DIVERSION OF FOREST LANDS FOR NON-FORESTRY PURPOSES AND THE FOREST (CONSERVATION) ACT 1980 For Officer Trainees of SFC & 2nd MES FC At MCR HRD IT On 06.05.2020 BY: SHRI P.K.SHARMA, IFS (Rtd.), Former Prl. Chief Conservator of Forests & Head of Forest Force, Telangana.

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 THE FOREST

 CONSERVATION

 &CT, 1980

The Forest (Conservation) Act, 1980

I. Background

- The maintenance of the ecological balance should be as much a part of the developmental process as the working of our national resources. If we plan only on the basis of the exploitation of our existing resources and give no thought to their conservation and renewal, we shall negate the concept of development itself. We have to plan for tomorrow and true development consists of building our capital measured not only in financial and physical terms but also in terms of Nature.
- The preservation of our environment is our collective concern. Any deterioration of the environment threatens the present end future well-doing of both our country and our people.

The Forest (Conservation) Act, 1980

I. Background

- As there were indiscriminate use of forest land for various developmental activities without giving due regard to ecological sustainability and environmental degradation, the Forest (Conservation) Act,1980 was enacted with effect from 25.10.1980.
- FC Act 1980 is an Act to provide for the conservation of forests and for matters connected there with or ancillary or incidental thereto.

The Forest (Conservation) Act, 1980

II. Section 2

No State Government or other authority shall make, <u>except with the prior</u> <u>approval of the Central Government</u>, any order directing –

➢that any Reserved forest or any portion thereof, shall <u>cease</u> to be Reserved.

That any forest land or any portion thereof may be used for any <u>non-forestry purpose;</u>

The Forest (Conservation) Act, 1980 II. Section 2

➢that any forest land or any portion thereof may be <u>assigned</u> by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government.

➤that any forest land or any portion thereof may be <u>cleared of trees</u> which have grown naturally in that land or portion, for the purpose of using it for re-afforestation. Explanation – For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for -

a)the <u>cultivation</u> of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

b) purpose other than re-afforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, viz., the establishment of check-post, fire lines, wireless communication and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

III. DEFINITION OF FORESTS:

The term "forest land" mentioned in Section 2 of the Act refers to:

- Reserved forest, Protected forest or <u>any area</u> recorded as forest in the government records.
- Lands which are notified under Section 4 of the Indian Forest Act (AP Forest Act, 1967 or equivalent).
- Forest" <u>as understood in the dictionary</u> <u>sense (Supreme Court order dated 12.12.1996</u> in WP No.202/1995: Godavarman Case).

IV. PENAL PROVISION:

3 A. Penalty for contravention of the provisions of the Act:

Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period, which may extend to 15 (fifteen) days.

PENAL PROVISION:

<u>3 B. Offences by authorities and Government</u> <u>Departments</u> -

Where any offence under this Act has been committed -

by any department of Government, the head of the department; or

by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be <u>deemed to be guilty of the offence</u> and shall be liable to be proceeded against and punished accordingly.

V. Dealing with violations

Proceedings against persons guilty of offences under the Act.

The Central Government may, by notification, authorize <u>any officer not</u> <u>below the rank of Conservator of Forests</u> or the concerned forest officer having territorial jurisdiction over the forest land in respect of which the said offence is said to have been committed, <u>to file complaints</u> against the person(s) prima-facie found guilty of offence under the Act or the violation of the rules made there under, <u>in the court having jurisdiction in the matter</u>.

Provided that no complaint shall be filed in the court, <u>without giving</u> the person(s) or officer(s) or authority(s) against whom the allegations of offence exist, an opportunity to explain this or their conduct and to show cause, by issuing a notice in writing of not less than 60 days, as to why a complaint should not be filed in the court against him or them for alleged offences.

The MoEF & CC, Govt. of India have issued notification authorizing the Chief Conservator of Forests, Regional Office to file complaint against the persons prima facie found responsible for violation of provisions of F(C) Act, 1980 in the court having jurisdiction in the matter.

