

जयराम रमेश
JAIRAM RAMESH



D.O. No. 1-22 MOS(UC) E&F/10

राज्य मंत्री (स्वतंत्र प्रभार)

पर्यावरण एवं वन

भारत सरकार

नई दिल्ली-110003

MINISTER OF STATE (INDEPENDENT CHARGE)
ENVIRONMENT & FORESTS,
GOVERNMENT OF INDIA
NEW DELHI - 110 003

Assent -

Dear Shri Moilyji -

19th July 2010

SUB: LEGAL QUERY TO THE ATTORNEY GENERAL OF INDIA REGARDING THE DISPOSAL OF VEDANTA'S APPLICATION FOR FOREST CLEARANCE BY THE MINISTRY OF ENVIRONMENT AND FORESTS

I write to you to seek a formal legal opinion from the Attorney General of India on a matter of critical importance as prescribed under Article 76 of the Constitution of India read with Rule 5(a) of the Service Rules 1987 (being No.F.18(1)/86-Judl). Given the litigious history surrounding the case, it is imperative that certain substantial points of law be clarified for the Ministry of Environment and Forests to take an appropriate decision. The query is enclosed.

I must stress the urgency of the situation given the sensitive nature of the matter concerned.

I appreciate your guidance in this regard.

With regards, *personal*

Yours sincerely,

Jairam Ramesh
(Jairam Ramesh)

Shri Veerappa Moily
Minister of Law & Justice
Shastri Bhawan
New Delhi

Encl: as above

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QUERY TO ATTORNEY GENERAL OF INDIA

QUERIST: THE MINISTRY OF ENVIRONMENT AND FORESTS, GOVERNMENT OF INDIA

In Re: Grant of Final Forest Clearance in the Matter of Vedanta Aluminum Limited

This concerns the grant of formal approval under the Forest (Conservation) Act 1980 for use of 660.749 ha for bauxite mining and associated non forestry activities in favour of Orissa Mining Corporation in Kalahandi and Rayagade districts. This has been under careful examination by the Ministry of Environment and Forests over the span of the last one year.

This examination, which has included a fresh site inspection along with numerous representations received from a wide variety of individuals and institutions, has led to the emergence of certain facts/information which may have a significant bearing on the decision that has to be made vis-à-vis the grant of forest clearance in the above mentioned matter.

However, due to the unique set of circumstances that have precipitated the taking of this decision, I am uncertain as to the extent to which we are bound by the judgments of the Supreme Court dated 08.08.2008 [(2008)9SCC711] and 23.11.2007 [(2008)2SCC222]. One construction that has been put forward of the judgment is that the MoEF role is limited to ensuring compliance with the Apex Court's instructions and conditions and thereafter of signing the clearance over. The operative part of the judgment dated 08.08.2008 reads as under:

"For the above reasons and in the light of the Affidavits filed by SIIL, OMCL and State of Orissa, accepting the Rehabilitation Package, suggested in our Order 23.11.07, we hereby grant clearance - to the forest diversion proposal for diversion of 660.749 ha of forest land to undertake bauxite mining on the Niyamgiri Hills in Lanjigarh. The next step would be for MoEF to grant its approval in accordance with law."[Emphasis added]

In light of the above judgment, it is felt that prior to the Ministry taking a final decision, it would be appropriate to seek a clarification from the Attorney General of India on the following points:

- **Whether the term “in accordance with law” as contained in ¶13 of the Judgment dated 08.08.2008 above would operate to disallow the Ministry from applying its own mind and deciding the matter on its merits?**
- **Whether the decision of the Supreme Court to grant forest clearance is final and binding or is it subject to approval and ratification by the MoEF?**

Copies of the Judgments are attached.