

No. A5(2).GFL.CR-03/2014-15

Encl: Proposal in 3 sets

Office of the
Principal Chief Conservator of Forests
(Head of Forest Force),
Aranya Bhavan, Malleswaram,
Bengaluru - 560 003, dated: 7 -02-2015.

To

The Additional Chief Secretary to Government,
Department of Forest, Ecology and Environment,
M.S. Building,
Bangalore - 560 001.

Sir,

Sub: Diversion of 1.5383 ha. of deemed 'forest' land with private ownership in Sy.No. 146/57 A1 E1 of Neriya village in Belthangady Taluk, Dakshina Kannada District for establishment of 24 MW Mini Hydel Scheme in favour of M/s. SLV Power Private Limited, - regarding.

- Ref: 1. Letter No. FEE 57 FLL 2014 dated 20-08-2014 of the Government of Karnataka.
2. Proposal submitted by M/s. SLV Power Private Limited, Mangaluru vide No. FP/KA/HYD/7231/2014 on 29-09-2014, 07-10-2014, 23-10-2014 & 05-11-2014.
3. Letter No: ಎಚ್.ಆರ್.ಸಿ.ಆರ್-94/2014-15 dated 21-12-2014 of the Chief Conservator of Forests, Mangaluru Circle, Mangaluru.
4. This office letter of even No. dated 29-12-2014.
5. Letter No: ಎಚ್.ಆರ್.ಸಿ.ಆರ್-94/2014-15 dated 12-01-2015 of the Chief Conservator of Forests, Mangaluru Circle, Mangaluru.

In pursuant to the directions issued by Government of Karnataka under ref.(1) above, the Authorized signatory, M/s. SLV Power Private Limited, Mangalore had submitted the proposal through web-portal mode under ref.(2), for diversion of 1.5383 ha. of deemed 'forest' land with private ownership in Sy.No. 146/57 A1 E1 of Neriya village in Belthangady Taluk, Dakshina Kannada District for establishment of 24 MW Mini Hydel Scheme in favour of M/s. SLV Power Private Limited, Mangaluru under the Forest (Conservation) Act, 1980. Accordingly, directions were issued by this office on 15-11-2014 through web-portal mode to the field officers to process the proposal as per norms prevailing.

Accordingly, the Chief Conservator of Forests, Mangaluru Circle, Mangaluru after receipt of the proposal from the Deputy Conservator of Forests, Mangaluru Division through web-portal mode on 16-12-2014 as well as on receipt of hard copies of the proposal, has submitted the proposal through web-portal mode as well as in the form of hard copies vide his letter dated 21-12-2014 for the said project under ref.(3). However, after examination of the said report/proposal in this office, the Chief Conservator of Forests, Mangaluru & User Agency were directed to submit clarification with regard to some observations viz., submergence in the upstream, issue related to ownership of the land in question, land identified for raising Compensatory Afforestation etc., vide this office letter dated 29-12-2014 under ref.(4). Accordingly, the Chief Conservator of Forests, Mangaluru vide his letter dated 12-01-2015 under ref.(5) has submitted necessary clarification. Details of the same is briefed as below.

The details of the 'forest land' (which is under private ownership) required is as under:

Sl. No.	Description	Village, Taluk	Sy.No.	LxB (mts)	Area in ha.	Status of ownership
1.	Diversion weir.	Neriya Village, Belthangady Taluk.	146/57 A1 E1		0.0267	As per RTC Private land
2.	Penstock (pipeline) and Surge Tank.				1.3374	
3.	Power House, ODY and others. (proposed in non forest area)				0	
4.	Proposed Road.				0.1742	
			Total		1.5383	

