

Vedanta Alumina Project in Lanjigarh, Orissa

A Scandal of epic proportions involving MoEF, State of Orissa, Vedanta Group and Orissa Mining Corporation

Introduction

Kalahandi is one of the most economically 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. The thickly forested and riverine region of Lanjigarh in Kalahandi is under severe pressure from mining development for bauxite deposits and alumina processing, by the British Vedanta Group, in collaboration with State of Orissa, Orissa Mining Corporation and also, Ministry of Environment and Forests. Yes, MoEF is also an agent in this destruction, and here's why.

The Central Empowered Committee (CEC) appointed by the Hon'ble Supreme Court of India in the Godavarman case has produced its reports highlighting in shocking detail the extent of collusion at the highest levels of the Ministry of Environment and Forests, and the State of Orissa in rushing through environmental clearances for the establishment of a one million tonne per annum capacity alumina refinery project together with the 75 MW coal based captive power plant being set up by M/s Vedanta Alumina Limited (M/s Vedanta) at an estimated cost of about Rs. 4000 crores at Lanjigarh, District Kalahandi, Orissa and the associated bauxite mining project at Niyamgiri Hills, Lanjigarh. The CEC has reprimanded the Ministry in very strong language for absolutely violating basic tenets of environmental clearance procedure, violation of fundamental provisions of forest clearances, raised critical issues of perjury against Vedanta, MoEF and Orissa Government, highlighted how the the Ministry has deliberately overlooked field reports of its own Regional Office that had called for a detailed assesments prior to according to clearances, and the abhorrent violation of human rights of the affected communities, constituted mainly by tribals, merely for seeking information and asserting their right to participate in Statutory Environmental Public Hearings.

There is no better statement of the extent of the serious violations that have taken place in this project, than the report of the CEC. What follows are extracts from the CEC report in response to applications before it filed in IA No. 1234 against establishment of the Vedanta Alumina project by Shri Biswajit Mohanty of Wildlife Society of Orissa, Shri Prafulla Samantara and Academy of Mountain Envirionics and its Fact Finding Mission.

Basic features of the Vedanta Alumina project:

Reporting on the main grounds raised by the petitioners, the CEC reports that:

“The alumina refinery project will require 3 million tones per annum bauxite which is proposed to be sourced from the nearby Niyamgiri hills. After completing the preliminary works, M/s Sterlite Industries (India) Limited transferred the project for implementation to its subsidiary, M/s Vedanta. The land required for the alumina refinery and the mines are 723.343 ha. and 721.323 ha., respectively. The environmental clearance for the project was accorded by the MoEF on 22nd September, 2004 wherein it is stated that the project does not involve any diversion of forest land and that the source of bauxite for the alumina refinery will be the Niyamgiri bauxite mines near Lanjigarh. At the time of the grant of the environmental clearance, a proposal for the diversion of 58.943 ha. of the forest land for the alumina refinery was pending with the MoEF. The proposal for the use of 672.018 ha. forest land for mining is at present pending with the Ministry of Environment and Forests. The project involves the displacement of 102 families. Permission for the use of 30,000 cu. mtrs. of water per day from River Tel has been accorded by the State Government on 31.10.2003. “

Value of Niyamgiri Forests where mining is allowed:

Niyamgiri forests will be severely compromised by the massive Vedanta mining and refinery complex. Highlighting the importance of the Niyamgiri forests, the CEC reports:

“Niyamgiri forests are historically recognized for its rich wildlife population. It was declared a game reserve by the ex-Maharaja of Kalahandi. It has also been proposed to notify it as a wildlife sanctuary in the Working Plan for Kalahandi Forest Division, and which has been approved by the MoEF on 16th December, 1998. This area has been constituted as an Elephant Reserve by the State of Orissa vide Order N4643/WL(Cons)34/04 dated 20.8.2004. It contains elephant, sambhars, leopards, tigers, barking deers, various species of birds and other endangered species of wildlife. More than 75% of the hill is covered by thick forests with an average density of 0.6. Wild relatives of sugarcane plant are found here and which are valuable genetic sources for the future hybrids and therefore need preservation to maintain a pure gene bank; it has more than 300 species of plants, trees, etc. including about 50 species of medicinal plants. Six of the species are listed in the IUCN Red Data Book. These forests are yet to be surveyed properly for their floral and faunal wealth.”

