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COMPENSATORY AFFORESTATION IN INDIA VIS-À-VIS FOREST (CONSERVATION) RULES, 2022

Shailesh Kumar Pandey & Priyanshi Dubey**

[Abstract: *Since ancient times, mankind's development has remained heavily dependent on natural resources and forests, but with the increasing needs of the population, infrastructural and developmental expansion is claiming more and more forest land every day. In multiple rulings, the apex court has stated that heavy ecological destruction in the name of development is defying sustainable development goals and directed the state to ensure compulsory afforestation for the conversion of forest land for non-forest purposes like infrastructural projects, mining, railway expansion, etc. The rule of compulsory afforestation mandates the rehabilitation of ecological balance in areas where the forest has been diverted for non-forest use through the compulsory plantation. These rules also provide for the recovery of compensation for the ecological loss by the state via an assessment of net present value in monetary terms so that the fund can be generated for forest conservation-related activities. The fundamental object of compulsory afforestation is to ensure sustainable development by restoring the ecological balance of forest diversion-affected areas, but this very object is being defeated by the state via the implementation of the Forest (Conservation) Rules, 2022. It has to be noted that Rule 11(1)(d)² creates discretion in the hands of the state and U/T governments to permit users of forest land for non-forest purposes to carry out afforestation activities in any other state. The present study will evaluate the implication of the Forest Conservation Rules, 2022, on compensatory afforestation in India. Furthermore, the study is aimed at shedding light on the possible consequences and shortcomings of the 2022 Rules regarding compensatory afforestation and forest conservation.]*

Keywords: *Forest (Conservation) Rules, 2022, compensatory afforestation, ecological balance, non-forest use.*

I

Introduction

In its 75th year of independence, India has come a long way in terms of development and governance. Since the advent of civilization on earth, humans have continuously utilised

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² The Forest (Conservation) Rules, 2022, R. 11(1)(d).

natural resources for their growth and development. However, with massive industrialization, heavy demand amongst the population for timber resources, and the conversion of forest land for non-forest uses, the earth is on the verge of facing a significant climate change crisis. After the industrial revolution at the global level, the forest cover of India has significantly reduced, and even today it's reducing despite the compensatory afforestation requirements under the law.

India's forest conservation has come a long way since the Act of 1927.³ The aforesaid act was primarily intended to enhance the regulatory control of the colonial government over the products and resources of forests. In the Act of 1927, the tool of classification of the forest into reserved forest, protected forest, etc.⁴ was very effectively utilized by the Britishers to undermine the rights of the forest dwellers, and the act completely overlooked the environmental consequences and restoration of a massively reducing forest cover. Ultimately, the Forest Conservation Act of 1980⁵ was passed by the Indian Union government to regulate the conversion of forest land for non-forest purposes.

One of the fundamental objectives of this act was to develop strong legislation by defining penal provisions and statutory requirements for the conversion of forest land for another purpose. The Forest Conservation Act of 1980 is the principal legislation for the governance of forest-related activities and the conversion of forest land for non-forest use.

The authorities under this act, which are responsible for ensuring compulsory and compensatory afforestation, are mostly under the control of the state government. Section 2(i) of the Forest Conservation Act 1980⁶ clearly prescribes that all deforestation-related activities and non-forest usage of forest land have to be done in conformity with and with the approval of the central government, and any activity done in violation of this section shall be considered an illegal activity for the purpose of the act.

³ The Indian Forest Act, 1927.

⁴ The Indian Forest Act, 1927, S. 27-29.

⁵ The Forest (Conservation) Act, 1980.

⁶ The Constitution of India, 1950, article 21.

The constitution of India guarantees the right to a safe and clean environment under Article 21⁷ and Article 48-A of directive principles of state policy clearly highlights the function of the state to maintain and protect the environment and ecology.

