

ENVIRONMENT

Rights and wrongs

ASHISH KOTHARI

Print edition : Apr 23, 2004

T+ T-



Residents of Bhaonta-Kolyala village in Rajasthan at the entrance of their "public wildlife sanctuary". Involvement of villagers is vital to the protection of forests and wildlife.—PICTURES BY ASHISH KOTHARI

The Central government circulars to the States urging steps to clear the disputes over tribal occupation of forest land may have political aims, but their subject matter is of utmost importance to the tribal people's survival.

IT was straight out of the set of a Bollywood blockbuster, one felt: would-be heroes and actual villains, opportunistic politicians, courtroom drama, a silently suffering populace and plenty of room for sequels. But, the scene was from the corridors of power in New Delhi and the portals of the highest court of the land. The suffering populace was made up of several million tribal people and forest dwellers.

On February 23, the Supreme Court severely embarrassed the Central government by ordering a stay on its much-publicised move to grant land rights to the tribal people in forest areas. In early February, the Ministry of Environment and Forests (MoEF) issued circulars to all State governments asking them to expedite the process of clearing disputes regarding the occupation of land classified as "forest" by tribal people and the conversion of "forest villages" into "revenue villages". Simultaneously, it published advertisements in leading newspapers, claiming that it was taking the "revolutionary step" of giving forest rights to Adivasis.

Based on an application filed by senior counsel Harish Salve against this move, the Supreme Court came down heavily on the government. It was pointed out that the Ministry's circulars were in violation of an earlier ruling by the Supreme Court that any regularisation of forest encroachment had to be cleared by the court. Salve also alleged that the move would endanger several hundred thousand hectares of forests. He pointed out that the circulars were aimed at gaining mileage in the general elections, as was evident from the advertisements. The court accepted these arguments and gave the government a month to come back with a response, pending which the operation of the circulars was stayed.

The subject matter of the two circulars issued by the Ministry is of utmost importance to the survival and cultures of millions of people.

Encroachments are a major cause for the loss of forests in India. A variety of people are responsible for this, from land mafia to urban citizens to poor rural families. But many of the tribal and other forest-dwelling communities have been unfairly labelled as "encroachers". The fact is that they occupied or were using these lands before they were declared "forest lands" under the Indian Forest Act, but the traditional occupation and use of these lands by them were ignored. For instance, the revenue land settlements completed during the 1970s in Orissa did not involve the survey of hilly lands, which are predominantly inhabited by tribal communities (owing to the higher surveying costs it entailed); these were declared state-owned revenue "wastelands" or forests. In Andhra Pradesh, lands under shifting cultivation, which were lying fallow at the time of forest classification, were declared reserve forests, without recording the rights of the tribal people. In a circular issued in 1990, the MoEF recognised such lands as "disputed" and asked the States to sort out the disputes and make applications to the Central government in order to provide proper titles or deeds to their traditional occupiers. The circulars of February 2004 reiterated this and urged the State governments to complete such processes within one year in the case of all tribal people who were found to be occupying such lands before December 31, 1993.

Many other families and communities have actually encroached on forest land. They may have done so out of sheer necessity (driven by poverty, or displaced from their traditional lands by development projects and natural disasters). They were considered to be entitled to have such lands, if occupied before 1980, regularised in their name. This is as per earlier decisions of the Government of India, taking the enactment of the Forest Conservation Act of 1980 as the cut-off point. Such cases had not been adequately processed by several State governments. The February 2004 circular points out that the Central government has sought the Supreme Court's permission to regularise cases brought to it until then.

About 2,690 settlements that exist within or adjacent to forests are legally classified as "forest villages", as distinct from most rural settlements in India that are legally designated as "revenue villages". These are in many cases villages that already existed within forests and were taken over for administrative purposes by the Forest Department; in other cases they were actually comprised of workers brought in by the department. For generations these people have helped conserve or manage forests, and have undertaken small-scale cultivation. In some cases the Forest Department has aided in meeting their basic needs. But many of them have been denied the basic developmental inputs that revenue villages are entitled to, and over the years their economic and social status has declined markedly. In 1990, the Government of India issued guidelines to the relevant States to convert forest villages into revenue villages, but most States have been tardy in implementing them (Progress was seen only in Madhya Pradesh and Maharashtra, where there are active forest-dwellers' movements). The February 2004 circulars reiterated the need to move on this urgently and outlined some steps in that direction.

There are several elements of the circulars that are problematic. One is the stipulation to complete the settlement of rights within one year. It is also not specified why the cut-off year is 1993. There is scope for considerable improvement in the way the circulars are framed. However, their overall substance is undoubtedly positive. Resolution of the above issues would not only provide security of livelihood to a few million families, but help create a stake for them in forest regeneration and conservation. It would, if carried out with transparency and honesty, help to separate the genuine forest-dwellers from the vested interests, such as the land mafia, that have encroached on forest lands in the name of Adivasis.

Unfortunately, the timing of the circulars and the accompanying advertisements could not but raise the suspicion that the interests of forest-dwellers or conservation were not quite the intent of the move. The Supreme Court was therefore entirely justified in taking the stand it did. But its stand and that of the senior counsel who filed the application against the circulars also smack of a strange inconsistency. Simultaneous with the circulars regarding forest encroachments and forest villages, the Ministry issued a spate of clearances to "development" projects. Some of these are extremely controversial projects, such as the Bodh Ghat dam in Chhattisgarh, which has for years been opposed by the local Adivasis (it would entail a diversion of 5,700 hectares of forest land), and the Human dam in Maharashtra, which has been pointed out as being a major environmental threat to the Tadoba National Park. There was no indication of whether the processes of environmental impact assessment, public hearing, and obtaining the consent of the panchayats concerned, were completed.

Obviously, these clearances were granted in order to gain propaganda mileage for the elections. In fact, the official press release on February 6 clubbed all these circulars and clearances together. And yet, neither the senior counsel nor the Supreme Court thought it fit to question the government about these project clearances.

In the past few years of legal and judicial activism, several judgments delivered by the Supreme Court have impacted heavily on Adivasis, fisherfolk, peasants and pastoralists: the presumption has often been that they are in some way primarily responsible for environmental damage. Simultaneously, there is a trend of condoning massive "development" projects that are obviously ecologically destructive. Projects that provide electricity and water to resource-guzzling cities and industries (Narmada, Tehri and so on) or help corporations (oil pipeline through the Marine National Park in Kutch) seem to be justified even though they will mean damage to natural ecosystems and the displacement of people, while a tribal eking out a modest living inside a forest is not considered to be in a legitimate occupation.

It is imperative that immediately after the elections the government moves to re-issue directions to the State governments on these matters and step up monitoring to ensure that they are implemented. The Supreme Court needs to facilitate this, especially because the ruling party would probably have already gained political mileage from the move (despite, or perhaps due to, the court's stay), and it should therefore be pressured to implement the promises.

Simultaneously, it is important that the big development projects cleared by the MoEF are stayed until the elections are over. The due process of environmental impact assessment, public hearing, and the seeking of the consent of the villages that would be affected, need to be carried out in their case.

Ashish Kothari is a founding member of Kalpavriksh, an environmental action group.