The CEC highlights the concerns of the petitioners that “the alumina plant and the mining project linked with it will have serious adverse effect on the flora and fauna due to mining, overburden dumping, construction of proposed road through the dense forests, liquid and gaseous effluents emissions, bright illumination, blasting with explosives, drilling and resultant vibration and dust, operation of heavy loading and unloading equipment, pollution etc.”

Validity of the Environmental Clearance accorded:

In a major slap to the administrative and regulatory capabilities of MoEF, the CEC accepts the questions of the petitioners regarding the very validity of the environmental clearance granted on the following grounds:

- a) “out of the land requirement of 723.343 ha. for the alumina refinery and 721.323 ha. for the bauxite mining, 58.943 ha. and 672.018 ha., respectively are forest land. The government revenue land and the private land also contain thick forest and therefore are eligible for classification as “forest” as per the Hon’ble Court’s orders dated 12.12.1996;
- b) since the project involved the use of the forest land for the alumina refinery itself, the environmental clearance could have been granted by the MoEF only after the use of the forest land was permitted under the F.C. Act. Similarly, the environmental clearance for the alumina refinery could not have been accorded without taking a decision on the mining component which is an integral part of the project;
- c) M/s Vedanta has deliberately and consciously concealed the involvement of the forest land in the project. In the acquisition notice dated 6.6.2002 issued by the District Collector, Kalahandi it is clearly mentioned that 118 acre of forest land is included in the project site. In the application made by M/s Vedanta for the environmental clearance and also during the examination of the proposal, this vital fact was concealed so that environmental clearance is not kept pending for want of the F.C. Act clearance;
- d) in violation of the F.C. Act guidelines, the project has been split into alumina refinery project and bauxite mining project even though the bauxite mining is an integral part of the refinery project. Though the MoEF was fully aware that the use of the forest land for the mining at Niyamgiri hills is absolutely necessary if the alumina refinery is to be established at Lanjigarh, the environmental clearance to the alumina refinery has been accorded by the MoEF by overlooking these facts;
- e) at the time of the grant of the environmental clearance even the proposal under the F.C. Act for the use of the forest land for the Niyamgiri bauxite mines had not been filed with the MoEF;
- f) the construction work of the alumina refinery was started on the project site much before the environmental clearance which was accorded on 22nd September, 2004. This will be evident from the annual reports and the other documents filed before the CEC. As per the statements given by the Company, 45 % of the work had been completed by 31st March, 2005 i.e. within 4 _ months and an amount of US \$ 29 million had been spent.”

Vedanta's claims and counterclaims over involvement of forestland:

In the full glare of the administrative machinery of both the Central and State Government, Vedanta was allowed to engage in a number of major violations. The CEC accepts the applicants contentions on how Vedanta played around with the forest clearance mechanism, first reporting forest land was involved, later claiming none at all would be lost. The reality was that the project was coming up on excellent forest lands, that also protected the water regime supporting the basic needs of lakhs of people downstream. In a totally lackadaisical manner MoEF took decisions, at the level of the Secretary, to overlook serious concerns that its own Regional Office had raised, and let Vedanta do whatever it pleases.

The CEC records such manoeuvres as follows:

- I. "M/s Vedanta had applied for the diversion of 58.943 ha. of the forest land for the alumina refinery project. Subsequently on 27th March, 2005, which happened to be a Sunday, it made a request through the State Government to withdraw the proposal. The very next day i.e. on 28th March, 2005, the proposal was accepted by the MoEF. There was no application of mind by the regulatory agency i.e. MoEF to find out the reasons for the withdrawal, whether the project could be implemented without the forest land or whether it will affect other issues related to the environmental clearance; (emphasis not in original)
- II. the forest area of 58.63 ha. extends over a number of patches distributed in the seven villages. These patches have now lost the character of forest. It is not clear how the project can be implemented without these areas when these are widely spread inside the project site itself. They are within the compound walls of the project and can only be left out of the project on paper but not on site;
- III. though the State Government officials were fully aware that forest land is involved in the project, the forest offence report (FOR), issue of notices to the company etc. for breaking/encroachment of forest land was initiated by the Forest Department/Revenue Department as late as 18th December, 2004 which was only after the matter was brought before the CEC and there was a public outcry over the violation of the Acts;"

How the water regime of Niyamgiri will be destroyed

About how critical the Niyamgiri hills are to protecting the water regime of a major part of Orissa state and how this would be compromised merely to support Vedanta, is described by the applicants averments as follows:

