both forest and

non forest area, the user agency can start the work over non forest area, subject to following conditions:

- (i) The mining plan for working in the non-forest area within a coal block/lease (which also has forest area within it), shall not involve any forest area in the coal block/lease concerned.
- (ii) No component/activity of the mining in the non-forest forest of such block/lease shall have any dependency in the forest area of the same block/lease.
- (iii) Such permission in the non-forest area shall not create any obligation or *fait accompli* with regard to approval (Stage-I or Stage-II) under the Forest (Conservation) Act, 1980 by the Central Government.
- (iv) Stand-alone proposal shall be made, if mining is intended in the forest area of the coal block/lease, under the provisions in the FC Act, 1980. No reference of mining already taken up in non-forest area shall be made in such proposal.
- (v) In case of any violation over forest area is reported, matter shall be dealt as per the provisions in the FC Act, 1980 and Rules made thereunder.

Confirmed through E-mail

Dr. Sanjay Deshmukh
(FAC Member)

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Shri S. D. Vora
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Shri O. P. Sharma
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Approved the final draft

Subhash Chandra

(Chairman and DGF)