However, environment conservation is the joint responsibility of the union and state governments in India as per List 7 of the Constitution of India⁸; most of the powers are still with the union government, and the Ministry of Environment, Forest, and Climate Change is responsible for formulating and enacting various rules and by-laws for forest conservation in India.⁹

II

Meaning of Compensatory Afforestation

The general meaning of "compensatory afforestation" is a plantation or reforestation activity that is conducted after the conversion of well-grown forest land for non-forest purposes. Compensatory afforestation has been defined under Rule 2(E) of the Forest Conservation Rules 2022¹⁰ as forestation activity done under the provisions of the rules. The rule of compensatory afforestation was the result of the continuous degradation of the forest due to various activities, including deforestation and conversion of forests for non-forest purposes. Furthermore, the rule of compensatory afforestation places a burden on the user who intends to convert forest land for non-forest purposes, including the development of building or infrastructural projects, including highways, railways, and other developmental activities. This rule is based upon the principle of 'polluter pays' and as per the rule, anyone causing a loss to the ecological cover of the forest is burdened with the liability to compensate in terms of money as well as in terms of afforestation activities that are to be conducted as per the rules made by the state government or union territory government. The fundamental objective of afforestation is to create a new forest and also to compensate for developmental activities by creating an equitable ecology and vegetation subject to land availability and other permissions of the state and union governments.

⁷ The Constitution of India, 1950, article 48A.

⁸ The Constitution of India, 1950, Schedule 7, List – III.

⁹ The Forest (Conservation) Act, 1980, S. 4(1).

¹⁰ Forest (Conservation) Rules, 2022, R. 2(e).

III

Current Policy for Compensatory Afforestation

As per the current legal position in India, if a party or user intends to convert forest land for non-forest purposes by way of diversion, the interested party shall apply in the appropriate prescribed format under the Forest Conservation Act 1980 to get the necessary approval.¹¹ The approvals are of two kinds: the first is a principal approval, and the second is a final approval.¹² On reviewing the project proposal that is forwarded by the user, the compensation and net present value for reforestation and restoration of the degraded forest are critically evaluated by the state authorities and departments established under Forest Conservation Rules 2022. Apart from the computation of the compensation that is required to be paid by the user for seeking and getting required approvals under the Act of 1980, the legal provisions also mandate the user to carry out afforestation-related activities upon receipt of non-forest land, and if the proposed deforestation site is a degraded forest site, the plantation requirements are increased by 200%.¹³ In compliance with the provisions contained in the 1980 Act, the diversion or conversion order is passed in favour of the user or applicant, and permission for the conversion of forest land for non-forest purposes is granted by the concerned departments and union ministry.

IV

Judicial Trends on the Rule of Compensatory Afforestation

The Indian Supreme Court remained inactive for the conservation of the forest for a long period of time but ultimately it extended its control over the deforestation and reforestation activities of the country through a landmark pronouncement in T.N. Godavarman Case.¹⁴

The T.N. Godavarman case led to the issuance of several guidelines for the conservation of the forest and for conducting compensatory afforestation activities in India. Direct also highlighted the responsibility of the union ministry for the conservation of the forest by ensuring compliance with the compensatory afforestation rules in the country. In the verdict, the

¹¹ The Forest (Conservation) Act, 1980, S. 2A.

¹² Forest (Conservation) Rules, 2022, R. 9.

¹³ Forest (Conservation) Rules, 2022, Schedule - I.

¹⁴ *T.N. Godavarman Thirumulkpad v. Union Of India*, (1997) 2 S.C.C. 267 (India).

Supreme Court stayed and stopped all the deforestation-related activities that are being conducted without the prior approval of the central government across India. The restrictions included a prohibition on unregulated timber mills, sawmills, etc., and also imposed a ban on unregulated forest cutting by both organized and unorganized groups.¹⁵

One of the most fundamental contributions of the judgment was that it stated that the forest not just includes the forest that is mentioned under the entries of the state as forest, but forest-like entities shall also be considered part of the forest for the purpose of the act, and Section 2(i)¹⁶ shall apply for those landmasses that have forest-like properties and features. This rule extended the control and scope of the FCA Act 1980 to all the areas that are either mentioned as forests or have the attributes of forests.¹⁷

The judgement also prohibited the deforestation activities that were conducted across India without the prior approval of the central government, which shall be granted only after the state government submits a proposal for a working plan to the central government in this regard under the provisions of the FC Act 1980.¹⁸

The apex court also made it mandatory for the state governments to establish an expert committee and also submit data relating to the existing number of sawmills and timber mills that are functional in each state, and the expert committee was given the responsibility to report on the conditions of the forests in the states. Subsequently, the apex court, in its order of the year 2000¹⁹, gave the responsibility of implementing a compensatory afforestation scheme to the Ministry of Environment, Forests, and Climate Change. In further order of May 2002, the central empowered committee was directed to be constituted. The apex court gave direction in 2002 for the foundation of compensatory afforestation management and planning authority and also directed certain rules that are to be framed for the purpose of implementation of its order.²⁰

For the purpose of execution of the supreme court's guideline, no adequate steps were taken by the union government. Ultimately, in 2006, the Supreme Court itself formed an ad hoc

¹⁵ *Id.*

¹⁶ The Forest (Conservation) Act, 1980, S. 2(i).

