

FOREST (CONSERVATION) ACT- IMPLICATIONS OF PROVISIONS REQUIRING POLICY INTERVENTION FOR EFFECTIVE IMPLEMENTATION

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ABSTRACT

Forest (conservation) Act, 1980 was enacted to check indiscriminate diversion of forest land. The objective of the act is to regulate diversion of forest land for non forest purpose. The paper analyses the provisions, implications and implementation of the Act based on study of several cases. The Act which is probably the smallest in the country, has to its credit highest number of guidelines, clarifications and instructions, which makes it complex if not confusing. Some of the clarifications/instructions/guidelines appear to be against the spirit of the Act. In this paper cases have been examined, where gross violation of FCA has taken place due to negligence, lack of will power to take action, and sometimes ignorance of facts or provisions of the Act. Implications of non compliance of conditions, imposed in the approval granted under FCA, have also been critically examined. Mutation of non forest land, provided for compensatory afforestation in lieu of forest land diverted, and subsequently declaration of such land as 'Forest' is a major challenge. This eventually defeats the very purpose of the Act, which was to compensate for the loss of forest land. Lack of clarity and procedure in the penal clause for violation of the provisions of Forest (Conservation) Act comes into way in invoking the penal clause and thus makes it ineffective. Certain other provisions of the Act have also been dealt with in the paper. These provisions/clauses, if suitably amended/enacted, would render more adequacy and efficacy to the Act.

Key words: Forest Conservation, Diversion, Compensatory afforestation.

Introduction

Forest Conservation Act was promulgated to check indiscriminate diversion of forest land. The objective of the Act was to regulate diversion of forest land for non-forest purposes. But for the strong backing from the Hon'ble Supreme Court of India, the Act is struggling for its cause. Apart from the lack of will amongst the policy makers and bureaucrats, there are certain technical flaws in the Act which render its implementation arduous.

The Act came into force on 25th October, 1980, however the rules were first notified on August 01, 1981. The gap between the two left the Act unimplemented, effectively, for almost a year. Similarly the Penal provisions under sections 3A and 3B were inserted by Forest (Conservation) Amendment Act (69 of 1988). This elucidates that actually the Act initially served a regulatory purpose only as there was no penal clause to act as a deterrent against any act of commission or omission against the provisions of the Act.

The Act did not define 'Forest'. It was only after the T.N. Godavarman case that upon the orders of Hon'ble Supreme Court of India dated 12.12.1996 in WP No. 202/1995, forests were defined and the scope of forests

was extended to include all types of forests irrespective of ownership. The Hon'ble Supreme Court said that forests would be defined by their "dictionary meaning", without elaborating what this meaning was.

Shortfalls in the perceived achievements of the Act For diversion of Forest land, equivalent non forest land has to be acquired, planted and declared as Forest land. The Ministry's records revealed that against the receivable non-forest land of 1,03,381.91 ha, 28,086 ha was received during the period 2006-12 which constituted only 27 per cent of receivable non-forest land. The compensatory afforestation done over the non-forest land received was an abysmal 7,280.84 ha constituting seven per cent of the land which ought to have been received (CAG Report, 2013).

Seven States viz. Gujarat, Haryana, Kerala, Maharashtra, Meghalaya, Punjab and Rajasthan show no record of carrying out compensatory afforestation either over non-forest land or over degraded forest land (CAG Report, 2013).

The status of transfer and mutation of NFL is also dismal. Out of 23,246.80 hectare of non forest land received by the States/UT's only 11,294.38 ha was

The Forest Conservation needs Act to be amended to ease the process of diversion of forest land in case of linear infrastructure projects and restrict the diversion of forests from the 'inviolable areas.

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transferred and mutated in the name of the State Forest Department. Out of this, only 3,279.31 hectare was declared as Reserve Forest/ Protected Forest which constitutes 14 per cent of non forest land so received (CAG Report, 2013). Thus diverted forest land is not being appropriately and adequately compensated.

