Site Inspection Report of the Fact Finding Committee Regarding its Visit to Orissa from 18th - 23rd December 2004

Introduction

Kalahandi is one of the economically most backward districts of Orissa. However, it has rich deposits of bauxite over its hill ranges. Recently the State Government and its corporation have entered into agreement with certain industrial houses for creating infrastructure to extract bauxite and process it.

I.As. have been filed before CEC by three NGOs and social activists namely Wildlife Society of Orissa, Shri Prafulla Samantra, complaining about the violation of the Environment (protection) Act, 1986, Forest (Conservation) Act, 1980 and Wild Life (Protection) Act, 1972 committed by the State Government and industrial houses in executing the works related to various projects. They have brief resume of the alleged violations and the environmental damage being caused/likely to be caused by various projects is given under:

Violations pertaining to mining and processing of bauxite by M/s Vedant Alluminium Ltd.

i) State Government has allocated M/s Vedantha Aluminium Ltd., which is a subsidiary company of Sterilite Industries Ltd., Niyamagiri hill forests near Lanjigarh of Kalahandi district for bauxite mining and the area at the base of these hills for setting up of the refinery for processing of the bauxite mining. These areas are quite significant from floral biodiversity and wildlife point of view. Niyamagiri forests are also source of water for two important rivers namely Nagavalli and Vansadharsa. Permitting of bauxite mining on Niyamagiri forests would affect the water supply of these rivers irreversibly. The I.As also mention that the forests of Niyamagiri hills are also abode of Dongarias and Kondhs, who depend upon fruits grown by them in this area also. What diversion of Niyamagiri forests is likely to result in extinction of these tribes.
ii) The area allocated to M.s Vedant Aluminum Ltd. forms part of Schedule V area of the Constitution. Handing over of this area to any private party is violative of the Judgement of Hon’ble Supreme Court.

iii) M/s Vedant Aluminium Ltd. has been clearing the private and government revenue lands, allocated for construction of refinery, in violation of Forest (Conservation) Act and carrying out construction work of refinery after cutting the trees of the area.

iv) Thousands of mature trees have been felled by the company in Niyamagiri forests and it has already started digging the bauxite ore in the garb of test mining.

v) The area cleared by the company for constructing the refinery had extensive extent of natural growth and it would be difficult to determine the value of the natural vegetation cleared by the company and it is not possible to determine the net present value of the forests realized from the company as per directions of Hon’ble Supreme Court without ascertaining the crown density of trees in the area through study of satellite imageries of the area by the Forest Survey of India.

vi) To highlight the biodiversity value and wildlife significance the petitioners have appended the copy of the working plan prescriptions of Kalahandi Forest Division where in it has been proposed to notify the Niyamagiri hills and adjoining forests as Niyamagiri Wildlife Sanctuary.

Construction of road inside Karlapat Wildlife Sanctuary

The Collector Kalahandi has permitted M/s Sulakshani Mines and Minerals Ltd. to construct a new road from Simelguda village of Pahadpadar Gram Panchayat to Khanduamali village under Karlapat gram panchayat via Khalguda, Borapadand Karlapat villages. The proposed road passes deep inside the Karlapat Wildlife Sanctuary.

In addition to the I.As. mentioned above 7 MLAs from Orissa namely Dr. Dabasis Patnaik, Sri Namichandra Sarkar, Sri Sudhir Nayak, Sri A.R. Majhi have also
addressed an application to CEC complaining about Sulakshini Mines and Minerals being permitted by the Collector, Kalahandi to construct a new road inside Karlapat Wildlife Sanctuary in violation of orders of Hon'ble Supreme Court and Sterlite Company developing huge project in the area near Lanjigarh without getting clearance from the Ministry of Environment and Forests, Government of India.

The Central Empowered Committee, pursuant to aforesaid IAs and the complaint filed by the seven MLAs decided that a team comprising of Sri S.C. Sharma retired Addl. D.G.F. (Wildlife), Government of India and Shri S.K. Chadha, A.I.G. Ministry of Environment and Forests should visit Orissa from 19th to 23rd December to ascertain the factual situation regarding the allegations made in the aforesaid IAs and complaint.