¹⁷ *Supra* note 15 at 270.

¹⁸ *Id.*

¹⁹ Comptroller and Auditor General of India, COMPLIANCE AUDIT AN COMPENSATORY AFFORESTATION IN INDIA 7 (2013).

²⁰ *Id.*, Comptroller and Auditor General of India, at 7-8.

Compensatory Afforestation Management and Planning Authority (CAMPA), which was declared responsible for the management and allocation of the funds that are received as a part of the compensatory afforestation fund by provisions of the FC Act 1980.²¹

In an order given on March 2, the Supreme Court clarified that the ad hoc CAMPA shall be audited by the Comptroller and Auditor General of India (CAG). In another order issued by the Supreme Court in March 2008²², the net present value was ordered to be revised every 3 years in consultation with the authorities.

As a part of the decentralization of the administration and management of forest conservation, the apex court issued an order on July 4, 2009, defining the structure of the state CAMPA and also permitting the ad hoc CAMPA to utilize funds up to Rs. 1000 crore every year on afforestation activities.²³ The Supreme Court, after the landmark judgment of T.N. Godavarman, has continuously played an active role in strengthening the forest conservation mechanism in India.

V

Compensatory Afforestation under Forest Conservation Rules 2022

The compensatory afforestation-related provisions are contained in various rules and legislative provisions, but one of the fundamental changes has been brought about recently by newly implemented forest conservation rules.²⁴ These rules were formulated by the Ministry of Environment, Forest, and Climate Change (MoEFCC), Government of India, on June 28, 2022. These rules have been formulated under Section 4 (1) of the F.C. Act of 1980²⁵. Under the new rules, rule 2 (e)²⁶ defines compensatory afforestation, rule 2 (i)²⁷ defines diversion of the forest land, and rule 2(x)²⁸ defines the user as the beneficiary who is requesting the conversion of the forest land for non-forest usage. The user includes unions and state government departments

²¹ The Forest (Conservation) Act, 1980.

²² *Supra* note 20, Comptroller and Auditor General of India, at 8.

²³ *Supra* note 20, Comptroller and Auditor General of India, at 8-9.

²⁴ Forest (Conservation) Rules, 2022.

²⁵ The Forest (Conservation) Act, 1980, S. 4(1).

²⁶ Forest (Conservation) Rules, 2022, R. 2(e).

²⁷ Forest (Conservation) Rules, 2022, R. 2(i).

²⁸ Forest (Conservation) Rules, 2022, R. 2(x).

that are seeking the approval of the ministry for the conversion and usage of forest land into another land for non-forest purposes.

Rule 3²⁹ deals with the establishment of an advisory committee that will be responsible for the approval of the proposal that is forwarded to the union ministry, and such authority shall be under the control and supervision of the Ministry of Environment, Forest, and Climate Change (MoEFCC), Government of India. On the other hand, Rule 8³⁰ defines a project screening committee that will be established by the state or union territory government for granting approvals and evaluating proposals forwarded by the users under Rule 9(4)³¹.

The 2022 rule prescribed two forms of approval: principal approval and final approval. Rule 5³² says that either the state can provide land for the purpose of afforestation or the user can acquire land for plantation at their own cost. The rules regarding compensatory afforestation are clearly mentioned in Rule 11³³ and Schedule 1. As per the second para of Rule 11(1) (a)³⁴, in the case of degraded forest deforestation in the area, afforestation in an area twice the size of the proposed conversion area is mandatory. The explanation of Rule 11 provides that the afforestation area shall have a minimum density of 0.4 canopies in the 5th year of afforestation.

The rule further mandates the declaration of afforestation sites as protected forests under Section 29 of the Forest Act³⁵, and afforestation activity shall begin within one year of getting approval from the concerned departments under the 2022 rules. As per Rule 11(1)(d)³⁶, interstate shifts in the plantation site have been permitted subject to the approval of the state government and union government in those areas where 2/3 of the total area of the state is hilly or 1/3 of the total area of the state is covered with forest. The Interstate Shift can be done to a state where less than 20% of the area is covered under the forest as per the provisions of the 2022 Rules.