VI. The Applicability of Forest (Cons.) Act, 1980

1.2 Clarification

- i. The cases in which specific <u>orders for de-reservation or diversion of forest areas</u> in connection with any project were issued by the State Government prior to 25.10.1980, need not be referred to the Central Government. However, in cases where <u>only administrative approval for the project was issued without specific</u> <u>orders regarding de-reservation and/ or diversion of forest lands</u>, a prior approval of the Central Government would be necessary.
- ii. <u>Harvesting of fodder grasses, legumes etc</u>., which grow naturally in forest areas, without removal of the tree growth, will not require prior approval of the Central Government. However, lease of such areas to any organization or individual would necessarily require approval under the Act.
- iii. The forest policy, as well as provisions of the Forest (Conservation) Act, 1980 do not interfere in any manner or restrict the Nistar, recorded rights, concessions and privileges of the local people for bonafide domestic use as granted by the State Governments under Indian Forest Act, 1927 or State Forest Acts/ Regulations. However. It has to be ensured that while allowing such rights, concessions and privileges to be exercised, the right holders do not resort to felling of trees or break up the forest floor so as to procure stones, minerals, or take up constructions, etc. The forest produce so obtained shall not be utilized for any commercial purposes.

iv. The <u>collection of such forest produce should be</u> <u>manual and should be transported through local</u> <u>modes of transport like bullock carts, camel carts, etc.</u> and <u>no mechanized vehicles shall be allowed</u> to be used in transporting such forest produce and only in exceptional cases with the approval of concerned Divisional Forest Officers, tractors mounted with trolley may be used.

<u>The Supreme Court</u> has passed an order on 14.2.2000 restraining removal of dead, diseased, dying or windfallen trees, drift wood and grasses etc. from any National Park or Game Sanctuary..... In view of this, rights and concessions cannot be enjoyed in the <u>Protected Areas (PAs)</u>. The RoFR Act, 2006 provides these rights to some extent.

VII. INVESTIGATION & SURVEY:

1.3 (i)"Investigations and surveys carried out in connection with development projects such as transmission lines, hydro-electric projects, seismic surveys, exploration for oil drilling, mining etc. which do not involve any clearing of forest or cutting trees and involve operations such as clearing of bushes and lopping of tree branches for purpose of sighting will not attract the provisions of the Act;".

1.3 (ii) If, it involves clearing of forest area or felling of trees, prior permission of the Central Government is mandatory.

(iii) However survey, investigation and exploration cannot be carried out in Wildlife Sanctuaries, National Parks and Sample Plots demarcated by the Forest Department without obtaining the prior approval of the Central Government, whether or not felling of trees is involved". 1.3 (v) "Prospecting of any Mineral done under Prospecting License (PL) granted under MMRD Act, which requires collection/removal of samples from the Forest land, is a stage between survey & investigation and grant of Mining Lease (ML); requires permission under Forest (Conservation) Act, 1980.

 However, in case of Coal, lignite and metallic ores – test drilling <u>up to 20</u> <u>boreholes of maximum 8" dia per 10</u> <u>sq.km.</u> and

(v) in case of non-metallic Ores 1.3 excluding Coal and lignite, -test drilling up to 16 boreholes of maximum 6.6" dia per 10 sq.km for prospecting, exploration or reconnaissance operations without felling of trees, do not attract the provisions of the Act.

 In all other cases, involving more number of drilling of bore holes, prior permission of Central Government under the Act is required". VIII. GUIDELINES SPECIFIC TO MINING:

1.6 (i) Mining, including underground mining, is a non-forestry activity.

Renewal of an existing mining lease in a forest area also requires the prior approval.

Continuation or resumption of mining operation on the expiry of a mining lease without prior approval amounts to contravention of the Act.

1.6(iii)Boulders, bajri (coarse sand), stone, etc, in the riverbeds located within forest areas also constitute a part of the forest land and their removal also requires prior approval of the Central Government.

- a. Submission of Mining Proposals
- ✓ Applications to be entertained <u>only if the mineral is not</u> <u>available outside the forest lands</u>. District Mining Officer to certify to this effect with the help of scientific studies, facts & figures.
- ✓ The UA should <u>fully justify the necessity</u> of opening new mining leases for that particular mineral. The state Government / DMG must give complete justification for <u>establishing its inescapability</u> for locating the project in <u>forest area</u>.
- Mining Plan to be approved by the competent authority for coal by the Controller of Coal and for major minerals by IBM and so on.
- ✓ Even in case of renewals, complete details of existing or proposed leases in that particular forest area with their present status to be indicated on Survey of India topo-sheet on 1:50,000 scale.

- ✓ With proposal for fresh mining, a brief profile of the lessee / company along with <u>details of their</u> <u>existing mining lease</u> in the state; with their <u>capacity of production</u>, the present level of <u>average annual production</u>, <u>location</u> of these pits and the <u>status of reclamation</u> of forest land that are exhausted of minerals.
- ✓ Along with this, the State Government (DMG) to submit details of all other mining leases for that particular mineral with their capacity and average annual production and projected future requirements.