The team visited various sites and had detailed discussions with government officials, MLAs, NGOs and local people as per itinerary given below:


20.12.2004 Inspected refinery area of M/s Vedant Aluminium Ltd. and forests of Niyamagiri hills (areas both in Kalahandi and Raygada Districts).

Meeting with local leaders, people from various sections of the society and the project officials from Vedant Aluminium Ltd.

21.12.2004 Inspected Karlapat Wildlife Sanctuary and the alignment of the new road proposed to be constructed from Semuliguda to Khandualmali.

Meeting with local leaders, people from various sections of the Society and NGOs.
22.12.2004 Discussions with petitioners, NGOs and Social activists.

Meeting with senior officers under the Chairmanship of Additional Chief Secretary.

23.12.2004 Sri Chadha got the views of the State Government on the points raised in IAs and complaints in writing and met some leaders of different parties.

Resume of the discussions and the observations made in the field

19.12.2004 Discussions with senior officers of the State Government

To get the views of the State Government on various allegations made by the petitioners in their IAs and the complainants, the team held a meeting in the afternoon with the senior officers of the Forest Department, Mining Department, Power and Steel Department and the Industrial Infrastructure Development Corporation. Sri S.C. Sharma at the outset raised the point as to how the Orissa Mining Development Corporation has signed an agreement with M/s Vedant Aluminium Ltd. for long term sale of bauxite extracted from Lanjigarh and Karlapat mines for being processed at Lanjigarh refinery without getting the approval of the mining site and the refinery site from the Government of India under the Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980. The officials were also requested to elucidate the reasons for the Orissa Government permitting the construction of the refinery and exploration of minerals at the mining sites without approval of the Ministry of Environment and Forests, Government of India under the said Act.

Power and Steel Secretary informed the team that as far the exploration and survey of mining site is concerned the approval of the Central Government is not mandatory for mineral exploration areas outside National Parks and Sanctuaries provided it does not involve felling trees. He quoted abstracts from the guidelines issued by the Central Government. In this regard, he further mentioned that the Ministry of Environment and Forests has already issued the clearance of the refinery project under the Environment (Protection) Act, 1986 on September 22nd, 2004. According to the
said order the refinery is to be constructed on 720 ha. non forest land. The order also mentions that the project does not involve diversion of any forest land. The State Government however discovered that the project also requires diversion of 58 ha of forest land i.e. 30 ha of reserved forests and 28 ha of village forests and requests the Ministry of Environment and Forests for clearance of the refinery project under the Forest Conservation) Act on being asked why the proposals for approval under the Environment (Protection) Act and Forest (Conservation) Act could not be sent to the Central Government simultaneously. The Power and Steel Secretary stated that the application for environmental clearance is sent to Government of India directly by the project proponent and no consultation is done by the Ministry of Environment and forests with the State Government during the processing of the proposal. While the proposals under Forest Conservation are routed through the State Government. There is bound to be time lag between the dates between the dates of receipt of the two proposals by Government of India. The State Government has taken action for facilitating the execution of the project strictly in accordance with the sanction of the project issued by the Ministry of Environment and Forests. The task of facilitating the project is being carried out by the Industrial Infrastructure Development Corporation and details about the progress made in this regard would be given by them.

Chairman-cum-Managing Director, Infrastructure Development Corporation informed the team that the land required for establishing Lanjigarh Alumina refinery comprises of 1485 acres oruvate 493 acre non-forest revenue land and 145 acres of forest land. No forest land has been acquired by it so far. As regards non-forest land the Corporation has already acquired 701 acre of non-forest land (574 acre private land and 127 acre non-forest revenue land) through Collector Kalahandi and the same has been handed over to M/s Vedant Aluminium Ltd. for construction of the refinery and the construction work of the refinery is on. No felling has been permitted either in Gramya Van or revenue forests.