²⁹ Forest (Conservation) Rules, 2022, R. 3.

³⁰ Forest (Conservation) Rules, 2022, R. 8.

³¹ Forest (Conservation) Rules, 2022, R. 9(4).

³² Forest (Conservation) Rules, 2022, R. 5(e)f.

³³ Forest (Conservation) Rules, 2022, R. 11.

³⁴ Forest (Conservation) Rules, 2022, R. 11(1) (a).

³⁵ The Indian Forest Act, 1927, S. 29.

³⁶ Forest (Conservation) Rules, 2022, R. 11(1)(d).

As per Rule 11(3)(a), an accredited compensatory afforestation scheme has been formulated where private land can be utilized for afforestation activities, and if private land has 5-year-old trees with a minimum 0.4 canopy density, such private land can be purchased by the user, and accredited compensatory afforestation can easily be utilized in the form of credit for compliance with the compensatory afforestation liabilities under the Act of 1980 and Rules of 2022.³⁷ This means that now even private land that already has vegetation can be purchased by the user to meet the compliance requirements of the Act and easily escape the liability of compulsory afforestation. The ultimate objective of compulsory and compensatory forestation is to increase in vegetation and forest cover and the above rule is defeating that very purpose by bringing bypass to the statutory provision virtual provide us safe passage to those who are not ready to comply with the provisions of 2022 Rules.

VI

Forest Conservation Rules 2022: A Critical Analysis

“Power tends to corrupt and absolute power corrupts absolutely.”

- **Lord Acton (1887)**

The fundamental criticism of the Forest Conservation Rules 2022 is that the rules have created a bypass procedure and have given absolute power to the central government to decide whether there any project is sustainable for the environment or not.

Currently, the fundamental problem encountered by our environment is that even though we have abundant legal safeguards for ensuring compensatory afforestation, the rapid increase in deforestation is leading to a reduction in the total forest cover of India. One of the fundamental reasons for the same is the lack of compliance and implementation mechanisms for the rule of compensatory afforestation.

The CAG Audit Report of 2013 clearly highlighted that multiple states in India are not taking adequate measures to implement compensatory afforestation in their state, which is causing a

³⁷ Forest (Conservation) Rules, 2022, R. 11(3)(a).

heavy reduction in forest cover.³⁸ Furthermore, the existing penal provisions contained in the Act of 1980 have been stated to be inadequate by the CAG report.³⁹

The rules have created a system of permission where the clearance of the gram Sabha is not required for first and second-stage clearance approvals, and at the later stage, the legislative drafting reflects that only the provisions of the Forest Rights Act 2006⁴⁰ have to be taken care of by the state governments as per their capacity and whims, but express permission of the gram Sabha is no longer required for bringing about fundamental changes in the ecological structure and fabric of any forest area.⁴¹

The Honourable Supreme Court in the landmark "Niyamgiri judgment" against the government of Orissa specifically highlighted the powers and position of the Gram Sabha in deciding whether any project leads to the conversion of forest land for non-forest purposes. The Gram Sabha was empowered by the Supreme Court to take necessary and appropriate decisions for the conservation of the forest and ecology in their habitat.⁴²

The rulings of the Supreme Court were heavily appreciated by certain international organizations that are working in the field of protection of the human rights of the tribals residing in India including Amnesty International regarded that the rulings of the Supreme Court creating empowerment for the forest rights of indigenous tribes who are continuously struggling to protect and preserve their cultural and ecological habitat.⁴³

As per the 2022 rules, the approval of the Gram Sabha is now not required which is a clear violation of the express statutory provisions of Forest Rights Act 2006⁴⁴. And now it has become a fundamental topic for discussion whether any rule of delegated legislation be having overriding effects over the express legislative intent described in any central legislation. One of

³⁸ *Supra* note 20, Comptroller and Auditor General of India, at 9.

³⁹ *Id.*

⁴⁰ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

⁴¹ CITIZENS FOR JUSTICE AND PEACE, *Forest Conservation Rules, 2022- An overview of changes that snatch rights of Gram Sabhas* (Oct. 25, 2022) available at : <https://cjp.org.in/forest-conservation-rules-2022-an-overview-of-changes-that-snatch-rights-of-gram-sabhas> (last visited Mar.20,2022).

⁴² *Orissa Mining Corporation v. Union of India and Ors*, (2013) 6 S.C.R. 881.