The DCF, Mangaluru has visited the site on 30-11-2014 and inspected the proposed sites of weir construction, pipeline route, power house point, road formation area and also the area identified for Compensatory Afforestation. During his inspection it was noted that the proposed site is situated in the Western Ghat region near Charmady Ghat road. As per the records, the areal distance from the boundary of Kundremukha national park whose eco-sensitive zone is yet to be notified, is about 7.6 km. However, the proposed project site is a part of private property called Banjara estate. The area of this private estate is about 3100 acres, in which rubber, cardamom and cocoa is being cultivated in an extent about 300, 300 and 700 acres respectively. The Deputy Conservator of Forests has further stated that the remaining area of the estate is under 'forest cover', and that the forest of the estate is not notified as private forest but as per the dictionary meaning / definition it comes under the category of deemed forest. Furthermore, he has also reported that the criteria as specified in Government Order No. FEE 185 FAF 2011 dated 15-05-2014 has been taken into consideration while deciding whether the land is deemed forest or otherwise. It has been further clarified by the Deputy Conservator of Forests, Hassan

that since the total extent of land parcel is more than 5 ha. (i.e > 3000 acres) having > 50 naturally growing trees of more than 30 cm. at gbh per ha, this land parcel is qualified to be considered as deemed forest.

The CCF, Mangaluru has inspected the site on 19-12-2014 and he has stated that the weir proposed to be built across the stream is approximately 50 mtrs in length with top width of 1.5 mtrs and height at the deepest point is 8 mtrs, which averages to 5 mtrs. Further, he has also stated that in the weir construction area and the area to be submerged which is around 50 mtrs length upstream from the weir, a total of 22 trees have been marked for removal. However, the trees which do not cause any impediment to the construction of the weir need not be removed. Thus, the trees numbered, as 01, 06, 08 and 10 in the marking list should be retained. He has further mentioned that the project authorities were also agreeable to the suggestion. At the same time he has also clarified that as per the User Agency, the proposed mini hydel scheme is a run-of-the river type and no storage created and hence, no submergence. Accordingly, while agreeing with the opinion/recommendations of the Deputy Conservator of Forests, Mangaluru Division he has opined that the instant project may be considered for approval under Forest (Conservation) Act, 1980 subject to other necessary clearances required if necessary.

The Deputy Conservator of Forests, Mangaluru Division & Chief Conservator of Forests, Mangaluru Circle have inspected the site on 30-11-2014 & 19-12-2014 and furnished the details in Form-A, Part-II & III, the details of which are as under:

1. Though the area under forest is not notified as private forest, due to its characteristics is categorized as deemed forest. As per the RTC in Column No. 9 ownership is in the name of Shri. Mr. Y Moideen Kunhi and the User Agency is M/s. SLV Power Private Limited. Therefore, with regard to issue of how the User Agency is related to the land owner following is reported by the Chief Conservator of Forests & Deputy Conservator of Forests, Mangalore.

“The User Agency has stated that, the Owners of M/s. SLV Power Private Limited are the family members of Mr. Y Moideen Kunhi. Further, the User Agency has furnished certificates from the Company Secretary stating that the Directors and Shareholders of M/s. SLV Power Private Limited are the family members of Mr. Y. Moideen Kunhi. [Copy of the certificate from the Company Secretary are enclosed as Annexure-1 (a), 1 (b), 1(c)]. According to the User Agency, since the land owners also own the company, there is no agreement between these two”.

Further, as reported by the field officers, the matter pertaining to the land in the Sy.No. 146/57 A1 E1 is in the Hon'ble Supreme Court of India. The Hon'ble Court in its Interim Order dated 14-05-2010 in Special Leave Petition(s) No (s). 11398-11400/2009 has Ordered that ***“During the pendency of the appeal, the respondents will not create any third party rights”*** Copy of the

said Order of the Hon'ble Supreme Court is enclosed as Annexure-2. Accordingly, in the Col. 11 of RTC pertaining to this Sy.No. it has been mentioned that ಹಂಚುಕಟ್ಟಡ - 3, ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ಆದೇಶ WP 11398/-11400/2009ರಂತೆ ಉಚ್ಚ ನ್ಯಾಯಾಲಯದ 10920/1983 - 40425/1982ನೇ ಪ್ರಕರಣಕ್ಕೆ ತಡೆಯಾಜ್ಞೆಯಿದೆ ಯಾವುದೇ ವ್ಯವಹರಣೆಗೆ ಅವಕಾಶವಿಲ್ಲ.

