

CHAPTER-4

Some Clarifications

4.1 Delegation of Powers

- (i) All proposals involving diversion/dereservation of forest land up to 20 hectares, and proposals for clearing of naturally grown trees in forest area or portion thereof shall be sent by the concerned State/UT Government to the concerned Regional Office of MOEF.
- (ii) Chief Conservator of Forests of the concerned Regional Office shall be competent to finally dispose of all proposals (including decision regarding violation of Act) involving diversion/dereservation of forest land up to 5 hectares, except in respect of proposals for regularisation of encroachments and mining (including renewal of mining leases). Similarly, proposals involving clearing of naturally grown trees in forest area or portion thereof for reforestation shall also be finally disposed of by the Chief Conservator of Forests of the concerned Regional Office, subject to guidelines/instructions issued in this regard (refer to para 1.8) and any other instructions issued from time to time.
- (iii) In the absence of Chief Conservator of Forests, these powers shall be exercised by the concerned Conservator of Forests of the Regional Office in case the post of Chief Conservator of Forests is vacant due to transfer, long leave, etc. (In respect of Regional Office at Chandigarh, these powers shall be exercised by Conservator of Forests of the Regional Office of Chandigarh).
- (iv) A list of all cases finally disposed of and a list of cases rejected along with reasons thereof for rejection would be required to be sent every month to the MOEF by the Regional Office.
- (v) (a) In respect of proposals involving diversion of forest area above 5 hectares and up to 20 hectares and all proposals for regularisation of encroachments and mining up to 20 ha., the proposals shall be examined by the Regional Chief Conservator of Forests/Conservator of Forests in consultation with an Advisory Group consisting of representatives of the State Government from Revenue Department, Forest Department, Planning and/or Finance Department and concerned Department whose proposal is being examined. The views of the Advisory Group shall be recorded by the Regional Chief Conservator of Forests and along with the same, the proposal shall be sent to Secretary, MOEF for considering and final decision. It is to be clarified that views of this Advisory Group in no way shall be binding while deciding the proposal. The meeting of the Advisory Group may be held at the State Capital. The proposal will not be deferred for want of quorum.

(b) The meeting of the State Advisory Group (SAG) will normally be held once in month at concerned State Capital. The Regional Chief Conservator of Forest shall act as Chairman of the Advisory Group and Nodal Officer may be nominated to work as Member Secretary of the State Advisory Group.

(c) State Government may take immediate steps to nominate representatives of the State Government not below the rank of joint Secretary for the Advisory Group. Nodal officer may be nominated to work as Member Secretary of the State Advisory Group.

(d) The details of the officer alongwith address, telephone number, etc may be directly communicated to the concerned Regional Chief Conservator of Forests under intimation to this Ministry to facilitate early processing of the proposals by the Advisory Group.

4.2 Two Stage Clearance of Proposals

- (i) Forestry clearance will be given in two stages. In Ist stage, the proposal shall be agreed to in principle, and after receipt of compliance report from the State Government in respect of compliance of the stipulated conditions regarding transfer and mutation of non-forest area

identified for compensatory afforestation, if any, and transfer of funds in favour of Forest Department, etc., formal approval under the Act shall be issued.

- (ii) However in cases where compliance of conditions stipulated in the in-principle approval is awaited for more than 5 (Five) years from the State Government, the in-principle approvals would summarily be revoked. After the revocation of the in-principle approval, if the State Government agency is still interested in the project, they would be required to submit a fresh proposal which shall be considered de-novo.
- (iii) Sometimes the proposals for renewal of mining leases are accorded in-principle approval/temporary working permission subject to compliance of certain conditions. It has come to the notice of the Ministry that many a times the user agency approaches the Courts against the very conditions on which the proposals are accorded in-principle approval. Ideally the user agency should sort out any grievance in respect of any stipulated condition with the Central Government/State Government. **Therefore, it has been decided that in cases where the user agency decides to approach the Courts for redress, the in-principle approval and temporary working permission shall stand revoked/in abeyance unless the Court cases are withdrawn and conditions complies with or till the cases are decided by the Courts.**
- (iv) Approved proposals shall not normally be reopened for review of the conditions, which have been stipulated earlier.

