

CAMPAIGN FOR ENVIRONMENTAL JUSTICE – INDIA

Dr. Manmohan Singh
Prime Minister of India
(i/c) Union Ministry of Environment and Forests
South Block, Raisina Hill,
New Delhi,
India-110 011.
Telephone: 91-11-23012312
Fax: 91-11-23019545 / 91-11-23016857

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Reg.: MoEF Notification proposing an amendment to the EIA Notification – 2006, offering various concessions to project developers, is in violation of Code of Conduct of Election Commission

Respected Sir,

We address you in your capacity as a Member of the Union Cabinet incharge of the Union Ministry of Environment and Forests (MoEF).

As you are aware, your Ministry has proposed a major amendment to the Environment Impact Assessment Notification – 2006 (EIA Notification - 2006) by way of Notification S.O. 195 (E) issued on 19 January 2009. Following the closure of the public commenting period of 60 days, MoEF proposes to go ahead with the amendments anytime now.

The EIA Notification – 2006 requires that projects that cause pollution, displacement, destruction of natural resources, etc., be they in the nature of expansion or as greenfield ventures, must go through a series of clearance steps as per standards and with the prior consent of a variety of statutory agencies, both at the State and Central levels, as applicable. The procedures laid down require project developers to comply with various national legislations such as the Environment Protection Act, Forest Conservation Act, Wildlife Protection Act, Water and Air (Control of Pollution) Act, and a range of international treaties, in particular the Rio Declaration of 1992. In addition a variety of legal principles that are part of the rubric of Indian law, such as Polluter Pays Principle, Doctrine of Public Trust, Precautionary Principle, etc., are to be adhered to when advancing any developmental project. Failure to comply with the procedures laid down in the EIA Notification is a criminal offence punishable under the Environment Protection Act, 1986 and related criminal procedure laws.

The Amendment Notification, accessible only on the website of the Ministry (in English and Hindi alone), proposes a series of amendments to the EIA Notification - 2006 which will significantly weaken, even negate, the role of the Ministry and other statutory agencies in reviewing the environmental and social impacts of a variety of high impact and polluting projects. In addition, the amendment proposes to grant a range of exemptions from mandatory statutory provisions of applicable environmental law for upto three years. There is also an extraordinary and clearly illegal concession offered to polluters who simply have to declare through a 'self certification' that they cause no additional pollution and thus escape from the need to secure environmental clearance! In a country which is known for its gross failure in enforcement of environmental regulations, and where there is no competent administrative and regulatory infrastructure to independently review compliance with law, this is certain to open the floodgates to environmental destruction and destabilisation of thousands of project affected communities across India. The frequent expose of corporate fraud, even amongst leading companies, cause great discomfort when we consider the consequences of such illegal concessions.

An indicative list of the beneficiaries of the concessions proposed include shipping, dredging and port development, building and construction sector, area development projects, special economic zones, mining, petrochemical sector, modernisation of airports, expansion of all sorts of manufacturing industries, etc. Without doubt each and every one of these sectors have the potential of causing extensive damage to our environment and society, sans effective regulation.

One of the reasons offered for granting such sweeping concessions is that the Ministry failed to create statutory environmental monitoring and clearances agencies, such as the State Environment Impact Assessment Authorities and State Expert Appraisal Committees, in several states since the enactment of the EIA Notification – 2006. Astonishingly, the failure to institute appropriate regulatory infrastructure is now being offered as a reason to comprehensively weaken, even negate, India's environmental regulatory framework.

Nowhere in the history of environmental regulation in the world have such sweeping concessions been accorded by any Government at any point in time. In fact, such a move is likely to be criticised globally as extending unfair advantage

to Indian industry by lowering globally acceptable environmental standards for production, a factor that would weigh heavily against India's standing in the climate change negotiations.

All this considered, Sir, we find the reasons cited for the amendment and the timing of the proposed amendments quite specious. Your Government was well aware that its term in office was coming to a close when this Amendment Notification was issued in January 2009, and that too by a Ministry directly under your supervision. The concessions proposed by way of this Amendment Notification, besides being illegal and destructive of democratic decision making, constitute a largesse of the State to the beneficiary industries and infrastructure project developers. The monetary value alone would run into thousands of crores for beneficiaries while severely compromising our ecological security.

It is widely known now that many leading political parties are major beneficiaries of corporate grants. This proposed amendment amounts to your Government taking advantage of its position to harness much needed resources for elections by offering such astounding and clearly illegal concessions that attack the very edifice of environmental regulation in India.

With this in view, we urge you to immediately direct your Ministers of State in charge of Environment and Forests, and the Secretary of the Ministry of Environment and Forests, to issue a public announcement stating that the proposed Amendment has been kept in abeyance till such time a new Government is in power and is able to take a fresh and independent decision on this matter.

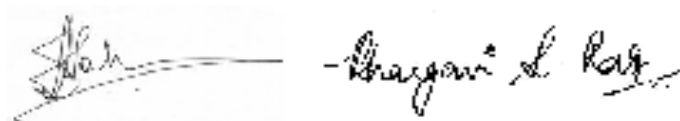
We make this fervent request in light of the Code of Conduct issued by the Election Commission of India, wherein it is clearly and categorically stated that no significant change in existing policy, scheme or programme of the State is allowed at the time of elections. Conformance with these guidelines are critical to ensuring a Government in power does not abuse its executive privileges to advantage its party at the time of elections. The proposed amendment to the EIA Notification, being a subordinate legislation, is clearly within the realm of the executive power of the State and thus constitutes a fit case for application of the aforementioned Code of Conduct.

We do hope you will initiate action in this regard with due dispatch. Any failure to initiate such action will compel us to move the matter before the Election Commission of India for effective and appropriate action.

Thank you for your cooperation and support.

Yours truly,

For Campaign for Environmental Justice – India

The image shows two handwritten signatures. The first signature on the left is in dark ink and appears to be 'Leo F. Saldanha'. The second signature on the right is in black ink and appears to be 'Bhargavi S. Rao'. There is a horizontal line drawn between the two signatures.

Leo F. Saldanha
Environment Support Group
105, East End B Main Road, Jayanagar 9th Block East, Bangalore 560069
Tel: 91-80-22441977/26531339 Voice/Fax: 91-80-26534364
Email: esg@esgindia.org Web: www.esgindia.org