

F. No. 11-37/2016-FC  
Government of India  
Ministry of Environment, Forest and Climate Change  
(Forest Conservation Division)

Indira Paryavaran Bhawan,  
Jor Bagh Road, Aliganj,  
New Delhi-110003.  
Dated: 5<sup>th</sup> December, 2017

To

The Principal Secretary (Forests),  
All States / Union Territories.

**Sub: Applicability of Forest (Conservation) Act, 1980 and Wildlife (Protection) Act, 1972 on the forest land falling in the Right of Way (RoW) of the Railway in light of the provisions of the Railway Act, 1989 - regarding.**

Sir,

Kindly refer to the above mention subject. The questions have been raised by the Ministry of Railway on various occasions regarding applicability of the Forest (Conservation) Act, 1980 (FC Act in short) and Wildlife (Protection) Act, 1972 (WPA in short) and it has been insisted upon by the Railway that the FC Act and WPA will not be applicable to the forest land falling in the right of ways of the Railway and the Railways has the power to acquire the forest land and divert the forest land falling in the ROW under section 11 (a) of the Railway Act of 1989.

2. In the instant case of gauge conversion [Meter Gauge (MG) to Broad Gauge (BG)] of existing Akola-Khandwa railway line, constructed during 1955-59, was referred to MoEF & CC by the Ministry of Railway stating that the FC Act and WPA will not be applicable in ROW of Railways. The existing MG railway track passes through the Reserved Forest and Melghat Tiger Reserve which is among the first nine tiger reserves notified in 1973-74 under the Project Tiger.

3. The MoEF & CC has been repeatedly clarifying that the FC Act and WPA will be applicable for diversion of forest land for non-forestry purpose irrespective of the ownership of the forest land and the forest land owned by the State cannot be acquired and transferred to Railways under section 11 (a) of the Railway Act of 1989 without following provisions of FC Act and WPA.

4. It is informed that the matter has been examined in the Ministry and the legal opinion of the Ministry of Law and Justice (MoLJ) was also obtained on the applicability of the Forest (Conservation) Act, 1980 on the use of forest land falling in the Right of Way (ROW) of the Railway for construction of new railway line and conversion of gauge from existing Meter Gauge (MG) to Broad Gauge (BG) and applicability of provisions of the Railway Act, 1989. The MoLJ has opined on 28.09.2017 that "though the railway administration has the power under section 11 (a) of the Act of 1989, to construct or maintain a railway on any land, but it appears that for so assignment of forest land (other than the railways land) falling in the ROW to the railway by way of lease or otherwise may attract the provisions of the Act of 1980."



5. It is important to note that the 'forest' land has been defined by the Hon'ble Supreme Court in the T.N. Godavarman Thirumulkpad Vs Union of India & Ors on 12<sup>th</sup> December, 1996 whereby it has been clarified that the word "forest" must be understood according to its dictionary meaning irrespective of its ownership.

*" The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and fore matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest: must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof."*

6. In other words, even 'forest land' owned by the railways is also 'forest' and cannot be put to non-forestry use by the railways itself without the approval of the Central Government as provided in the section 2 of the Forest (Conservation) Act, 1980. In addition to this, for the use of forest land declared as 'Protected Areas' and areas falling under the Eco Sensitive Zone (ESZ), the approval of State Board of Wildlife and National Board of Wildlife (NBWL) is required.

7. The Ministry is of considered opinion that the railways has the right of ways for construction and maintenance of railways lines for public welfare and may acquire land from the owners of the land but this right is also subject to the other statutory provisions and regulations. If a forest land cannot be dispensed with for the railway track in view of the conservation of forest and wildlife, then the Railway cannot acquire forest land under section 11 of the Railway Act, 1980 without the prior approval under FC Act, 1980. The State Government also cannot assign and allot forest land, which is not the property of the Railways, to Railways without the prior approval of the Ministry under section 2 of the FC Act, 1980 and the NBWL if the area falls in the protected area notified under the provisions of the Wildlife (Protection) Act, 1972. However, any actual diversion of forest land for non-forestry purpose already done before 25.10.1980 will not attract provisions of FC Act and this position was clarified by the Ministry vide guideline dated 13.10.2016 though clearance under WPA will be required if Protected areas are involved.

8. Railway projects passing through the notified Eco-sensitive Zone or located within 10 km. radius of Wildlife Sanctuary (WLS) / National Parks (NP) and Tiger Reserves (TR) are not required to obtain wildlife clearance from National Board of Wildlife as these projects do not need Environment Clearance. However, railway projects passing through the areas linking one protected area or Tiger Reserve with another protected area or Tiger Reserve diversion cannot be allowed for ecologically unsustainable use, except in public interest with

✓

the approval of NBWL on the advice of National Tiger Conservation Authority as provided for under sec 38(O)(1)(g) of Wildlife (Protection) Act, 1972.

Railway projects passing through Wildlife Sanctuary / National Parks / Tiger Reserves amount to destruction of habitat within the meaning of Section 29, Section 35(6) and Section 38(O)(1)(g) of Wildlife (Protection) Act, 1972 as amended upto date are required to seek the approval of National Board of Wildlife (NBWL). The need of seeking approval for railway projects passing through a Wildlife Sanctuary is in pursuance of Supreme Court Order dated 09.05.2002 in Writ Petition (Civil) No. 337 of 1995 (Centre for Environmental Law, WWF-India Vs. Union of India & Ors.).

9. In light of the above it is further clarified that the use of forest land, irrespective of ownership, by the railways for construction of new railway track and other facilities and for gauge conversion of existing railways requiring fresh diversion of forestland on either side of the existing Meter Gauge (MG), as assessed by the State Forest Department, falling in the ROW of railway, will require forest clearance under the provisions of Forest (Conservation) Act, 1980.

This issues with the approval of competent authority.

Yours faithfully,

  
05/12/17  
(Naresh Kumar)

Dy. Inspector General of Forests

Copy to:

1. All PCCFs States/UTs
2. All Regional Office, MOEF&CC
3. Secretary, M/o Railways, New Delhi
4. Nodal Officers (FCA) O/o the PCCFs All States/UT
5. All IGFs/Dir(ROHQ)/All AIGFs(FC), MOEF&CC New Delhi
6. PPS to Secretary, MOEF&CC, New Delhi
7. PPS to DGF&SS, MOEF&CC New Delhi
8. PPS to IGF(FC)
9. Guard File

  
05/12/17  
(Naresh Kumar)

Dy. Inspector General of Forests