- a. "many perennial streams originate from the Niyamgiri hill top. It is a permanent source of water to the entire area including Kalahandi and Rayagada districts;
- b. 22 water harvesting structures are located in the foothills which provide year round water supply. Vamsdhara and Nagvalli are two major rivers of South Orissa which emanate from this hill. Lakhs of people of South Orissa and Andhra Pradesh depend for drinking water and irrigation on these rivers. The mining of bauxite is bound to destroy the water recharging capacity of the hill and will also cause the desertification of perennial streams;
- c. there is an intimate relationship between the bauxite topped mountains in Orissa and the perennial flow of water. All flat topped malis with bauxite deposits have a large number of perennial springs and streams along its slopes and which form the major source of lean season flow to the rivers in the region. This is because the bauxite is oolitic and pisolitic with high level of porosity giving it a high water retention capacity. It occurs beneath the laterite-capped plateaus and is characterized by the existence of a plateau supported by relatively impervious laterite layer with poor water retention capacity. This leads to a phyto-geographic condition wherein the plateaus are vegetated by grasses and shrubs providing a picture of a relatively unforested upland. In the present case the mining of bauxite deposits on the top of the Niyamgiri will mean the water capacity will be destroyed and the entire system of the perennial springs will be adversely affected;

- d. in the EIA it was shown that the water for the plant would be sourced from the Vamsdhara river. Now the water is being sourced from Tel river. This river is an important source of water for irrigation and drinking for the lakhs of people of Bolangir district downstream. It is basically a dry river with very little water flow. The temporary flow in Tel river even during the lean season is because of the fact that the canal system in the command area of the Indravati Multipurpose Irrigation Project is yet to be fully developed and implemented. After completion of the Indravati Multipurpose Irrigation Project there will be severe shortage of water. No EIA has been conducted to assess the likely impacts of water being used from the Tel river;”

Forcible eviction of project affected communities

Equally alarming are the observations on how the project affected communities were forcibly evicted and “rehabilitated”:

- i. “The people have been displaced from their houses through physical eviction by the district administration. Many were beaten up by the employees of M/s Vedanta. The National R&R policy requires that land for land should be given after due process of consultation, particularly in the case of the tribals. Contrary to the above cash compensation was offered to them and which was not acceptable to many. The tribal people living on the plant site are mainly Kondhs who are illiterate and depend completely on their agricultural lands and forest for their subsistence. They have deep spiritual and cultural attachment to their ancestral lands and settlements. The displacement was opposed vehemently by them despite being offered large cash compensation by M/s Vedanta. In the face of resistance, the District Collector and the company officials collaborated to coerce and threaten them. An atmosphere of fear was created through the hired goons, the police and the administration. Many of the tribals were badly beaten up by the police and the goons. After being forcibly removed they were kept under watch and ward by the armed guards of M/s Vedanta and no outsider was allowed to meet them. They were effectively being kept as prisoners;
- ii. apart from the land acquired by the District administration from the large number of tribals and the harijans of Bandhagunda and Rengopali villages, land was also illegally taken over by M/s Vedanta for which neither acquisition notice was served nor compensation was paid;
- iii. about 64 households of Jaganathpur Village, most of whom are Kandha tribals have been cultivating for generations Khasra No. 186 – a revenue land. Encroachment cases have been filed against many of them. These tribal families were evicted by force from the land being cultivated by them for generations without any compensation or any shelter thereby taking away their main source of livelihood. This has taken place even though these cultivators have been officially shown to be in possession of this land and cultivating. The eviction has taken place without any process of verification and is in violation of the special protection provided to the scheduled tribes. Though they approached the District Collector against the forcible eviction, no action was taken by him;”

Violation of Samata judgment:

On how the Vedanta violates the Samata decision of the Hon’ble Supreme Court, the CEC reports the following:

- a) “transfer of land to the non-adviasis in this area in violation of the judgment of the Hon’ble Supreme Court in Samta Vs. Andhra Pradesh case. A highly endangered primitive tribe – the Dongaria Kandha whose population is less than 6000 reside in the Niyamgiri hills. They are dependent on farming / agroforestry and have no other source of livelihood. Niyamgiri Hill is a sacred hill for the Dongaria Kandha tribe. They do not cultivate on the hill top out of respect and the hill is worshipped as Niyam Raja. The entire tribe with its unique custom and practice will become extinct if Niyamgiri hills are diverted for mining;
- b) in the Guidelines No. 2-1/2003-FC dated 20.10.2003 of the MoEF it has been specifically stated that the maintenance of good cover is essential for sustaining the livelihood of tribal population and that in tribal areas only infrastructure development projects (other than commercial) should be encouraged. The

manufacture of alumina is a commercial project which will only benefit the promoter company and cannot be described as infrastructure development project. It will thus be seen that the MoEF in this case has not followed its own guidelines;

- c) the provisions of the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribe Regulation) 1956, the Scheduled Tribe And Scheduled Tribes (Prevention of Atrocities Act), 1989 have been violated;”

It also adds that “the rehabilitation colony has been located too close to the reserve forest which may have serious adverse effect on the forest.”

