

Government of Orissa  
Steel & Mines Department

No. LC-16/2009(Pt.-II) 450/ISM. Bhubaneswar, the

17-7-2010

From

Shri Manoj Ahuja  
Commissioner-cum-Secretary to Government

To

The Director of Mines,  
Orissa, Bhubaneswar

Sub: Interlocutory Application No. 2746-2748 of 2009 filed by Shri Rabi Das, Editor Ama Rajdhani arising out W.P.(C) No. 202/1995 filed before the Hon'ble Supreme Court: Order dated 07.05.2010 of Hon'ble Supreme Court thereon. Clarification of the Central Empowered Committee on actionable points following the meeting held on 25.05.2010.

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All DDMS/MS  
are to be informed  
19/7/10

Ref: Memo No. 9806/F&E dated 28.05.2010 of Forest & Environment Department addressed to the Director of Mines, Orissa.

Sir,

You are aware that Central Empowered Committee (CEC) in its interim report dated 26.04.2010 submitted before the Hon'ble Supreme Court has made the following recommendations:

Para 15(b): "Even otherwise the Rule 24A(6), M.C. Rules, 1960 does not authorise the lessee to operate a mine without the statutory clearances/approvals. Therefore, in respect of a mine covered under the "deemed extension" clause, the mining operations should be permitted to be undertaken in the non forest area of the mining lease only if (i) it has the requisite environmental clearance; (ii) it has the consent to operate from the State Pollution Control Board; under the Air & Water Acts. (iii) Mining Plan is duly approved by the competent authority; and (iv) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund

The mining in the forest land included in the mining lease should be permissible only, if, in addition to the above, the approval under the F.C. Act/ TWP has been obtained.

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Para 15(c): No forest land can be leased/assigned without first obtaining the approval under the F.C. Act. Therefore, the forest area approved under the F.C. Act should not be lesser than the total forest area included in the mining leases approved under the M&M(D&R) Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of Temporary Working Permission to the mines in Orissa and Goa has made it one of the pre-conditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining lease holders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining leases;

Para 15(d): In Orissa, substantial areas included in the mining leases as non forest land have subsequently been identified as DLC forest (deemed forest/forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12.12.1996. While processing and / or approving the proposals under the F.C. Act in many cases such areas have been treated as non-forest land. It is recommended that (i) the NPV for the entire DLC area included in the mining lease after deducting the NPV already paid, should be deposited by the concerned lease holder and (ii) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the F.C. Act has been obtained/ is obtained for such area. Keeping in view the peculiar circumstances as was existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with.

2 The Hon'ble Supreme Court vide its order dated 07.05.2010 has ordered as follows:

**"The CEC has filed its Report. The State would like to file its response Six weeks time is granted for the same. The recommendations of the CEC which are acceptable to the State Government can be complied with".**

3. Pursuant to the above, the PCCF, Orissa in his letter No. 8235 dated 19.05.2010 asked all DFOs of the State to urgently raise the NPV on the leases of MLs/RMLs where the lease area includes forest land (a copy of the letter is enclosed).

4. Forest & Environment Department in their letter No. 9803 dated 28.05.2010 addressed to PCCF, Orissa has directed the course of actions to be taken including the following, which is as per the decision taken in a meeting of the State Government Officials with the CEC on 25.05.2010.

**"The mining lease holders who do not pay the NPV as per the demand raised by the concerned Divisional Forest Officers within a period of 30 days, will not be allowed to continue mining till the payment alongwith interest at the rate to be decided by State Government is deposited"**

A copy of the above letter has also been sent to you.

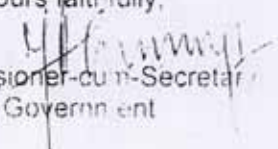
5. The State Government has already filed its response before the Hon'ble Supreme Court regarding implementation of the above recommendation of the CEC.

6. The DFOs have already raised demand against MLs/RMLs having forest area for payment of NPV and such payment are to be made within a period of 30 days.

