Central Empowered Committee

Report in IA no. 1324 regarding the Alumina Refinery Plant being set up by M/S Vedanta Alumna Limited at Lanjigarh in Kalahandi District, Orissa

Info: What is the Central Empowered Committee?

The Central Empowered Committee (CEC) is a panel of experts, created by the Indian Supreme Court in 2002.

It was asked to consider and make recommendations about Vedanta's alumina refinery and bauxite mine, planned in and around the Niyamgiri hills (where the Dongria Kondh, and their neighbours the Majhi Kondh, live). The committee sent a fact-finding team to the area to investigate.

On 21st September 2005, the committee presented a report to the Supreme Court, covering issues about the refinery and the mine. Below are the report's 'observations and conclusions.'

The committee recommends that mining in Niyamgiri should not be allowed, and that were it not for administrative peculiarities the refinery may never have been allowed to be built.

OBSERVATIONS AND CONCLUSIONS

30. After considering the submissions made by the applicants, M/s Vedanta, the State of Orissa, MoEF, Site Visit report of the MoEF, report of the Fact Finding Team, Site Visit by the CEC from 14-16th June, 2005 and other relevant documents it is seen that:

(i) M/s Vedanta is constructing a one million ton alumina refinery project at Lanjigarh at an estimated cost of Rs. 4000 crore. The basic raw material 'bauxite' is planned to be obtained from the nearby Niyamgiri Hills;

(ii) in the notice dated 6.6.2002 issued for the land acquisition for the alumina refinery project by the Collector, Kalahandi (refer Annexure – R 1), it was mentioned that *"lands for compensatory afforestation shall be provided at other places in lieu of 118 Acres of existing village forest coming inside the project area."* Thus, the State Government even at an early date was aware about involvement of forest land in the project;

(iii) in the application dated 19.3.2003 filed by M/s Sterlite (parent company of M/s

Vedanta) for seeking environmental clearance for the project (refer Annexure – R 2) against column number 3 it is stated that "nil" forest land is required for the alumina refinery and that within a radius of 10 km. of the project site there is no reserve forest, which is contrary to the facts on record;

(iv) subsequently, on 16.8.2004 a proposal for allowing the use of 58.943 ha. forest land, consisting of 28.943 acre of "Gramya Jungle Jogya" land and 30 ha. of reserve forest, was moved under the FC Act through the State Government to the MoEF. Out of the above, 26.123 ha. forest land was required for the refinery, 25.82 ha. for the mine access road and the balance 7.0 ha. was required for the construction of the conveyor belt for the transportation of the mineral from the mine site to the plant.

Thus though forest land was required for the project, the environmental clearance was sought stating that no forest land was required and during the pendency of the application for the environmental clearance, a proposal for the use of the forest land for the same project was submitted for seeking the approval under the FC Act;

(v) though the proposal for the use of the forest land was pending with the MoEF, the environmental clearance for the alumina refinery was accorded by it on 22.9.2004 (refer Annexure – R 4) stating that *"The project does not involve diversion of forest land"*;

(vi) after the grant of the environmental clearance the State Government vide letter dated 24.11.2004 (refer Annexure – R 6) informed the environmental wing of the MoEF that *"....This communication refers that area required for the project is 720 ha. and the project does not involve diversion of forest land. ...*

The proposal for diversion of 58.943 ha. of forest land in Lanjigarh Tahsil in Kalahandi district for setting up of Alumina refinery and 75 MW Captive Power plant by M/s Vedanta Alumina (India) Ltd. has been received. The total project area is 723.343 ha., which includes 58.943 ha. of forest land with a status of reserved forest and village forest.....The proposal has been recommended in F&E Department letter No. 12328/F&E, dated 16.8.04 to the MoEF, GoI (FC Division). This is for your information and necessary action towards issuing corrigendum if any";

