

FTS.2878/LS/11
Ministry of Law and Justice
Department of Legal Affairs

New Delhi
Date: 22.09.2011

To

The Secretary
National Commission for Scheduled Tribes
6th Floor, B Wing, Lok Nayak Bhawan
Khan Market, New Delhi

(Kind attention : Shri Aditya Mishra, Joint Secretary)

Sir,

Subject: Meeting on New Draft Mines and Minerals (Development & regulation) Bill, 2010.

I am directed to refer to your letter no. 12/12/2009-Coord dated 14th September, 2011 on the aforesaid subject and to say that opinion of this Department on the issue of making available to the Commission a copy of the draft Bill on the aforesaid subject has been sent to the Ministry of Mines vide FTS no. 3120/11/Adv.A, a copy of which is sent herewith for record/necessary action as desired.

Its receipt alongwith annexures may please be acknowledged.

Yours faithfully

M.K. Sharma

(M.K.Sharma)
Joint Secretary & Legal Adviser
Tel. no. 23383054

*we should
be sitting with
Sectaries to ascertain
why the Bill was
not shared with
no. impact of this
classification (Joint Secy)
J S (Mines & Minerals)
so that the document
can be documented in our
next annual report.
Enc. As above also
155/ Secy / N. should also
address letter to PM as
decided for the last mtg
Secretary
20/9/2011
PDS
for file
07/0.*

*Pl give me copy
of letter/enc.*

F.T.S. No. 3120/11/Adv.A
Ministry of Law & Justice
Deptt. Of Legal Affairs

The Ministry of Mines has referred the following issues for advice:

- (i) Whether the draft Mines and Minerals (Development and Regulation) Bill, 2011, as a legislation based on National Mineral Policy, 2008, qualifies as a policy matter in terms of the provisions of clause (9) of Article 338 A of the Constitution of India; and
- (ii) Whether the draft Mines and Minerals (Development and Regulation) Bill, 2011, can be shared at this stage with National Commission for Scheduled Tribes, once the GOM has recommended the draft Bill to be placed before the Cabinet (since it is a part of the Cabinet process).

2. It has been stated that National Commission for Schedule Tribe (NCST) is seeking a copy of the draft Mines and Minerals (Development and Regulation) Bill, 2011 to give its comments/views on the draft Bill which has been recommended by the GOM to be placed before the Cabinet. The NCST has stated that the Constitution of India confers power upon it to monitor all matters relating to safeguards provided for the Scheduled Tribes and to participate and advise on the planning process of socio-economic development of the Scheduled Tribes. NCST has further stated that clause (9) of Article 338A of the Constitution provides that "the Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes, and clause 5(d) of the same Article also provides that the Commission shall present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards. The NCST has sought a copy of the draft MMDR Bill, 2011, in terms of these provisions of the Constitution.

3. According to the administrative Ministry it had undertaken an exercise to prepare a draft Bill to replace the existing Mines and Minerals (Development and Regulation) Act, 1957 in terms of the Report of the High Level Committee in Planning Commission and the new National Mineral Policy, 2008. In preparation of the draft Bill the Administrative Ministry has undertaken extensive consultations with all stakeholders including State Governments, Concerned Ministries/Departments of Central Government Industry Associations and Representatives of Civil Society concerned with environmental/societal impact. Successive versions of draft was circulated/uploaded on the web site for comments of the stakeholders. Subsequently the Government set up a GOM to consider the draft Bill which has recommended the Bill to be presented to the Cabinet.

4. It has been stated that the NCST addressed the Hon'ble Minister of Mines vide its letter dated 06.08.2010 (p.22-23/C) regarding concern on issues pertaining to Scheduled Tribes arising out of mining operations and recommended that in a development project specially when land is required from tribal land owners, the land should be returned to the owners after reclamation of mined areas or future earning shared if non-Agricultural use is continued and a sum equal to royalty due should be paid to tribal for duration of mineral extraction to compensate them for deprivation of livelihood. Since, the draft Bill was referred to GOM which had already held two meetings by then, the NCST vide the letter dated 27.09.2010 (p.27/C) of the Hon'ble Minister of Mines was informed inter alia that the draft Bill has been prepared after consultations with the stakeholders in terms of National Mineral Policy, 2008 which enunciates that appropriate compensation will form an important aspect of sustainable mining and adequately provide for stakeholders' interest for indigenous population in the mining operations. It was further informed that the Government has constituted a GOM

