

Additioanl Agenda- 1

File No. 8-87/ 96-FC

1. Government of Odisha in their letter dated 31st January 2014 referred to this Ministry's letter dated 24th February 1999 wherein this Ministry accorded in-principle approval under the Forest (Conservation) Act, 1980 for diversion of 465.64 hectares of forest land (160.72 hectares already broken up area + 37.25 hectares unbroken area to be worked during present renewal period + balance 267.64 hectares to be maintained as forest) for renewal of mining lease in favour of M/s. Steel Authority of India Ltd. (SAIL) in Bolani iron ore mines, Keonjhar district and informed as below:
 - (i) Among the five number of stipulations prescribed, the stipulation No. (i) reads as under:
 - (a) Immediate action should to taken for transfer and mutation of indentified 304.89 ha. of non-forest land in favour of the State Forest Department.
 - (ii) As per request of the user agency, being Government of India Undertaking in their letter dt. 13.02.2009, and in order to facilitate the compliance of the Stage – I conditions, State Government in its letter No. 7491/F&E dated 18.4.2009, had informed the Government of India, MoEF that an area to the tune of 2.0 ha in Asia village out of 50.039 ha land indentified out of total non-forest land indentified of 304.89 ha. was found to be not free from encroachment, with a request to modify the condition No. (i) of in-principle approval order dt. 24.02.1999 accordingly for the purpose of compensatory of afforestation for this projects as taking up compensatory afforestation over double degraded forest land i.e. 4ha in lieu of 2.0 ha of non-forest land reportedly encroached so as to expedite the compliance for obtaining final forest clearance for this Central Sector Project.
 - (iii) The Government of India MoEF, having considered this position, vide their letter F. No. 8-87/96 –FC dt. 14.07.2009, had granted for modification of condition regarding Compensatory afforestation for renewal of Mining lease in favour of M/ s SAIL in Bolani ore mine in Keonjhar district, Odisha as proposed by the State Government.
 - (iv) However, the Addl. Pr. CCF (Forest Diversion)& Nodal Officer, FC Act, O/o Pr. CCF, Odisha in his letter No. 305 dt. 6.1.2014 (Copy enclosed) has reported that in compliance to condition No. (1) of in-principle approval order dt. 24.2.1999, 304.89ha. of non-forest land was allotted by the Collector of Keonjhar district in different tehsils of Keonjhar district in lieu of forest land proposed for diversion in Bolani ore mines in Keonjhar district. Out of such identified non-forest land of

304.89 ha., 81.4267 ha. of non-forest land was found to be suitable and balance 223.4633 ha. of non-forest land was unsuitable for Compensatory afforestation. Subsequently 223.4633 ha. of non-forest land was allotted in Guptaganga village under Telkoi tehsil and such alternate identified non-forest land was also demarcated by the user agency. However, this demarcated non-forest land of 223.4633 ha. could not be alienated in favour of Forest Department due to strong opposition of the local tribal population. Therefore another 223.4633ha. of non-forest land was identified in village Nippo under Bansapal tehsil of Keonjhar district for the purpose of Compensatory afforestation. However, during joint verification of identified land, it was found that part of such identified non-forest land is covered with dense forest growth and other portion of identified land is already occupied by the tribal people for their use. As such, this 223.4633ha. of non-forest land in village Nippo, also could not be alienated in favour of Forest Department.