(vii) however, the environmental clearance stipulations were not modified and the work on the project was allowed to be continued. It may be seen that para 2.3 (ii) of the guidelines laid down by the MoEF (refer Annexure – R 7) states that *".....For projects requiring clearance from forest as well as environment angles, separate communications of sanction will be issued, and the project would be deemed to be cleared only after clearance from both angles....."* Thus the environmental clearance granted by the MoEF becomes effective only after the clearance for the use of the forest land under the FC Act is accorded unless and until both i.e. the FC Act clearance as well as the environmental clearance had been obtained. No work on the project could have been started by M/s Vedanta. Had the guidelines issued by the MoEF been followed, or the environmental wing of the MoEF had taken cognizance about the involvement of the forest land in the project or if M/s Vedanta had furnished the correct information in its application for the environmental clearance, the construction work on the alumina refinery would not have been started at all;

(viii) normally, the environmental clearance is accorded by the MoEF after assessing the environmental issues associated with the linked mining project. In this case also the MoEF vide letter dated 24.3.2004 (refer page 8 of M/s Vedanta affidavit dated 16.2.2005 at Annexure – R 25) earlier took the stand that *"since the functioning of the alumina refinery would be dependent on the proposal for mining it had been decided to consider the two proposals i.e. mining and alumina refinery project together."* Thereafter, M/s Sterlite vide letter dated 25.3.2004 sought the environmental clearance for the alumina refinery plant on the ground that it would take three years to build the refinery whereas the bauxite mines can be opened (made functional) in one year (refer page 8 of M/s Vedanta affidavit dated 16.2.2005 at Annexure – R 25);

(ix) though normally in all the big projects varying time periods are required for implementing the different components of the project the MoEF had granted the environmental clearance for the refinery project vide letter dated 22.9.2004, thereby in effect delinking the alumina refinery project from the mining project. Such delinking is

objectionable because the alumina refinery project has been located in Lanjigarh because of its proximity to the proposed mining site at Niyamgiri Hills, Lanjigarh. In the event, for the mining component the environmental clearance and / or the forest clearance is rejected, the expenditure of about Rs. 4000 crore being incurred on the project will become infructuous;

(x) as per para 4.4 of the guidelines laid down by the MoEF (refer Annexure – R 7) states that *"Some projects involve use of forest land as well as non-forest land. State Governments / Project Authorities some times start work on non-forest lands in anticipation of the approval of the Central Government for release of the forest lands required for the projects. Though the provisions of the Act may not have technically been violated by starting of work on non-forest lands, expenditure incurred on works on non-forest lands may prove to be infructuous if diversion of forest land involved is not approved. It has, therefore, been decided that if a project involves forest as well as non-forest land, work should not be started on non-forest land till approval of the Central Government for release of forest land under the Act has been given".*

The Alumina Refinery construction work has been started and continued in blatant violation of the above said guidelines;

(xi) during the hearing held on 28.2.2005, the CEC raised the issue such as the validity of the environmental clearance granted to the project, starting of the work in violation of the guidelines issued by the MoEF, whether environmental clearance is being withdrawn, action proposed to be initiated against the project authorities for obtaining the environmental clearance on the basis of misinformation and related issues (dealt with in detail earlier page 43 under the heading "Views of the Ministry of Environment and Forests"). As per the affidavit dated 14.7.2005 filed by the MoEF (refer Annexure – R 11) it is stated *"(v)" That, it was only on March, 3, 2005, i.e. after the order was passed by the Central Empowered Committee (CEC), that M/s Vedanta Alumina Ltd., the successor company of M/s Sterlite Industries (India) Ltd., had informed the Ministry that the company had as a matter of abundant precaution moved a proposal to the Ministry in August, 2004 for the diversion of 58.943 ha. of forest land..... The*

applicant company had never brought this fact to the notice of the Impact Assessment Agency prior to the grant of environmental clearance in September, 2004." The MoEF vide notice dated 23.3.2005 directed M/s Vedanta that further construction work on the project shall be undertaken only after getting the requisite clearance under the FC Act;

