

GOVERNMENT OF KARNATAKA

No. FEE 154 ENV 2018

Karnataka Government Secretariat,
M. S. Building,
Bangalore, dated: 15.09.2020.

Directions under Section 49(1) of the Biological Diversity Act, 2002

The Biological Diversity Act, 2002 (hereinafter referred to as the "Act") came into force in 2003 for conservation of biological diversity, sustainable use of its components and fair and equitable benefits arising out of the use of biological resources, knowledge and for matters connected therewith and incidental thereto. The Biological Diversity Rules, 2005 were introduced by the Ministry of Environment, Forest and Climate Change to facilitate the implementation of the Act.

Whereas, the Karnataka Biodiversity Board (hereinafter referred to as the "Board") was established as per Section 22 of the Biological Diversity Act, 2002 in June 2003 and started functioning from 1st August 2003. The Government of Karnataka also notified the Karnataka Biological Diversity Rules in 2005 vide G.O no. FEE 151 ENV 2005 dated 3rd May 2006 as per the powers conferred under the Section 63 of the Biological Diversity Act, 2002. The Government of Karnataka has made certain amendments to the Karnataka Biological Diversity Rules, 2005 vide G.O no. FEE 106 ENV 2014 dated 29/08/2016. It is also to be noted that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations only came into force in 2014 and clarity with respect to the procedure to be followed for examination and processing of the applications submitted by the Indian citizens/entities registered in India who fall under section 7 of the said act, came only after these Guidelines in 2014.

Whereas, one of the functions of the State Biodiversity Board under Section 23(b) of the Act is to regulate by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians. Further Section 23(c) of the Act empowers the State Biodiversity Boards to perform such other functions as may be necessary to carry out the provisions of this Act or as may be prescribed by the State Government. Also Rule 13(i) of the Karnataka Biological Diversity Rules, 2005 empowers the Board to lay down the procedure and guidelines to govern the activities provided under section 23 of the Act and Rule 13 (xxii) of the Karnataka Biodiversity Rules 2005 gives the Board the authority to perform such other functions, as may be necessary to carry out the provisions of the Act or as may be prescribed by the State Government from time to time.

Whereas, the Ministry of Environment, Forest and Climate Change has issued directions to the National Biodiversity Authority vide office memorandum No. F. N. C. - 12025/8/15-CS-III dated 10th September 2018. In this direction it has been contemplated that it has been brought to the notice of the Ministry of Environment, Forest and Climate Change by the National Biodiversity Authority that a large number of entities are not fully aware of the provision of the act but are desirous of complying with the same. Thus, there is a need to provide an opportunity to all such entities which are required to obtain prior approval of the authority for undertaking activities as specified under sections 3, 4 and 6 of the act, including cases that may relate to past, in line with the objectives of the act and regulate them in a manner that enhances implementation of the act. Therefore Ministry of Environment, Forest and Climate Change has issued directions to National Biodiversity Board that all such cases where prior approval was required but a person/entity has not obtained such approval, shall be heard by the Authority, which shall then pass appropriate orders with respect to acts that may have occurred in the past, taking into account scientific evidence as well as any damage that might have been caused in furtherance of the powers available to the Authority under Section 18 of the Act, with the objective of ensuring conservation and sustainable use of biodiversity and fair and equitable sharing of benefits arising from its use. The Authority shall consider all such cases on the basis of merit and shall ensure that only those cases are granted approval for future activities which would have otherwise been approved in the normal course, had the person/entity concerned applied in time for prior approval. The Central Government further directs the Authority to take decisions thereon within a period of 60 days from the date of issuance of this office Memorandum, including course of action for matters related to past. The Ministry further directs the Authority to continue to spread awareness about the act to various stakeholders to avoid the occurrence of such activities.

Whereas, further the chairperson of National Biodiversity Authority directs the all state biodiversity boards to take action to spread awareness about the Biological diversity Act to various stakeholders and to enhance the implementation of the Biological diversity act, vide D O Letter No.NBA/Law Gen/28/12/13/18-19/3007, dated: 8th November 2018.