IMPORTANT POINTS TO BE TAKEN INTO CONSIDERATION:

Whether the forests land proposed to be used for nonforest purpose forms part of a Nature Reserve, National Park, Wildlife Sanctuary, Biosphere **Reserve** or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying severely eroded catchment; Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose.

IX. UPGRADATION OF ROADS IN FOREST AREAS

Constructed prior to 1980 in Forest Areas to Pucca Roads.

- 1. The up-gradation of <u>roads constructed in forest areas</u> <u>prior to 1980</u> from 'Kutcha to Pucca' is allowed to the extent that these roads are <u>not black topped / tarred</u>, and if during the process of up-gradation these roads need to be black topped / tarred, <u>prior environmental</u> <u>clearance shall be sought by the User Agency</u>.
- 2. For such up-gradation in Protected Areas like National Park / Sanctuaries, prior permission of National Board of Wildllife and the Supreme Court shall be taken by the State/UT Government.
- 3. Both sides of the upgraded roads shall be reinforced with brick / stone works, and vegetative measures to check soil erosion, at the project cost, in consultation with the Divisional Forest Officer.

X. COMPENSATORY AFFORESTATION:

- One of the most important conditions for diversion of Forest lands for non forestry purposes.
- Formulation of a <u>comprehensive Compensatory</u> <u>Afforestation Scheme</u> is mandatory.
- Compensatory Afforestation shall be done over an equivalent area of non forest land.
- As far as possible, non forest land for Compensatory Afforestation should be identified <u>contiguous to or in</u> <u>the proximity of Reserve Forest or Protected Forest</u> to enable the Forest Department to effectively manage the newly planted area.

<u>Special Provisions Regarding</u>
 <u>Compensatory Afforestation</u>

Compensatory Afforestation may be raised over degraded forest land <u>twice in extent</u> of the forest area being diverted in respect of following cases:

✓ For extraction of minor minerals from the river beds

✓ Proposals of CPSUs

No Compensatory Afforestation shall be insisted upon in respect of :

 Proposals involving diversion of forest land up to 1.00 Ha. (however, plantation of 10 times the number of trees likely to be felled will be carried out).

✓ For <u>underground mining</u> in <u>forest land</u> <u>below</u> <u>3 Mts</u>. (However, for surface rights CA will be required)

Cases of renewal of mining lease for the forest area already broken / used for mining, dumping of overburden, construction of roads, rope ways, buildings etc.

XI. NET PRESENT VALUE (NPV)

The NPV amounts are required to be used for achieving ecological plans, and for the regeneration of forest and maintenance of ecological balance and eco-system.

It's not in relation to any proprietary rights'

CALCULATION OF NET PRESENT VALUE (NPV):

- Monetary value of following Goods and Services provided by the forests have been taken into consideration:
 - (i) Value of timber and fuel wood
 - (ii) Value of Non Timber Forest Products (NTFP)
 - (iii) Value of Fodder
 - (iv) Value of Eco-tourism
 - (v) Value of bio-prospecting
 - (vi) Value of Ecological services of forest
 - (vii) Value of Flagship species
 - (viii) Carbon Sequestration Value

ECOLOGICAL CLASSES FOR NET PRESENT VALUE (NPV):

The 16 major forest types have been re-grouped into 6 Ecological classes depending upon their ecological functions:

Eco-Class I	Consisting of Tropical Wet Evergreen Forests, Tropical Semi Evergreen Forests and Tropical moist Deciduous Forests.		
Eco-Class II	Consisting of Littoral and Swamp Forests		
Eco-Class III	Consisting of Tropical Dry Deciduous Forest		
Eco-Class IV	Consisting of Tropical Thorn Forests and Tropical Dry Evergreen Forests		
Eco-Class V	Consisting of Sub-tropical Broad Leaved Hill Forests, Sub- Tropical Pine Forests and Sub Tropical Dry Evergreen Forests		
Eco-Class VI	Consisting of Montane Wet Temperate Forests, Himalayan Moist Temperate Forests, Himalayan Dry Temperate Forests, Sub Alpine Forest, Moist Alpine Scrub and Dry Alpine Scrub.		