Non compliance of the provisions of the Act

The main impediment in compensating for the loss of forest land has been the availability of non-forest land for afforestation. According to the FCA guidelines the land selected should preferably be contiguous to the forest being diverted, so that it is easier for forest department to manage it. But in case this is not possible, land in any other part of the state can be used for the purpose. In case there is no non forest land available for Compensatory Afforestation, a certificate has to be issued by the Chief Secretary, and compensatory afforestation has to be undertaken over the degraded forest land twice to the extent of the forest land diverted. It was observed that compensatory afforestation was allowed over an area of 75,905.47 hectare without any certificate of the Chief Secretary, in almost all the states except Delhi, Himachal Pradesh, Meghalaya and Sikkim. Only in two State/ UTs viz. Chandigarh and Uttarakhand, equivalent or more non-forest land was received. (CAG Report, 2013).

The quality of plantation is also dismal. Several user agencies do not pay the requisite amounts, for carrying out compensatory afforestation. There is also a lacunae in the utilisation of the funds for carrying out compensatory afforestation.

Working plans /schemes: The working plans in most of the states are not prepared within time. As such the necessary works in the forest areas are carried out according to annual working schemes after approval of Central government. However, this practice is not as per the provisions of National Working Plan Code, as the code nowhere mentions the implementation of Working schemes as substitutes of Working Plans, in areas for which regular Working Plans are prepared.

Approval to work after Stage I clearance in case of Linear projects: MoEF vide its orders dated 08.08.2014 and 07.05.2015 has stated that in linear projects, the work can be started after the grant of Stage I clearance itself. This order disaccords with the soul of the Act. There are disparities like after grant of Stage I clearance if the entire project is implemented then what is at stake for the user agency to pursue for grant of final approval.

This provision is also against clause 4.2 of Forest conservation guidelines which states:

i) Forestry clearance will be given in two stages. In 1st stage, the proposal shall be agreed to in principle in which usually the conditions relating to transfer, mutation and declaration as RF/PF under the Indian Forest Act, 1927 of equivalent non-forest land for compensatory afforestation and funds for raising compensatory afforestation thereof are stipulated and after receipt of compliance report from the State Government in respect of the stipulated conditions, formal approval under the Act shall be issued.

ii) However in cases where compliance of conditions stipulated in the in-principle approval is awaited for more than 5 (five) years from the State Governments, the in-principle approvals would summarily be revoked.

These guidelines had been challenged before the NGT. In January 2015, the NGT restrained the felling of trees after Stage 1 approval, but subsequently reviewed the order in the light of an affidavit submitted by the MoEF&CC. In its direction, the NGT concluded that while tree felling and commencement of work might be allowed for linear projects after Stage 1 approval, it would be treated as an order under Section 2 of the FCA and therefore can be challenged before the NGT.

It is important to comprehend this order because the NGT had earlier ordered that only those orders issued finally by state governments activating forest diversions could be brought before it. Till then no commencement of work or tree felling could be allowed.

Procedural flaws

Delinking of grant of forest clearance from the clearance of Standing Committee of the National Board for Wildlife- MoEF vide its order dated 20.08.2014 has delinked Forest clearance from Environmental clearance and clearance of NBWL.

In pursuance to the order of Hon'ble Supreme Court dated 4th December 2006 in Writ Petition (Civil) No. 460/2004, in case any project requiring Environmental Clearance, is located within the eco-sensitive zone around a Wildlife Sanctuary or National Park or in absence of delineation of such a zone, within a distance of 10 kms from its boundaries, the User agency/ Project Proponent is required to obtain recommendations of the Standing Committee of NBWL.

If the project area falls within both Forest land and non-forest land and the project proponent starts work in NFL after obtaining necessary Environmental clearance but the project fails to get clearance of NBWL and forest clearance then the decision of the Hon'ble Supreme Court is disregarded as well as the work in NFL becomes infructuous.