Whereas, the Biological Diversity Act, 2002 lays down the procedure for taking cognizance of matters relating to the Act. Section 61 of the Act provides that cognizance of any offence under the Act can be taken only by the Central Government or officers authorized in this behalf by the Central Government which includes Officers of the State Biodiversity Board, not below the rank of Scientist 'C' (S.O. 2708 (E) dated 17.11. 2008) and also Forest Officers not below the rank of Range Officers in their respective jurisdictions (as per the Notification S.O 120 (E) dated 7th January 2009).

Whereas, Indian citizens/entities are required to give prior intimation to the Board as per section 7 of the Biological Diversity Act. 'Prior intimation' entails that the Indian citizens/entities must apply to the Board under Form I of the State Rules before they

access biological resources. But it has been realized that quite a few of such Indian citizens/entities either approach the Board late or do not approach the Board at all for complying with the provisions of the Act, even if they are desirous to do so. Hence, taking into consideration the bonafideness of the Indian citizens/entities desirous of complying with the Act and in furtherance of not imposing sanction on its citizens/ entities and individuals, who have in good faith approached the Board, without having the knowledge or deliberate intention of violating the provisions of the Act, shall be given a window of opportunity of 60 days to comply with the provisions of the Act.

Wherefore, taking into account all the above facts and provisions, the Government of Karnataka, in exercise of its powers under Section 49 of the Act, hereby issues the following directions:

1. All citizens of India and Indian entities who fall under the ambit of Section 7, who are desirous to comply with the provisions of the Biological Diversity Act and Rules can give prior intimation to the Karnataka State Bio-diversity Board by making an application in Form I within a period of 60 days from the date of issuance of this direction.
2. Also taking into account that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations only came into force in 2014, a window of opportunity for compliance of the Act from date: 15.09.2020 to date: 15.11.2020 is to be provided. This window of opportunity is provided to the acts and approvals that were required to be obtained in the past subject to certain restrictions.
3. All such applications in Form I for ex post facto approvals will be scrutinized by the Board in a hearing and only on adequate and reasonable justification and by recording the reasons, the Board, if satisfied, may permit the application. The Board shall consider all such cases of ex post facto approvals on the basis of merit and shall ensure that only such cases are granted approval for future activities, which would have otherwise been approved in the normal course, had the Indian citizen/entity concerned applied in time for the prior approval.
4. The Board shall ensure that the Principles of Natural Justice such as fair hearing and a reasoned decision by the authority is strictly adhered to.

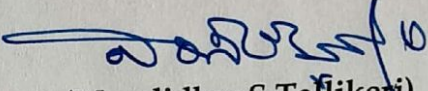
Further the Government of Karnataka directs the Board to take decisions thereon within a period of 60 days from the date of issuance of this order, including the course of action for matters related to the past.

These directions shall come into force with immediate effect.

These directions are intended to facilitate and enhance implementation of the act in public interest towards meeting the objectives of the acts, namely, conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising from commercial use.

This issues with the approval of the Competent Authority.

By Order and in the name of the
Governor of Karnataka


(Muralidhar S Tallikeri) 15/09/2020
Under Secretary to the Government,
(Ecology and Environment)
Forest, Ecology and Environment Department

To;

- ✓ 1. The Member Secretary, Karnataka Biodiversity Board, Vana Vikasa Building, 18th Cross, Malleshwaram, Bengaluru.
2. PS to Hon'ble Minister for Forest, Ecology and Environment, Vikasasoudha, Bangalore.
3. PS to chief secretary to Government of Karnataka, Vidhana Soudha, Bangalore.
4. PS to Additional Chief Secretary to Government, Forest, Ecology and Environment, M S Building, Bangalore.
5. PS to Principal Secretary to Government (Ecology & Environment), Forest, Ecology & Environment Department, M. S. Building, Bangalore.
6. SGF / Spare Copies.