Ministry of Environment, Forests and Climate Change

National Biodiversity Authority

Proceedings of the 59th Authority Meeting [Virtual]

Held on

07-08-2020

The 59th Authority meeting of the National Biodiversity Authority (NBA) was held on 7th August, 2020 in 'virtual mode' under the Chairmanship of Dr.V.B. Mathur, Chairman, National Biodiversity Authority. The list of participants is placed as **Annexure-I.**

At the outset, Dr.V.B. Mathur, Chairperson, NBA welcomed the Members, and Chairman of the Expert Committee Shri A.K.Goyal, IFS (Retd.,) Former Special Secretary, Ministry of Panchayati Raj; Co-chairman of the Expert Committee, Shri Achalender Reddy, IFS, Principal Chief Conservator of Forests, Arunachal Pradesh and Shri T. Rabikumar, IFS., Former Secretary for this meeting as special invitees for briefing the members about the proposed amendments in the Biological Diversity (BD) Rules, 2004.

He apprised the members about the meeting held with the Cabinet Secretary, Secretary, MoEF&CC, AYUSH, DBT and other related Ministries on 24th July, 2020 on the progress on the amendments of the Guidelines, BD Rules, 2004 and BD Act, 2002. The Cabinet Secretary deliberated that a Working Group should be formed taking all the stakeholder Ministries on board and arrive at complete consensus in two months' time. This shall be submitted to the MoEF&CC for further processing and conclude the amendments of BD Rules in a month. Dr. Sujit Bajpayee mentioned that MoEF&CC has received the comments from the Ministry of Law on the proposed amendments of the Guidelines, 2019. He mentioned that the Cabinet Secretary has asked the MoEF&CC to take the lead in forming the working group taking all the stakeholders on board. The members deliberated that the Guidelines and the BD Rules should be amended first as it will be discussed and finalized at the Ministry level and need not go up to the Cabinet Secretary level. Dr. Sujit Bajpayee mentioned that the amendment in the Guidelines needs to be revisited. Dr. Unnat Pandit deliberated that there are certain anomalies in the proposed amendments in the BD Rules, 2004 which may be fixed before

deliberated that a democratic framework be developed for the

At the outset, and
highlighted the principles of Access and Benefit Sharing (ABS) and also mentioned that there were certain issues in the implementation of the ABS, which had to be suitably addressed. Similarly, the issues relating to definitions of the Act also need to be addressed in the amendments to the Biological Diversity Act, 2002. He added that amendments to the Biological Diversity Rules, 2004 would be finalized at the first instance and amendments to the BD Act, 2002 would be taken up soon after the completion of the BD Rules. He also mentioned that
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3. Shri. J. Justin Mohan, Secretary NBA presented the agenda items for the meeting.

Agenda for the 59th Authority Meeting of National Biodiversity Authority

Item no.	Agenda	Page no.
59.01	Confirmation of the Proceedings of the 57th Authority meeting	4
59.02	To consider the proposed draft amendments to the Biological Diversity Rules, 2004	4
59.03	Approved Budget for the year 20-21 and Annual Accounts 2019-20	9
59.04	Any other item (s) with the permission of the Chair	10
	Annexure	
1	Proceedings of the 57th Authority meeting held on 07.07.2020	
2	Revised Amendments to the Biological Diversity Rules, 2004 as per the recommendations of the Expert Committee	
3.	Annual Accounts	

59.01: Confirmation of the Proceedings of the 57th Authority meeting

The draft proceedings of the 57th Authority meeting of the National Biodiversity Authority held on 07-07-2019 through virtual mode were circulated to the members vide e-mail dated 14th July 2020 for seeking their comments. No comments were received and the proceedings are placed in **Annexure- I** for consideration and approval.

Submitted for Approval

59.02: To consider the Draft Amendments Proposed to the Biological Diversity Rules, 2004

NBA with the help of an Expert Committee constituted under the Chairmanship of Shri. A. K. Goyal, IFS (Retd.) to examine the Biological Diversity Act 2002 and Biological Diversity Rules, User Country Measures under Nagoya Protocol on ABS and development of sector specific SOPs is working on the various amendments.

2. As per the ToRs, the EC, after considering comments / inputs received from the stakeholders and SBBs, developed draft amendments proposed to the Biological Diversity Rules, 2004.

