

August 21, 2012

To
Mrs Jayanti Natarajan
Union Minister of State of Environment and Forests (IC)
Paryavaran Bhawan,
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New Delhi 110 003

Sub: Reconstituted Forest Advisory Committee (FAC)

Respected Madam,

The Union Ministry of Environment and Forests reconstituted the Forest Advisory Committee through the order F. no. 3-2/2012-FC dated August 3, 2012. Among the three independent members in the reconstituted FAC include the names of Shri K P Nyati and Prof N P Todaria. Both these appointments are inappropriate for a statutory body like FAC. Neither of them can be considered independent. Following are some of the reasons why we think these appointments are inappropriate:

Shri K P Nyati

1. In case of Mr Nyati, it is well known that since at least 1992 he has been part of Confederation of Indian Industry (CII), representing the interests of the industries in one way or the other. He has thus made a career representing the interest of the industry. Thus there is clear conflict of interest in his case with the role of an independent member of the FAC that is supposed to work for the interests of conservation of forests.

2. His association with CII continues in various ways even today. He is currently “Principal Advisor” to CII-ITC Centre of Excellence for Sustainable Development, see: http://www.sustainabledevelopment.in/services/policy_division/contact.htm.

3. He has been in the past the CEO of Sustainable Mining Initiative (SMI), see: http://www.fedmin.com/smi/index.php?option=com_content&view=article&id=73&Itemid=116

SMI includes major mining companies like Tata, NMDC, NALCO, Hindustan Zinc, Rungta, Essel, Rio Tinto, Sesa Goa, ACC, among others. This is another case of conflict of interest. All these mining companies are keenly interested in projects that require diversion of huge forest land.

4. He is Chemical Engineer, see his bio-data (<http://www.leadindia.org/?p=board-of-directors>, he is on the Board of Lead India). The biodata reveals that, **“He provides consultancy and training services to the Indian industry** in the environment field. He has regular interaction with the Ministry of Environment & Forest and regulatory bodies in the country on policy matters **on behalf of Indian Industry. He is also involved in facilitation of environmental technology transfer and business linkages internationally.**” (Emphasis added). These facts conclusively establish that Mr Nyati is NOT independent. He is actually supporting only the Companies’ interest during his decades long career.

From all this it is clear that Mr K P Nyati is clearly not an appropriate choice for one of the independent members of the Forest Advisory Committee.

Prof N P Todaria:

1. Prof Todaria has been a consultant involved in preparing Environment Impact Assessment (EIA) and related reports of a number of hydropower projects in India, including Kotli Bhel 1A, Kotli Bhel 1B, Naitwar Mori, Lata Tapovan, Rupsiabagar- Khasiabara, according to official University website of HNB Garhwal University, see: <http://forestryhnb.page.tl/N-.-P-.-Todaria.htm>. In the case of all such projects, the reports that he had authored have all supported and justified the projects, and these included assessing impacts due to forest loss. Thus his role as consultant for the EIA and related reports, which he has been involved in for many years, is clearly in conflict with the position of an independent member of the Forest Advisory Committee.

2. In case of many of the projects for which the EIA and other reports that he authored and which justified the projects, the FAC in recent past has actually rejected the application for Forest Clearances, this includes the Kotli Bhel 1B and Rupsiabagar Khasiabara hydropower projects. Even in case of Kotli Bhel 1A, the FAC first recommended a cumulative impact assessment report, among other studies before even considering the project for forest clearance. Not all of these reports have still been done. The EIA reports that he co-authored did not even see the need any of these studies.

It is clear from the above mentioned facts that the stand which Prof Todaria has taken in these projects is contrary to the FAC decisions. Such questionable reports underline that his independence and his credentials on the issues that FAC is supposed to look into, cannot be trusted.

3. On April 16, 2012, the Union Ministry of Environment and Forests made the Wildlife Institute of India (WII) report on Cumulative Impact Assessment of Ganga Basin public. This report recommended that at least 24 large hydro projects in planning and clearance stages should be dropped in the interest of terrestrial and aquatic biodiversity in the Ganga basin. This report was commissioned by the ministry following the orders of the Supreme Court of India (through the Central Empowered Committee), carried forward by the FAC. Within weeks after this report was made public, Prof Todaria, along with a colleague of his at the Garhwal University wrote a letter to the Prime Minister (the letter was widely reported, including, at: <http://www.projectsmonitor.com/ELECTRICITY/eia-report-harming-hydro-in-uttarakhand>), justifying hydropower projects in Uttarakhand and calling opposition to them as ill informed, unscientific and so on. Such bias *FOR* big hydropower projects in the Uttarakhand would clearly disqualify anyone from becoming an independent member of the FAC. This is good enough reason for Prof Todaria's disqualification.

4. Moreover, in the letter to Prime Minister, Prof Todaria and his colleague accuse "WII's interim report, which was full of mistakes and written with extreme insincerity and very little scientific facts" and goes on to say that this interim report "was the basis of the MoEF's decision to stop three major projects". This kind of allegations, without so much as a shred of evidence is itself unscientific and tantamount to lobbying for big hydro projects. Prof Todaria wrote the letter, possibly because one of the projects that the FAC and MEF decided to reject in this way happened to be the project for which Prof Todaria has co-authored the EIA, namely the Kotli Bhel 1B Hydropower project.