- (v) Further 81.4267ha. of non-forest land found to be suitable for Compensatory afforestation earlier, was later found to be encroached by the local people. In view of the above position, it may be appreciated that forest land of 304.89 ha. identified/allotted by the District Administration of Keonjhar district on different occasion, as mentioned above, for the purpose of Compensatory afforestation as against the condition No. (i) of in-principle approval order of MoEF dt. 24.2.1999 is either found to be unsuitable for Compensatory afforestation or under occupation/encroachment of local tribal population for which alienation of such non-forest land in favour of Forest Department for the purpose of Compensatory afforestation could not be made till date.
- (vi) On this background and keeping in view of non-availability of suitable non-forest land free from encroachment and encumbrance and in order to facilitate compliance to the stipulations prescribed in in-principle approval dt. 24.2.1999 pertaining to proposal of Bolani ore Mines of M/s SAIL, a Central Sector Project, the Government of India, MoEF, may kindly consider again to modify their condition No. (i) of the in-principle approval order dt. 24.2.1999 regarding raising compensatory afforestation as per relaxation granted under 3.2(ix) of the F.C. Act guidelines by imposing a stipulation for taking up compensatory afforestation over double degraded forest land i.e. 609.78ha.(304.89 ha. x 2) of degraded forest land in lieu of 304.89ha. of forest land proposed for diversion for this project in lieu of equivalent extent of 304.89ha. of non-forest land and convey their approval in this context to the State Government so as to take steps for furnishing detailed

compliance on Stage-1 approval order's conditions to MoEF, Government seeking final forest clearance for the project.

- (vii) The user agency is a Central PSU. Para 3.2 (ix) of guidelines issued under the Forest (Conservation) Act, 1980 inter-alia provides that as a **special provisions for Central Government/Central Government Undertaking Projects** compensatory afforestation in lieu of forest land diverted in their favour may be raised on degraded forest land twice in extent of forest area being diverted. Certificate of Chief Secretary regarding non-availability of non-forest land for compensatory afforestation will not be insisted.

2. Keeping in view the above a it was proposed that approval of the **Hon'ble Minister for Environment and Forests** may be solicited to amend the condition stipulated in the in-principle approval under the Forest (Conservation) Act, 1980 accorded by this Ministry vide letter dated 24th February 1999 read with letter dated 14th July 2009 as per details given below:

Conditions stipulated	Modified/ amended conditions
(i) Immediate action should be taken for transfer and mutation of identified 304.89 ha. of non-forest land in favour of the State Forest Department.	(i) Compensatory afforestation over the degraded forest land double in extent to the 304.89 hectares of unbroken forest land proposed to be diverted (<i>i.e.</i> 304.89 x 2 = 609.78 hectares) shall be raised and maintained by the State Forest Department from funds to be provided by the User Agency;
(ii) The user agency will transfer the funds for compensatory afforestation (revised as on date to incorporate existing wage structure) over 304.89 hectares area in favour of the State Forest Department.	(ii) The User Agency shall transfer the cost of raising and maintaining the compensatory afforestation, at the current wage rate, to the State Forest Department.

3. However, after further examination of the matter it was observed that the conditions have been imposed in stage-I approval after the recommendation of FAC. It was also observed that there may be other issues *viz.* FRA which may require to be looked into, it was desired that the matter may be referred to the FAC before the Ministry seek approval of the

Competent Authority for amendment in the conditions.

4. The said matter was placed before the Forest Advisory Committee in its meeting held on 29th -30th April 2014 for its examination and appropriate recommendations.
5. FAC after examination of the proposal and interaction with representatives of user agency observed as below:

- (i) In consideration of a proposal received from the Government of Odisha, MoEF vide letter dated 24th February 1999 accorded in-principle approval under the FC Act for diversion of 465.64 hectares of forest land (160.72 hectares already broken up area + 37.25 hectares unbroken area to be worked during first renewal period + balance 267.64 hectares to be maintained as forest) in favour of M/s. Steel Authority of India Ltd. (SAIL) for first renewal of their Bolani iron ore mines;
- (ii) In-principle approval accorded by the MoEF vide their said letter dated 24th February 1999 was subject to fulfilment of *inter-alia* the following condition:

“Immediate action should to taken for transfer and mutation of identified 304.89 hectares of non-forest land in favour of the State Forest Department.”