3. The draft amendments proposed to the Biological Diversity Rules, 2004 were discussed in the 56th Authority meeting held on 23rd & 30th June, 2020 vide agenda item no. 56.03 and it was decided to have further discussion on certain draft amendments proposed to the BD Rules, 2004 in the next meeting in the light of the issues put forth by the Members. It was also decided that NBA would circulate the comments/suggestions received from all the members. NBA vide letter dated 09.07.2020 has circulated the comments to all members.

4. Pursuant to the decision of the 57th Authority meeting held on 07th July, NBA received comments on the draft amendments to the BD Rules from the Ministry of Tribal Affairs dated 10th July 2020; Dr.J.L.N. Sastry, CEO, NMPB dated 5th July 2020 and

Dr.Alka Rao, IMTECH dated 22nd June, 2nd July & 5th July 2020. The comments offered by the members have been discussed in the 58th Authority meeting held on 17th July, 2020 vide agenda item 58.02 and it was decided as follows:

Authority decided that comments offered by the members of the Authority on the draft amendments to the Biological Diversity Rules, 2004 may be referred to the Expert Committee constituted for this purpose for examination and response.

5. Pursuant to the decision of the Authority, Expert Committee in its 23rd meeting held on July 22-23, 2020 through virtual mode examined the comments of the members on the draft amendments proposed to the BD Rules and made modifications thereof, as appropriate, within the framework of the existing provisions of the BD Act. The major modifications made by the committee based on the suggestions offered by MoTA are summarized below:

a) The EC observed that the existing provisions of the Act do not provide any scope to make explicit reference to the Gram Sabha and forest rights holders as the BMC functions as a representative body of the Gram Sabha/local body. However, in order to ensure participation of the forest rights holders in implementation of the BD Act, the EC has proposed to include a proviso to rule 22(2) which may read as *"Provided further that wherever a committee has been constituted to implement section 5 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the chairperson or one of the members of that committee shall be one of the members of the BMC…."*.

b) EC agreed to incorporate a proviso clause under rules 14(5), 17(5), 18(5) and 19(5) providing for extension for a further period of 90 days on the request of the applicant failing which application shall be deemed as withdrawn by the applicant.

c) EC observed that geographic location from where biological resources are to be collected is already part of the agreement. However, it was decided to make

specific mention of information on “location” under rule 14(6)(viii). The timelines for reporting compliance are given in the agreement depending upon the validity of the agreement period.

d) The EC agreed to the suggestion of publication of the approvals should also be done in the territorial limits of the local body concerned and modified the language of the rule 14(10).

e) The EC decided to include monitoring role for the BMCs for some of the agreement conditions (clauses (ii), (vii) and (xii) of sub-rule (6) of rule 14), by adding sub-rule (8) under rule 22. The BMC, in case of contravention of these conditions, shall prohibit or restrict access to biological resources and report to the State Biodiversity Board.

f) During the period of suspension of the approval, the BMC will ensure that no biological resources are accessed. It was decided to incorporate a new clause (iv), under sub-rule (1) of rule 15 stating that the applicant shall not access the biological resources during the period of suspension of the approval.

g) MoTA suggested that recognizing the value of the bioresources extending service to the humanity and biological resources that are not naturally regenerated, compensation in the form of advance/EMD may be obtained from the applicant before accessing the biological resources. The EC supported this proposal, however, left it to the Authority to take a view on this.

h) EC agreeing to the suggestion of MoTA that the activity that is having impact on social and cultural aspects of the local tribal populations is also to be revoked/prohibited. It was decided that the text of rule 16(iii) has been modified to incorporate the phrase “and socio-cultural aspects”.

6. With regard to the suggestions offered by NMPB on draft BD rules, the EC has made the following recommendations:

a) EC considered the comments of NMPB with regard to category of entities under section 3(2), it was suggested to do changes in the Rule 14 and it was decided that since the proposed amendments to the Rules are as per the existing provisions of the BD Act, proposal of the NMPB does not presently fit within the existing framework of the Act.

b) With regard to suggestion to provide 90 days for withdrawal or revocation of the granted approval. The EC did not find any logic in the suggestion of providing period of 90 days for revoking the approvals granted by the NBA as this may pave the way for illegal access of bio resources. Moreover, approval will be revoked only after providing reasonable opportunity of being heard. The existing provisions of the Act do not provide any scope to sanction a period for revocation.

c) With regard to suggestion to follow the IUCN categories under rule 16(i); EC observed that IUCN provides for eight categories of threatened species and all those categories fall under the broad “threatened” category and there is no need to get into lengthy process of including categories of IUCN list in the Rules. The EC also observed that the classification as rare, endangered and threatened species is not in line with the IUCN standards. With regard to exemption of cultivated bio-resources/medicinal plant raw material, the existing provisions of the Act do not make any distinction about the sources either cultivated, wild or from the market. Further, CBD and Nagoya Protocol also do not make any such distinction. The list of NTACs under section 40 of the Act exempts certain parts of the cultivated biological resources, if traded as commodities.