On being asked as to how OMC has entered into agreement with M/s Vedanta Aluminium Ltd. for providing it bauxite from Karlapat/Niyamagiri forests without getting the approval of the mining site without getting the approval of the mining site
from the Ministry of Environment and Forests. What would happen if the Central Government finds that these cannot be diverted for mining purposes due to their high biodiversity value and other environmental attributes. Power and Steel Secretary and the Industrial Infrastructure Development Secretary mentioned that it is for M/s Vedant Aluminium Ltd. to think about these consequences as the refinery is being constructed at their cost. PCCF (Wildlife) mentioned that the allegations regarding construction of road being done within Karlapat wildlife Sanctuary are not correct and to best of his information no new road has been constructed in the sanctuary.

Discussions with Sri Biswajit Mohanti

Sri Biswajit Mohanti of Wildlife Society of Orissa mentioned that the area so called as non forest land had very good natural growth and significant damage has been done by the government by allowing the clearance of the vegetation that was acting as buffer for Niyamagiri forests. He was of the firm view that clearance for the refinery should have been given by the Ministry of Environment and Forests only after final view about the proposed mining area had been taken under the Forest (Conservation) Act. He also made a reference to guidelines under Forest (Conservation) Act, with regard to projects involving both the forest land and non-forest land, which stipulate that works on non-forest land would not be started till the approval of the Central Government for release of the forest land under the act has been given. M/s Vedant Aluminium Ltd. have maliciously concealed the involvement of forest land for the refinery project in their application for environmental clearance. He was quite concerned about M/s Vedanta Aluminium Ltd. using the figures of expenditure on construction of refinery to coerce the Central Government to approve the diversion of biodiversity rich area of Niyamagiri forests for mining of bauxite, ignoring its biodiversity value. Such a decision would have disastrous effect on the wildlife and the availability of drinking water in the area. He has submitted a supplementary petition giving certain additional points against the diversion of Niyamagiri hill forests for mining purposes. The papers submitted by him are at Annexure - I.
20.12.2004 Visit to Vedant Aluminium Refinery near Lanjangarh, Kalahandi

The team was accompanied during the visit to the refinery area by Sri Pande, Conservator of Forests incharge Regional Office, Bhubaneswar, Sri P.N. Padhi, CCF, Nodal, DFO Kalahandi, DFO Raygada, ADM Kalahandi, the forest officials and revenue officials posted in the area. Project authorities including Sri Debashish Roy, Vice President, Vedant Aluminium Ltd also joined the team during inspection. Construction of the refinery was going on at a fast pace. Many machines and workers were at work. Boundary wall has been completed around 50% of the periphery of the land handed over to the factory. The team to begin with tried to check the condition of the village forests falling within the refinery area. The project authorities took the team to the village forests that have been demarcated and left intact; but in the meanwhile the team was joined by Sri Debashish Patnaik, MLA and Zila Panchayat representatives from the Lanjigarh area. Sri Patnaik showed the team dumping of boulders and debries in Kotadwar village forests, digging of boulders in Basantparha village. It was revealed that the area of 102 acres had been given on lease to a contractor of M/s Vedanta Aluminium Ltd. about 6 months back by the local Tehsildar. Transfer of this area to the company is in addition to the area of 701 acre already transferred to the company through the Collector of Kalahandi. Team also saw private land of village Jaganathpur that has been cleared by the company for construction of three pillars required for the conveyor belt. Some trees have also been felled from the area. The project authorities clarified that the work has been carried out by them with the consent of villagers after making due payment to them. This action of the authorities is also violative of the prescribed procedure for acquisition of land from tribals in this Schedule V area. Divisional Forest Officer, Kalahandi also pointed out that the project authorities have cleared two small patches of forest land in village Kinnari and village Kotadwar. The show cause notice issued in this regard is at Annexure - II.

Local villagers informed the team that they are not permitted to take their livestock to the forests falling in the proposed campus of the refinery. The complaint appears to be quite logical because the project authorities cannot keep the refinery area open to villagers in general for security reasons.
The team asked the revenue authorities to explain the rules and regulations in force in the district for alienation of the land belonging to tribals in the name of a private individual on the lines envisaged in the case of Samata of Andhra Pradesh by the Hon'ble Supreme Court. The ADM informed that there is no special law in this regard. The revenue authorities, have, however to ensure that the displaced tribals get adequate rehabilitation package. The company has given each displaced family a pucca houses and adequate amount of cash. The team saw the rehabilitation colony and was stunned to see that the colony is in close vicinity of Reserved Forests of Niyamagiri hills. No land has been given to villagers for growing alternative biomass to meet their domestic needs and to earn sustainable living. The project authorities, however, informed that they would provide employment to one member of each family. In the interim period they are giving free electricity to each house.

