



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.)

File No. MC/Policy-2/2013/RU-IV

Dated 21/01/2013

To

Shri R.H.H. Hmar,
Under Secretary,
Ministry of Tribal Affairs
Room No. F-281,
August Kranti Bhawan,
Bhikaji Kama Place,
New Delhi- 110066

Sub: Draft Cabinet Note for Amendment of Coal Bearing Areas (Acquisition & Development) Act, 1957

Sir,

I am directed to refer to your letter No. 17011/01/2013-P&M dated 07/01/2013 (received in the Commission on 10/01/2013) regarding views/ comments of the Commission on the Draft Cabinet Note mentioned above and to say that the subject matter was discussed as Agenda Item No-1 in the 43rd Meeting of the Commission held on 21/01/2013.

2. Relevant Extracts from the Summary Record of the meeting of the Commission are enclosed for information and further necessary action. In this Connection, you are requested to ensure that in accordance with the revised instructions issued by the Cabinet Sectt. vide OM dated 16/2/2012, the views of the Commission, as received by the MTA, are placed before the Hon'ble Minister, MTA before communicating final views/comments of the MTA to the sponsoring Ministry viz. Ministry of Coal. Further, the Ministry of Coal should be requested to include in/ enclose with the note for consideration of the Cabinet the unabridged/ unedited views of the Commission along with the views of the MTA and their responses thereon.

3. It is requested that information about action taken on the views and observations of National Commission for Scheduled Tribes on the subject matter, and the nature and the manner in which those views have been incorporated, may be forwarded to this Commission urgently for including the same in the Annual Report of the Commission.

Yours faithfully,

(K. D. Bhansor) Mrs.
Deputy Director

Encl: As above.

Copy for information to:-

The Secretary,
(Kind Attention:
Shri S.K. Singh,
Joint Secretary)
Ministry of Coal,
Shastri Bhawan,
New Delhi-110001

Please refer to your letter No 43022/1/2010-PRIW-I dated 31/12/2012, addressed to Ministry of Tribal Affairs on the subject.

2. Relevant Extracts from the Summary Record of the meeting of the Commission, communicating views/ comments of the Commission on the issue are enclosed. In this connection, your kind attention is also invited to para 2 above with reference to the revised instructions issued by the Cabinet Sectt. vide O.M. dated 16/02/2012. It is requested that the action may please be taken accordingly and the nature and the manner in which views of the Commission have been incorporated in the proposed Amendment to the Act may be forwarded to the Commission urgently for including the same in the Annual Report of the Commission.

Encl: As above
SSA (NIC)
Assistant Director
(Coordination)

For uploading on the Website of NCST



(K. D. Bhansor) Mrs.
Deputy Director

EXTRACT

NATIONAL COMMISSION FOR SCHEDULED TRIBES

Subject: Summary record of the 43rd meeting of the National Commission for Scheduled Tribes held at 12:30 HRS on 21/01/2013.

The 43rd meeting of the Commission was held at 12:30 hrs on 21/01/2013 in the Conference Room of the Commission in Loknayak Bhawan, New Delhi. The meeting was presided over by Dr. Rameshwar Oraon, Hon'ble Chairperson, NCST. List of the participants is enclosed at **ANNEXURE**. There were three Agenda Items for discussion in the meeting. All the Agenda Items were discussed in the meeting.

3. The decisions taken and the action points that emerged out of the discussions held in the meeting are given below:

xxx

xxx

xxx

xxx

Agenda Item I	Draft Cabinet Note for Amendment of Coal Bearing Areas (Acquisition & Development) Act, 1957
----------------------	---------------------------------------------------------------------------------------------------------

3. Ministry of Tribal Affairs vide O.M. No. 17011/01/2013-P&M dated 7/01/2013 (received on 10/1/2013) have sought the comments of the Commission on the Draft Cabinet Note for Amendment to the Coal Bearing Areas (Acquisition & Development) Act, 1957, with reference to the Ministry of Coal letter dated 31/12/2012.

4. The Commission noted that the MTA O.M. dated 7/1/2013 seeking comments of the Commission was received in the Commission only on 10/1/2013 while Ministry of Coal vide their letter 31/12/2012 had sought the comments on the Draft Cabinet Note within a period of 15 days. The Commission has guidelines which include stipulated procedure to be followed for dealing with such cases, which require minimum 2 weeks. MTA may, therefore, be requested to forward such cases on an urgent basis.

5. Joint Secretary, NCST mentioned that the Draft Cabinet Note has been submitted for introducing the Coal Bearing Areas (Acquisition and Development) Amendment Bill, 2013 in the Lok Sabha to insert a provision to enable return of mined out/unutilized land to the concerned State Governments on the basis of the proposed Amendment. The return of mined out/unutilized land to the concerned State Govts. has been justified based on the recommendations of a Committee constituted by the Ministry of Coal in Dec., 2009 under the Chairmanship of Additional Secretary, Ministry of Coal and with the justification that the concerned State Govts. hold the surface as well as the mining rights situated within their jurisdiction and also the custodian of all land situated within their jurisdiction. The proposed Amendment provides for counting of reclaimed afforested land in compensatory afforestation towards future acquisition of forest land for mining as well as use of returned land for commercial purposes, with payment of to the CIL at the prevailing market rate.

