



DAKSHINBANGA MATSYAJIBI FORUM (DMF)

Trade Union Regn. No.20474/92. Affiliated to National Fishworkers' Forum (NFF)

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July 9, 2016

To
The Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road, Aliganj,
New Delhi-110 003.

Sub: Objections and suggestions on the proposal contained
in the draft notification No. S.O.1705(E) dt.10.05.2016

Sir,

This is to bring to your notice that Dakshinbanga Matsyajibi Forum (DMF) is an organization of around 10,000 small and traditional fish workers. It is a well known fact that our water resources are being increasingly impacted by unregulated and/or ill regulated 'development' activities all over the country. Degradation and destruction of our surface water resources have attained terrible proportions. As a result fishing communities of our country are facing severe loss of livelihood and destitution.

Environmental Impact Assessment (EIA) and some other rules, notifications and orders issued under the Environment Protection Act (EPA) of 1986, though not at all adequate to protect our environment and natural resources, serve the concerned communities and citizens to some extent as means to address the onslaught on the same.

It is observed that there has been a continuous effort by the government to dilute these statutes presumably to serve the investors and profiteers who gain from destruction and degradation of natural resources. Suffice it to mention that this is done at the cost of the livelihood of crores of fishers, farmers, forest dwellers and pastoral communities who are primarily dependent on natural resources.

We are constrained to state that the instant draft notification No. S.O.1705(E) dt.10.05.2016 is a continuation of the same process and is aimed at further diluting a weak, inappropriate and inadequate instrument like Environment Impact Assessment (EIA) Notification of 2006. As such this draft notification should be withdrawn and the Government in the Ministry of Environment, Forest and Climate Change should immediately start a process of consultation with natural resource dependent people, environmentalists and concerned citizens to strengthen the EIA Notification of 2006.

Detailed comments of Dakshinbanga Matsyajibi Forum (DMF) on draft notification No. S.O.1705(E) dt.10.05.2016 are enclosed.

Thanking you,

Yours faithfully,

Pradip Chatterjee

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President



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Objections and suggestions of Dakshinbanga Matsyajibi Forum (DMF) on the proposal contained in the draft notification No. S.O.1705(E) dt.10.05.2016

Dakshinbanga Matsyajibi Forum (DMF) rejects the intention of the Government in the Ministry of Environment, Forest and Climate Change contained in the following lines of the instant draft notification –

“the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation be brought under compliance with in the environmental laws in expedient manner, for furtherance of this purpose the Government of India deems it essential to grant environmental clearance with adequate safeguards to entities which were non-compliant to make them compliant.”

Dakshinbanga Matsyajibi Forum (DMF) firmly observes that the Ministry of Environment, Forest and Climate Change has miserably failed to take effective measures against the violators of our environmental laws. **If the MoEF is serious about discouraging violations and enforcing compliance, then the existing laws allow it to file criminal complaints and prosecute the offenders. Unfortunately, the ministry has failed to exercise this power.** And now it has come out with a prescription to bail out the violators.

Dakshinbanga Matsyajibi Forum (DMF) further observes that all the powers conferred on the Government by Sections 3 and 5 of the Environment (Protection) Act, 1986 **cannot and should not be construed as powers to provide ways and means to the violators of statutory directives to continue with the violations**, instead these powers are to be used to effectively stop the violations, penalise the violators and make them compensate and pay for restoration of environment. It will mean **providing license for violations if the violators are allowed to continue with the violations on payment of some money to fund some programmes or activities.**

Dakshinbanga Matsyajibi Forum (DMF) notes with concern that the instant draft notification states –

“In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned regulatory authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and shall be appraised for grant of environmental clearance and the project proponent to compensate may implement the Environmental Supplemental Plan to remediate the damage caused or likely to be caused, and take out the undue economic gain due to non-compliance and violation.”

Thus it is quite clear that the draft notification aims to legitimise all violations of environmental law under the cover of **Environmental Supplemental Plan.**

The hypocrisy of the notification regarding Environmental Supplemental Plan is betrayed by the following statement (apologetic!) contained in the annexure to the draft notification –

“3. The implementation of Environmental Supplemental Plan reduces neither the stringency nor the timeliness requirements of Central environmental statutes and regulations. Performance of an Environmental Supplemental Plan does not alter a proponent's obligation to remedy a violation expeditiously and return to compliance.”

If Environmental Supplemental Plan is in no way linked with the ‘stringency’ or ‘timeliness’ requirements of Central environmental statutes and regulations then why does the draft notification state that the projects treated as cases of violations “shall be appraised for grant of environmental clearance and the project



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proponent to compensate may implement the **Environmental Supplemental Plan** to remediate the damage caused or likely to be caused, and take out the undue economic gain due to non-compliance and violation”?

