

डा. हर्ष वर्धन

Dr. Harsh Vardhan



सत्यमेव जयते

भारत सरकार
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्री
GOVERNMENT OF INDIA
MINISTER OF ENVIRONMENT, FOREST &
CLIMATE CHANGE

D.O. No. 11-100/2015-FC(Vol.III)

Date: 31st August, 2018

Dear Shri Jairam Ramesh ji,

I appreciate your concern regarding protection of the provisions in the Forest Rights Act 2006 and PESA while implementing Compensatory Afforestation Fund (CAF) Act and Compensatory Afforestation Fund (CAF) Rules, 2018, which was notified after considering the opinion and views of various stakeholders including that of Ministry of Tribal Affairs (MoTA). I must also inform you that the copy of the Draft CAF Rules was sent to you also but as per our record no comment was received from your good self.

I assure you that the apprehensions and concerns indicated in your letter and raised in the Parliament by you have been suitably addressed for protection of tribal rights, as stipulated in Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, while framing the CAF Rules. It is to further inform you that the authority of the Gram Sabha has not been undermined by equating with other institutions like Village Forest Management Committee which are created for management of forest by associating local communities.

You may kindly appreciate that the notified CAF Rules 2018 in sub-rule (2) of rule 2 reads:

*"The words and expressions used and not defined in these rules but defined in the Act, the Indian Forest Act 1927 (16 of 1927), the Wildlife (Protection) Act 1972 (53 of 1972), the Forest (Conservation) Act 1980 (69 of 1980), the Biological Diversity Act, 2002 (18 of 2003) and the **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007)** and the rules made under these Acts, shall have the meanings respectively assigned to them in those Acts and rules."*

In other words the 'Gram Sabha' has the meaning as per the definitions in above referred Acts and therefore, your concerns have been suitably addressed.

Further you will also appreciate that the CAF Rule 2018 does not equate 'Gram Sabhas' with the Joint Forest Management Committees and any other similar body. The Rule provides that in case the activities referred to in sub rules (2) and (3) of Rule 5 are to be undertaken in the forest land under the administrative control of the Forest Department of State Government, then the said activities shall be carried out as per the approved working plan of the forest areas in consultation with the Gram Sabha or Village Forest Management Committee, as the case may be, and shall be in

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consonance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) and the guidelines issued thereunder, wherever applicable.

The above referred rule makes it abundantly clear that the activities proposed in the annual plan of operation will be carried out by State Forest Departments in consultation with the 'Gram Sabha' having jurisdiction over the forest and non-forest land under consideration. It must be noted that these activities do not further divert forest land or displace tribal population but undertake forestry related activities over non-forest and forest land identified in advance for compensatory afforestation and ecological restoration works, such as, catchment area treatment and wildlife management, etc. The phrase '*consultation*' has been prescribed because all forests in the State are managed as per the 'Working Plan' prescriptions prepared under the 'Working Plan Code' issued by the Ministry of Environment Forest and Climate Change and this position cannot be altered by the CAF Rules. While preparing the Annual Plan of Operation the State Government is under statutory obligation to follow provisions of FRA, other Acts and related Rules. Further, no reference have been made in the Rules which in any manner illegally limits the applicability of FRA to only those areas where rights are formally recognized/titled thereby excluding all potentially areas where tribal and other traditional forest dwellers have got traditional rights.

It is further clarified that the CAF Act and Rules have not been framed for the sole purpose of management of the forests and wildlife in the State which is carried out as per the Forest Policy and Indian Forest Act and other Acts applicable in States. The objectives of the CAF Act is to develop institutional mechanism to manage the funds collected for Compensatory Afforestation and NPV under the Forest (Conservation) Act, 1980 to compensate the loss of forest area and ecosystem services.

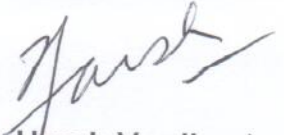
You have referred to the Ministry's guideline dated 03.08.2009 [F. No. 11-9/1998 – FC (Pt.)] which stipulates that the use of forest land for non-forestry purpose requires prior recognition of forest rights, and the free, prior and informed consent of Gram Sabhas, in the local languages. The CAF Rules does not dilute the constitutional and statutory requirement of free, prior and informed consent of Gram Sabhas in any manner. The constitutional and statutory requirement of free, prior and informed consent of Gram Sabhas is mandatorily considered by the State Government while recommending the proposals under FC Act to Central Government. No prior approval is granted to State Government unless the FRA compliance certificate is received from

District Collector of the State Government. However, once the prior approval is granted and the funds are collected, the compensatory afforestation has to be done on the forest /non forest land identified by the State Government initially proposed in the FC proposal. The State Government has to ensure that the land identified for compensatory afforestation does not contravene any provisions of the applicable Acts in the State including FRA.

I again reassure you that the concerns raised by you in your letter has been adequately addressed while framing and notification of the CAF Rules, 2018.

With regards,

Yours sincerely,



(Dr. Harsh Vardhan)

Shri Jairam Ramesh
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