



FN.No. 172014-FP
 Government of India
 Ministry of Environment, Forest and Climate Change
 Forest Policy Division

India Secretariat House,
 Connaught Place,
 New Delhi-110028
 Date: 19th May 2013

To: The Principal Secretary (Forest),
 Government of Maharashtra,
 Mumbai-400032

Sub: The Indian Forests (Maharashtra) (Regulation of assignment, management and conservation of village forests) Rules, 2013-regarding

Re:

Your directed as above, herewith a copy of the OM no. 2011/172014-FP/A dated 14th April, 2013 with reference to the Cabinet Secretariat Enforcement no. 700/21/2012-C.A.V dated 10th April, 2013 along with the comments and points of concerns of the Ministry of Tribal Affairs regarding the Indian Forests (Maharashtra) (Regulation of assignment, management and conservation of village forests) Rules, 2013 for kind perusal and consideration.

It is requested that the comments of the Maharashtra Government on points raised by MCTA may kindly be furnished to this Ministry for necessary action.

Yours faithfully

Yours faithfully

The Director General
 Deputy Director General of Forests (Forest Policy)
 Telephone: 2605579

Copy to:

1. The Chief Secretary, Government of Maharashtra, Mumbai-400032 for information.
2. The Ministry of Tribal Affairs (Chief, Mumbai, Shri Manoj Kumar Prasad, Joint Secretary, P.O. No. 311, 27/11/06, Mumbai-400030, Sd/- DGM (MPO) (6) 2605579.

Recd file

GOVERNMENT OF INDIA
Ministry of Tribal Affairs

Date: 20th April 2023

OFFICE MEMORANDUM

Subject: The Village Forests (Maharashtra) (Regulation of assignment, management and conservation of village forests) Rules, 2021 - 1102/1199.

The Government is directed to refer to the Chief Secretary, Maharashtra Government, Mumbai dated 20th April, 2023 on the above subject and to advise the Government of Maharashtra on the above subject, for its consideration to the Ministry. The contents of this Order, bearing the initials of concerned officers, shall be placed on file for record and to be used for all subsequent correspondence.

The Government is directed to advise the Government of Maharashtra.

(Signature)

Joint Secretary to the Government of India
Ministry of Tribal Affairs

Secretary
Ministry of Tribal Affairs
New Delhi

Copy of this Order to be sent to the Government of Maharashtra for their information and to be placed on file for record.

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100
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Received from the Ministry of Tribal Affairs, New Delhi

Approved

M. P.

Joint Secretary

Received from the Ministry of Tribal Affairs, New Delhi

T. P.

Not in the Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of village forests) Rules, 2014 vis-à-vis Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Government of Maharashtra issued on 13th May 2014 (Notification No. A.M. 2010(DR-3787) in the Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of village forests) Rules, 2014 (hereafter 2014 Rules)

The Ministry of Tribal Affairs issued a letter dated 13.8.2014 bearing No. 23011/17/2014-FFA where it was stated that the aforesaid 2014 Rules were prima facie in violation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter 'Forest Rights Act') and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2006 (hereafter Forest Rights Rules), and therefore should be void in entirety.

Subsequently, the Ministry received communications from Hon'ble Minister of Rural Development, Panchayati Raj and Drinking Water and Sanitation vide letter dt. 12.8.2014 bearing No. 3544 M (RD) and from the Ministry of Environment, Forests and Climate Change vide letter dt. 29.8.2014 bearing No. T-17/2014-FF) requesting that the Ministry's letter dated 13.8.2014 be withdrawn.

Ministry vide its letter dated 5th December 2014 (No. 23011/17/2014-FFA) communicated to the Principal Secretary Forests, Government of Maharashtra that the said Rules amount upon and are irreconcilable with the provisions of the Forest Rights Act and PESA.

More recently, the Ministry has received communication dated 21.1.2016 from the Hon'ble Chief Minister of Maharashtra, where reliance has been placed upon the legal opinion rendered by Mr. Pankaj Arund, Senior Advocate and Additional Solicitor General for India, as well as by Mr. Sunil V. Manchil, Advocate General, Maharashtra. A copy of the legal opinion dated 22.12.2014 rendered by Mr. Arund was received by the Ministry on 04.2.2015.

The aforesaid 2014 Rules, since then have been examined by MoTA with reference to the provisions of the Forest Rights Act, the Forest Rights Rules, and numerous Guidelines and clarifications issued by the Ministry of Tribal Affairs, Government of India from time to time.

