

MINUTES OF THE MEETING OF THE FOREST ADVISORY COMMITTEE (FAC) HELD

ON 30TH MARCH, 2020

Agenda No. 1

Recommendation of FAC made under Agenda item no. 3 will apply *mutatis mutandis* to Agenda item no. 1

Agenda No. 2

File No. 8- 14/2017-FC

Sub: Diversion of 100 ha of forest land for extension of Runway at Shibpur, Andaman & Nicobar – regarding.

1. The FAC considered the above-mentioned agenda item in its meeting held on 30.03.2020 through video conferencing due to unprecedented situation of a lockdown on account of Covid-19 outbreak. Dy. Director General (Central), Regional Office, Chennai, Dy Director General (Central), Regional Office, Bhubaneshwar and Dy. Director General (Central), Regional Office, Nagpur had also joined the meeting.
2. Facts of the case, in the form of fact sheet were presented before the Committee. After detailed deliberations on the issue, the FAC, noted the following:
 - i. Proposal was granted Stage-I approval by the MoEF&CC on 10.07.2017, one of the conditions of which was i.e. condition no. (iii), as below:

“To compensate for the trees lost due to the proposed diversion, 100 ha area of degraded forest land will be identified and be earmarked for Compensatory Afforestation. This degraded forest land will be planted preferably @ 1000 trees/ha for compensating the trees lost in the proposed diversion. Suitable CA scheme is to be prepared and user agency will bear the cost thereof. The CA scheme and shape/kml file of degraded forest land for CA will be provided.”
 - ii. FAC further noted that given the rich forest cover in the A&N Islands, compliance of above mentioned condition could not be ensured by the A&N Administration (A&NA). A&NA approached Hon’ble Supreme Court seeking relief in this regard. Apex Court vide its order dated 4.10.2018 directed that *the Secretary (EF&CC) to*

have a meeting with the officers of A&N administration and CEC some time next week so that the entire problem can be sorted out.

- iii. In pursuance of directions of Apex Court, Ministry vide letter dated **22.05.2019** issued guidelines stating that States/Union Territories having forest more than 75% can take up Compensatory Afforestation in any other State/UT. Subsequently, Ministry vide letter dated **12.10.2019, viewing peculiar and special circumstances of A&N Administration** requested four States namely Uttar Pradesh, Madhya Pradesh, Rajasthan and Kerala for identification of degraded forest land and non-forest land for the purpose of raising CA in lieu of non-forestry use of forest land in A&N Islands. MoEF&CC vide letter dated 21.10.2019 also requested all State/UT Governments to spare area for CA for the projects of A&N Administration.
- iv. FAC was further informed that a meeting was held on 19/12/2019 under the chairmanship of DGF&SS, wherein it was decided that for the “Naval Base proposal”, the Compensatory Afforestation will be pursued with State Governments of Uttar Pradesh, Telangana or any other willing state. However, no concrete proposal in this regard has been received from any State so far.
- v. In the meanwhile, Lieutenant Governor, A&NA vide his letter dated 20.12.2019 informed that the A&N Islands have forest cover of more than 90% of its geographical area and only 7.71 Sq. km of revenue land being available for development /tourism projects. Reserving such a large tract of revenue land for afforestation only for one project would impact all development activities and impose a severe limitation. A&NA requested intervention of MoEF&CC and to accord stage-II approval to the project.
- vi. The A&NA has already made available revenue land 100 ha extent for compensatory afforestation purposes in lieu of forest land being approved for non-forestry purposes. There is hardly any scope of afforestation over the said non-forest land, as the said land is fully stocked with vegetation. Principally, the condition regarding ‘land’ for ‘land’ has already been complied. Therefore, the issue related to plantation of 1000 saplings per ha needs to be addressed as the same cannot be taken up in the identified non-forest land. Ministry, in consultation

with the CEC and A&NA has already made efforts to undertake such afforestation in other State/UTs. However, there has been no success in this regard so far.

3. After detailed deliberations and taking note of the various facts and developments, the FAC recommended the following:
 - i. The 100ha non-forest land identified towards Compensatory Afforestation, shall be mutated in the name of A&N Forest Department and notified as RF/PF, without further delay.
 - ii. The user agency shall deposit cost of raising 100ha plantation (the afforestation scheme may be prepared which is applicable to the locality where the 100 ha non-forest land has been identified). The requisite amount for such afforestation based on appropriate schedule of rates shall be deposited in A&N CAMPA.
 - iii. After obtaining final approval, A&NA shall explore the possibility of undertaking afforestation of 1000 trees per ha on any degraded forest land suitable for afforestation in A&N or wherever available in the country. To identify such degraded forest land, A&NA may take help of FSI, Dehradun.
 - iv. Details of such lands proposed to be used for raising afforestation may be made available to the MoEF&CC within six months of final approval, for undertaking monitoring in near future.

Agenda No. 3

F.No. 11/201/2019-FC

Sub: Validity of approval granted under the Forest (Conservation) Act, 1980 vis-à-vis extension of Mining Leases under Rule 3(2) of Mineral (Mining by Government Company) Rule, 2015 -reg.