4.3 Anticipatory Action by the State / UT Governments-Penal Compensatory Afforestation

- (i) Cases have come to the notice of the Central Government in which permission for diversion of forest land was accorded by the concerned State Government in anticipation of approval of the Central Government under the Act and/or where work has been carried out in forest area without proper authority. Such anticipatory action is neither proper nor permissible under the Act which clearly provides for prior approval of the Central Government in all cases. Proposals seeking ex-post-facto approval of the Central Government under the Act are normally not entertained. The Central Government will not accord approval under the Act unless exceptional circumstances justify condonation. However, penal compensatory afforestation would be insisted upon by the MOEF on all such cases of condonation.
- (ii) The Penal compensatory afforestation will be imposed over the area worked/used in violation. However, where the entire area has been deforested due to anticipatory action of the State Government, the penal compensatory afforestation will be imposed over the total lease area.

4.4 Projects Involving Forest as well as 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 projects. Though the provisions of the 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 land involved is not approved. **It has, therefore, been decided that if a project involves forest as well as non-forest land, work should not be started on non-forest land till the approval of the Central Government for release of forest land under the Act has been given.**

4.5 Diversion for Construction of Houses

- (i) On a proposal for construction of houses the late Prime Minister had observed: "Destruction of our forest has already caused great damage to our environment. Therefore, I am not at all in favour of use of forest land for construction of houses. The State Government should find other land for such purposes."

The Central Government will not entertain any proposal for diversion of forest land for construction of residential or dwelling houses.

- (ii) Diversion of forest land for construction of other buildings also will not be normally considered. However, such diversion may be allowed for construction of schools, hospitals/dispensaries, community halls, cooperatives, panchayats, tiny rural industrial sheds of the Government etc., which are to be put up for the benefit of the people of that area, but such diversion should be strictly limited to the actually needed area and further it should not exceed one hectare in each case.

4.6 Excavation of Minor Minerals from the River Beds

- (i) Extraction of minor minerals like boulders, bajri, stone, shell, etc. from the river beds shall not be permitted if the river bed is in a national park or a wildlife sanctuary unless such extraction is for the benefit of the forest or wildlife.
- (ii) There shall be no labour camp in the forest area for the labour involved in the extraction work.
- (iii) Extraction of minor minerals shall be from the middle of the river bed after leaving one fourth of the river bed on each bank untouched.

4.7 Safety Zone for Mining Operations

- (i) Forest area required for safety zone for mining operations should not be part of the forest area proposed for diversion. However, it should be indicated separately in the proposal. Such area will have to be fenced at the cost of the project authority. Further, project authority will have to deposit funds with the Forest Department for the protection and regeneration of such safety zone area and also will have to bear the cost of afforestation over one and a half times of the safety zone area in degraded forest elsewhere.
- (ii) Safety zone area calculation in the proposal should be done taking 7.5 metres strip of the forest land all along the outer boundary of the mining lease area. If it is a cluster proposal, then the outer boundaries of the cluster should be taken as the safety zone.
- (iii) In order to safeguard public roads, forest roads, natural streams and nallahs located in mining lease areas, it is necessary that no mining activities should be carried out up to certain reasonable extent. This area can also be included in the safety zone calculation and provision for its fencing and regeneration should be made in the proposal.

4.8 Catchment Area Treatment Plan for Irrigation Projects

- (i) Proposals for diversion of forest land for major and medium irrigation projects shall invariably be accompanied by detailed catchment area treatment plan. However, in respect of minor irrigation project, catchment area treatment plan will not be insisted.
- (ii) Proposals for diversion of forest land for Hydro-electric projects shall invariably be accompanied by detailed catchment area treatment plan. However, in respect of small hydel projects (maximum up to 10 MV capacity), Where are either canal head or run-of the river projects without involving impounding of water/submergence of forest land, catchment area treatment plan will not be insisted.

4.9 Special Arrangement in case of Large Projects

In case of large projects, depots for fuel wood should be set up by project authorities who will also arrange alternate fuel like coal, kerosene, biogas, LPG, electricity etc. The supply should be free of cost to the labourers and free or at subsidised rates to the other staff as may be determined by the project authorities.