It should be noted that it was the FAC that in its meeting in May 2011 took the decision not to recommend forest clearance as mentioned above. Prof Todaria thus actually also casts aspersions on the FAC members, and some of the official members of the previous FAC will also be the members of the new FAC and thus he also accuses of these members of being unscientific. Prof Todaria failed to provide any explanation for these allegations.

It is clear from above mentioned facts that Prof N P Todaria is not worthy of being considered for an independent member of the Forest Advisory Committee.

Legal implications

These appointments would also not pass the legal scrutiny. These are against the letter and spirit of constitutional propriety. It may be recalled that the independent expert members were appointed on FAC following the Supreme Court directions in 2007. The appointments of K.P Nyati and Prof Todaria as 'non official members' are in violation of the orders of the Supreme Court. It is unfortunate that the Ministry of Environment and Forest has deliberately undermined the order of the Supreme Court in both letter and spirit. Since, you were not the Minister of Environment and Forest at that time, it is imperative that you appreciate the reasons why non official members in the Forest Advisory Committee are expected to be independent and experts and why your present action amounts to a violation of the orders of the Supreme Court.

In I.A 1412 of 2005 in Writ Petition No. 202 of 1995 in **T.N Godavarman Thirumulpad Vs Union of India**, wherein the Hon'ble Supreme Court dealt at length on the composition of the Forest Advisory Committee and specially the criteria for selection of the non official members of the Forest Advisory Committee. We would like to point out that in 2004, the MoEF had included within the scope of non official members, disciplines such as 'mining, civil engineering and environmental economics'. This decision of the Ministry was set aside by the Hon'ble Supreme Court. In this way the order appointing the above category of professionals was cancelled because it is contrary to the provisions of the Forest (Conservation) Act, 1980.

The Supreme Court comprising of Chief Justice Y.K Sabharwal, Justice Pasayat and Justice Kapadia by order dated 28-11-2006 held as follows: **"Considering the importance that has been given since last more than three decades, particularly, after Rio Conference 1992 and host of legislations brought in which a view to protect environment, wild life and to conserve forests. Advisedly, eminent experts were included in the Committee as the decision of the Committee is of utter significance on permitting or non-permitting for non-forest use of forest land and other matters connected with conservation of forests. There are provisions on similar lines in the wild Life (Protection) Act as also the Environment (Protection) Act, 1986. The eminent members under the Rules, it is evident, have to be those who are independent and experts in the field of forestry, namely, in the field of conservation of forests or allied disciplines. The object is to check illegal exercise, if any, of powers under Section 2 of the FC Act."**

The Hon'ble Supreme Court has held that the subject of mining and civil engineering cannot be termed as 'allied disciplines'. The Hon'ble Court held: **"Mining or other development project cannot be said to be allied discipline of forestry. Allied disciplines may be like, water harvesting, wild life protection, bio-diversity etc. The composition of Rule 3 is to strengthen the participation of people in the matter of conservation of forests and to check the degradation of the environment ... It is implicit in the Rules of 2003 and when seen in the light of 1981 Rules, coupled with the objects of the FC Act, that the persons to be included in the category under consideration are those who are independent experts in the field of conservation of forests and allied disciplines and have established their credentials in that capacity..."**

A bare perusal of the Order of the Hon'ble Supreme Court clearly shows that both the 'non official members', Mr K P Nyati and Prof Todaria, given their background are clearly not independent experts and therefore it is in the interest of the MOEF and all concerned that the appointment is not given effect to and the FAC is reconstituted in a manner which is both in consonance of the Forest (Conservation) Act, 1980, the National Forest Policy, 1988 and the Orders of the Hon'ble Supreme Court.

In conclusion

Even a mainstream business paper like *The Economic Times*¹ has found it fit to call this order of MEF as a industry friendly signal. "Government is sending out yet another industry friendly signal. The environment and forest ministry has reconstituted the statutory advisory body on forest diversion with members, who have strong pro-industry, particularly mining and hydro power, bias" said the paper in the very first paragraph in the report.

In this context we would like to refer to your defence of these appointments as reported by the *Hindustan Times*². You seemed to be seriously misinformed about the credentials and back ground of both Mr Nyati and Prof Todaria. It would be a very shocking defence indeed if you continue to maintain even now that these appointments are in the best interest of forest conservation.

It would also be worthwhile in the interest of ensuring complete transparency and avoidance of such misinformed actions in the future, that the relevant officials in your ministry be please be directed to put (under sec 4 of the RTI Act) online at the ministry's website the entire sequence of file notings in accordance with which these appointments were decided upon.

In view of the above, we would urge you to immediately cancel the appointments of Shri K P Nyati and Prof N P Todaria as independent members of the Forest Advisory Committee. Their appointment as members of FAC is inappropriate and would be disastrous for the remaining forests of India. While reconstituting the FAC, we would also urge the ministry to keep gender balance in mind.

We look forward to your early response,

Yours Sincerely,

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¹ http://articles.economictimes.indiatimes.com/2012-08-07/news/33083778_1_forest-clearance-process-amita-baviskar-hydro-power-projects

² <http://www.hindustantimes.com/India-news/NewDelhi/Civil-activists-question-fairness-of-new-appointees/Article1-909320.aspx>

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