2. User Agency has identified non-forest land for raising Compensatory Afforestation in Sy.No. 146/57/A3/D9 in Neriya Village, Belthangady Taluk, which belongs to M/s. KIADB as per RTC. In this regard the Chief Conservator of Forests, Mangaluru has reported as follows:

*"As per the information collected from the User Agency, i.e., M/s. SLV Power Private Limited, the land to an extent of 27 Acres has been leased by KIADB to M/s. Prasanna Power Ltd., a sister concern of M/s. SLV Power Private Limited, for developing mini hydel project. Out of this, 12 Acres of land is proposed for lease to M/s. SLV Power Private Limited. An agreement has also been executed between M/s. Prasanna Power Ltd., and M/s. SLV Power Private Limited in this regard, copy of this agreement is enclosed as Annexure-3. Further, KIADB has permitted M/s. SLV Power Private Limited to establish their plant of 24 MW capacity, copy of the said letter dated 03-12-2013 is also enclosed as Annexure-4. Moreover, it is also informed by the User Agency that the lease of land by KIADB is being made as **absolute Sale Deed** and would be reflected in the name M/s. Prasanna Power Ltd., subsequently, as per the agreement, M/s. Prasanna Power Ltd., will register 12 Acres of land in favour of M/s. SLV Power Private Limited. This may happen in a month's time as informed by the User Agency."*

The Deputy Conservator of Forests, Mangaluru Division in his inspection note has stated that the said land is a private plantation land with a canopy density of about 0.5 to 0.6. Since the said area identified for raising Compensatory Afforestation is already having vegetation, gap plantation/enrichment plantation can be taken up in the area with proper protection. In this regard User Agency has agreed to pay towards the cost of Compensatory Afforestation in the identified non-forest land as per prevailing norms and accordingly has submitted an undertaking.

3. The User Agency has to pay the Net Present Value (NPV) of forest land being diverted under this proposal as per conditions stipulated by Government of India, Ministry of Environment and Forests, New Delhi vide letter No. 11-9/98-FC dated 13-02-2014 and Orders dated 28-3-2008 and 9-5-2008 of the Hon'ble Supreme Court of India in I.A.No.826 in I.A.566 in WP(C) No. 202/1995. In this regard the User Agency has also given an undertaking vide dated 19-01-2015 to pay the Net Present Value towards 1.5383 ha., of Private forest land proposed for diversion. Copy of the said undertaking is enclosed with the proposal.
4. As per GoI, MoEF guidelines No. 11-54/2012-FC dated 09-11-2012 Catchment Area Treatment Plan (CATP) has to be implemented by the Deputy Conservator

of Forests, Kundapura Division at the cost of User Agency. In this regard the User Agency has submitted a CATP with a financial outlay of Rs. 3,50,000/- (lump sum) involving construction of Gully checks, check dams etc, plantation and planting of trees and stone pitching/grass pitching etc., Further, Catchment area map of the Aniyur Hole MHS – 24 MW prepared in proper scale has also been enclosed.

5. The requirement of forest land proposed by the User Agency is unavoidable and barest minimum for the project.
6. 267 trees of different species exist in the proposed area marked for felling and abstract of the tree enumeration is enclosed with the proposal. The trees species includes Red Cedar, Halasu, Dalchini, White cedar, Nandi etc.,
7. There are no protected / archeological / heritage sites / defence establishments or important monuments in the area.
8. Though the proposed Private 'forest' land do not form part of any National Park, Wildlife Sanctuary and Biosphere Reserve, etc., but it is situated at 7.6 km. from the boundary of Kudremukha National Park and accordingly is falling in the limits of Eco Sensitive Zone (ESZ) of 10 km. default as the said ESZ is yet to be notified.
9. There is no violation reported under Forest Conservation Act, 1980.

