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अध्यक्ष
(भूतपूर्व सांसद–लोकसभा)
(पूर्व जनजातीय कार्य राज्यमन्त्री)
Dr. RAMESHWAR ORAON
Chairman
(Ex Member Parliament-LS)
(Former Minister of State for Tribal Affairs)

सत्यमेव जयते

भारत सरकार
राष्ट्रीय अनुसूचित जनजाति आयोग
छठी मंजिल, लोकनायक भवन,
खान मार्किट, नई दिल्ली-110003
Government of India
National Commission for Scheduled Tribes
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DO No.12/2/2009-Coord

Dated the 18th November, 2011

Respected Pradhanmantri jee,

I invite your august attention to my D.O. letter No. NCST/2009/RELHAB/01 dated 17th October, 2011 regarding the cavalier disregard exhibited by some Ministries in respect of their obligation of meaningful consultation with the Commission, as mandated under Clause (9) of Article 338A of the Constitution, while drafting legislation affecting the land rights of tribals, etc. which are specifically protected under the Constitution.

2. The views of the Commission on the Land Acquisition, Rehabilitation & Resettlement Bill, 2011 have already been forwarded vide the D.O. letter dated 17th October, 2011 referred above. Further thereto, I forward the comments/views of the Commission on the Mines and Minerals (Development and Regulation) Bill, 2011 as made available by the Ministry of Mines to the Commission vide their letter dated 24th October, 2011 (enclosed). I would request you to have the views of the Commission considered by the Government in respect of both the Bills, even while the matter is engaging the attention of the respective Standing Committees of the Parliament.

3. I would also like to bring to your kind notice that the Commission have not since been informed of the corrective action which may have been initiated by the Government. Meanwhile, Secretary, Ministry of Rural Development and the Secretary, Ministry of Mines have been extended an opportunity to explain their reasons for not ensuring meaningful consultation with the Commission in respect of these Bills; and the Commission will advise further recommendations separately.

With esteemed regards.

Yours Sincerely,

Rameshwar Oraon

(Dr. Rameshwar Oraon)

Dr. Manmohan Singh,
Hon'ble Prime Minister of India,
South Block,
New Delhi- 110001.

Encl:
Annexure-1 : Views/comments of the Commission on the Mines and Mineral (Development and Regulation) Bill, 2011.

TOTAL : 10 PAGES.

Annexure to DO No.12/2/2009-Coord dated 18th November, 2011

Views/comments of the National Commission for Scheduled Tribes on the Mines and Mineral (Development and Regulation) Bill, 2011.

Some important issues, which have still not received due attention in this version of the Bill, are as follows:-

a. In SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. Of Andhra Pradesh and Ors. the Supreme Court had observed that in the light of the provisions contained in Clause a of sub-para 2 of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals in the Scheduled areas- which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals, whether for incidental public purposes or otherwise. The judgment also directed that Minerals in Scheduled Areas have to be exploited by the tribals or State instrumentalities alone. Thus, the Samatha judgement requires exclusivity in grant of mineral concessions for Scheduled Tribes or State instrumentalities, not merely according preference to them.

It is therefore, desirable that, if mineral extraction is authorized by private entities in case of the Scheduled areas, the Govt. should be willing to shoulder vicarious responsibility for providing habitat and livelihood security in such areas. The State is one of the principal beneficiaries of the mineral extraction projects, as the royalty levied by the State on minerals extracted far exceeds the rents paid by the lessee to the tribal owners. To ensure livelihood security to tribals, the State must ensure alternative land in case they will be substantially deprived of their holdings, as well as give them a due share of the profits to be derived from mining.

b. The Bill doesn't incorporate an essential, specifically delineated provision for rehabilitation & resettlement for the project affected/displaced persons under the obligations set out in the mining lease. It maybe mentioned that the draft Land Acquisition, Rehabilitation & Resettlement Bill, 2011, which is awaiting approval of the Parliament, has integrated the provisions of rehabilitation and resettlement with the land acquisition process, but doesn't cover R& R in respect of the project-affected/displaced persons as a result of diversion of forest land/private lands leased for mining . The R& R obligations also need to be ensured in respect of incremental leasing of adjacent areas and extension of current leases in perpetuity also, which have not been provided in the Bill. The subject is vital to the interests of Scheduled Tribes and merits a separate chapter in the Bill.