The team checked the area of Niyamagiri Forests from pillar number 26-28 and found that the project authorities have not made any clearance in this area for construction of pillars required for the conveyor belt.

Visit to Niyamagiri Forests
The team visited the bauxite deposits at the top of Niyamagiri hills. As we ascended the hill slope we witnessed very dense quality sal, Anogeisus latifola, Bauhinia species. The area is quite moist and small rivulets flowing in a zigzag manner on both sides of the road. The trees are quite tall and thick in the lower portions but get quite stunted towards the upper reaches. At the top of the hill is a large grassy patch with underlying deposits of bauxite. Survey pits and survey boring done by MECL reveals that maximum depth of bauxite here is around 18 meters and the average depth is around 13 meters. No trees have been felled during the process of survey on way back to Lanjigarh the team saw stumps of four freshly felled sal trees. The company representatives mentioned that they are not involved in any way in the felling of these trees. There is no reason to disbelieve this statement but such instances are bound to increase as a result of large work force and local people being given residential accommodation next to invaluable forests of Niyamagiri Hills.
team on its way to Lanjigarh also saw small rivulets converging together to make the Vansdhara river and also the local paddy fields being irrigated with the water from the rivulets flowing down the river.

20.12.2004 Discussions with representative from various sections of society and the people's representatives

Discussions held at Bhawanipatna were more or less on political lines. Sri Bhakta Charan Das former MP, Debasis Patnaik, Daitary Pradhan were against large scale industrialization of Kalahandi district. They had apprehensions about the adverse impact of the industry on the sustainable life style of the tribal population. They alleged that public hearings both by the Pollution control Board and the Collector have not been free and fair. Use of police force at the time of hearing intimidated people and they could not express themselves freely and frankly. Bharat Bhushan Deo of District Environment Society highlighted the adverse impact of the project on wildlife. Sri Daitari Pradhan pointed out that the company had given false affidavit in Orissa High Court that it has felled only three trees during the construction phase of refinery. Debashish Patnaik pointed out the likelihood of river water being polluted by the industry and the wildlife corridors being disturbed because of degradation of forests. Sri Santosh Mund wanted detailed impact study of mining and relook at the rehabilitation package. Prof. G.B. Behra retired Professor of Chemistry argued that the damage to forests by the industry would be negligible as compared to train loads of fuelwood going from the forests due to headloading of fuel by the starving tribals. He was of the opinion that setting of Aluminium plant at Lanjigarh would improve the economy of the area. He wanted M/s Vedant Aluminium Ltd. to set up a smelter plant also in its refinery. Sri Debi Prasad Mishra, Ex-Chairman of Municipality of Bhawanipatnam pointed out that Kalahandi is a zero industry area. Tribals sustain themselves through Podu cultivation. Coming up of the industry would provide employment to large number of tribals. Sri P.K. Poojari of Zila Adivasi Sangh also supported setting up of the Alumina Unit.

Sri Keertan Nayak advocate was mainly concerned about the tribals being provided
land and skills in horticulture and other vocations. Ajay Panigrahi, Member, Zila Parishad wanted that most of the jobs in the company should go to local people. Shri Debashish Roy, Vice President of M/s Vedant Aluminium Ltd. explained initiatives taken by the company for the welfare of local communities and raising vocational hills of the people for getting employment in the company.

21.12.2004 Visit to Karlapat Sanctuary alongwith District Collector of Kalahandi. The sanctuary has very rich faunal and floral diversity. Gurgling sound of the river flowing through steep hill slopes clothed with dense forests of indigenous species gives the area an unparalleled splendour. It was sad to note that State Government has made little efforts to manage the sanctuary on scientific lines and encourage tourists to this area. Central Government has provided assistance of Rs. 8.00 lakhs this year for the first time. Chief wildlife Warden may get detailed management plan of the sanctuary prepared and get it implemented through funds available under the Centrally Sponsored Scheme.