- (iii) State Government in their letter dated 18th April 2009 informed the MoEF that out of the total 304.89 hectares of non-forest land identified for creation of compensatory afforestation, 2.00 hectares of non-forest land was found to be under encroachment, and requested the MoEF that the said condition stipulated in the in-principle approval may be partially amended to the effect that in lieu of 2 hectares of non-forest land found to be under encroachment, compensatory afforestation may be raised over degraded forest land twice in extent (*i.e.* 4 hectares of degraded forest land);
- (iv) MoEF keeping in view para 3.2 (ix) of guideless issued under the FC Act, which provides that as a special provision for Central Government/Central Government Undertaking Projects, compensatory afforestation in lieu of forest land diverted for execution of such projects may be raised on degraded forest land twice in extent of forest area being diverted, accepted the said request and communicated the same to the Government of Odisha vide letter dated 14th July 2009;
- (v) State Government in their letter dated 31st January 2014 informed the MoEF that the remaining 302.89 hectares of non-forest land identified for creation of compensatory afforestation has also been found to be under encroachment

and requested the MoEF to further amend the said condition stipulated in the in-principle approval to the effect that compensatory afforestation in-lieu of the 302.89 hectares of non-forest land found to be under encroachment may be raised over degraded forest land twice in extent (i.e. $2 \times 302.89 = 605.78$ hectares);

- (vi) Para 4.2 of guidelines issues under the FC Act provides inter-alia that in cases where compliance of conditions stipulated in the in-principle approval is awaited for more than 5 (five) years from the State Governments, the in-principle approvals would summarily be revoked. The said para also provides that after the revocation of the in-principle approval, if the State Government/ user agency is still interested in the project, they would be required to submit a fresh proposal which shall be considered de-novo. Compliance of conditions stipulated in the in-principle approval in this proposal is awaited from the State Government for more than fifteen (15) years;
- (vii) Para 4.16 of guidelines issued under the FC Act provides *inter-alia* that the approval under the FC Act 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 under Mines and Minerals (development and Regulation) Act 1957 (MMDR Act, 1957) or Rules framed thereunder, but not exceeding 30 years. The said para also provides that 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 MMDR Act or Rules framed there under;
- (viii) In this proposal, State Government sought approval under the FC Act for diversion of the said forest land during first renewal of mining lease. First renewal of mining lease has already expired in 2002. MoEF did not receive any proposal to obtain approval under the FC Act for second renewal of mining lease *w.e.f.* the year 2002;
- (ix) In-principle approval under the FC Act for diversion of 465.64 hectares of forest land accorded by the MoEF vide their said letter dated 24th February 1999 was therefore, for the period co-terminus with the period of first renewal of mining lease which has already expired in 2002;

- (x) User agency, without waiting for grant of stage-II approval under the FC Act for diversion of the said forest land during first renewal of mining lease and without submitting an application to seek approval under the FC Act for second renewal of mining lease, is using forest land located within the said mining lease for processing, storage, and transportation of iron ore raised from their adjoining mining lease. The same amounts to violation of the FC Act and the Orissa Forest Act, 1972;
- (xi) The said mining lease is presently working under deemed second renewal of mining lease in terms of Rule 24 (A) (6) of the Mineral Concession Rules, 1960;
- (xii) Hon'ble Supreme Court in paragraph 24 of their Judgment dated 21st April 2014 in Writ Petition (Civil) No. 435 of 2012 in Goa Foundation *versus* Union of India and others *inter-alia* directed as below:

*“24. The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24A of the MC Rules provides that if an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon. This sub-rule cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. **We are, therefore, of the opinion that sub-rule (6) of Rule 24A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act.....**”*

- (xiii) Keeping in view the said direction of the Hon'ble Supreme Court the user agency does not have valid lease, even under deemed extension, for the said forest land.