For strict compliance of the recommendations of the CEC, you are requested to issue suitable instructions to all Circle Mining Officers/Deputy Director of Mines immediately. The Circle Mining Officers/ Deputy Director of Mines may be asked to contact the local DFO(s), collect the complete list of mining lease holders/RML applicants who have been asked to pay the NPV by the concerned DFO and the prescribed date of such payment, and strictly ensure that **"the mining lease holders who do not pay the NPV as per the demand raised by the concerned Divisional Forest Officers within a period of 30 days, will not be allowed to continue mining till the payment alongwith interest at the rate to be decided by State Government is deposited"**

A detailed lease wise report may be submitted to the Department by 31<sup>st</sup> July, 2010.

Yours faithfully,

  
Commissioner-cum-Secretary  
to Government



FOREST HEADQUARTERS, ORISSA  
OFFICE OF THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS  
ARANYA BHAWAN, BHUBANESWAR-23.

Memo No. 8235 /9F (Misc.) 60/ 10.  
Dated, Bhubaneswar, the 19 th May, 2009

From:

S. C. Mohanty,  
Principal Chief Conservator of Forests, Orissa.

To

All Divisional Forest Officers (T & WL)

The Central Empowered Committee of the Supreme Court has recommended to the hon'ble Court in its interim report in the L.A. No. 2747-2748 of 2009 filed by Shri Rabi Das, as follows; and orders have been passed by the hon'ble Supreme Court to implement the said recommendation:

Para 15(b): "even otherwise the Rule 24 A(6), MCR, 1960 does not authorise the lessee to operate a mine without the statutory clearances/ approvals. Therefore, in respect of a mine covered under the 'deemed extension' clause, the mining operations should be permitted to be undertaken in the non forest area of the mining lease only if (i) it has the requisite environmental clearance; (ii) it has the consent to operate from the State Pollution Control Board under the Air & Water Acts; (iii) Mining Plan is duly approved by the competent authority; and (iv) the NPV for the entire forest falling within the mining lease is deposited in the Compensatory Afforestation Fund.

The mining in the forest land included in the mining lease should be permissible only if, in addition to the above, the approval under the FC Act/ TWP has been obtained.

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Para 15 (c) : no forest land can be leased/ assigned without first obtaining approval under the FC Act. Therefore, the forest area approved under the FC Act should not be lesser than the total forest area included in the mining leases approved under the MMDR Act, 1957. Both necessarily have to be the same. In view of the above, this Hon'ble Court while permitting grant of Temporary Working Permission to the mines in Orissa and Goa has made it one of the pre-conditions that the NPV will be paid for the entire forest area included in the mining leases. Similarly, all the mining lease holders in Orissa should be directed to pay the NPV for the entire forest area, included in the mining leases;

Para 15 (d) : in Orissa, substantial areas included in the mining leases as non forest land have subsequently been identified as DLC forest (deemed forest/ forest like areas) by the Expert Committee constituted by the State Government pursuant to this Hon'ble Court's order dated 12.12.1996. While processing and/ or approving the proposals under the FC Act in many cases such areas have been treated as non-forest land. It is recommended that (i) the NPV for the entire DLC area included in the mining lease after deducting the NPV already paid, should be deposited by the concerned lease holder and (ii) the mining operations in the unbroken DLC land (virgin land) should be permissible only if the permission under the FC Act has been obtained/ is obtained for such area. Keeping in view the peculiar circumstances existing in Orissa and subject to the above, the mining operations in the broken DLC land may be allowed to be continued provided the other statutory requirements and Rules are otherwise being complied with.

Para 15 (e) : the demand for the payment of the NPV, as per sub-para (b), (c) and (d) above should be raised by the concerned Divisional Forest Officer within a maximum period of 30 days and the mining lease holder should deposit the amount payable towards the NPV (for the balance

251

forest area) within a period of 30 days thereafter failing which the mine should not be allowed to continue its operations. Appropriate detailed working instructions in this regard should be issued immediately by the State Government."

You are, therefore, required to urgently raise demand for payment of NPV on the lessees of the MLs/ RMLs (deemed extension cases) where the lease area includes forest land, working out the demand in respect of

- (a) forest lands included within the total ML/ RML area but not covered by approval for diversion/ lease under the FC Act, and
- (b) forest area approved for diversion under the FC Act after 30.10.2002, subject to deduction of the amount of NPV already realized.