(xii) instead of stopping the work, M/s Vedanta vide letter dated 24th March, 2005 informed the MoEF and the State Government that they will implement the refinery project without involving the use of 58.943 ha. of forest land and that since the refinery project does not involve any forest land, the directions issued by the MoEF to stop the work are not applicable (refer Annexure – R 14). The State Government vide letter dated 27th March, 2005 which happened to be a Sunday, recommended (refer Annexure – R 17) that the proposal pending under the FC Act may be allowed to be withdrawn which was accepted by the FC division of the MoEF on 28th March, 2005 (refer Annexure – R 18). On the very same day the environmental wing of the MoEF informed M/s Vedanta that the Ministry's letter dated 23.3.2005 stands withdrawn (refer Annexure – R 19);

(xiii) the intentional or otherwise concealment of the fact about the involvement of the forest land, grant of environmental clearance by delinking the mining project from the refinery project, no action taken on the State Government's letter dated 24.11.2004, violation of the guidelines issued by the MoEF and later on prompt permission granted to withdraw the FC Act proposal itself enabled M/s Vedanta to take up the project construction work without obtaining the FC Act clearance for the plant / mine site which otherwise would not have been possible;

(xiv) while permitting the withdrawal of the proposal, the reason for withdrawing the proposal, its effect on environmental clearance, whether the project could be implemented without the use the of the forest land, whether the conveyor belt for transporting the bauxite and the approach road could be constructed without the use of forest land, why the certificate about the absolute necessity of the forest land for the project was given by the concerned officials and whether the withdrawal of the proposal is linked with the stopping of the work by the MoEF and other related issues do not appear to have been

examined or analyzed. It was also not ascertained whether the forest land, could be retained as 'forest' when it is interspersed at various locations within the other project land and is enclosed by the compound wall of the alumina refinery plant;

(xv) after the 'stop work' order was issued by the MoEF on 23.3.2005 the proposal for withdrawal was moved by M/s Vedanta immediately on the following day and then forwarded by the Orissa Industrial Development Corporation, recommended by the State Government (on a Sunday) and the decision to allow the withdrawal of the proposal as well as to withdraw the 'stop work' order was taken by the MoEF on 28.3.2005 all within a period of five days. On the other hand it took months to take cognizance about the involvement of the forest land in the project and to issue 'stop work' order. It may be seen that the MoEF vide affidavit dated 4.4.2005 (refer Annexure - R 10) had confirmed that pending filing of the report by the CEC and directions thereon by the Hon'ble Supreme Court the proposal under the FC Act for the mining project will be kept in abeyance. **If the forestry clearance proposal itself had not been withdrawn by M/s Vedanta and the withdrawal not accepted by the MoEF, the work on the alumina refinery would necessarily have had to be stopped till the entire matter was examined by this Hon'ble Court;**

(xvi) in the affidavit dated 16.2.2005 (refer para 5.1 of the affidavit at Annexure – R 24) the State of Orissa had taken an unequivocal stand that *"The 58.94 ha. of forest land (28.94 ha. 'suitable for village forest' + 30 ha. of reserve forest) is an integral part of the Vedanta Alumina Project. This land is required for development of Alumina Refinery complex over 26.12 ha. and construction of service corridor, conveyor belt and approach road over 32.82 ha. Accordingly, the applicant has submitted forest diversion proposal through the State Government to the Ministry of Environment & Forests."* The site inspection report of the Regional office of the MoEF (refer Annexure – R 12) also corroborates this. The pillars for the ropeway have been constructed by M/s Vedanta on the non-forest land acquired for it. 10.41 acre of the said land was found to have been encroached by M/s Vedanta by way of land breaking and levelling activities for which forest offence cases have been registered and show-cause notices have been

issued by the Orissa Forest Department (dealt with in this report under the heading "Use of 58.943 ha. of forest land earlier sought for the Alumina Refinery Project" page 56);