Thereafter, the team visited the proposed alignment of the new road from Semalguda to Khaliguda in Karlapat Gram Panchayat. The total length of the road is 4.4 kms. The area of the proposed road is recorded in revenue records as 'Abadi Ayogya Anabadi Dongar and is atleast 5 to 6 kms away from Karlapat Sanctuary. The work on the project has already been stalled because of the proposal being shelved by the government of Orissa on account of certain issues related within the feasibility of the project. This fact was communicated to the team in the meeting held with senior officers of the Orissa Government.

21.12.2004 The team on 21.12.2004 had a meeting with the representatives of local people, district officials and NGOs in the Office of Collector, Raygada. The DFO gave a detailed presentation about the mining project of bauxite in the forests of Niyamagiri forests. The total land required for mining in Raygada District and Kalahandi District in Niyamagiri forests is 313.12 ha and 408.95 hectares. Of the 408.95 hectares in Kalahandi district, 49.305 hectares is revenue land. He apprised the gathering that project authorities would spend about Rs. 250 crores for the welfare activities of the tribals in the two districts. The company would also
spend 5% of the annual profit earned by it on the entry point and development activities.

Sri Chandra Mouli Patnaik opposed the project on the ground that it involves alienation of tribals from lands and that the tribal land alienation cannot be done without the approval of Gram Sabha. He was also opposed to the project because of its adverse impact on the quality of water. Sri Vijai Kumar Babu expressed similar views. Sri Akshay Kumar Das highlighted the need of providing employment in the project to the local people. Sri Akhailanand Panda wanted the company to go for production of value aided products and not merely the aluminium. He wanted the working of the project to be monitored by a high powered project and detailed assessment of the project for its impact on wildlife.

22.12.2004 The team met a number of MLAs and NGOs at State Guest House. Supplementary petitions were given by some of the NGOs and petitioners. The NGOs raised the issue of water security for the area and the survival of the Dongria tribes who are fully dependent on Niyamagiri forests. Shri Biswajit Mohanty raised the issue of misleading the Ministry of Environment and Forests by Vedantha Aluminium suppressing the information regarding the requirement of forest land for the project area. He also raised the issue of large scale of felling of trees in the project area and need for comparison of satellite imagries before and after the project work started. Some of the NGOs and villagers who came from the Lanjigarh Block informed that during the public hearing they were not allowed to participate and the process was not transparent. Shri Debashish Patnaik, MLA reiterated the facts stated in the petition and demanded that the project work should be stopped and strict action be taken against the project authorities. The team met the Senior Officers of the State Government in the Government Secretariat. The meeting was chaired by Additional Chief Secretary, Orissa. The State Government was thanked for providing necessary assistance and facilities for smooth conduct of the visit of the team. The brief summary was presented in the meeting about the visit and it was emphasized that State should do environmental study for the whole area before deciding the siting of the industries to avoid fragmentation of the habitat and migratory corridors of the animals as has been the experience in Northern Orissa, Central Orissa and Southern
Orissa. This will help in mitigating the sufferings of the people arising out of the human-animal conflict because of fragmentation of the habitat. They were also informed about rich diversity of the Niyamagiri Reserved Forests and that a proposal has been made in the Working Plan to notify this area as Sanctuary. It was also pointed out that the agreement entered into by M/s OMC with M/s Vedantha Aluminium Ltd. for making the bauxite ore from Karlapat / Niyamagiri Hill Forests is improper and unwarranted because the mining of bauxite in these areas involves forest land and the approval for diversion of this forest land for mining purposes, under the Forest (Conservation) Act has not been obtained from the Central Government as yet. 23.12.2004 Shri Chadha met a number of leaders of different parties who orally emphasized that the violation of Environmental and Forest Act should not be allowed and no project should be allowed at the cost of the environmental degradation. They also said that in-principle they are not opposed but to the coming of industries in Kalahandi District but environmental and forest laws must be strictly followed by everybody. Shri Chadha met the Commissioner-cum-Secretary, Forest Department in the Government Secretariat. A copy of the counter affidavit of the State Government of various issues raised in the I.As was made available by the Additional Chief Secretary to Shri Chadha (Annexure III)