RATES OF NET PRESENT VALUE (NPV):

Eco-Value	Class and NPV rates in Rs. Per Ha.					
	Class I	Class II	Class III	Class IV	Class V	Class VI
Very Dense Forest	10,43,000	10,43,000	8,87,000	6,26,000	9,39,000	9,91,000
Dense Forest	9,39,000	9,39,000	8,03,000	5,63,000	8,45,000	8,97,000
Open Forest	7,30,000	7,30,000	6,26,000	4,38,000	6,57,000	6,99,000

* The NPV rate fixed was valid for a period of 3 (three) years and was subject to variation after three years as per the Supreme Court's judgment dated 28.03.2008. <u>Its already delayed & going to be revised shortly, with 100 to 400% hike.</u>

RATES OF NPV IN PROTECTED AREAS:

- After obtaining permission from the SCI:
- In case of <u>Wildlife Sanctuaries</u>- An amount equal to <u>5 (Five) times the value of NPV</u> payable for such areas.
- In case of <u>National Parks</u> An amount equal to <u>10 (Ten) times</u> the value of the NPV payable for such areas.

Exemption from Net Present Value

S. No.	List of Activities / Projects	Exemption levels for NPV (as percentage of full chargeable (NPV)	Remarks
1.	 i. Schools ii. Hospitals iii. Children's play ground of non-commercial nature. iv. Community centres in rural areas. v. Overhead Tanks vi. Laying of underground drinking water pipeline up to 4" diameter and vii. Electricity distribution line up to 22 KV in rural areas. 	 Full exemption up to 1.00 Ha. forest land, provided:- a) No felling trees is involved; b) Alternate forest land is not available. c) The project is of non-commercial nature and is part of the Plan/Non-Plan Scheme of government; and d) The area is outside National Park/Sanctuary. 	As per Supreme Court Order dated 09.05.2008.

Forest (Conservation) Act, 1980

Exemption from Net Present Value

S. No.	List of Activities / Projects	Exemption levels for NPV (as percentage of full chargeable (NPV)	Remarks
2.	Relocation of Villages from the National Parks / Sanctuaries to alternate forest land.	Full Exemption	do
3.	Collection of boulders / silts from the river beds in the forest area.	 Full exemption provided; a) Area is outside National Park / Sanctuary; b) no mining lease is approved/signed in respect of this area; c) The works including the sale of boulders / silt are carried out departmentally or through the Eco- Development Committee (ECC) or JFM Committee 	do

Forest (Conservation) Act, 1980

Exemption from Net Present Value (Contd....)

S. No.	List of Activities / Projects	Exemption levels for NPV (as percentage of full chargeable (NPV)	Remarks
3.	Collection of boulders / silts from the river belts in the forest area. (Contd)	 d) The activity is necessary for conservation and protection of forests; and e) The sale proceeds are used for protection/ conservation of forests. 	do
4.	Laying of underground optical fiber cable	 Full exemption provided; a) No felling of tree is involved; b) Areas falls outside National Park/Sanctuary. 	do
5.	Pre-1980 regularization of encroachments & conversion of forest villages into revenue villages.	Full exemption provided these are strictly in accordance with the MoEF's guidelines dated 18.09.1990	do

Exemption from Net Present Value (Contd...)

S. No.	List of Activities / Projects	Exemption levels for NPV (as percentage of full chargeable (NPV)	Remarks
6.	Underground mining	50% of the NPV of the entire area	do
7.	Field Firing Range	 Full exemption provided; a) No felling of trees are involved; and b) No likelihood of destruction of forest is involved. 	
8.	Wind Energy Projects	50% of the minimum rate of the NPV irrespective of the eco-class in which the project lies provided minimum tree felling is involved.	do— and CEC clarification Dated 22.12.2008

XII. DELEGATION OF POWERS UNDER FOREST (CONS.) ACT

(a). The Central Government has conveyed its <u>GENERAL APPROVAL</u> under Section 2 of the Forest (Conservation) Act 1980 for diversion of forest land to <u>State Governments</u>, up to 1 Ha, for following activities:

- i. Schools
- ii. Dispensary hospital
- iii. Electric & telecommunication lines
- iv. Drinking Water
- v. Rain water harvesting structures
- vi. Minor irrigation canal
- vii. Non-conventional sources of energy
- viii. Skill up-gradation vocational training centre
- ix. Power sub-stations
- x. Communication posts; and
- xi. Police establishments like police stations outposts border outpost/Watch towers in sensitive areas (identified by Ministry of Home Affairs).