Significant environmental impacts due to the Vedanta project:

The CEC also records the serious concerns over the environmental impacts due to disposal of toxic effluents and mining overburden :

- I. “Red Mud Pond and the Ash Pond are being established on the banks of river Vamsdhara with a part of the river actually covered by the red mud pond. A flashflood in the river can cause a breach in the pond and which could result in a massive spill in the river of noxious and poisonous red mud which is a mix of highly toxic alkaline chemicals and heavy metals including radioactive element all of which could have disastrous consequences;
- II. the dangerous heavy metals and the chemicals may leach the ground water and destroy all the plant life that comes into contact with it. This aspect has been glossed over in the EIA and ignored by the MoEF.
- III. the overburden from the mining will flow into the streams and pollute them and in the process also destroy the unique micro-niches along the streams as well as the habitat of many of the unique species and the drinking water source for the wild animals. The streams will dry up in the summer and no surface flowing water will be available for drinking/agricultural use. Considering the acute water scarcity in the Kalahandi district one of the few sources of perennial water should not be allowed to be destroyed;”

How the Regional Cell’s opinion for comprehensive review was deliberately overlooked by MoEF:

A major issue of concern over the Vedanta clearance decision is that MoEF sidestepped, nay overrode, the decision of its own Regional Office at Bhubaneswar, which is headed by a rank no less than the Chief Conservator of Forests, in reviewing the environmental clearance application of Vedanta.

MoEF has to rely on the report of the Regional Office for all its decisions, as that is the agency with the wherewithal to conduct field visits and report accurately the ground situation. In this case, the Regional Office explicitly stated that protected forests were involved, tribal settlements were involved, an excellent water regime was being compromised, and thereby nothing less than a comprehensive environmental and social impact assessment would do prior to clearing the project.

In an extraordinary case of collusion between the offices of the Union Minister for Environment and Forests, the Secretary, MoEF and the Orissa State Secretariat, all these issues were brushed aside in a such tearing hurry that it requires to be treated as nothing short of criminal breach of administrative procedures.

The CEC records the following in this regard:

“rapid EIA is only a mechanism to initiate the assessment and in the case of small projects it could cover substantive aspects of the implications. Large projects such as that being implemented by M/s Vedanta demands a comprehensive EIA. A detailed analysis is therefore essential to ensure that the eco-systems are not damaged beyond resilience. It is inappropriate to clear projects of such magnitude based on a study of only 60 days.”

What the CEC's Fact Finding Mission reported:

The CEC also records diligently the many averments made by Vedanta Alumina and the State of Orissa. It then proceeds to highlight the major facts as reported by its own Fact Finding Mission and these are reproduced below:

- I. "the project authorities have taken up the construction work of the refinery on non-forest lands without getting the clearance under the Forest (Conservation) Act, 1980 for 58.93 hectares of forest land which is an integral part of the refinery project. This is violative of the guidelines of the Ministry of Environment and Forests on the subject. In addition, they have cleared parts of the 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 the clearance of the refinery site. By granting 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 the clearance of the 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 the conservation of forests. It is just a 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 the 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 Vamsdhara 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 the local people. The question of pollution of Vamsdhara river is also there. Under these circumstances, alternative sources of ore should be explored for the project;
- V. although the 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 the village forest land in violation of the Forest Conservation Act and clearing the trees in the project site without the 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 parking site for heavy vehicles, particularly trucks, etc. should be made at a place away from the Niyamgiri Reserved Forest;
- VIII. project authorities should provide funding for the 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. (District Level Committee) has not included these areas in the definition of deemed forests. Unregulated felling in these areas is likely to have severe environmental impact. The State Government should be asked to consider these areas in the list of deemed forests, wherever the extent is more than five hectares;
- X. the present practice of OMC getting into agreement for allotment of the mining areas, in respect of which clearance under the Forest (Conservation) Act, 1980 and Environment (Protection) Act has not been taken, is violative of the spirit of the aforesaid Acts. Creation of the infrastructure for processing the mineral without firm commitment of the availability of the mineral puts the Government in an awkward situation;
- XI. the area proposed to be given for mining of Bauxite to M/s Sulakhmi Mines is too close to the Karlapat Sanctuary and is 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; and
- XII. the Ministry of Environment and Forests has to set up a mechanism under which close coordination is maintained between Impact Assessment Division, Forest Conservation Division and Wildlife Division so that the Ministry is not put in an awkward situation by issuing sanctions on the basis of information supplied by the project proponents.”