6. FAC after detailed deliberations recommended that keeping in view that report on compliance to conditions stipulated in the in-principle approval is awaited for a period more than 15 years, the MoEF may revoke the said in-principle approval with immediate effect.
7. The FAC further recommended that keeping in view that forest land located within the said mining lease is being utilised for non-forest purpose without obtaining requisite approval under the FC Act, the MoEF may advise the State Government to take following immediate action:
 - (i) Restrain the user agency from using the forest land located within the said mining lease for non-forest purpose till requisite approval under the FC Act is obtained;
 - (ii) Realise from the user agency funds for creation of **penal compensatory afforestation** over degraded forest land, five times in extent to the area of forest land used for non-forest purpose without obtaining requisite approval under the FC Act;
 - (iii) Realise from the user agency **penal NPV** of the forest land utilised for non-forest purpose without obtaining requisite approval under the FC Act, @ 20 % of the rates applicable on the date of issue of letter by the MoEF in this regard, for each year or fraction thereof, of the use of such forest land for non-forest purpose without obtaining requisite approval under the FC Act. (**Explanation:** In case total period for which a patch of forest land has been utilized for non-forest purpose without obtaining requisite approval under the FC Act is six years, NPV to be realised in respect of such forest land will be at the rate of 1.2 times the rates applicable on the date of issue of letter by the MoEF in this regard;
 - (iv) Initiate disciplinary proceedings against the officials who *prima facie* failed to restrain the user agency to utilize the forest land for non-forest purpose without obtaining requisite approval under the FC Act; and
 - (v) Initiate action against the user agency in accordance with the provisions of the Orissa Forest Act, 1972 for use of forest land for non-forest purpose without obtaining requisite approvals.
8. The FAC also recommended that the MoEF may advise its Regional Office having jurisdiction over the said forest land to further investigate violations of the FC Act in respect of the said forest land and file complaints against persons *prima -facie* found guilty of such offence, in the court having jurisdiction in the matter

9. User agency in their letter dated 22nd May 2014 drawn attention to the minutes of the said meeting of FAC and informed as below:

- (i) In the minutes FAC have observed that mine has been operated in violation of the provisions of Forest (Conservation) Act, 1980, in this regard it is submitted that in the Stage-I clearance a condition was stipulated that State Govt. shall identify the non- forest land for afforestation at the cost of User Agency.
- (ii) In spite of vigorous efforts put in by SAIL, the State Government could not transfer the identified non-forest land as the said land was not later found to be suitable by the Forest Department. Further, somehow or the other though alternative non-forest lands were identified, however, due to encroachments same could not be transferred. As SAIL being a Central PSU and according to para 3.2(xi) of the guidelines issued under the FC Act, the SAIL has requested through State Government for modification of the said condition that in lieu of equivalent non-forest land afforestation on double the degraded land be raised.
- (iii) In none of the reports of the State Govt. any violation of Forest (Conservation) Act, 1980 has been brought to the notice of MoEF. It is to bring to your kind notice, that no forest land within the lease has been used for taking up non forest activities post 1977. In this regard an undertaking from GM Bolani Ores Mines is enclosed herewith for your kind consideration please.
- (iv) In view of above, it is requested that the proposals may kindly be reviewed by the Forest Advisory Committee in its forthcoming meeting scheduled for 30th May, 2014.
- (i) In para VI to VIII it is observed that keeping in view the direction of Hon'ble Supreme Court in writ petition (civil) No.435 of 2012 in case of Goa Foundation v/ s Union of India and till the final reserved judgment is delivered in case of illegal mining in Odisha, the FAC deferred the decision. The said paragraphs of the minutes are reproduced here in below for ready reference:

"The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24A of the MC Rules provides that if an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the State Government passes order thereon. The sub-rule cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision

regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government regarding reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that sub-rule (6) of Rule 24A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act....”

- (ii) The interim order in case of illegal mining in Odisha in writ petition (civil) No.114 of 2014 has been pronounced by Hon'ble Supreme Court on 16.05.2014. The above lease has been classified as non-working lease in list of 102 mining leases annexed (as annexure R2) to the report of Central Empowered Committee (CEC) dated 25.04.2014. Further the Hon'ble Supreme Court in para 3 has directed that operations in these mining leases shall remain suspended, but it will be open to such leases to move the concerned authorities for environmental clearances, approval under Forest Conservation Act, 1980, approval of mining plan or consent to operate and as and when the mining leases are able to obtain all the clearances/ approval/consent, they are at liberty to approach Hon'ble Supreme Court for modification of the interim order.
 - (iii) As the FAC has deferred the decision in view of above reserve order, it is requested that the case may kindly be listed once again for the consideration of the FAC in accordance with the interim order passed by the Hon'ble Supreme Court of India.
4. Matter is therefore, again placed before the FAC for their examination and appropriate recommendations.