REGARDING THE OPINION RENDERED BY LEARNED ADDITIONAL SOLICITOR GENERAL FOR INDIA

The Ministry of Tribal Affairs (MoTA) most respectfully disagrees with the opinion rendered by the learned Additional Solicitor General for India, and reiterates its view

that the provisions of the Indian Forests (Maharashtra) (regulation of assignment, management and cancellation of village forests) Rules, 2014 are in direct conflict with the Forest Rights Act, the Forest Right Rules and also PESA. The learned ASG has also not used the advantage of considering the draft Gram Sabha resolution which was circulated to all the Gram Sabhas in the State of Maharashtra in advance of the biennial meeting on the 11th of August, 2014 which this Ministry had occasion to closely examine.

As stated in the Ministry's letter dated 5.12.2014, the 2014 Rules encroach upon the field of law already occupied by the FRA which is a Central legislation. The said Rules 2014 have not obtained the consent of the President in this regard and as such are contrary to the mandate of Article 254 of the Constitution of India which provides that where a Central legislation already occupies the field covered by a particular subject in the Concurrent list, no legislation can be passed regarding the said subject by a State Legislature which is repugnant to the provisions of the Central legislation with the only exception when such State legislation has received the consideration and assent of the President of India. Therefore Maharashtra Government may withdraw the said Rules 2014.

The Learned ASG has relied upon a decision of the Allahabad High Court (Judge Chandra Gupta vs. State of UP & Ors., etc. AIR 2011 40 88) to assert that there is no conflict between the provisions of the Indian Forest Act, 1927 and the Forest Rights Act, 2006. However, a close reading of the said judgment reveals that the matter is distinguishable on facts from the present situation. For one thing, it related to an amendment to the Indian Forest Act, 1927 by the Uttar Pradesh Legislative Assembly, and not the Central legislation itself. The 2014 Rules, however, have not been enacted by the Maharashtra State Legislature. Further, the said UP amendment had received the consideration and assent of the President of India as required under Article 254 of the Constitution of India, which is not the case in the present scenario. Finally, the case related to encroachments on forest land by persons who were neither forest dwelling Scheduled Tribes nor other traditional forest dwellers, for the purpose of commercial shops. The High Court in that case has rightly rejected the writ petition filed by such persons attempting to wrongfully encroach upon state property for running commercial shops, which are not in the nature of forest rights and therefore not entitled to any protection under the Forest Rights Act at all.

The 2014 Rules, on the other hand, relate to subject matter which is squarely within the domain of the Forest Rights Act, namely, the right to protect, regenerate, or conserve or manage community forests which is recognised as a forest right under Section 3(1)(f) of the Forest Rights Act. Further, under Section 5 of the Forest Rights Act, the Gram Sabha is vested with the power and responsibility to protect and preserve the community forests, the biodiversity, wildlife, and waterbodies which fall within the community forest resource. The Ministry respectfully disagrees with the conclusion of the learned ASG that the 2014 Rules only relate to ownership, access

to collect, lift and dispose of timber forest produce' and therefore the subject matter is different from the Forest Rights Act. It is a matter that a forest is the vast field of biodiversity, ecosystems, wildlife and forest dwellers as it, and the trees or timber constitute an important part thereof. It is not possible to separate the trees from the forest which constitute the community forest resource.

The Ministry also repeatedly disagrees with the opinion of the learned AGPs that the 2014 Rules substantially exclude the forest rights and the areas covered by the Forest Rights Act and the Scheduled Areas, and that this is sufficient protection against any encroaching of the two regions. It is a matter of record that during the pendency of implementation of the Forest Rights Act, the attention of the forest dwellers as well as the state machinery was on the recognition and vesting of forest rights under Section 4(1)(a). It is only after the Ministry has taken up the issue repeatedly with various State governments that the recognition of other forest rights relating to minor forest produce, community forest resource, and other usufructory rights under Section 4(1) is being addressed. This process of receipt of applications, examination by the Forest Rights Committees of the Gram Sabhas, joint on-site inspections and verifications, further examination by the Sub-Divisional Level Committees, and final decision by the District Level Committees is still underway. The process of recording of the forest rights in the record of rights as required under Section 6(1) has not even commenced in most States. It may also be pertinent to state that some of the decisions of the DLGs rejecting either fully or in part the applications for recognition of forest rights, have been challenged under Articles 226 and 227 of the Constitution before the concerned High Courts.