Restriction on the dereservation of forests or use of forest land for non-forest purpose (Section 2 of the FCA): Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing - that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

However, it is noticed that State Governments are de-reserving forest lands without concurrence of Central Government under Section 27 of Indian Forest Act which states *The 1 [State Government] may, 2 [***] by notification in the 3 [Official Gazette], direct that, from a date fixed by such notification, any forest or any portion thereof reserved under the Act shall cease to be a reserved forest.*

Since Indian Forest Act came into existence much earlier than FCA so provisions of FCA supersede those of IFA. Section 2 of FCA otherwise also very clearly states that 'Notwithstanding anything contained in any other law for the time being in force'. However, many instances of unlawful de-reservation of forest land have been discerned in various states across the country. In the famous case of Government of UP versus Jai Prakash Associates Limited, the recommendations of the CEC were accepted by the Hon'ble SC wherein the court stated that 'the orders passed by the Forest Settlement Officers for exclusion of 1083.231 ha of the land notified under Section 4 of Indian Forest Act are declared null and void'.

Hon'ble Supreme Court vide its order dated 13.11.2000 in Writ Petition (C) No. 337 of 1995 has banned dereservation of forests/National Parks/sanctuaries. The same has been reiterated by MoEF vide its order dated 20.08.2004 'All such proposals for conversion of forest villages into revenue villages and deletion of Section 4 area shall be processed by the Central Government only after the concerned State/UT Government obtains the permission of Hon'ble Supreme Court or after final decision in the case'.

However, with the advent of Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2008, conversion of all forest villages, old habitations, unsurveyed villages, etc. into revenue villages under Section 3(1)(h) of the Act, is under progress in many states like Chattisgarh and Orissa. Thus the modalities have to be further illustrated for convenience and to avoid scepticism.

Diversion for Construction of Houses -According to the FCA guidelines, the Central Government will not

entertain any proposal for diversion of forest land for construction of residential or dwelling houses. However, construction of residential or dwelling houses in private forest land in Mussorie Dehradun Development Authority (MDDA) areas of Uttarakhand is permitted to alleviate hardships of homestead owners, where non-forest land is not available, subject to stipulations vide Ministry letter F No. L-UP/1952/1996-FC-V dated 11.02.2011. This is ambiguous since there are almost none homestead owners in Mussorie and also there is ample of non forest land available in MDDA areas.

Certain guidelines / orders issued from time to time are contradictory to the provisions of the Act. The Act does not lay any specific provisions/concessions, however, the guidelines/orders issued for general approval to State Governments are contradictory to the spirit of the Act. MoEF in October 2000 granted approval for diversion of forest land for public utility projects such as underground laying of optical fibre cables, underground laying of telephone lines and underground laying of drinking water supply pipelines involving forest land of not more than 1 ha., and delegated the powers to State/UT Governments to expedite the disposal of such cases subject to fulfillment of certain conditions. This General approval has been extended along with modifications from time to time, till further orders. There is no enabling clause in the Act for delegation of power so State government cannot grant approval under this order. Therefore, all orders issued by State Government under General Approval actually have no legal sanctity.

Clarifications issued with respect to right of way passing through forest strips -Since the area involved for construction of petrol pumps is less than 1 ha, power to grant approval for construction of public utilities like petrol pumps along road side should have been vested with State Government, if status of general approval is legally valid. However, it was only in 2014, that MoEF extended general approvals to State Governments for granting permission for construction/widening of roads including approach roads to roadside establishments by Government Departments subject to certain conditions.

Regarding validity of the permission for ROW for petrol pumps, decision was taken in a meeting of MoEF that initially it will be for a period of 15 yrs and then will have to be renewed (Goyal, 2014), however, no necessary amendments/provision in the rules was done.

It is also clarified in the letters issued from time to time by MoEF, that the requirement of forest land shall be based on the approved layout plan provided in the guidelines issued by the MORTH. The practical in field situation says that the required width for ROW, as is

mentioned in the MORTH guidelines is not available. So the MORTH guidelines also have to be revisited for necessary amendments.

Certain provisions of the Act are at times misinterpreted as a result severe irregularities are noticed. Clause 2 (iii) of the Act imposes restriction on the use of forest land by any private person. It states-

Not with standing anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

This clause has been grossly violated in Uttarakhand. In Uttarakhand Forest Department, forest land on which Eucalyptus was planted was leased to private people for plantation of agricultural crops in agroforestry model. Later with the intervention of Regional Office, MoEF, Lucknow, the practice was stalled.