(xvii) inspite of the above, the forestry clearance proposal for 58.943 ha. of forest land has been allowed to be withdrawn and thereafter work on the project allowed to be continued. The withdrawal of the proposal has been justified by M/s Vedanta taking a stand that *"Further since the proposal for diversion of 30 ha. was for mine access road and conveyor corridor and could also be included in the mining proposal VAL withdrew the entire 58.943 ha. forest diversion proposal"* (refer para 7 of M/s Vedanta affidavit dated 22.7.2005 at Annexure – R 28) and that *"With regard to the query as to whether withdrawal of the proposed diversion of 30 hectares of forest land sought for by this Respondent for the mine road and conveyor would not be reactivated at a later stage by this Respondent, it is stated that this Respondent would not do so. The mining lessee being OMC it is only such party who would be assessing their requirements for effectual operation of any mining lease"* (refer para 6 of M/s Vedanta affidavit dated 28.4.2005 at Annexure – R 27). Apparently, the proposal for obtaining forest clearance has been withdrawn by M/s Vedanta to basically circumvent the 'stop work' order issued by the MoEF (after CEC questioned the validity of the environmental clearance) and not because the use of the forest land was avoidable;

(xviii) the bauxite mining project involves the use of 672.018 ha. forest land in the Niyamgiri Hills (660.749 ha. forest land for mining and 11.269 ha. for safety zone). The area is rich in wildlife, has dense forest cover and has been proposed to be notified as a Wildlife Sanctuary in the Working Plan of the area duly approved by the MoEF under the FC Act (refer Annexure – R 21). It is also constituted as an Elephant Reserve by the State of Orissa vide order dated 20.8.04. The importance of the area being rich in wildlife has been acknowledged by the State of Orissa;

(xix) the CEC had deputed a Fact Finding Team (FFT) to look into the various issues raised about the alumina refinery project and the associated mining project. The findings of the FFT, which are dealt with in this report under the heading "Report of the Fact

Finding Team" has made several adverse observations about taking up of the refinery construction work in violation of the FC Act guidelines, issue of show-cause notice by the Orissa Forest Department for encroachment of forest land by way of land breaking and levelling by M/s Vedanta, necessity of environmental clearance for the mining site before the refinery site, the rehabilitation package for the displaced persons not being in the interest of sustainable livelihood of the local communities, Niyamgiri Hill being a rich forest from the bio-diversity point of view and proposed for Wildlife Sanctuary and to be included in elephant reserve, Niyamgiri Hills being origin of Vamsdhara river and other rivulets, likely adverse effect of mining on bio-diversity and availability of water for the local people, agreement entered into by the Orissa Mining Corporation for the allotment of the mineral without first obtaining the clearance under the FC Act being against the spirit of the FC Act etc. The FFT has recommended that the project authorities should explore alternative source of bauxite mineral;

(xx) 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);

(xxi) as per the applicants Niyamgiri Hills forms the source of the Vamsdhara river and a major tributary of the Nagvalli. 36 streams originate from within the mining lease site. Most of these streams are perennial due to springs originating just below the bauxite escarpment. These are used for irrigation as well as a source of drinking water by the people living in the adjoining villages. By mining of bauxite deposits at the top of Niyamgiri the water retention capacity of the bauxite deposit will be destroyed. The

mining will lead to the flow of mineral overburden into the streams. In the process it will destroy the unique micro-niches along the streams (refer submissions dated 5.7.2005 by the applicant at Annexure – R 20). On the other hand the State of Orissa and M/s Vedanta have taken the stand that the mining will not have any adverse effect on the water regime in this area;

(xxii) M/s Vedanta had earlier taken a stand that the bauxite mines at the Niyamgiri Hills are absolutely necessary for the alumina refinery project without which it cannot survive. In fact, the location of the alumina plant was based on the availability of the 'bauxite' from the Niyamgiri Hills. After the issue about the linkage of the project with the mining and the consequent validity of the environmental clearance was raised, M/s Vedanta took a stand that the proposed mines at Niyamgiri Hills are not necessary for the alumina refinery project and that it will make alternative arrangements if the same are not approved. After it was pointed out by the CEC that the use of the forest land for the Niyamgiri Hill mines can be approved under the FC Act only if the use of the forest land is absolutely necessary and no viable alternative is possible, M/s Vedanta again changed its stand and stated that the mines are absolutely necessary (dealt with in this report earlier under the heading "Whether the mining from Niyamgiri Hills is critical for the Alumina Refinery Project" page 60);