4.10 Site Inspection

- (i) The proposed forest area shall be inspected by a responsible Forest Officer of the State Government. If the area is very important from the forestry angle, the territorial Conservator should himself inspect the area and give complete information relating to the forest and aspects of wildlife. The scientific names of important timber species should be given while describing composition of the forest crop. If the area is relatively less important, the DFO could inspect the area. The Inspecting Officers should clearly record in item 13 of the proforma if any violation is observed like tree felling, land breaking etc., in that area by the user agency. In any case the recommendations of the Chief Conservator of Forests should be categorical and specific and should be sent with photographs of inspected sites, highlighting the aspects observed, especially when the area is large or is sensitive and fragile. However, every proposal up to 40 hectare must be accompanied by a site inspection report from the DFO and proposal involving area above 40 hectare should have a site inspection report of the CF. They should, apart from providing the information in the proforma, also attach a clear cut certificate as regards the violation of the Forest (Conservation) Act, 1980. In case, violation has taken place, a detailed report should be the DFO and countersigned by the CF along with the proposal.
- (ii) In respect of proposals involving diversion of forest land above 100 hectares, site inspection shall also be carried out by Regional Office of the Ministry. However, the State/UT Governments are required to continue to send a copy of proposals involving diversion of forest land above 40 hectare to the concerned Regional Office as per exiting practice. The site inspection report should be on the prescribed proforma, which is at Annexure-X and it should be specific on alternatives examined by the project authority, minimum requirement of forest land and self explanatory particularly with regard to overall impact of the project and also contain site specific mitigating measures, in case of recommending a project. The report should also contain photographs of the site indicating main points mentioned in the report.
- (iii) However, site inspection of proposals involving diversion of forest land upto 100 hectares will be need based i.e. done by the Regional Officers as and when desired by the Forest Advisory Committee or Ministry. The Regional Office will, however, scrutinise the proposal (involving forest land between 40 to 100 hectares) and can their observation or any feedback particularly violation of the Forest (Conservation) Act, 1980 for further processing of the proposal.
- (iv) In respect of proposals involving renewal of leases, the Regional Officers of the Ministry should submit a copy of the repot of the latest monitoring done (one year before the expiry period) along with the abstract of monitoring report of the project during the lease period specially highlighting the conditions which have not been fulfilled, with complete details of the reasons for not fulfilling. the conditions which have been complied with should also be h highlighted with the quality of performance of the project authorities with short note on the desirability or renewal of lease and other recommendations.

4.11 Complete Details

While forwarding the proposal to the Central Government, complete details in all aspects of the case should be given. Incomplete and deficient proposal will not be considered and will be returned to the State Government in Original.

4.12 Specific Time Limits

- (i) To ensure speedy disposal of proposals, specific time limits have to be laid down for disposal of references at various levels. Efforts should be made to dispose of each reference at the State

Governments level within a maximum period of 60 days. Specific instructions may be issued in this regard to officers at all levels.

- (ii) Cases which are complete in all respects shall be disposed of within 90 days by the Central Government.

4.13 Quarterly Progress Report (QPR)

A Monitoring Cell has been created in the Ministry of Environment & Forests, which shall be looked after by Director (FC) and an Asstt. Inspector General of Forest. In all cases the States will submit quarterly reports regarding the implementation of the stipulations laid down by the Government of India while approving the project and future clearance of projects of the States and Union Territories concerned will depend upon the fulfillment of the stipulations and the achievements in compensatory afforestation. Monitoring Cell will also monitor the time taken by the authorities in processing the case at different levels of the State Government as well as Central Government.

Along with quarterly progress report, a statement in tabular form as given below should also be submitted which will give status of the total number of proposals in the State.

- (a) Name of State
- (b) Total no. of proposals submitted since 1980
- (c) No. of proposals finally approved
- (d) No. of proposals given Stage I approval
- (e) No. of proposals rejected
- (f) No. of proposals withdrawn by State Govt.
- (g) No. of Proposals closed for want of information
- (h) No. of proposals pending with Central Govt.
- (i) No. of proposals pending with State Govt. for want of information
- (j) Remarks

4.14 Rejection/Reopening of Cases

- (i) In cases where the State Government is requested to furnish clarifications or additional information relating to a proposal, all particulars should be made available to the Central Government within 60 days. If such particulars are not received within a maximum of 90 days, the proposal may be rejected by the Central Government for non-furnishing of essential information. Such cases could be reopened provided the following conditions are satisfied:
 - (a) all the required information has been made available.
 - (b) delay in providing the information is satisfactorily explained, and
 - (c) there is no change in the proposal in terms of scope, purpose and other important aspects.
- (ii) In some cases, the State Government comes up with a request for reconsideration of the proposal after it has been considered and rejected by the Ministry. Such request should be made within three months from the date of the issue of the rejection letter. The request should give a detailed justification for reconsideration as well as comments on the grounds on which the proposal was rejected by Ministry.