⁴³ AMNESTY INTERNATIONAL, *India: Landmark Supreme Court ruling a great victory for indigenous rights* (Apr. 18, 2013) available at - <https://www.amnesty.org/en/latest/news/2013/04/india-landmark-supreme-court-ruling-great-victory-indigenous-rights/>. (last visited Feb.22,2022)

⁴⁴ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, S. 6-10.

the most crucial elements involved in this rule of 2022 is that if the gram Sabha can do absolutely nothing to mark opposition to the proposed project conversion of forest into non-forest land the gram Sabha is left with absolutely no redressal and remedy but just to obey the elders and tolerances have debuts that are already issued by the concerned government authorities including the ministry of forest and environment and the state forest department because gram Sabha cannot even be consulted before granting the initial clearances.⁴⁵

Limitations of the Rule of Compensatory Afforestation under Forest Conservation Rules 2022

The rule of compensatory afforestation creates a legal mandate for the plantation of trees equivalent to the forest land destroyed or converted for project purposes. But one thing that is completely ignored by the current position of the rule is that if new plantations are ordered in the nearby area, it takes a lot of time to create a forest life situation and ecological balance in the area, which leads to permanent destruction of the ecological and climatic structure of the forest area.

After the enactment of new rules in 2022, the situation is becoming even worse because now the users are not mandatorily required to compensate for the loss of vegetation caused by their actions in the given state, but they are actually very free to go and plant trees elsewhere after seeking new approval from the state government and central government agencies.

The fundamental problem still remains that if you are not at an earlier stage of the ecological loss and rehabilitation of the vegetation that is not properly facilitated by the compensatory afforestation policy of the state, the user or polluter will be at liberty to easily evade liability by taking responsibility from one state for conducting plantations in any other state where the users are on friendly terms with state authorities, which may eventually help them in doing away with all the procedural requirements related to compensatory afforestation.⁴⁶

One of the major problems in the implementation of the 2022 rules is that there is no oversight committee or supervising committee to check and verify the Interstate transfers of plantation drives to make sure if the plantation has been done in another state or not or whether that

⁴⁵ *Supra* note 42.

⁴⁶ Shailee Basu, *Forest Conservation Rules 2022: The smokescreen of 'compensatory afforestation*, Vidhi Centre for Legal Policy (Jan. 11, 2023) available at : <https://vidhilegalpolicy.in/blog/forest-conservation-rules-2022-the-smokescreen-of-compensatory-afforestation/>. (last visited Feb. 12, 2023).

transfer requested by the users is done solely for the purpose of evading the liability that was inflicted by the Forest Conservation Act of 1980 and the Forest Conservation Rules of 2022.

VIII

Conclusion

The Forest Conservation Rules 2022 are prima facie diluting the rights of tribals and indigenous communities who have been living in forests for 1000 years by clearly giving absolute powers to the central government for granting stage one clearance on receipt of the application for forest diversion or conversion. As per the new rules, the responsibility for ensuring that all legal compliances are met for the conversion of the forest is solely given to the state government, but it will be better if both the union and the state share this responsibility by forming an oversight committee for each state. The interstate transfer of plantation locations as suggested in the new rules will cause irreparable and serious damage to the ecological balance of a given forest area, and such practices shall not be promoted by legislative enactments because damage to a particular ecological habitat cannot be permitted at the cost of reforestation of another ecological habitat. The rules of 2022 shall be amended to ensure forest quality and afforestation-related follow-up procedures to make sure that the forest is not just planted but maintained and managed by the users. It has to be ensured that any fund that is collected for compensatory afforestation shall be strictly utilized for forestation-related activities only, and no allied activities shall be financed out of these funds.

The implied permission is granted to private parties for the afforestation and maintenance of the forest which will later be utilized by the users to seek forest accreditation credit and exemption from compensatory afforestation rules this will create unfair evasion passage for corporate and commercial users of forest land. As per the above rules, users can purchase a plantation location, and then without adding one single tree to the local ecology, they will succeed in fulfilling compensatory afforestation requirements and it will eventually turn statutory and pious obligation into a mere formality.

Lastly, compensatory afforestation is not just legislative or statutory compliance but a fundamental human duty that should be performed irrespective of any rule or legislative compulsion because if a developmental project or non-forest usage is creating a disturbance in

the ecological fabric of the particular forest area, that fundamental problem shall be dealt with accordingly by the user and the state and central governments under whose permission search activities are being conducted.

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