

No provision in Forest Rights Act to obtain gram sabha consent for projects: Ministry

The law explicitly states that the Ministry of Tribal Affairs is responsible for its implementation; Centre's rules and regulations require that all processes under the forest Act be completed before the concerned government authority can issue a certificate diverting the forests formally



Parliamentary panel report on NHPC Limited said the average time for forest clearance of projects is 106 months.

ABHINAY LAKSHMAN
NEW DELHI

In deliberations with the Union Ministry of Power over government projects delayed due to the "critical bottleneck" of "100% gram sabha consent under the Forest Rights Act (FRA)" for forest clearance, the Union Ministry of Tribal Affairs has said that the 2006 law has "no provision for obtaining consent of the gram sabha for forest clearance", adding that "such matters" related to gram sabha consent "do not fall under the purview of the Ministry of Tribal Affairs".

In an official communication to the National Hydroelectric Power Corporation (NHPC) Desk of the Power Ministry on August 31, the Ministry of Tribal Affairs said, "There is no provision for obtaining consent of the Gram Sabha for forest clearance for Stage-II forest clearance in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Rules made thereunder. Therefore, such matters do not fall under the purview of the Ministry of Tribal Affairs."

While the FRA itself does not have the language of gram sabha consent specifically with respect to diverting forest land for non-forestry purposes, the Union government's rules and regulations governing the diversion of forests specifically require that all processes under the FRA be completed before the concerned government authority can issue a certificate diverting the forests formally.

These guidelines, under the Forest Conservation Act of 1980, require the identification of potential FRA claimants, the recognition of their rights where applicable, the vesting of these rights, and then obtaining a no-objection certificate (NOC) from the gram sabhas concerned regarding the proposal to divert the said forest land for the stated purpose — all of it as mandated under the FRA. This procedure of obtaining an NOC from gram sabhas is what has commonly come to be known as the procedure for gram sabha consent for forest clearance.

The FRA explicitly states that the Ministry of Tribal Affairs is the nodal ministry responsible for the law's implementation.

Supreme Court advocate Shomona Khanna, a former legal adviser to the Ministry of Tribal Affairs under both the United Progressive Alliance and National Democratic Alliance governments, reacted to the Ministry's position on the FRA in its latest communication to the Power Ministry by saying, "This is bizarre. If such matters are not under the purview of the Tribal Affairs Ministry, then whose purview is it under?"

House panel report

The deliberations between the Union Power Ministry and the Tribal Affairs Ministry were initiated after an August 3 report by the Parliamentary Standing Committee on Public Undertakings on NHPC Limited. In this report, the committee, based on discussions with NHPC officials, observed that the average time for forest clearance of under-construction projects was 106 months, and that the requirement that all concerned gram sabhas consent to the diversion of forest land required for the projects had become the "single most critical bottleneck, with projects like the Teesta-IV HEP being indefinitely stalled because consent from small minority of Gram Panchayats remains pending". In its report, the committee, headed by BJP MP Bajayanta Panda, took to the NHPC's recommendation that a "qualified super-majority consent" — consent of 70-75% of the affected gram sabhas — should be sufficient for "large hydropower infrastructure projects of national importance".

The House panel had thus recommended that the Power Ministry discuss the "feasibility" of such a proposal with the Ministry of Tribal Affairs.

Previously, in cases such as the Nicobar mega-infrastructure project or other independent cases related to the implementation of the FRA in States like Madhya Pradesh, Karnataka and many others, the Tribal Affairs Ministry has claimed that it has no role to play and argued that this was because the FRA mandates implementation of the law to the State or Union Territory governments.