to consider various view points on the draft Bill to give its recommendations to the Government. Since the Bill is under consideration, specific measures and details are not yet finalized. Subsequent to this, the NCST issued another letter dated 11.10.2010 (p.95-97/C) making additional recommendations on the draft Bill. It has been stated that the administrative Ministry had incorporated these recommendations on the draft Bill but the NCST was not informed for the reason that the matter was with the GOM and the provisions of the Bill were not finalized. As the NCST was not informed, the NCST convened a meeting for discussion and requested the Secretary, Ministry of Mines to attend the same on 25.07.2011 (p.114-115/C). In the said meeting the Ministry of Mines is stated to have clarified that all concerns raised by NCST have been suitably addressed in the draft Bill and that once the draft Bill was approved by the Cabinet, a copy of the same would be sent to NCST before introducing the same in the Parliament.

5. From the above, it may be seen that the draft Mines and Minerals (Development and Regulation) Bill, 2011 is yet to be submitted to the Cabinet as recommended by the GOM. The administrative Ministry has neither disclosed nor placed on file any instructions/guidelines prohibiting to share the draft Bill with the NCST which is under the constitutional obligation to participate and advise on the planning process of Socio-economic development of the Scheduled Tribes and to evaluate the progress of their development in terms of Article 338 A(5) (c). The Commission also possess powers of Civil Court under Article 338A(8). Further, in terms of Clause (9) of Article 338A, the Union and every State Government are under an obligation to consult the Commission on all major policy matters affecting Scheduled Tribes.

6. In view of above, we are of the opinion that the concerns expressed by the National Commission for Scheduled Tribes in their letters dated 06.08.2010 (p-23/C) and 11.10.2010 (p.96-97/C) relate to the safeguards of the Scheduled Tribes and the provisions of the draft Bill may likely to affect the Scheduled Tribes and as such, may be a major policy matter affecting Scheduled Tribes. Hence in our opinion, the Ministry of Mines is under constitutional obligation to consult the commission. Thus, there may be no legal or constitutional objection in sharing the draft Bill with the Commission before its submission to the Cabinet.

May kindly see.

R. S. Shukla

(R.S. Shukla)
Addl. Legal Adviser
14.09.2011

J.S. Lakshmi
IS&LA(SI/MKS)

may also kindly see

Drake
15-9-11



3/20/A

L.S. 15/9/11
M.L.S.
Sa 16/9/11
Secretary 19/9/11
J.S. Lakshmi
ALLA (013) 20.9.11



टी. के. विश्वानाथन
विधि सचिव
T.K. VISWANATHAN
Law Secretary

S No 5(I)

भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग
नई दिल्ली-110115
GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
SHASTRI BHAWAN
NEW DELHI-110115

D.O. No. 11051/07/Advice-A

26th October 2007

My Dear Cabinet Secretary

The National Commission for Scheduled Castes called me on 7th August, 2007 to discuss the issue relating to non-consultation of the Commission while making various substantive legislations and rules affecting the interests of the Scheduled Castes in the country.

2. During the discussion Dr. Buta Singh, the Chairman of the Commission expressed his serious concern by observing in no uncertain terms that the Commission is not being consulted by the Government while taking various decisions /measures affecting the rights of the Scheduled Castes in the country and that such non-consultation violates the provisions of article 338(9) of the Constitution of India. The said article provides that the Union and every State Government shall consult the Commission on all major policy matters affecting the Scheduled Castes. The role of our Department and the Legislative Department in such matters was explained to the Commission. After the discussion, the Hon'ble Chairman directed me to take appropriate steps in the matter and inform the Commission.

3. I shall be grateful if you could kindly advise all Ministries/Departments to strictly follow the provisions contained in the said article as per observations of the Commission.

Rth Bhow

Yours sincerely,

T.K. Viswanathan
(T.K. Viswanathan)

*Received
Rth
29/10*

Shri K.M. Chandrasekhar,
Cabinet Secretary,
Cabinet Secretariat,
New Delhi.