d) With regard to suggestion of Indian person(s) or entity [Section 3(1) entities of new definition] should be exempted from filing prior permission to obtain an IPR as long as it is not including any folklore claim or ethno-medicinal aspect. EC decided that

suggestions of the NMPB do not fall within the ambit of the existing provisions of the Act. Hence, it may not be possible to incorporate the same in the BD Rules.

7. Further, EC considered the comments of Dr. Alka Rao and recommended that 'Form-C' comprises a note which requires the foreign repositories to bring the requirements of the Indian domestic law to the notice of the users and it may not be treated as a condition. The World Federation of Culture Collections issued guidelines in 2013 which require the repositories to transfer/exchange the strains of microorganisms in conformity with the principles of the CBD and Nagoya Protocol on ABS. Besides, the user country measures established under the Nagoya Protocol by the various Parties obligate the repositories to comply with the domestic laws of the Party concerned for access. Thus, denial to pass on obligations of the domestic laws and rejecting strains from the Indian scientists are contrary to the provisions of various international legal instruments.

8. Further, the rule 19 pertains to section 3(2) persons who have obtained approval of the NBA and is not applicable to the Indian scientists. Besides, as per the provisions of the section 39 of the BD Act, the repositories are meant only for keeping in safe custody biological material including voucher specimens deposited with them. For any transfer to the section 3(2) entity, prior approval of the NBA is necessary. Hence, the rule cannot be modified as suggested.

9. Accordingly, EC modified text of the rules and submitted the same along with justifications thereof in the form of matrix, the details of which is placed as **Annexure-II.**

10. Besides, PPVFRA vide letter dated 12th June, 2020 received by NBA on 24th July, 2020 communicated their comments on the draft BD Rules, 2004 and the same are briefed below for consideration of the Authority.

a) **Rule 18(1) -** The Rule 18(1) does not apply to the variety protected either by farmers or by breeders under the Protection of Plant Varieties and Farmers' Rights Act (2001)

Justification: *The Plant Variety Protection which is the 7th IPR as per National IPR policy of India, has to be totally outside the purview of Biological Diversity Act since the PPVFRA deals only with the right it gives to farmers on breeders on the variety protected. There cannot be another permission on already covered right by any other Act, as PVFRA is already empowered not to be interfered by any other Act or Law or Rule as far as the provisions under PPVFRA are concerned. Therefore, an exception be added, as proposed.*

b) **Rule 22 & 22 (6A) related to PBR:** In reciprocation and for identical as well as purposeful documentation of the same information between two legally empowered Statutory Authorities of the Government of India, the NBA should also introduce the provision in the rule that a physical/ electronic copy of People's Biodiversity Register relating to flora (Plants) be forwarded to PPV &FR Authority as it would facilitate the PPV &FR Authority in discharging its functions under Section 8(2)(c) and (d) of PPV &FR Act, 2001 relating to documenting, cataloging and indexing of farmers varieties as well as compulsory cataloguing of all varieties of plants.

Submitted for consideration

59.03. Approved Budget for the year 2020-21 and Annual Accounts 2019-20

The Ministry has sanctioned an Annual Budget to the tune of **Rs. 23 crores under Grants-in-Aid** for the FY-2020-21 to National Biodiversity Authority**.** This includes **Rs. 4 crores under Grants-in-Aid – Salaries** and **Rs. 19 crores under Grant-in-Aid – General**. As per the provisions contained in the Biological Diversity Rules, 2004 under Clause 12(x) General Functions of the Authority, the Annual Budget with head wise allocation of funds both for GIA-Salaries and GIA-General as approved by the Ministry for the F.Y. 2020-21 as follows:

Sl.no	Head	Funds (amount in crores)
1	GIA – Salary	4.00
2	GIA – Regular	12.00
3	GIA – Strengthening of SBBs	3.00
4	GIA – Preparation of PBRs	2.00
5	Special Component Plan of SCs	1.00
6	Special Component Plan of TSPs	1.00

2. The Annual Accounts of NBA for the F.Y. 2019-20 and Budget for the year 2020-21 was approved by the Chairperson which is placed as **Annexure-III**.

Submitted for Approval

59.04: Any other item (s) with the permission of the Chair