Therefore, it is clear that the process of determining which areas are governed by the Forest Rights Act, and which areas are not thus governed, is still underway and the situation on the ground is dynamic and evolving. Therefore, it would be inappropriate and premature for the State government to bring the 2014 Rules into force until such time as the process of recognition and vesting of forest rights under the Forest Rights Act, and in particular the recognition and vesting of community forest resource rights, is complete.

The learned AGPs suggestion by way of abundant caution that the Proviso to Rule 1(2) be amended in order to clarify the different areas of operation of the Forest Rights Act and the 2014 Rules cannot also, for these reasons, be accepted.

SPECIFIC AREAS OF CONFLICT BETWEEN THE 2014 RULES AND THE FOREST RIGHTS ACT

Some of the key areas wherein the 2014 Rules are clearly repugnant to the Forest Rights Act are, inter alia, as under:

- A. The forest rights recognised under Section 3 read with Section 4(1) of the Forest Rights Act include the forest right to ownership of minor forest produce, the right to community forest resources, minor rights as well as rights in

farming, grazing, and other usufructuary rights. These rights, once recognised under the procedure provided under the Forest Rights Act and Rules framed thereunder, cannot be taken away by the State executive under any circumstances. They certainly cannot be surrendered by the forest dwellers, whether voluntarily or otherwise. The 2014 Rules, however, provide that these very forest rights can be withdrawn by the State government under certain conditions, albeit after issue of notice to the concerned Gram Sabha and after providing it an opportunity to be heard. This is a major area of recognition.

- B. Section 4(1) of the Forest Rights Act recognises and vests the forest rights, "notwithstanding anything contained in any other law for the time being in force". This non-obstante clause is a very important and categorical message from the Parliament that the rights vested and recognised by the Forest Rights Act shall override any legal regime or executive arrangement which is contrary to such right. This approach is mirrored in Section 4 of PESA as well, where under sub-section (m)(ii) the right to ownership of minor produce is vested in the Gram Sabha. The 2014 Rules, which proceed on the basis that the Gram Sabha only has access rights to the minor forest produce, and not the right to ownership, are overridden by the aforesaid non-obstante clauses in the Central legislation. In any case, the approach to minor forest produce is repugnant to the Central law and therefore invalid.
- C. The 2014 Rules also fell foul of the determinations adopted by the Forest Rights Act of tiered level Gram Sabhas for the purpose of vesting and recognition of forest rights, replacing the same with the Panchayat level Gram Sabhas which are the norm under the State Panchayats Act.
- D. The 2014 Rules further attempt to override the institutional mechanisms provided under the Forest Rights Act, which is also not permissible. Section 3(1)(i) read with Section 5 of the Forest Rights Act and Rule 4(1)(a) and (f) of the Forest Rights Rules require the establishment of Forest Conservation and Management Committees under the direct supervision of the Gram Sabhas for the preservation, protection, management, and conservation of the community forest resource, including the forest, wildlife and biodiversity. It is clearly stated that the said Committee shall draw up plans for this purpose, which shall integrate, with such modifications as may be required, the working plans prepared by the Forest Department. These plans are made and executed under the authority of the Gram Sabha at all times. This position is mirrored under Rule 41 of the Maharashtra Village Panchayats Extension to Scheduled Areas (PESA) Rules, 2014 which provide that the Resource Planning and Monitoring Committee (RPMC) shall monitor access to minor forest produce in consultation with the Gram Sabha. The 2014 Rules, however, provide that the Gram Sabha will divest itself of all its statutory powers and responsibilities in this regard, and surrender them to the pre-

working for the empowerment of the Joint Forest Management (JFM) Committee, which were previously established under the JFM Scheme. It was to perfect out the better these JFM committees for the above said and thereby work with the forest Conservation and Management Committee under the Forest Rights Act and the FPFC under PFLA.

