

Proceedings of Meeting by Dr. Rameshwar Oraon, Hon'ble Chairperson with
Secretary, Ministry of Mines on 25.07.2011

A List of officers present in the Sitting is at the Annexure.

1.0 ISSUE

Action taken regarding the recommendations of the Commission sent to the Ministry on the draft Mines and Mineral(Regulation and Development) Bill, 2010.

2.0 BACKGROUND

The Constitution of India enjoins upon this Commission to monitor all matters relating to the safeguards provided for the Scheduled Tribes, and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. Clause (9) of Article 338A of the Constitution also provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes. Clause 5(d) further provides that the Commission shall present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

It is understood from the reports that Group of Ministers (GoM) had approved the new draft Mines and Minerals (Development & Regulation) Bill, 2010 (MMDR Bill, 2010). As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, the Commission is anxious that certain important concerns need to be adequately addressed in the Bill. The concerns of this Commission regarding safeguards of the Scheduled Tribes in the MMDR Bill, 2010 were communicated to Hon'ble Minister vide DO letter No.NCST/2008/REHAB/01 dated 06.08.2010 and DO letter No.12/2/2009-Coord dated 11.10.2010. The comments of the Commission on the related clauses of the Bill have also been forwarded to the Ministry of Mines.

The Ministry have not informed the Commission regarding the action taken on the comments/suggestions made by the Commission. The Commission DO letter No.12/2/2009-Coord dated 13.07.2011 refers in this regard.

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3.0 DISCUSSION

Initiating the discussion, Joint Secretary, NCST, mentioned that the meeting was convened in pursuance of the observations of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes in its 33rd Report, wherein the Committee had desired feedback regarding action taken by the concerned Ministries/Departments/Organizations on the recommendations/observations of the Commission of various policy related matters. He further mentioned that Clause (9) of the Article 338 A of the Constitution makes it obligatory on the part of all the Ministries/Departments/Organizations to consult the Commission on all major policy matters affecting Scheduled Tribes. However, the Ministry of Mines had not so far sought comments of the Commission on the draft MMDR Bill, 2010. Notwithstanding this, the Commission had, suo moto, communicated its views/suggestions to the Ministry of Mines vide D.O. letter quoted above on the Draft MMDR Bill (version 03.06.2010, available on the web-site of the Ministry).

Representative of the Ministry of Mines clarified that the draft MMDR Bill was formulated in terms of the National Mineral Policy, 2008, which had been approved by the Government in March, 2008. Further, since the present proposal pertained to legislation and not policy matter, the draft MMDR Bill was not referred to NCST. However, once the concerns of the NCST were received, the same were considered suitably for incorporation. Secretary, Ministry of Mines clarified that Shri Maurice Kujur, Hon'ble Vice-Chairman, NCST, had written to then Hon'ble Minister of Mines Shri B.K. Handique on 6.8.2010 vide D.O. No.NCST/2008/REHAB/01 on the concerns pertaining to Scheduled Tribes arising out of mining operations. As the draft MMDR Bill had been referred by the Cabinet Secretariat to a Group of Ministers, and the GoM had held two rounds of meetings, Vice-Chairman, NCST was so informed by Hon'ble Minister of Mines vide his D.O dated 27.9.2010. Draft MMDR Bill, 2010 after consideration by the Group of Ministers (GoM) had been recommended by the GoM to the Cabinet after legal vetting for consideration. The concerns of the Commission on various provisions of the draft Bill had been appropriately taken care of. In this connection, Secretary, Ministry of Mines also submitted point-wise comments with reference to the views/suggestions of

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the Commission to the draft MMDR Bill, 2010 in the meeting, including the recommendation of NCST on replacing the concept of profit sharing with royalty sharing.

The Commission noted from the position submitted by the Ministry of Mines that the Commission's recommendations in respect of the following areas don't appear to have received attention.

- i. Issue of sweat equity to the land owners, and dividends at par with the other share holders, as part of profit sharing. In the event of closure of operations in a particular mine or operations below a certain optimal level, redemption of the equity of the land owners and fixation of annuity in lieu of the royalty that was being paid while the mine was in operation. (Sl. No.(v) of Ex-Vice Chairperson D.O. letter dated 11.10.2010).

Representative of the Ministry clarified that the same is adequately covered by the provision on lease holders sharing a sum equivalent for royalty with the persons affected by mining operations since the project sharing concept has been curtailed.

- ii. Consideration of R&R plan with the mining plan (Sl. No. (vi) of Ex-Vice Chairperson D.O. letter dated 11.10.2010).

The Ministry of Mines mentioned that mining plan is a legal document containing specification on mining matters, which would require techno-economic skills to evaluate, and such skills may not be available in the Gram Sabha/ District Councils, which render the entire exercise futile. Ministry of Mines further clarified that matters relating to R&R would be taken up in accordance with the R&R Policy at the State Government level and would not form a part of the mining plan which is regulated by IBM.

- iii. Utilization of National Mineral Fund and State Mineral Fund (Comments of the Commission against Clause No. 49(2) and 52(4) respectively forwarded vide letter dated 15.7.2011).

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The Commission mentioned that the NCST did not favour District Mineral Fund (DMF) because of the potential for diversion to other proposals and preferred direct payment to the affected people. Secretary, Ministry of Mines mentioned that the concept of DMF had developed out of the consideration that all mines or minerals may not yield similar revenues and that some of the mines may be more profitable, while some may incur even losses leading to differential payments and inequalities. Further, at mine development stage there would be no revenue generation in the mines, thus impacting the beneficiaries. Therefore, to ensure payment to the affected people at a uniform level with respect to the nature of claim, establishment of the DMF had been considered by GoM as appropriate. Moreover, the Sustainable Development Framework which is in the process of being finalized would address to all remaining issues of SIA.

The Commission observed that its recommendations as mentioned at Sr. No. i to iii above, being important, required consideration of the Government, and in case it was not found to be feasible to incorporate Commission's recommendations for general adoption, these may be incorporated as special provisions, applicable to the Vth Scheduled Areas. Secretary, Ministry of Mines mentioned that it was his understanding that all of the issues had been substantially addressed in the draft Bill. However, after approval by the Cabinet, the finalized draft would be made available to the Commission before introducing it in Parliament from where it would be sent to Standing Committee of Coal and Steel for further examination.

4.0 CONCLUSION

The Commission observed that since the draft MMDR Bill, as finalized and being processed had not been referred for comments by the Ministry of Mines, the Commission was not in a position to date, to discharge its mandated function in regard to an important legislation relating to STs like the MMDR Bill, 2010.

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