1. The FAC considered the above-mentioned agenda item along with Agenda-1, through VC conducted with members participating from home (due to nationwide lockdown) held on 30.03.2020. DDG (Central), Regional Office, Nagpur and DDG (Central), Regional Office, Bhubaneswar were also present in the meeting. Facts of the case were circulated through mail and were presented before the Committee. The details may be seen at www.PARIVESH.nic.in. After detailed deliberations on the issue, the FAC, noted the following:
 - i. A request dated 17.09.2019 has been made by the Ministry of Steel, Government of India wherein a clarification was sought from MoEF&CC to extend the validity of approval already granted under the Forest (Conservation) Act, 1980 to make it co-terminus with the mining lease period accorded under rule 3(2) of Mineral (Mining by Government Company) Rules 2015 issued under the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (MMDR-2015). Under the relevant rules, of MMDR-2015, State Government of Chhattisgarh extended the validity of five (5) mining leases of M/s National Mineral Development Corporation (NMDC). Out of the five, four were originally granted mining lease in the year 1965 while one lease was granted in the year 1967. Therefore, given the provisions of the MMDR-2015, period of 50 years has already expired in 2015 (for 4 leases) and in 2017 (in respect of 1 lease).
 - ii. Further, the State Government, exercising the provisions of Rule 3 (2) of Mineral (Mining by Government Company) Rule, 2015 extended the validity of these mining leases by another 20 years i.e. for a period upto 2035 and 2037, respectively.
 - iii. Similar request was also received from Government of Odisha. The facts are placed in Agenda-1.
 - iv. The matter related to request of Chattisgarh, as presented in this agenda was earlier

considered by the FAC in its meeting held on 17.10.2019 wherein the Committee recommended the Ministry may obtain legal opinion from the Ministry of Law and Justice on the following:

Whether Ministry can extend the prior approval granted to these mines during 1998 to 1999, for a period upto 2035 and 2037 to make it co-terminus with the valid mining lease granted under Rule 3 of the Minerals (Mining by Government Companies) Rules, 2015 notified under the MMDR Act, 1980

- v. The recommendations of FAC were placed on the file for approval of competent authority. In the process, Secretary MoEF&CC observed that FAC may re-examine the issue in the light of latest legal opinions of MoLJ and law officer obtained with respect to different proposed amendments in FCA rules with reference to the amendment in the provisions of MMDR (Amendment) Act 2015. It was also observed that there are no expressed provisions of “validity of prior approval” of Central Government under the Forest (Conservation) Act, 1980. However, in case of mining projects, based on interpretations of different court orders and different legal opinions from time to time, validity of prior approval under the provisions of Forest (Conservation) Act, 1980 has been made co-terminus with the valid leases granted under the MMDR Act, 1957.
- vi. The observations of Secretary (EF&CC) was placed before the FAC. The Committee was also apprised that after promulgation of MMDR-2015, validity of prior approvals, granted under the FC Act for non-forestry use of forest land for mining purpose, was deemed to have been extended for a period co-terminus with the valid lease granted under the MMDR-2015. Said deemed extension was provided by way of issuing guidelines dated 01.04.2015 to align the prior approval granted under the FC Act with the validity of mining lease granted under sub-section (1) of Section 8 A of MMDR-2015. The validity of mining leases owned by Government companies or corporations is governed by sub section 8 of Section 8 MMDR-2015 wherein the State Government have been authorized to extend the mining lease (after expiry of term of 50 years) of Government companies for a period of up to 20 years at a time.
- vii. Committee observed that in light of existing precedence and interpretations of court orders, prior approval of Central Government granted under the FCA-1980 for mining

purposes is co-terminus with the valid lease granted under the MMDR Act, 1957 and therefore, as such there does not seem to be any impediment in extending the prior approval granted under the FCA-1980 for mining projects of government companies.

However, giving due consideration to the fact that approval under the FCA-1980 was last granted by taking into consideration the likely impact of mining on the forests and other associated resources for a finite period only as specified in that initial FC proposal and on the presumption that forest land will be handed over back to the Forest Department after the expiry of such finite period (i.e. latest by 31.3.2020), the FAC opined that it will be appropriate for the Central Government to appraise the conditions of extension of mining projects in terms of (a) whether the conditions stipulated in the previous forest clearance related to compensatory afforestation and other mitigation measures have been adequately met or not, and (b) if the extension of mining beyond 50 years will require any additional mitigation measure because of new situation on the ground.

- viii. Committee was further informed that considering the emergency situation now (ongoing lockdown due to outbreak of Corona-19 virus), Ministry has issued an OM no. 22-25/2020-IA-III, dt. 25.03.2020, extending the validity of all prior environmental clearances expiring in respect of all category of projects expiring between 15.03.2020 and 30.04.2020, till 30.06.2020, subject to certain conditions. Moreover, Ministry of Home Affairs has considered 'mining operations' as essential services (which will not be interrupted) during this lockdown period.

2. After detailed deliberations and discussions, FAC recommended the following:

MoEF&CC, in view of the recent emergency situation (lockdown due to outbreak of Corona-19 virus), may consider the approval granted under FCA-1980, to Government mines, making those co-terminus with the valid lease period granted under the provisions of section 8(8) of MMDR-2015 with following conditions

- 1) The extension may be approved. However, the status of compliance of conditions of the previous approval and the requirement for additional mitigation measures, if any, shall be reviewed by the FAC after three months. For this purpose, the Regional Office will provide information and make recommendation on the following based on existing information/monitoring reports, decision support

system, inputs from the States government, etc. and necessary field visit/s (a) status of compliance of conditions of the previous forest clearance; (b) additional mitigation measures that have become necessary in view of new facts on the ground and considering that the extension of approval has been given for another 20 years i.e. till 2037; and (c) comprehensive status of reclamation of mined-over/ abandoned portions of the forest area as per approved mining plan.

- 2) All the additional stipulations, if any, imposed by FAC after the said review meeting, shall be complied by the user agency

Confirmed through mail
(S. D. Vora)
Member

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(Dr. Sanjay Deshmukh)
Member

not present
Additional Commissioner (Soil Conservation)
Ministry of Agriculture (Member)

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(Sh. Anmol Kumar)
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Sd/-
(A.K. Mohanty)
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(Dr. Sanjay Kumar)
Director General of Forests (FC)