

विभा पुरी दास

सचिव

Vibha Puri Das

Secretary

Tel. : 23381652

Fax : 23073160



भारत सरकार

Government of India

जनजातीय कार्य मंत्रालय

Ministry of Tribal Affairs

शास्त्री भवन, नई दिल्ली-110001

Shastri Bhawan, New Delhi -110001

E-mail : secy-tribal@nic.in

D.O. NO.23011/22/2010-FRA

7<sup>th</sup> June, 2013

Dear Shri *Ah Patnaik*,

Thank you for your letter No.18584/TD-II(FRA)-35/2013 dated 1<sup>st</sup> June, 2013, apprising us of the steps taken by the Government of Orissa with regard to the judgement dated 18<sup>th</sup> April, 2013 of Hon'ble Supreme Court in Writ Petition (Civil) No.180 of 2011 in Orissa Mining Corporation Vs. Ministry of Environment and Forests and others and also enclosing therewith letter dated 27<sup>th</sup> May, 2013, addressed to the Collectors of Rayagada and Kalahandi districts by the Commissioner-cum-Secretary to Government of Odisha.

2. It has been stated in the aforesaid letter that the view of the Law Department of Odisha Government has been obtained with regard to the import of the said Hon'ble Supreme Court's Judgement especially with respect to conducting of Gram Sabha in the Kalahandi and Rayagada districts. You have also informed us that the State Government's law department has advised you that the final judgement of the Apex Court has to be read in conjunction with the interim order dated 6<sup>th</sup> December, 2012.

3. I would like to bring the following to the notice of the State Government:

(a) In the view of this Ministry, the judgement delivered on the 18<sup>th</sup> April, 2013 is the only judgement that assumes finality and it is not subject to or to be read in reference to earlier orders, affidavits filed, argument or submissions made. It is also clear that the Supreme Court in its judgement has not alluded to or limited the application of the Forest Rights Act in the project areas to any specific number of villages under any paragraph of this judgement. Therefore, any interpretation to the contrary would simply be an incorrect interpretation.

(b) Paras 53 and 54 of the judgement referred to in your letter relate to factual information and observations made by the Supreme Court. Such observations cannot be interpreted to assess the number of villages that need to be considered for recognition and vesting of claims under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereinafter Forest Rights Act (FRA)).

(c) Para 58 of the judgement too emphasizes that the question whether STs & OTFDs have religious rights is required to be considered by the Gram Sabha. It further observes if the BMP in any way affects their religious rights, that right has to be preserved and protected.

(d) In fact, subsequent paragraphs where there are clear directions of the Supreme Court are the operative parts of the judgement. Thus, for example, Para 59 clearly states that **“the Gram Sabha is also free to consider all the community, individual as well as cultural and religious claims, over and above the claims which have already been received from Rayagada and Kalahandi districts. Any such fresh claims be filed before the Gram Sabha within six weeks from the date of this judgement. State Government as well as the Ministry of Tribal Affairs, Government of India, would assist the Gram Sabha for settling of individual as well as community claims.”**

(e) Similarly, paras 60 and 62 also lay down a process and a timeline within which the claims have to be considered and decision has to be taken by the Gram Sabha in the presence of judicial officers as observers for which you have taken appropriate steps as per information given in the above letter. This Ministry is in receipt of copies of several claims under FRA for various rights including religious and cultural rights claimed over Niyamgiri forests and sacred areas from villages over and above the 12 villages selected by the State Government. It further shows that Niyamgiri forests are shared by not just 12 villages, while a number of other villages in Kalahandi and Rayagada too share religious and cultural rights over Niyamgiri.

4. In view of the above, I would emphasise that limiting the convening of the Gram Sabha only 12 villages is not in accordance with the Hon'ble Supreme Court order dated 18<sup>th</sup> April and directions issued by this Ministry under Section 12 of FRA vide letter No.23011/22/2010-FRA dated 2<sup>nd</sup> May, 2013.

5. The directions issued by this Ministry have laid down steps to arrive on the exact number of villages/hamlets where forest dwellers have customary religious and cultural rights and wish to claim rights as per FRA. The list of villages where rights of forest dwellers are guaranteed under the FRA or where cultural and religious rights are likely to be affected cannot be arbitrarily decided by the State Government. It is to be decided by the people i.e. Palli Sabha where claims would be filed through a transparent manner so that no genuine Gram Sabha who have a legitimate claim is left out of the process. This is in line with para 59 of the Apex Court judgement quoted above.

6. I would also like to bring to your notice that the rights which are required to be protected include the habitat rights as defined in Section 3(1)(e) of FRA. Section 3(1)(e) addresses the rights of particularly vulnerable tribal groups (Dongria Kondhs and Kutia Kondhs in this case) over their customary habitats or territories which, in local context, comprise the entire Niyamgiri forests and sacred areas, which, as we have learnt, are shared by various clan groups of the local tribal communities. It must be noted here that Rule 12B(1) of the Amendment Rules 2012 specifically deals with the recognition of habitat rights and ensure that all PTGs receive habitat rights, in consultation with the concerned traditional institutions of PTGs and their claims are filed before the concerned Gram Sabhas. Since the rights to be addressed include habitat rights, it must be ensured that the process of claims covers all the villages and settlements which share these rights.

7. I would also further advise you that all the points mentioned in the directions issued under Section 12 of the FRA require statutory compliance on part of the State Government.

8. In view of the above, you may like to ensure that the State Government arrive at the exact number of villages in which Gram Sabha is to be conducted through the process mentioned in the directions issued by this Ministry and in accordance with the judgement of the Hon'ble Supreme Court. Ministry may be apprised the progress against the deliverables indicated in this Ministry's letter of 2<sup>nd</sup> May, 2013 at the earliest in view of the timeline indicated in the judgement. Should you require any assistance with the above process, please inform us so that the directions of the Hon'ble Supreme Court are complied with in both letter and spirit.

*Regards,*

Yours sincerely,

*Vibha Puri Das*  
(Vibha Puri Das)

Shri Bijay Kumar Patnaik,  
Chief Secretary,  
Government of Odisha,  
Bhubaneswar.