

Tribal affairs ministry against MoEF move to dilute forest rights Act

MoEF notification on 5 February says linear projects such as roads, canals wouldn't require gram sabha consent

First Published: Fri, Mar 29 2013. 10 28 PM IST

New Delhi: A move by the ministry of environment and forests (MoEF) to exempt promoters of so-called linear projects such as roads, pipelines and canals from seeking the consent of village councils in forest areas will likely be a non-starter unless the government moves to amend the forest rights Act (FRA).

MoEF issued a notification on 5 February that such projects, including power transmission lines, wouldn't require the consent of *gram sabhas*, or village councils. It acted in the face of criticism over the delay of many infrastructure projects for want of environmental approvals.

But the measure won't have any constitutional validity until FRA is amended, an official in the tribal affairs ministry said, indicating a possible face-off between MoEF and his ministry. The person did not want to be identified given the sensitive nature of the ongoing debate within the government.

The tribal affairs ministry has raised its concerns in a letter to MoEF asking it to revise the 5 February notification.

"The concern of this ministry is that it be made amply clear that the rights of FDSTs (forest-dwelling scheduled tribes) and OTFDs (other traditional forest dwellers) on forest land proposed to be diverted must get recognized and vested under the FRA (without any exception) before forest clearance is granted to any such proposal," said the letter, a copy of which was reviewed by *Mint*.

The 5 February notification, posted on the MoEF website, states that the decision was taken after consultations with an inter-ministerial committee. However, the tribal affairs ministry contends that it hadn't been consulted.

The matter was raised at the last meeting of the cabinet committee on investment, but no decision has been taken. "The matter is still unresolved," said the official cited above. The cabinet committee on investment has been set up to speed up the clearance of big infrastructure projects and is headed by the Prime Minister.

A top environment ministry official said he wasn't aware of the reservations of the tribal affairs ministry. "The notification that we issued was done after consultation with the tribal affairs ministry, then why will they have a problem?" said the official, who requested anonymity.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, stipulates that projects such as schools, hospitals, *anganwadis* (child and mother care

centres), fair price shops, electric and telecommunication lines, tanks and water bodies, water pipelines, rainwater harvesting structures, minor irrigation canals, vocational training centres, roads and community centres require the permission of village councils.

“The clearance of such developmental projects shall be subject to the condition that the same is recommended by the *gram sabhas*,” according to the text of the Act.

While clearance for projects is given by MoEF, and the tribal affairs ministry doesn't play a role in that, it comes into the picture if there is a dispute over *gram sabha* approval or if “someone contests the clearance given”, said the tribal affairs ministry official cited in the first instance.

In such cases, the tribal affairs ministry will have to go by FRA, the official said.

Clause (11) of FRA states that the tribal affairs ministry is the nodal agency for the implementation of its provisions, the same person said. That's why the Act will have to be amended for the notification to come into effect, he said.

“How can a memorandum or a notification from a ministry repeal an Act passed by Parliament?” the official said.

The MoEF official cited above said nothing was done by the environment ministry on its own. “It was only after a meeting that the Prime Minister had with both the environment minister, [Jayanthi Natarajan](#), and the tribal affairs minister, [V. Kishore Chandra Deo](#), that it was decided to issue the notification,” the official added.

To be sure, it was unlikely *gram sabhas* would oppose development projects such as roads, electric transmission lines or drinking water pipelines. FRA, one of the United Progressive Alliance government's landmark items of legislation in its first term, was passed by Parliament in 2006, said the second official.

Only the nodal ministry, in this case the tribal affairs ministry, can issue fresh guidelines or notifications amending the rules.

“However the tribal affairs ministry has not yet issued any such notification that calls for changing the provisions in the Act,” the same official said.

[Tushar Dash](#), a researcher with Vasundhara, an Orissa-based not-for-profit organization that's working on forest rights and conservation, said a group of states and non-governmental organizations had raised the issue of the dilution of tribal rights with the tribal affairs ministry earlier this month.

“We had told them to intervene in this matter and make sure that the forest rights Act does not get diluted,” Dash said, adding that if the tribal affairs ministry had written to the environment ministry, then it was definitely “a good move on their part”.