The relevant instructions of the State Govt. in regard to raising demand of NPV for different classes of forest area (Letter No.21687/F&E dt.22.12.2009) is enclosed for your guidance. The demand shall be raised based on detailed field verification of the respective forest areas to ascertain (i) crown density at various locations as well as (ii) the eco class of the forest. The demand of NPV has to be formally raised on the lessees concerned within a maximum period of 30 days. The copy of the demand raised should be endorsed to this office and the O/o the Regional CCF for information and record.

Please treat this as extremely urgent, as we are to file affidavit on compliance of the Court's orders very soon.

*Sic. Mohanty*  
Principal CCF, Orissa, 19.5.10

Memo No. 8236 Dt. 19.5.10  
Copy forwarded to all Regional Chief Conservators of Forests for information and guidance.

*Sic. Mohanty*  
Principal CCF, Orissa, 19.5.10

Memo No. 8237 Dt. 19.5.10  
Copy forwarded to the Principal Secretary to Govt. of Orissa, Forest and Steel and Mines Department for information of Govt.

*Sic. Mohanty*  
Principal CCF, Orissa, 19.5.10

Memo No. 8238 Dt. 19.5.10  
Copy forwarded to the Commissioner-cum-Secretary to Govt. of Orissa, Steel and Mines Department for information.

*Sic. Mohanty*  
Principal CCF, Orissa, 19.5.10

GOVERNMENT OF ORISSA  
STEEL & MINES DEPARTMENT

M.C (ML/1)  
Please follow  
the procedure  
2) Circulate to all  
(Decide cases)  
3) Supply copy to  
2. min. Secy

No: SS&M, Bhubaneswar Dt./s//April, 2010

From: Ashok Dalwai  
Principal Secretary to Government

To: The Director of Mines, Orissa,  
Bhubaneswar

Sub: **Verification of all Mining Lease (ML) and Renewal of Mining Lease (RML) cases.**

Ref: **Letter No.6346/SSM dated 1<sup>st</sup> October, 2009.**

Sir,

In continuation of the letter under reference, further clarification and directions as contained herein may be noted for strict & immediate adherence.

2. The State represented by the officers of the Department of Steel and Mines and Forest and Environment Department have attended two meetings with the Central Empowered Committee (CEC) in connection with IA No.2746-2748 in WPC No.202/1995 filed before the Hon'ble Supreme Court of India. The CEC based on the submissions made by the State Government in the 2<sup>nd</sup> meeting held on 22.02.2010 has observed that, there is need for laying down a set of principles relating to forest and environment laws as applicable to grant of mineral concession and undertaking of mining operations. The CEC has further observed, that while there already exist some principles of law which can be held as well settled based on the judgement & orders of the Hon'ble Supreme Court followed by instructions and guidelines issued by the Ministry of Environment & Forest (MoEF), Government of India (GoI), a few other desired principles of law need further clarification. In this circumstance, the CEC has advised that the State Government should adopt all the well settled principles of law henceforth while considering grant of ML and RML cases, besides, ensuring strict adherence to

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these in undertaking mining operations by the lessees. The principles of law that can be held as well settled are as under:

- (i) No ML or RML can be granted if the proposed lease area consists, in part or whole, forest area and such area has not been approved for diversion under the Forest Conservation (FC) Act, 1980.
- (ii) No ML or RML can be granted if the forest area that forms part or whole of the proposed lease area that needs to be diverted has been cleared under the FC Act, but the area diverted is lesser than the exact extent of area that needs to be diverted under the FC Act, 1980 read with relevant clarification issued by the MoEF.

(For example, the extent of forest area used for safety zone may not need to be diverted, though it forms part of the ML area and therefore such extent of forest area can be considered as an area that does not need to be diverted under the FC Act. Hence, the extent of total forest area that forms part of the ML area minus the extent of forest area reserved for safety zones is the total forest area that needs to be cleared under the FC Act, 1980).