In light of the facts stated above, the following are some other observations with regard to the said proposal.

1. **Land proposed for diversion falling under deemed forest land category:** The Government of Karnataka has constituted Expert Committee-I, as per the directions of the Hon'ble Supreme Court, vide its Order No. FEE 2 FFM 97 dated 10-01-1997 to identify areas which are 'forests' irrespective of whether they are so notified, recognized or classified any law and irrespective of the ownership of the land of such forest. The said Expert Committee has submitted its report on this issue to the Government of Karnataka and after examining the said report the Government of Karnataka has filed an Affidavit in the Hon'ble Supreme Court. Further, as per the observations of the CEC of the Hon'ble Supreme Court, the Government of Karnataka vide its Order No. FEE 270 FGL 2002 dated 25-09-2002 has reconstituted the Expert Committee-I to submit a report. The Revised Expert Committee-I has categorized the 'forests' into 'Notified forests' and 'Deemed Forests' and submitted to the Government of Karnataka. The Chief Conservator of Forests, Mangaluru Circle in his site inspection report dated 19-12-2014 has reported that as per the said Revised Expert Committee-I report, extent of 1270.83 ha. (3140.21 acres) of Sy.No. 146/57 A1E1 in Neriya Village of Belthangady Taluk is categorized as Private Forest under **deemed forest** category. Further, the Government of Karnataka has constituted three (3) committees (District level, Divisional level & State level) vide its Order No. FEE 185 FAF 2011 dated 15-05-2014 to verify/review the areas included as 'Deemed Forests' in the report of Revised Expert Committee-I. The order had also specified certain

criteria for identifying 'forests' as understood in the dictionary sense. The Deputy Conservator of Forests, Mangaluru Division vide his letter dated 07-01-2015 has reported that the criteria as specified in Government Order No. FEE 185 FAF 2011 dated 15-05-2014 has been taken into consideration while deciding whether the land is deemed forest or otherwise. Since the total extent of land parcel is more than 5 ha. (i.e > 3000 acres) having > 50 naturally growing trees of more than 30 cm. at gbh per ha, this land parcel is qualified to be **considered as 'forest'** for the purpose of Forest (Conservation) Act, 1980.

2. **Identification of non-forest Compensatory Afforestation land:** User Agency has identified non-forest land to an extent of 1.5383 ha. for raising Compensatory Afforestation in Sy.No. 146/57/A3/D9 in Neriya Village, Belthangady Taluk, which belongs to M/s. KIADB as per RTC. In this regard the Chief Conservator of Forests, Mangaluru as detailed earlier the issues involved has reported that the User Agency has given undertaking that the same shall be mutated in favour of Karnataka Forest Department.

Therefore, the User Agency needs to transfer & mutate the said land in favour of Karnataka Forest Department subsequent to Stage-I approval.

3. **Issue related to Ownership of the land:** The proposed site is part of a private land called Banjara Estate. As per RTC an extent of 3140.21 acres it is under the ownership of Sri. Y. Moideen Kunhi. In this regard, the User Agency has inter alia stated in his letter dated 27-01-2015 (copy enclosed) as follows:

1. "The said plantation land in Sy.No. 146 was purchased by M/s. Y. Moideen Kunhi & Company, a partnership firm through registered sale deed dated 24-01-1957 from Shri Cholapurath Koru.
2. The land consisted of Cardamom plantation of about 2500 acres, rubber plantation in about 220 acres and Coco plantation is about 100 acres and about 573 acres of land occupied by alleged tenants.
3. After coming into force of the Karnataka Land reforms Act of 1961, the Land Tribunal, Belthangady by order dated 27-09-1982, held that the land to an extent of 368.16 acres is in excess of the ceiling limit.
4. The Tahsilder took possession of the excess land on 25-10-1982.
5. The order of the land Tribunal Belthangady was questioned by the State of Karnataka by filling W.P.No. 10920/1983 in the Hon'ble High Court.
6. During the hearing, however, the Hon'ble High Court on 07-11-1990 dismissed the above Writ Petition on merits holding that there is no error in the order passed by the Land Tribunal.
7. Again, State of Karnataka filed a Review Petition on 15-10-2004, seeking review of the order of 07-11-1990 passed by the Hon'ble High Court, after a lapse of 14 years.
8. The above Review Petition was dismissed by the Hon'ble High Court on 26-09-2007.

