



**NOTICE**

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**BY**

**FAX/**

**SPEED**

**POST**

**GOVERNMENT OF INDIA**

**NATIONAL COMMISSION FOR SCHEDULED TRIBES**

**(A Constitutional Commission set up under Art. 338A of the Constitution to investigate and monitor all matters relating to violation of rights and safeguards provided for STs.)**

No.12/2/2009-Coord

Date: 13<sup>th</sup> October, 2011

To

**Shri S. Vijay Kumar,**  
Secretary,  
Ministry of Mines, Room No. 320, 'A' Wing,  
Shastri Bhavan,  
New Delhi

**Sub: Mandatory consultation with the National Commission for Scheduled Tribes under Clause (9) of Article 338A by Ministry of Mines with reference to Mines and Mineral (Development & Regulation) Bill 2010**

**Sir,**

The Constitution of India enjoins upon the National Commission for Scheduled Tribes to monitor and evaluate all matters relating to the safeguards provided for the Scheduled Tribes under the Constitution, and any law for the time being in force and under any order of the Government, 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 further provides that "The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes". Under Clause 5(d) of the Article the Commission is required to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

2. It was understood from news reports that the Government was contemplating the new Mines and Minerals (Development & Regulation) Bill, 2010. As mining affects tribals in a large measure, particularly their livelihood, settlements, environment and culture, the Commission was anxious that certain important concerns need to be adequately addressed in the Bill, and requested the Ministry of Mines, on several occasions, to submit the Draft MMDR Bill, as finalized, for obtaining the views/comments of the Commission under Article 338A(9) of the Constitution, as detailed below:

Reference No./Date

Contents in brief

NCST	Letter	Secretary, Mines apprised of the mandatory consultation on all major policy matters affecting Scheduled Tribes under Clause 9 of Article 338A and requested to forward the draft regulation as soon it is finalized.
12/2/2009-Coord	dt.	
21/05/2010		

- MTA letter 20025/19/2009-P&M dt.02/06/2010 As a follow up to National Commission for Scheduled Tribes letter dated 21/05/2011, Ministry of Tribal Affairs requested the Ministry of Mines to send the draft legislation, as and when finalized, to the Commission.
- Min. of Mines 16/83/2009-M-VI(Pt.-IX) dt. 08/06/2010 Ministry of Mines communicated that new Draft MMDR Act has not been finalized, also informing that the latest version of the draft MMDR Act had been uploaded on 3<sup>rd</sup> June, 2010 on website of the Ministry of Mines.
- NCST Letter 12/2/2009-Coord dt.28/06/2010 Secretary, Ministry of Mines again requested (with reference to their letter dated 08/06/2010) to forward the new Draft MMDR Act, as soon as it is finalized for comments/views of the Commission.
- NCST /2008/ REHAB/01 dt. 06/08/2010 Minister of Mines apprised of mandatory consultation with the Commission under Clause 9 of Article 338A of the Constitution and the Commission's concern in critical areas which require urgent attention.
- NCST Letter 12/2/2009-Coord dt. 25/08/2010 Minister of Mines requested to forward the final version of the Draft MMDR Act for the views of the Commission as required under Article 338A of the Constitution at an early date.
- NCST Letter 12/2/2009-Coord dt 11/10/2010 Minister of Mines apprised of Commission's concern on certain important issues affecting Scheduled Tribes.
- NCST Letter 12/2/2009-Coord dt.13/07/2011 Minister of Mines was informed that no response from the Ministry of Mines had been received in response to D.O. letter dated 11/10/2010 with the request to have views of the Commission considered by the Council of Ministers.
- Minutes of the Meeting on held on 25/07/2011, circulated vide NCST Letter 12/2/2009-Coord dt.27/07/2011 Meeting taken by the Hon'ble Chairperson with the Secretary, Ministry of Mines. From the position submitted by the Ministry of Mines in the meeting, the Commission observed that its recommendations 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.

The Commission also 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. Representative of the Ministry of Mines stated 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 National Commission for Scheduled Tribes.

- NCST Letter 12/2/2009-Coord dt 27/07/2011 Secretary, Ministry of Mines requested to forward the Draft MMDR Bill 2010, as finalized by the Group of Ministers for Commission's views/suggestions to enable the Commission discharge its mandate in the spirit of the Constitution.
- NCST Letter 12/2/2009-Coord dt 10/08/2011 Secretary Ministry of Mines was informed that the Commission was not agreeable to the contention of the Secretary, Ministry of Mines that legislation was not a policy matter within the ambit of Article 338A (9) of the Constitution, Ministry of Mines was also apprised of the concern of the Commission regarding non-furnishing of the Draft MMDR Bill, 2010 inspite of the letter dated 27.07.2011 for Commission's views/suggestions in the matter. Secretary, Ministry of Mines also requested to produce copy of the draft MMDR Bill, 2010 in the meeting scheduled to be held on 17/8/2011.
- Min. of Mines Letter 16/83/2009-MVI)Part v) dt. 11/08/2011 Ministry of Mines informed that views of the Deptt. of Legal Affairs, Ministry of Law have been sought inter-alia, on the need to consult the Commission on the MMDR Bill, 2010 legislation
- Min. of Mines Letter 16/83/2009-MVI (part v) dt.17/08/2011 Ministry of Mines informed vide letter dated 17/08/2011 that recommendations of the GOM on the draft MMDR Bill 2010 were awaiting Cabinet approval. Since GOM and Cabinet procedures are by their nature secret, it is not possible to share the contents of the discussions of the GOM with the Commission at this stage.
- NCST Letter 12/2/2009-Coord dt 09/09/2011 Secretary, Ministry of Mines apprised of the need to forward the draft Bill finalized in the Ministry to the Commission and also expedite views of the Ministry of Law in the matter.
- Minutes of the Meeting on held on 15/09/2011, circulated vide NCST Letter 12/2/2009-Coord dt.20/09/2011 In the meeting taken by the Chairperson, National Commission for Scheduled Tribes representative of Deptt. of Legal Affairs stated that the opinion of the Ministry of Law would be communicated shortly.
- Min. of Law & Justice Letter FTS.2878/LS/11 dt. 22/09/2011 Ministry of Law and Justice have opined that the Ministry of Mines were under constitutional obligation to consult the Commission. Further, there may no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

3. It is evident from the above that the Ministry of Mines have faulted in lack of proper understanding of the Constitutional provisions - in particular, the obligation to consult the Commission in a meaningful manner as mandated under the Constitution, maintaining transparency of actions regarding implementation of Constitutional safeguards with respect to STs and failed to exhibit expected sensitivity of approach/attitude towards weaker sections.

4. In view of the obdurate avoidance manifest by the Ministry of Mines in respect of the obligation to consult the Commission on the draft MMDR Bill, 2010, as mandated under the Constitution, the Chairperson, NCST has called the Secretary, Ministry of Mines on **3<sup>rd</sup> November, 2011 at 12 00 hours** at the Conference Room of the Commission to:

- (a) Produce a chronological record of the action taken on the requests made by the Commission regarding the MMDR Bill, 2010.
  - (b) Explain the reasons for avoiding meaningful consultation with the Commission on this important legislation concerning the STs; and
  - (c) Explain why legal action should not be instituted against the Secretary, Ministry of Mines, for repeated disregard of the Commission's requests to provide a copy of the draft legislation to the Commission to ensure meaningful consultation before submission of these Bills to the Cabinet.
5. Secretary, Ministry of Mines, is requested to attend **in person**.

Yours faithfully,



(Aditya Mishra)  
Joint Secretary