FINDINGS OF THE TEAM

i. The Project Authorities have taken up construction work of refinery on non-forest lands and without getting clearance under Forest (Conservation) Act, 1980 for 58.93 hectares of forest land which is integral part of the Refinery Project. This is violative of the guidelines of Ministry of Environment and Forests on the subject. In addition, they have cleared parts of village forest land in village Kottadwar and Kinari. Show cause notice has been issued by Divisional Forest Officer, Kalahandi South Division to the user agency. It may also be mentioned that no felling of trees has been done by the company / OMC during the process of exploration drilling in the mining area.

ii. Environmental clearance of the Mining site should either precede or should be linked with clearance of the Refinery site. By granting of site clearance without linking the project with an approved mining site an anomalous situation has been created. The Ministry of Environment and Forests in their letter No. J-11011/81/2003-
IA-II dated 5.2.2004 had specifically mentioned about the linkage between the clearance of the refinery site and the mining site. Why environmental clearance for the refinery site has been granted by the Ministry without clearance of mining site is not understood.

iii. The Rehabilitation Package for the displaced persons given by the user agency is not in the interest of sustainable livelihood of the local communities as no land has been given for grazing purposes, raising agricultural crops and carrying out other income generating activities, etc. The location of the rehabilitation colony has been decided totally ignoring the interest of conservation of forests. It is just few meters away from the Niyamgiri Reserved Forest. Adverse impact of this colony and the labour force staying near the forest is already visible. The team saw four stumps of freshly cut sal trees in Niyamgiri forests.

iv. Niyamgiri is a very rich forest from biodiversity point of view. A proposal has already been approved in the working plan to declare this area as a Sanctuary. The relevant abstracts are part of the petition. It was further revealed that the State Government have made a proposal to include this area in the proposed new elephant reserve. Further, the hills form the origin of Bansadhara river. The rivulets coming across these hills are source of water for the local communities. Any mining in this area is bound to destroy the biodiversity and affect the availability of water for local people. The question of pollution of Bansadhara river is also there. Under these circumstances, alternative sources of ore should be explored for the Project.

v. Although village forests extending over 58.93 hectares exist in the Refinery Site but these have lost their utility for the villagers. The Project Authorities should acquire equivalent non forest land for carrying out plantations to meet the biomass requirement of the villagers and the area be notified as village forests.

vi. Appropriate action should be taken against the company for clearing village forest land in violation of Forest Conservation Act and clearing trees in the Project Site without proper sanction of the competent authority.
vii. The Project Authorities should provide free gas connections/electricity to its rehabilitation colony and labour force working in the project. The heavy parking site for vehicles, particularly trucks, etc. should be made at a place away from Niyamgiri Reserved Forest.

viii. Project Authorities should provide funding for establishment of a Forest Section Office with the entire infrastructure and the salary of one Forester and four Forest Guards for safeguarding against illicit felling in Niyamgiri hills.

ix. The team observed lot of natural vegetation in the lands classified as Abad Ajogya Anabadi and Dongers. D.L.C. has not included these areas in the definition of deemed forests. Unregulated felling in these areas is likely to have severe environmental impact. State Government should be asked to consider these areas in list of deemed forests, wherever the extent is more than five Hectares.

x. The present practice of OMC getting into agreement for allotment of mining areas, in respect of which clearance under Forest (Conservation) Act, 1980 and Environment (Protection) Act has not been taken, is violative of the spirit of the aforesaid acts. Creation of infrastructure for processing the mineral without firm commitment of the availability of the mineral puts Government in awkward situation.

xi. The area proposed to be given for mining of Bauxite to M/s Sulakhami Mines is too close to the Karlapat Sanctuary and is the part of the proposed elephant reserve. Environment Impact Assessment and broad based environment management plans need to be prepared for areas having Bauxite before entertaining applications for setting up of new industries in the area.

xii. Ministry of Environment and Forests has to set up a mechanism under which close coordination is maintained between I.A. Division, Forest Conservation Division and Wildlife Division so that Ministry is not put to an awkward situation by issue of sanctions on the basis of informations supplied by the Project Proponent.

(S.C. SHARMA) (S.K. CHADHA)