9. Copy of the order dated 26-09-2007 of the Hon'ble High Court is enclosed vide Annexure-1 for your reference, where in all the details is mentioned.
10. However, the State of Karnataka has appealed to the Hon'ble Supreme Court in 2009 again.
11. The Hon'ble Supreme Court passed an order dated 14-05-2010 that **"During the pendency of the appeal, the respondents will not create any third party rights"**. Copy of the said order is enclosed vide Annexure-2.
12. Government of Karnataka, had accorded permission to develop Mini Hydel Schemes in the land under question.
13. However, a petition was filed with Hon'ble Supreme Court by applicants seeking special directions to State of Karnataka to consider and grant permissions for development of Mini Hydel Schemes not with standing the pendency of the special leave petition. Copy of the petition filed by us is enclosed vide Annexure-3.
14. The Hon'ble Supreme Court passed on order on 02-08-2013 in this regard, copy of the order is enclosed vide Annexure-4 & 4 (A)."

The Hon'ble Supreme Court vide its Order dated 02-08-2013 ordered as under:

"We have heard learned counsel for the parties and we direct the State of Karnataka to consider whether permission can be granted to the respondents in the light of the Government orders dated 28-04-2010, 01-04-2011 and 26-07-2012 and any other order and material that the Government that it considers relevant notwithstanding the pendency of these Civil Appeals. We make it clear that we are not expressing any opinion on the merits of the claim made by the appellant-State nor by the respondents nor will any equity arise out of this order passed by this court".

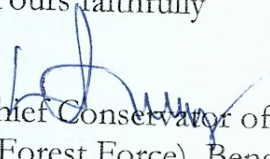
In light of the facts stated above, the Government of Karnataka may take decision in light of G.O. dated 28-04-2010, 01-04-2011, 26-07-2012, as directed by Hon'ble Supreme Court with regard to whether permission could be granted to respondents pending civil dispute before the Hon'ble Supreme Court and opinion from the Revenue Department as well as Law Department regarding process of proposal before forwarding the proposal to the Government of India for approval under Forest (Conservation) Act, 1980.

Moreover, it is to note that since around 250 trees may have to be felled in this proposed project, the ownership of these trees shall also be ascertained from Revenue and Law Department in light of litigation pending in the Hon'ble Supreme Court.

Under the circumstances, while agreeing with recommendation of the field officers it is requested to kindly move this proposal with the Government of India for considering in-principle (Stage-I) approval for diversion of 1.5383 ha. of deemed 'forest' land with private ownership in Sy.No. 146/57 A1 E1 of Neriya village in

Belthangady Taluk, Dakshina Kannada District for establishment of 24 MW Mini Hydel Scheme in favour of M/s. SLV Power Private Limited, Mangaluru under the Forest (Conservation) Act, 1980 subject to the specific condition that the consent of Law & Revenue Department is taken before submitting the proposal to Ministry of Environment, Forests & Climate Change, Government of India and general conditions appended in **Annexure 'A'**. The proforma particulars along with relevant documents in 3 sets are submitted herewith for kind perusal and further action.

Yours faithfully


Principal Chief Conservator of Forests
(Head of Forest Force), Bengaluru.

Copy to the Chief Conservator of Forests, Mangaluru Circle, Mangaluru for information and necessary action.