India's Environment Impact Assessment law (EIA Notification, 2006), provides for a legal process for grant or rejection of environmental clearances to industries and activities. Project developers/proponents cannot start work on project-related activities unless and until they receive 'prior' environmental clearance. In fact, the heart and soul of EIA is the need for prior approval. **This is the law as it exists.**

Dakshinbanga Matsyajibi Forum (DMF) observes that if the draft notification, as it is presently formulated, comes into force then **the project developers/proponents who violates the law by commencing construction or expanding operations (without approval) will be granted environmental clearances. The only condition is that they must agree to implement an Environmental Supplemental Plan (ESP).**

The ministry claims that the **primary purpose of the ESP is to discourage violations** of the law and to obtain environmental and public health benefits which otherwise would not have occurred. It wrongly assumes that ESP is needed to discourage violations since existing law does not provide for the same.

The **Air (Prevention and Control of Pollution) Act, 1981** and the **Water (Prevention and Control of Pollution) Act, 1974** provide for a minimum period of one and a half years of imprisonment for any person or entity which has commenced activities without a valid consent to establish or operate.

The citizens of the country have a right to know how many criminal complaints have been filed by the ministry in the court of law on cases of such violations.

Under the Coastal Regulation Zone Notification, 2011, ports are not allowed in high erosion zone and similarly, under the siting guidelines of the ministry, thermal power plants are not allowed in prime agricultural land (double cropped land). However, under the proposed notification, in case a project proponent commences such constructions in these prohibited areas, the MoEF will grant environmental clearance so long as it agrees to implement the ESP.

The hypocrisy of the notification is further betrayed by its reference to “Environmental Justice”. The draft notification states –

“Environmental Justice: This will be accorded high priority in formulation and implementation of Environmental Supplemental Plan.”

How can environmental justice be achieved by allowing blatant violators of law to get clearances and continue activities despite their disdain for the Rule of Law?

The draft notification goes on to state –

“The “environmental justice” (EJ) will be defined as the fair treatment and meaningful involvement of all people, caste, colour, creed or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Low-Income segments of the population are disproportionately burdened by pollutant exposure. Environmental Supplemental Plan can help ensure that residents who spend significant portions of their time in, or depend on food and water sources located near the areas affected by violations will be protected. In some situations, members of a community impacted by an environmental violation may feel that they lack meaningful involvement in the enforcement process, including the selection of an Environmental Supplemental Plan. The Ministry strongly encourages the Expert Group and proponents to reach out to the community for Environmental Supplemental Plan ideas and prefers Environmental Supplemental Plan proposals that have been developed with input from the impacted community.



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Thus, with so many 'good words' and so much 'good intentions', the impacted community has been bestowed with the right to be meek acceptors. **They have no right to reject the ESP or to demand stoppage of violations.**

Hypocrisy of the draft notification is further evident in its position regarding "Innovative Technology", it states –

"Innovative Technology: Environmental Supplemental Plan will provide the proponent and the Expert Group with an opportunity to develop and demonstrate new technologies that may prove more protective of human health and the environment than existing processes and procedures."

If new innovative technologies exist, should authorities wait for violations to take place for them to be implemented?

Dakshinbanga Matsyajibi Forum (DMF) observes that the draft notification violates both the '**Polluter Pay Principle**' and the '**Precautionary Principle**.' Both these principles form the basic edifice of environmental law. The Supreme Court has held that **Polluter Pay Principle can't be a license to pay and pollute**. The draft notification does just the opposite. It allows illegal activity to take place without environmental clearance, and ESP amounts to 'pay and pollute.'

Dakshinbanga Matsyajibi Forum (DMF) further observes that the fundamental problem in the draft notification is that it condones a criminal act on the part of the project proponent and replaces it with a procedure which allows the violation to be legalised.

Even more serious is the fact that not only does the draft notification condone existing violations; it contemplates that the violations may be repeated. It states that the project proponent must demonstrate that it will 'reduce' the likelihood of similar violation in future!

It should not be forgotten that the draft notification is only an exercise of the delegated powers under the Environment (Protection) Act, 1986 by the executive. It is a settled law that the executive, acting under delegated legislation, cannot frame rules which are contrary to the laws passed by legislature. This is exactly what is being proposed.

One of the emerging principles guiding environmental law internationally is the 'principle of non-regression.' Simply stated, it means that the states cannot dilute existing environmental laws and consistent efforts should be made only towards strengthening them to protect the environment. The draft notification is in clear violation of this principle.

The ministry should immediately recall the draft notification which is bad in law, will encourage bad corporate behaviour and will be disastrous for ecology.