(b). Delegation of Powers under Forest Rights Act 2006

"Notwithstanding anything contained in the Forest (Conservation) Act 1980, (69 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding 75 (seventy-five per Ha) provided that such diversion of forest land shall be allowed only if,

- i) The forest land to be diverted for the purposes mentioned in this sub section is <u>less than 1 Ha</u> in each case; and
- ii) the clearance of such developmental projects shall be subject to the condition that the <u>same is recommended</u> <u>by the Gram Sabha</u>.

*Chapter-II Section 3 (ii)

- a) Dispensary or hospital;
- b) Anganwadis;
- c) Fair price shops;
- d) Electric and telecommunication lines;
- e) Tanks and other minor water bodies
- f) Drinking water supply and water pipeline;
- h) Water or rain water harvesting structures;
- i) Minor irrigation canals;
- j) Non-conventional source of energy;
- k) Skill up-gradation or vocational training centres;
- I) Roads; and
- m) Community centres; (13 activities)

(c). Delegation of Powers for LWE Affected Districts:

- General approval up to 5.00 Ha:
 - 1. Schools
 - 2. Dispensaries / Hospitals,
 - 3. Electrical & Telecommunication Lines,
 - 4. Drinking Water,
 - 5. Water /Rain Water Harvesting Structures,
 - 6. Minor Irrigation Canal,
 - 7. Non-conventional sources of energy,
 - 8. Skill up Gradation/Vocational Training Centre,
 - 9. Power sub-stations,
 - 10. Rural roads,

11. Communication posts &

12.Police establishments like Police stations / Outposts / Border Outposts / Watch Towers in sensitive area (identified by Ministry of Home Affairs); and

13. Underground laying of optical fibre cables, telephone lines & drinking water supply lines.

XIII. PROCESSING OF THE PROPOSAL:

- Submission of Proposal by UA to PCCF/Nodal Officer.
- Scrutiny & Sending back to the UA OR send to the CF/DFO/FRO.
- Site inspection, enumeration of tree growth, evaluation from WL / Environmental Impact.
- Resubmission to the PCCF/ Nodal officer.
- Forwarding to the State Government & <u>online</u> <u>uploading on MoEF & CC's Portal.</u>
- Forwarding to GOI, MoEF by the State Govt.
- Site Inspection by the Regional CCF/CF
- Considering the Proposal by Forest Advisory Committee (FAC)
- Approval & issue of 1st Stage Clearance

- Communication by GOI to the State Govt.
- Communication by the State Govt. to the PCCF
- Communication by the PCCF to the UA
- Compliance of stipulated conditions by UA & SG
- Reporting back to GOI through the DFO/ CF / PCCF/SG.
- Issue of Stage II (Final approval) by GOI & communication to SG
- Issue of orders & Communication to the PCCF/UA/DFO/CF by SG
- Handing over of forest area, after extraction of tree growth (if required), by FD to UA.

REQUIREMENT OF DIGITAL MAP

- As per GOI Lr. dated 08.07.2011
- "All proposals must be accompanied with Geo-referenced boundary in shape file. The application should also contain a digital map.....duly authenticated by competent authority in State Government, of the forest land proposed for diversion, prepared by using Total Station or Differential GPS."

PROCESSING OF THE PROPOSAL.....

- "All proposals have to be uploaded on the Web Based portal of the MoEF & CC for Forest Clearances." <u>Otherwise, the</u> proposals will not be considered nor processed.
- Hence the inputs are to be provided to the Nodal Officer in digital format by the User Agency & inputted by the NO & RO.

MANDATORY CERTIFICATES/ UNDERTAKINGS TO BE FURNISHED: (Not-exhaustive)

- Undertaking to pay NPV, CA, extraction of tree growth etc
- RoFR certificate in prescribed proforma i.e., Form- I for linear projects and Form II for other than linear projects
- Resettlement and Rehabilitation Plan for families likely to be displaced including the RoFR benificiaries
- Detailed DPR indicating the purpose-wise breakup of requirement of forest land as per DPR
- The cost-benefit ratio
- Piece-meal proposals are not permitted. Exemption to irrigation projects to submit in a phased manner because of long gestation period (F.No.10-125/2013-FC(Pt.III), Dt.25.02.2014)

MoEF & CC's Portal

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Environmental Clearance Currently Logged-In Users Technical Help	Bar Chart (Wild Life Clearances Proposals) Search FCA Projects CA Land Diverted CA Plantation Funds Monitoring/Compliance Report Miscellaneous All Proposals received on or after 15th July 2014 All Proposals received upto 14th July 2014 List of Stage-I and Stage-II Proposals decided during a given time period Wild Life Clearance Proposals .	



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