6. The Commission observed that most of coal mines are situated in Scheduled/ Tribal Areas which had caused displacement of large magnitude of tribals. The land is the only asset tribals are having and is also the source of their livelihood. Therefore, acquisition of tribal land, leading to their landlessness, is both socially and economically depriving the tribals, who have limited capacity to earn their livelihood outside their habitat and pursue economic activity not involving agricultural land. Sensitivity to these tribal needs must be accounted into the proposed Amendment with reference to proviso (d) and (e), considering the following views/comments of the Commission:

- i) Tribal lands are not transferable to non-tribals – whether by sale, lease or mortgage, etc. In SLP (civil) 4601-02 of 1997, Samatha Vs. Government 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. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights.
- ii) The acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the re-payment of

the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease).

- iii) All other rights of the tribals over the unutilised land should be restored.
- iv) In case the land is subsequently utilized by the Govt. for a commercial purpose (e.g. for real estate development after mining, etc.), the earnings from such activity any alternate use should also be shared with the original land owners in similar fashion for appreciation in land values. Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature.

7. Based on the above deliberations, the Commission approved the comments, as placed at the Appendix, on the proposed Amendment to the Act.

8. Joint Secretary, NCST also highlighted that land is a precious resource and there is a need for proper closure to enable beneficial post-closure use to the proximate communities, especially STs. He further mentioned that there are many mines which have been closed prior to formulation of the new laws/guidelines. In respect of such abandoned mines, rehabilitation/separation of affected tribals due to closure needs to be commensurate with their post closure socio-economic activities and aspirations. The Commission desired that the Ministry of Coal should be requested to submit a brief Note to the Commission on the status of mine closure plan in respect of abandoned mines in Scheduled Areas within 3 weeks and thereafter, a meeting with the Secretary, Ministry of Coal should be organised for a presentation by the Ministry of Coal in the matter. The officials of the Ministry of Environment & Forests, Coal Mine Planning and Design Institute (CMPDI), Director General of Mine Safety (DGMS) may also be invited in the proposed meeting.

<u>THE COAL BEARING AREAS (ACQUISITION AND DEVELOPMENT)-(AMENDMENT) BILL, 2013</u>	
A	
BILL	
Further to amend the coal Bearing Areas (Acquisition and Development) Act, 1957	20 of 1957
Be it enacted by Parliament in the Sixty- third Year of the Republic of India as follows:-	
1. (1) This Act may be Called the Coal Bearing Areas (Acquisition and Development) (Amendment) Act, 2013	Short title, Application and Commencement.
(2)It extends to the whole of India, except the State of Jammu and Kashmir.	
(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
2. In the Coal Bearing Areas (Acquisition and Development) Act, 1957 after Section 18A, following Section shall be inserted, namely:-	Insertion of new section (Return of mined out land /surplus land no longer required for mining land allied activities or de-notification of land acquired).
“18B The Central Government may, by order in writing, in respect of the land acquired under this Act, return to the State Government concerned land	
(a) Which is yet to be taken into possession but is no longer required for mining and allied activities;	
(b) Which has been taken into possession after payment of compensation, but is no longer required for mining and allied activities;	
(c) Which has been taken into possession after providing Rehabilitation and Resettlement benefits to the project affected families and is worked out with or without leaving thinning reserves:	
Provided that	

Contd.....

	Comments of the National Commission for Scheduled Tribes
(a) The land so returned shall be mapped out and coal seams known to be available therein shall be clearly mentioned.	
(b) Before return of mined out land it shall be ensured by the coal company concerned that the land has been reclaimed as per the Mine Closure Plan guidelines.	
(c) The balance land shall be given to the State Governments free of cost and they may be advised to form a Land Bank of such	i) The proviso is intended for use of land for commercial purposes etc. In this connection, it is emphasised that the Tribal lands are also not transferable to non-tribals – whether by sale, lease or mortgage, etc. 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. Any law which seeks to expropriate tribal rights over land must recognize these differences; and provide appropriate and equitable circumstances as well as compensation of rights.

	<p>ii) In the event of the acquired land remaining unutilized, it should be returned back to the original tribal owner wherever possible, without insisting on the repayment of the compensation amount since the livelihood loss caused to the landowners may have eroded the compensation received (as is done on expiry of a lease</p> <p>iii) All other rights of the tribals over the unutilised land should be restored.</p> <p>iv) In case the land is subsequently utilized by the Government for a commercial purpose, the earnings from such activity or any alternate use should also be shared with the original land owners in similar fashion for appreciation in land values. Share of earnings from alternative users of land should also be provided, if future land use is of a commercial nature.</p>
<p>(d) Reclaimed afforested land that is returned to the State Governments shall be counted in compensatory afforestation towards future acquisition of forest land for mining and may be reserved by the State Government for the purpose</p>	
<p>(e) In case the returned land is used for commerce purpose, the State Governments would be bound to pay the prevailing market value of land to CIL. The market value of the land shall be calculated as per the provision of the prevailing Central of State LA Act or the prevailing system for the calculation of market value by the State Governments.</p>	<p>Please see comments against proviso (c) above.</p>