- D. FURTHER, the "encompassing terms", such as they are, of these JFM Committees are implicitly subsumed in the Working Plan of the Forest Department, to the extent that the 2014 Rules provide for cessation of the assignment of the village forest to the Gram Sabha in a variety of instances, including violation of the Working Plan (Rule 7). This position is specifically emphasized with regard to extraction of forest, while the right of the Gram Sabha, such as it is, can be sustained in case it does not adhere to the conservation and regeneration plan prepared by the Forest Department (Rule 10)(i), such an approach cannot, under any circumstances, be harmonized with the provisions of the Forest Rights Act, nor indeed with its object as articulated in the Preamble. There is no provision in the Forest Rights Act or in PFLA or in the State PESA Rules which permit the cessation of the right to ownership of the minor forest produce or its revenue to any part of the State, save under the State Forest Department. Indeed, such an interpretation is antithetical to the notion of ownership of such forest resource.
- E. The subordination of the decision-making power of the Gram Sabha under the 2014 Rules is illustrated by the procedure for assignment of a village forest under Rule 3, which requires that the Gram Sabha should establish its credentials for such assignment through fulfillment of the following criteria: a. Zero encroachment; b. Relative rate of natural regeneration; c. Percentage of burnt area removing below 2% in previous 3 years; d. Survival rate of 50% of plantations raised; e. Effective implementation of eco-tourism against grazing. Even after the assignment of the village forest has taken place, through a process which is restricted to State Forest Department officials, the said assignment continues to be subject to conditions specified in the assignment itself (Rule 10)(i) and also subject to the microplan, the working plan, the provisions of the 2014 Rules, and the Indian Forest Act, 1927. Violation of any of these conditions and prescriptions shall result in cancellation of the assignment and reversion of the village forest to the Forest Department. Rule 13 further provides that any right vested under the 2014 Rules can be overridden by "a written order or exercise of any right created by grant, or agreement in writing made by or on behalf of the state Government". These provisions are generally, specifically and inherently in violation of the Forest Rights Act.

There are a number of other areas of divergence between the 2014 Rules and the Forest Rights Act, which are not being gone into at this stage, such as the resolution of disputes (Rule 12), creation of first charge on the forest produce

(Rule 4(5)), levy of grazing fees, regulation of collection and disposal of minor forest produce (Rule 7(i), (m)), and prohibition of fishing (Rule 10(m)).

POTENTIAL FOR FUTURE CONFLICT

The 2014 Rules also have the potential to create present and future conflicts between the JFM Committees and the Forest Conservation and Management Committees established under Rule 4(1)(e) of the Forest Rights Rules.

For one thing, the JFM Committee has been given the power to harvest and dispose of minor forest produce, bamboo, tendu, and apts, which is contrary to the provisions of the Forest Rights Act where this forest right vests in the Gram Sabha. The Forest Rights Act contains no time limit for any community of forest dwellers to submit its claims, especially to community forest resources rights. However, according to the 2014 Rules, such community which is tardy in submitting its claims may find its forest rights already appropriated by the Van Nyaysthapan Samiti.

The 2014 Rules, by excluding the rights of communities who have "already acquired community forest rights" under the Forest Rights Act (Rule 1) indicates that they shall be applicable to such villages which have not staked claims to CFRs under the Forest Rights Act, or where the CFR claims are pending but undecided.

It is apprehended that such potential areas of conflict, if permitted to persist, will resolve themselves to the detriment of Scheduled Tribes and Other Traditional Forest Dwellers who belong to historically, socially and economically marginalised communities.

It may further be noted that the ultimate beneficiaries of both Forest Rights Act 2006 and 2014 Rules are the forest dwelling STs and Other Traditional Forest Dwellers. Therefore if a parallel process is initiated under Rules 2014, it would disrupt the process of conferring rights under the FRA 2006. As per definition of Forest land under Section 1 (d) of FRA, it is applicable to all forest land including undesignated forests, undemarcated forest, protected forests, reserve forests, Sanctuaries and national parks. Unless the entire process under FRA is completed, implementation of the said Rules will create further conflict and hindrance in right recognition process.

Indian Forest Act, 1927

Chapter III- Of Village Forests

Section 28, Formation of village-forests:-

(1) The State Government may assign to any village-community, without any contract or agreement under the Bombay Village Panchayats Act, 1958, or any other law in force in the State, any society registered or deemed to be registered under the Maharashtra Co-operative Societies Act, 1959 the rights of Government to or over any land which has been constituted as reserved forest or called a protected forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The State Government may make rules for regulating the management of village-forests, prescribing the conditions under which the community, panchayat or society to which any such assignment is made, may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved or protected forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests provided as the forests assigned are reserved or protected forests.

Notes: amendments made by State of Maharashtra are underlined.