The proposed National Sustainable Development Framework Bill should have equitable R&R as an objective, with an express provision for issue of R&R guidelines laying down a standard procedure for the same. Rehabilitation and Resettlement (R&R) plans should be linked to the Mining Plan, so that R&R activities are satisfactorily completed before the lessee ceases operations in a specified area. The standard rehabilitation procedure should also be made applicable to diversion of forest land also. All forest rights must be settled as per the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 before grant of lease; and, these must not be resumed/diverted except in the case of emergencies or strategic necessity, in which case equivalent forest land should be allotted with similar rights besides other compensation admissible.

Similar to the corporate social responsibility document (Cl.26(3)), there should also be a R&R document which should document the obligation/efforts and outcomes achieved. Before granting approval for extension of a mining lease, special report regarding implementation of R&R obligation should also be sought (Cl.28(3)proviso). Besides failure or delay in commencement of mining operations (Cl.29(1)) leases should also lapse in case R&R obligations have not been

discharged. Further, R & R norms specified by the R & R law/National Sustainable Development Framework should comprise the benchmark to be followed in all cases.

c. The Bill assiduously protects the financial interests of Government by mandating lease only through competitive bidding inclusive of profit-sharing [Cl. 13(3)(g)] and also those of lessees, who are permitted to transfer the concession with attendant potential for unearned profits, but does not provide any mechanism for profit-sharing with land owners. It is to possible to link profit-sharing with land holders also with the profits distributed to the Govt. Since mining is a long-term activity, necessary provision according share to land owners in the amount of appreciation of value of lease should also be included.

Contribution to the District Mineral Fund only as a proportion of royalty excludes share from windfall profits or protection against sudden deprivation due to cessation of business. Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. An effective and equitable compensation arrangement should ensure lifelong annuities sufficient to substitute income deprivation for the land owners (adjusted for likely inflation), besides creating alternative vocations for them. The land owners should also get a reasonable share in the profits distributed/ retained by the mining enterprise. Besides annual compensation in lieu of land surface rights, future (and sometimes windfall) earnings from mining activity should also be shared with land rights holders in reasonable measure as has been analogously provided in the Land Acquisition and R&R Bill, 2011. Further, the land should be returned to the owners after ecological reclamation of mined areas, or future earnings shared if non-agricultural use is continued in another form. If some land rights are being ceded in perpetuity, the Commission suggests that the retained earnings from the project activity should also be shared with the land owners in the form of "sweat-equity" (beside compensation for denial of use of land surface). Share of earnings from alternative

uses of land should also be provided, if future land use is of a commercial nature. Benefits/privileges available to mineral right holders may also be accorded to ordinary landholders also in Schedule V and VI areas.

d. The proposed District Mineral Foundation (DMF) should only work like a Trust looking after the interests of affected persons and should eschew the temptation to dabble in other activities. The sanction to use DMF for creation of local infrastructure, as provided in the Bill, may progressively erode the rights/benefits directly available to affected persons, unless this proportion is limited by law to a specified minor fraction. The legitimate expenditure toward infrasfructure development in Scheduled areas should be met through other sources. As evident from the conduct of functionaries/public representatives brought out in the CAG reports regarding use of MNREGA funds, etc., there should also be a provision for punishment of the members of the of Governing Committee of the Foundation for diversion of funds to ineligible purposes.

2. Clause-wise comments on the Bill are enclosed.

Enclosure

Views/comments of the National Commission for Scheduled Tribes on the Draft Mines and Minerals (Development and Regulation) Bill, 2011 [approved by Cabinet on 30th September, 2011]

Cl. 4(2):

The term " land where mineral sights vest in the State Government" in the Act will possibly exclude Schedule VI areas in the North East where land rights are vested in the community. This may lead to unfortunate problems as observed in mining of limestone in Meghalaya for cement plants in Bangladesh.

Cl.6(7):

In SLP (civil) 4601-02 of 1997, Samatha Vs. Govt. Of Andhra Pradesh and Ors. the Supreme Court had observed that in the light of the provisions contained in Clause a of sub-para 2 of Para 5 of Scheduled V of the Constitution, there is implied prohibition on the State's power on allotment of its land to non-tribals, in the Scheduled areas, which also limits the State's power to acquire tribal land for subsequent allotment to non-tribals whether for incidental public purposes or otherwise. The judgment also directed that Minerals have to be exploited by the tribals or State instrumentalities alone. Thus, the Samatha judgement requires exclusivity, not merely preference. No license can be given in Schedule VI areas because mineral rights may vest in the community.

Cl.7(4), proviso:

Enables continuous extension of lease by incremental leasing of adjacent areas with regard to R&R obligations.

Cl.7(7):

Provides extension of current leases in perpetuity without any regard to R& R obligations.

Cl.13(3)(g):

It is to possible to share profits with land holders also if profits are shared with the Govt. since mining is a long-term activity.