4.15 Nodal Officer

- (i) Separate cells for dealing with diversion of forest land cases should be opened at the State Government and PCCF levels. A whole-time senior officer not below the rank of Conservator of Forests should head the cell, who should be designated as the Nodal Officer.
- (ii) The Nodal Officer should receive cases from the user agencies and entertain all correspondence from them. He should scrutinise and process the case and after obtaining views/certificate of the Chief Conservator of Forests, should put up the case to State Government. Besides office staff, the Nodal Officer should also be given sufficient field staff to facilitate timely processing. The State Government while forwarding cases to the Central Government may endorse copies to the Chief Conservator of Forests and the Nodal Officer. The Central Government may also, while

corresponding with the State Government, send copies to the Nodal Officer. The Nodal Officer should also obtain all additional information required by the Central Government about the proposals from the concerned authorities directly and endorse a copy directly to the Central Government.

- (iii) While approving a proposal the Government of India stipulates certain conditions to reduce the environmental damage on account of forest loss. The conditions must be enforced. Their non-compliance should be reported by the Nodal Officer to Regional Office who should inspect the site from time to time.
- (iv) In case of opencast mining, it should be the responsibility of the Nodal Officer and his staff to ensure that all necessary inputs like creation of nursery, storage of top soil for reuse and methodology for its reforestation, choice of species etc. are so planned and implemented that the mined area is fully afforested by the time mining operations are completed.
- (v) The Nodal Officer should monitor the implementation of the conditions of compensatory afforestation and the survival ratio of the seedlings planted.
- (vi) The Nodal Officer may also report compliance of Stage-I conditions after getting it vetted by the State Government wherever it is called for mainly dealing with land and fund matters.
- (vii) The Nodal Officer may also inform violation/non-compliance of stipulations/conditions prescribed by the Central Govt. so that remedial actions could be taken up early since it is likely to be further delayed after these violations/non-compliance are to be received only from the State Govt. level. In case of gross violations, for which delay/time lag is crucial, such reports from territorial CCF/CF shall also be entertained by Government of India.
- (viii) The Nodal Officer shall submit a monthly report on all the complete applications received by the State Government and their status of processing in the State. The report shall be sent to the Regional Office concerned and the Assistant Inspector General of Forest (FC)/Director in charge of the monitoring cell.

4.16 Lease period for mining lease

- (i) The approval under the Forest (Conservation) Act, 1980 for diversion of forest land for grant/renewal of mining leases shall normally be granted for a period co-terminus with the period of mining lease proposed to be granted/renewed under MMRD Act, 1957 or Rules framed thereunder, but not exceeding 30 years. While recommending cases for approval under the FC Act, the user agency/State Government shall indicate the period for which the mining lease is proposed to be granted/renewed under MMRD Act or Rules framed thereunder. However, in the event of non compliance of stipulations to the satisfaction of the MOEF, the clearance accorded may be summarily withdrawn.
- (ii) The conditions stipulated while giving approval under the Forest (Conservation) Act, 1980 for diversion/renewal of forest land for mining purposes shall be renewed/monitored every five years. If it is found that the lessee has violated or is not complying with the stipulated conditions, then the approval given under the Forest (Conservation) Act, 1980 shall be revoked. Concerned Chief Conservators of Forests(C), Regional Offices of the Ministry will issue a certificate regarding fulfillment of these conditions after carrying out the monitoring. These guidelines shall be applicable retrospectively for all the mining leases which have more than five years of lease period left. (Annexure-XIII)
- (iii) The Regional Office will monitor the main parameters/conditions of formal approval as frequently as possible at least once in a year. At least once in five years a comprehensive monitoring as to the effect of mining on air and water pollution will also be carried out. Regional Offices should send such reports/certificates in respect of the monitoring mechanism indicated above to this Ministry, so that a view can be taken on continuation of mining lease beyond five years.

4.17 Renewal of Mining Lease - Temporary Working Permission

If an application for renewal of mining leases, complete in all respect, has been submitted by the user agency, to the State Government one year before the expiry of the existing lease period, but the State Government has not been able to process and forward the proposal for approval of the Central Government, till the date of the expiry of existing lease period; in such cases, the Central Government on an application from the user agency, may grant the user agency, temporary working permission in the already broken up area till a final decision is taken on the proposal

- 4.18** In respect of proposals related to renewal of mining leases, the Central Government would grant one year working permission for already broken up areas so as to enable the State Government to comply with the conditions. This period can be extended by one more year subject to submission of reasonable progress report from the State Government as regards to the steps taken to comply with the stipulated conditions. (Annexure-XIX)