Conclusion

Forest Conservation Act is the prime Act in the country for conservation of Forests. It is one of the briefest

and simplest Act but the orders issued from time to time have rendered the soul of the Act incoherent. The orders should be given legal sanctity by requisite amendment of the Act.

Though the Act is still inadequate and inefficient to compensate for the loss of forest land, however, the regulatory role of the Act in controlling the diversion of forest land for non-forest purposes cannot be denied. From the data available in the regional offices, the area diverted at present is around 17,000-20,000 ha per annum while earlier it was more than 1,50,000 ha per annum. Thus the rate of diversion of forest land has decreased considerably.

The issue of improper/ non-utilization of funds for carrying out compensatory afforestation should be addressed by State forest departments through adequate essential framework and appropriate monitoring mechanisms. Compensatory Afforestation should be ensured as mandated in the Act and guidelines to compensate adequately for diversion of forest land.

The Act needs to be amended to ease the process of diversion of forest land in case of linear infrastructure projects and restrict the diversion of forests from the 'involute areas'.

वन (संरक्षण) अधिनियम-प्रभावी कार्यान्वयन हेतु नीति हस्तक्षेपों के लिए वांछित व्यवस्थापन की उलझन

प्राची गंगवार एवं डी.पी. सिन्हा

सारांश

वन भूमि के अंधाधुंध विपथन पर नियंत्रण लगाने के लिए वन (संरक्षण) अधिनियम, 1980 लागू किया गया। अधिनियम का उद्देश्य गैर वन प्रयोजन हेतु वन भूमि के विपथन को नियंत्रित करना है। अनेकों मामलों के अध्ययन के आधार पर अधिनियम की व्यवस्थाओं, उलझनों और कार्यान्वयन का इस शोधपत्र में विश्लेषण किया गया है। अधिनियम, जो संभवतः देश में सबसे छोटा है, को दिशानिर्देशो, स्पष्टीकरणों एवं निर्देशों की उच्चतम संख्या का श्रेय है, जो इसे जटिल बनाते हैं यदि उलझाव वाले नहीं हैं तब भी। कुछ स्पष्टीकरण/निर्देश/मार्ग दर्शन अधिनियम की भावना के विपरीत दिखाई पड़ते हैं। इस शोधपत्र में उन मामलों की जांच की गई है, जहाँ लापरवाही, कार्रवाई करने में इच्छा शक्ति के अभाव और कभी-कभी अधिनियम के तथ्यों अथवा व्यवस्थाओं की अनभिज्ञता के कारण वन संरक्षण अधिनियम का उल्लंघन हुआ है। वन संरक्षण के अधिनियम के तहत स्वीकृत संस्तुति में लागू की गई शर्तों के गैर अनुपालन की जटिलताओं की भी बारीकी से जांच की गई है। परिवर्तित वन भूमि के बदले में पूरक वनीकरण हेतु उपलब्ध कराई गई गैर वन भूमि का परिवर्तन और बाद में 'वन' के रूप में इस प्रकार की भूमि की घोषणा एक प्रमुख चुनौती है। यह अन्ततः अधिनियम के मूल उद्देश्य को परास्त कर देता है, जिसे वन भूमि की क्षति हेतु क्षतिपूर्ति करना था। वन (संरक्षण) अधिनियम की व्यवस्थाओं के उल्लंघन के लिए दण्ड धारा में स्पष्टता एवं प्रक्रिया के अभाव, दण्ड धाराओं की याचना करने में, बीच में आ जाते हैं और इस तरह इसे निष्प्रभावी बना देते हैं अधिनियम की खास अन्य व्यवस्थाओं पर भी इस शोधपत्र में विचार किया गया है। ये व्यवस्थाएं धाराएं अधिनियम को ज्यादा पर्याप्तता एवं क्षमता देंगी, बशर्ते इन्हें उपयुक्त रूप से संशोधित/लागू किया जाए।

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