Cl.13(5)Proviso(i):

Clearance is also required under the Scheduled Tribes and Other TraditionalForest Dweller (Recognition of Forest Rights) Act, 2006 with determination of rights (individual/ community). All forest rights must be settled as per the ST & OTFD (RoFR)

rights besides other compensation admissible.

Cl.13(5, Explanation (i)):

Profit sharing should also be offered to land holders, if profits are shared with the Govt.

Cl.13(10):

No procedure has been laid for dealing with objections of local bodies in Scheduled Areas. Mineral concessions are also not limited to Public Sector Organisations as per the Samatha judgement.

Cl.18(3)(b):

Necessary provision regarding share to land owners in the amount of appreciation of value of lease should also be included.

Cl.18(6):

Benefits available to private persons may be made available to landholders in Schedule V and VI areas.

Cl.19(4), proviso :

Opportunités available to persons holding mineral rights should be extended to surface right landholders in Schedule V and VI Areas.

Cl.21(1)(k):

There should also be opportunity to be heard as per Clause 20(4)

Cl.24(1)

In order to identify the gamut of repercussions on tribal habitat, population and livelihood, a comprehensive Social Impact Assessment (SIA) should be conducted by a competent agency in consultation with Gram Sabha and District Councils before awarding the lease for mining of any mineral in Scheduled Areas

Cl.24(1)(d)proviso:

Royalty is proportion of production volumes. If royalty is shareable in respect of every mineral, dead rent should also be similarly payable to landholders, since it is the minimum return expected from mining rights.

Cl.24(1)(e):

Compensation for deprivation of earnings from alternative uses of land should also be provided, if land use is of a commercial nature..

Cl.24(1)(l):

Includes conditions for environmental protection but not regarding rehabilitation and resettlement.

Cl.24(1)(m):

Contribution to the Fund as a proportion of royalty does not include an element of profit-sharing from windfall/protect against liquidation of business.

Cl.24(1)(o):

Scope of this clause should be expanded to expressly include R& R obligations since there is no R&R law in sight.

Cl.24(4):

Breach conditions should include payment of surface rent, water rate also

Cl.26(1):

Mining plan should also include R&R obligations.

Cl.26(3):

There should also be a similar R&R document which should document the obligation/efforts and outcomes achieved.

Cl.28(3)proviso:

Special report regarding implementation of R&R obligation should also be sought

Cl.29(1):

Similar conditions for lapse in case R&R obligations have not been discharged should be included.

Cl.30(2):

Final closure clause should also include R&R consequences.

Cl.32(1):

Mine closure plan should also include R&R obligations prepared in accordance with the R & R Law / Policy and approved by the Gram Sabha / District Council before execution of the lease.

Cl.33:

(I) Since mineral extraction is generally destructive of soil surface, it can't usually be restored to original land use subsequently. To ensure livelihood security to tribals, the State must ensure alternative land in case they will be substantially deprived, a standard rehabilitation procedure should be drawn and incorporated in the Bill for the displaced tribals; and the same should be made applicable to diversion of forest lands for mining.

(II) The annual compensation and alternative sources of livelihood should be adequate to assure living standards comparable with the surrounding community, or even better. As mineral extraction is generally destructive of soil surface, it may be more helpful if damage compensation, or a significant part thereof, is paid at the outset to supplement livelihood security / change efforts.

(III) R & R norms specified by the R & R law, National Sustainable Development Framework should generally be followed.

Cl.43(2)(c)a):

The contribution to the DMF will vary according to production, while the annuity/compensation requirements shall grow keeping with inflation. There is no mechanism in the Act to protect the entitlements of PAPs.

Cl.46(2):

Equitable R&R should also be an objective of the framework.

Cl.46(5):

No separate R&R legislation has been enacted so far. For ample precaution, there should be an express provision for issue of R&R guidelines, if not a separate chapter on the subject in the Act.

Cl.56(2):

The wide scope afforded by the use of the words "work for the interest and benefit of affected persons" should not permit diversion of funds by public representatives/officials to other (private) ends.

Cl.56(3)(a)&(b):

The Foundation should only work like a Trust. Fund. Permission to use DMF for creation of local infrastructure may progressively erode the rights/benefits directly available to affected persons unless the proportion is limited by law to a specified minor fraction (as evident from the conduct of functionaries/public representatives brought out in the CAG reports regarding use of MNREGA funds etc.)

Cl.57(7):

There should also be a provision for punishment to the members of the of Governing Committee of the Foundation for diversion of funds to ineligible purposes.

Cl.68(1)(h):

The Authority should also have powers to review surface rent payable to land holders.