- (iii) No ML or RML can be granted if the proposed lease area is located within the National Park or / and Wildlife Sanctuary, unless there is a specific permission issued by the Hon'ble Supreme Court.
- (iv) No ML or RML can be granted unless the applicant has produced clearance / NOC under the provisions of Air (Prevention & Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 issued by the State Pollution Control Board.
- (v) No ML or RML can be granted unless an environment clearance where required has been issued by the MoEF, GoI / State Environment Impact Assessment Authority, as the case may be, under the relevant Notification.



(vi) No ML or RML can be granted unless the mining plan has been approved by IBM or Director of Mines, as the case may be.

3. In the above context the following directions are given.

(i) All ML and RML cases granted so far may be verified in accordance with the above principles and if there exists any inadequacy or shortcoming, the mining operations may be suspended and show cause notice issued as per law and a detailed report submitted to Govt. for further legal action due as per law.

(ii) The Department of Steel and Mines shall ensure strict adherence to the aforementioned principles of law in considering grant of ML and RML henceforth.

4. The principles of law as laid down vide para 2 (i) to (vi) may be read along with the principles laid down vide para 3 (i to vii) vide this Department letter No.6346/SSM dated 1<sup>st</sup> October, 2009.

5. Henceforth, grant of mining lease (ML) and renewal of mining lease (RML) cases, as also operation of mining during the period of both mining lease and under the provision of rule 24A(6) of MCR, 1960 undertaken by an RML applicant shall be carried out in strict accordance with the principles laid down vide this Department letter No.6346/SSM, dated, 1<sup>st</sup> October, 2009 and those contained in this letter. Any deviation by any one shall invite action as per law.

Yours faithfully

Principal Secretary to Government

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MXIII (a)-25/09 memo no 4/277 dt. 19/10/09  
copy forwarded to all D.O.M's / memo to  
information and necessary action

D.M. (a)

P.T.O

Government of Orissa  
Department of Steel & Mines

No. 659  
Bhubaneswar, the  
19.11.98

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From:

S. D. Das, I.A.S.  
Additional Secretary to Government

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To:

All Collectors

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Re: Stone Policy of Orissa, 1998.

In invitation a reference to this Deptt. Memo No. 4500/SM, dt. 17th June, 1998 & No. 6593, dt. 10.11.98 on the above subject I am directed to say that a good number of Mining Lease applications might have been received over the 10 prospected Gem bearing tracts which have been de-reserved and thrown open for grant of mining lease to private parties with effect from 1.1.99. The Mining Leases are to be granted in terms of M.M. (R&D) Act and M.C. Rules. In preference would be given those applications having the priority laid down at Para-7 of the Gem Stone Policy of Orissa, 1998. It is reliably learnt that prospecting report and mining plan from the applicants are insisted upon to recommend the M.L. applications.

In this context, I am to invite your attention to Section 11 of M.M. (R&D) Act, 1957 in which it has been laid down that mining lease shall be granted by the State Government unless it is satisfied that there is evidence to show that the area for which the lease is applied for has been prospected earlier and the existence of minerals therein has been established. This may be read with Rule-22 (A) and C. Rules, 1969, wherein it has been laid down that "on receipt of an application for grant of mining lease, the State Govt. shall take decision to grant precise area for the said purpose and communicate such decision to the applicant. On receipt of the communication from the State Government of the precise area to be granted, the applicant shall submit the Mining Plan within a period of 6 months for approval."

As the 18 Gem bearing tracts have already been prospected by the Directorate of Mining & Geology, the concerned Collectors/Deputy Director, Mines/Mining Officers are requested not to insist on the prospecting report in view of the provisions noted above. On the other hand, emphasis may be laid on the provision of 11 (3) & (4) of M.M. (R&D) Act in case of simultaneous applications and the policy parameters outlined at para-7 of the Gem Stone Policy of Orissa, 1998 to recommend those applications. The party will be asked to submit the Mining Plan after observing all formalities in the event of Government takes a decision to grant the precise area in his favour.

Yours faithfully,

*S. D. Das*  
14/2/99  
Additional Secretary to Government