The Fact Finding team also asked MoEF for its views and on their response made the following observations:

- a) “environmental clearance to the project was accorded on the premise that the project does not involve forest land whereas actually about 58 ha. and 660 ha. of forest land is involved for setting up of the plant and for mining respectively. Under these circumstances, how can the environmental clearances remain valid and whether any action to stop the work has been initiated by the MoEF!
- b) the MoEF guidelines prohibit starting of work on non-forest land pending a decision about use of forest land under the FC Act, substantial work has been carried out in violation of the said guidelines whether any action in this regard has been initiated by the MoEF?
- c) as per the guidelines issued by the MoEF, environmental clearance and the FC Act clearance are issued simultaneously. Since, FC Act clearance has not been accorded so far, whether environmental clearance is being withdrawn!”

The Fact Finding Team also records that:

“The Regional Office of the MoEF has made observations about the commencement of the work in violation of the FC Act guidelines, necessity of submitting a comprehensive proposal for the use of the forest land for the project including for the mining, linkage of the mining project with the refinery project, alternative source of bauxite mineral, importance of the area from the wildlife point of view, likely effect of the proposed mining on water regime etc. and recommended that the FC Act proposal for the refinery should not be examined in isolation. It has also recommended for an in depth study on the following aspects through reputed institutes before taking a view on the project (a) impact on wildlife; (b) impact on water regime; and (c) impact on soil erosion (dealt with in this report earlier under the heading “Site inspection report of the MoEF” page 50).

The questionable agreement between Vedanta and State of Orissa:

An interesting observation made by the CEC with regard to the Agreement between Orissa State, Orissa Mining Corporation and Vedanta is as follows:

- I. “....it may be seen that the agreement provides that though the mining lease will be in the name of the OMC and it will be responsible for complying with all the statutory and legal requirements, M/s Vedanta through the joint venture company will be de facto managing the mines and will be the principal

beneficiary on payment of development charges, royalty and other statutory dues payable to the State Government on the extracted mineral. Thus while on the one hand M/s Vedanta will be getting all the benefits of captive mines, on the other hand it is free from obtaining all the onerous statutory clearances because the lease holder is the OMC. “

Final Recommendations of the CEC

Taking cognisance of all facts and contentions by the petitioners and the respondents, and also its own Fact Finding Mission, the CEC recommends the following:

1. “The CEC is of the considered view that the use of the forest land in an ecologically sensitive area like the Niyamgiri Hills should not be permitted. The casual approach, the lackadaisical manner and the haste with which the entire issue of forests and environmental clearance for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the State Government and the MoEF to deal with such matters keeping in view the ultimate goal of national and public interest. In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to the project from environmental/ecological/forest angle would have become known in the beginning itself and in all probability the project would have been abandoned at this site.
2. Keeping in view all the facts and circumstances brought out in the preceding paragraphs it is recommended that this Hon’ble Court may consider revoking the environmental clearance dated 22.9.2004 granted by the MoEF for setting up of the Alumina Refinery Plant by M/s Vedanta and directing them to stop further work on the project. This project may only be reconsidered after an alternative bauxite mine site is identified.”

In conclusion:

It may thus be submitted that Vedanta Alumina is enough of a case to substantiate the widely held position that the Ministry of Environment and Forests has not just colluded with agencies engaged in serious violation of environmental and human rights, but that the Ministry itself is an agency engaged in the active violation of directions of the Hon’ble Supreme Court of India. It compromises administrative review mechanisms with impunity and perpetrates fraud by accepting wholesome lies as material for its decisions.

No less than the leadership of the Ministry, that is the Union Minister for Environment and Forests and Secretary of MoEF, must be held accountable for this travesty of environmental clearance mechanisms of India.

Source:

1. Applications before the Central Empowerd Committed in IA No. 1234 against establishment of the Vedanta Alumina project by Shri Biswajit Mohanty of Wildlife Society of Orissa, Shri Prafulla Samantara and Academy of Mountain Envirionics and its Fact Finding Mission.
2. Ruling of the Central Empowered Committee appointed by the Hon’ble Supreme Court of India per the Godavarman Judgment, based on the aforementioned application.