Copy to the Deputy Conservator of Forests, Mangaluru Division, Mangaluru for information and necessary action.

Copy to the M/s. SLV Power Private Limited, YMK Compound, Ashok Nagar, Mangaluru-575 006 for information and necessary action.


7/8/15

ANNEXURE 'A'

1. The legal status of the land shall remain unchanged and it shall continue to be as deemed '**forest**' land, subject to final orders of the Hon'ble Supreme Court of India in Special Leave Petition(s) No (s). 11398-11400/2009, applicable in the instant case.
2. The area diverted should be used for the purpose for which it is granted.
3. No residential buildings shall be permitted in the proposed '**forest**' land.
4. The area diverted shall be demarcated on ground by fixing RCC pillars at an interval of 20.00 mtrs and the boundary shall be fenced with chain link mesh at the cost of the User Agency.
5. The Forest (Conservation) Act, 1980, the Karnataka Forest Act, 1963 and Rules, 1969 and other relevant Acts & Rules will be applicable for any violation.
6. The identified Compensatory Afforestation land to an extent of 1.60 ha. shall be transferred & mutated in favour of the Karnataka Forest Department. Subsequent to Stage-I approval. The User Agency shall pay Compensatory Afforestation charges at the rate prevailing at the time of approval.
7. The User Agency shall pay the Net Present Value (NPV) of forest land diverted under this proposal as per orders dated 28-3-2008 and 9-5-2008 of the Hon'ble Supreme Court of India.
8. The Catchment Area Treatment Plan (CATP) shall be executed by the User Agency at the project as per the plan under the supervision of the Deputy Conservator of Forests, Mangaluru Division.
9. The User Agency shall ensure that there should be no damage to the available fauna and other flora.
10. No labour camp shall be established on the forest land.
11. The lessee shall not sub-lease, mortgage or hypothecate the '**forest**' land.
12. Only minimum number of trees shall be cut based on actual requirement of the project and the trees numbered as 01, 06, 08, 10, 66, 70, 76, 77, 87, 93, 118, 119, 171, 182, 183, 191, 192, 203, 204, 206, 227 & 228 (22 trees) should not be removed.
13. The weir (reservoir) should be kept open for drinking of water by Wild animals.
14. The User Agency shall also abide by all the conditions imposed upon by Government of India, the Government of Karnataka and the Principal Chief Conservator of Forests (Head of Forest Force).


Principal Chief Conservator of Forests
(Head of Forest Force), Bengaluru.

PART-IV

(To be filled in by the Nodal Officer or Principal Chief Conservator of Forests or Head of Forest Department).

<p>Detailed opinion & specific recommendation of the State Forest Department for acceptance or otherwise of the proposal with remarks.</p> <p>(While giving opinion, the adverse comments made by Forests or Deputy Conservator of Forests should be categorically reviewed and critically commented upon).</p>	<p>Recommended for diversion of 1.5383 ha. of deemed 'forest' land with private ownership in Sy.No. 146/57 A1 E1 of Netiya village in Belhanga Taluk, Dakshina Kannada District for establishment of 24 MW Mini Hydel Scheme in favour of M/s. SLV Power Private Limited, Mangaluru under the Forest (Conservation) Act, 1980 subject to the specific condition that the consent of Law & Revenue Department is taken before submitting the proposal to Ministry of Environment, Forests & Climate Change, Government of India and general conditions appended in Annexure 'A'.</p>
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Signature:

Name:

Designation:

P. ANUR REDDY, IFS.,

Nodal Officer &

Additional Principal Chief Conservator of Forests (Forest Conservation) Bangalore

Aranya Bhavan, Malleshwaram 18 th Cross, Bangalore - 560 003

(Official Seal):

Counter signed by :

Name:

Designation:

Principal Chief Conservator of Forests (Head of Forest Force) Bangalore.

G.V. SUGUM, IFS.,

N.D.O. No: 51 /2014-15.

Date: 07-02-2015.

