

## Govt now set to bypass tribal rights to fast-track mining projects

**Environment ministry says consent of tribals and settlement of land rights are not required at the time of giving initial go-ahead to projects coming up on tribals' traditional land**

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Union

### *Mining*

environment ministry has eased the process for granting 'forest clearance' to fast-track mining and other industrial projects that fall on the traditional land of tribal people.

Such projects will now not require consent of the tribal communities at the primary stage of their approval by the ministry. The state governments will also not need to settle the legal rights of tribals on the land assigned for these projects at the time of their initial assessment.

These legally mandatory conditions of taking consent from tribals and settling their land rights, according to a ministry letter, can now be fulfilled at a later stage — after an expert committee of the ministry has already assessed the project and given its “in-principle” go-ahead.

For most projects, the developers will have to submit proofs of fulfilling these conditions before they get the final approval from the ministry to chop the forests. However, in case of ‘linear projects’, such as roads, railways and transmission lines, even this rider may not apply. The ministry’s new guidelines may allow them to simply start construction after the initial clearance from the ministry without settling land rights.

The move came after the Union coal ministry lobbied with the environment ministry for fast-tracking coal-mining projects that were “stalled” for not having the consent of tribal communities or not settling their land rights, documents show. To bring in the change, the environment ministry overruled concerns raised by the Union Ministry of Tribal Affairs, which had said the move could put tribals “to a great disadvantage”.

The documents also show that ministry officials have re-interpreted the forest-clearance rules that were in practice for the past two years to ease the process.

The letter clarifying the change was sent to the Maharashtra forest department and was put up as “guidelines” on the ministry’s forest-clearance website on December 3. Business Standard sent detailed queries to the ministry regarding the letter on December 10 but did not receive a response despite repeated reminders. Four days after the queries were sent, the ministry removed the letter from the website on December 14.

When called, Siddhanta Das, the director-general of forests in the ministry, said the queries should be directed to Inspector General of Forests Deepak Kumar Sinha. Sinha’s office said since the matter was related to tribal rights, the ministry of tribal affairs should be approached.

### **Tribal rights and forest clearances**

A little less than a quarter of India’s land is covered by forests. Industries and governments can use forestland to set up projects after taking permission from the environment ministry according to the Forest Conservation Act of 1980.

Forests are also home to millions of tribal people and forest dwellers who have depended on forestland for centuries for livelihood. But, for decades, their traditional rights over forestland were not recognised and they were considered encroachers. At several places when forests were chopped for setting up projects, tribals were arbitrarily evicted as they did not have legal land titles.

In 2006, the then United Progressive Alliance (UPA) government passed the Forest Rights Act (FRA) that sought to correct this “historical injustice”. The law mandates that forest dwellers cannot be evicted from forests, unless their traditional land rights are recognised, and not without the consent of their Gram Sabha.

To align the forest-clearance process with the FRA, the environment ministry issued an order in 2009 making it mandatory for industries and government bodies to seek consent from Gram Sabhas and their certificates to prove that forest rights had been settled before applying for forest clearance. In 2016, the ministry amended the Forest Conservation Rules to include these conditions.

## Environment ministry Vs tribal affairs ministry

Within a few years of issuing the 2009 order, the environment ministry tried to do away with the requirement of Gram Sabha consent as industry bodies and government departments complained of delays in project approvals. It, however, could not do so because of strong protests from the tribal affairs ministry, which is the nodal agency for the implementation of FRA.

The environment ministry still exempted forest clearances for linear projects — roads, railways and transmissions lines — from the requirement of the Gram Sabha consent in early 2013.

The same year, the Supreme Court re-affirmed the need of consent and settlement of tribal rights as a pre-condition to forest clearance in its judgment on Vedanta's Niyamgiri mining case. Quoting this order, the tribal affairs ministry wrote to all states in 2014 that the Gram Sabha consent was required for all projects — including linear projects — and that since it was the nodal agency for forest rights, orders from other ministries should not be accepted.

The environment ministry complained to the Prime Minister's Office (PMO). After the National Democratic Alliance (NDA) government took over in 2014, a Cabinet meeting was called to resolve the issue between the two ministries. With the backing of the PMO, the environment ministry's stand on linear projects prevailed.

In protest, the then tribal affairs secretary wrote to the environment secretary asserting that there was no proof to establish that the implementation of FRA was delaying development projects. "The FRA is the law of the land... Recent announcements (by the environment ministry) have conveyed a message that the government is against fair implementation of FRA. This is not desirable in the interest of peace and governance in forest areas," the tribal affairs secretary wrote.

### The latest move

Forest clearance comes in two stages. Stage-I, or "in-principle" approval is given by an expert committee of the ministry, called the forest advisory committee (FAC), which assesses a project on its merits and impact on forests. Once the project submits proof of meeting the conditions imposed by the FAC, the ministry gives the final go-ahead. The FAC had clarified in the past that proof of the Gram Sabha consent and settlement of forest rights should be included with project proposals submitted to it before the "in-principle" approval.

In January 2018, the environment ministry held a meeting with the tribal affairs ministry in which it proposed that the conditions of FRA compliance should be imposed only at the final stage of forest clearance and not for an in-principle approval. The tribal affairs ministry said: "This would prove to be fait accompli as by that time the project proponents would have made sufficient progress and the Tribals living in the forest area earmarked for use by the project would be put to a great disadvantage," show minutes of the meeting.

The environment ministry, however, went ahead with the proposal. Its letter of December 3 shows the coal secretary had written to it on October 26, "intimating" that the proposals for in-principle approval for coal mining projects of Western Coalfield Limited, a subsidiary of Coal India, were "stalled at various levels of state forest department for want of certificate in compliance" to FRA.

The letter was signed by the deputy inspector general of forests who re-interpreted the ministry's Forest

Conservation Rules of 2016. “According to the Forest (Conservation) amendment rules, 2016, the compliance under FRA is not required for consideration of in-principle approval. This has to be furnished by the state govt for consideration of the proposal by the ministry for final approval,” said the letter addressed to the Maharashtra forest department.

The Forest Conservation Rules of 2016 explicitly state that the project proponents and the state governments must take the consent of tribal people and settle their traditional land rights before the “grant” of Stage-I forest clearance. The ministry letter, however, “clarified” that these conditions could be met during the time given to projects for “compliance” to the conditions imposed by the FAC after Stage-I clearance.

Supreme Court lawyer Ritwick Dutta questioned the legal validity of the ministry’s letter as it re-interpreted the 2016 rules “without amending them or without seeking the opinion of the law ministry”.

“The Forest Advisory Committee, which has independent experts in it, assesses projects thoroughly only at Stage-I of clearance. After that, ministry officials mostly complete the formality before final clearance. If the FRA compliance is required at a later stage, the independent scrutiny of the consent and the settlement of land rights of tribals by the FAC will be bypassed,” he said.

Apart from exempting linear projects from the requirement of Gram Sabha consent in 2013, the environment ministry, in 2014, had also allowed such projects to start construction right after an “in-principle” clearance without waiting for the final approval. “This means such projects can now come up without settling forest rights,” Dutta added.