(xxiii) the agreement signed between the Orissa Mining Corporation (OMC) and M/s Vedanta for establishment of a joint venture company for bauxite mining from Niyamgiri Hills, Lanjigarh and another mine provides that though the mining lease will be in the name of the OMC and it will be responsible for securing and complying with all the statutory approvals and legal requirements, M/s Vedanta will be de facto managing the mines and will be the principal beneficiary on payment of development charges, royalty and other statutory dues. Thus, it will be getting all the benefits of a captive mine without being responsible for obtaining onerous statutory clearances (dealt with in detail in this report under the heading "Agreement between Orissa Mining Corporation and M/s Vedanta for mining of bauxite" page 38);

(xxiv) serious allegations have been made by the applicants about the use of force for

evacuating the tribals from their land, non-payment of compensation to the tribals who were traditionally using the Government land for cultivation etc. (by way of encroachment, for which the State Government stands committed to regularize), no land for the settlers, emotional attachment of the tribals with their land etc. This has been refuted by the State Government as well as the project authorities;

(xxv) Dongaria Kandha tribe resides in Niyamgiri Hills. As per the applicants, they have unique culture, they worship Niyamgiri Hills, are dependent on it for their survival and that undertaking of mining at Niyamgiri Hills will result in extinction of the tribe. In support a publication namely "Adibasi – A Journal of Anthropological Research" published by the Government of Orissa has been relied upon (refer Annexure – R 22). The project authorities as well as the State Government have taken a stand that project would not have any adverse effect on them;

(xxvi) initially, about 30,000 cubic metre water per annum for the project was proposed to be drawn from Vamsdhara river after constructing a dam thereon. Now, it has been decided to draw the water from Tel river. Detailed Impact studies for the withdrawal of water from Tel river do not appear to have been done;

(xxvii)out of 58.943 ha. of the forest land for which the FC Act approval was sought, M/s Vedanta has been found to have encroached 10.41 acre land by way of levelling and breaking of land. For this offences under the relevant Acts have been registered by the Forest Department as well as the Revenue Department. Later on, for this very forest land M/s Vedanta withdrew the proposal earlier filed under the FC Act;

(xxviii)as per the applicants the location of the pond for the red mud, which is a mix of highly toxic alkaline chemicals and contains a cocktail of heavy metals including radioactive elements and the Ash pond on the Vamsdhara river may cause serious water pollution. The breach of the red mud and the ash pond may cause severe damages downstream. The potential of such an occurrence has not been properly assessed. M/s Vedanta has refuted this; and

(xxix) the applicant has pleaded that the present project is of a mega dimensions and is expected to continue operations for several decades. Instead of taking a rapid EIA, a detailed EIA study should have been done before considering the project in an eco-sensitive area.

31. The CEC is of the view that though the forest land is required for the alumina refinery project itself and also for the associated mining component, the environmental clearance has been granted on the wrong premise that no forest land is involved and by inappropriately delinking the mining component. Even after the State of Orissa pointed out about the involvement of the forest land in the project no corrective measures were taken. On the contrary in violation of the MoEF guidelines the work was allowed to continue. The 'stop work' order was issued by the MoEF only after the validity of the environmental clearance was questioned by the CEC. Thereafter, instead of stopping the project work, M/s Vedanta sought the withdrawal of the forestry clearance proposal itself which was immediately accepted without examining its effect, propriety, linkage with environmental clearance and 'stop work' order and that use of at least part of the forest land is totally unavoidable for the construction of the approach road and the conveyor belt for the transportation of the bauxite mineral.

The project is based on and is totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which is an important wildlife habitat, part of elephant corridor, a proposed wildlife sanctuary, having dense and virgin forest, residence of an endangered Dongaria Kandha tribe and source of many rivers/rivulets. But for the grant of environmental clearance on the wrong premise, violation of the FC Act guidelines and the subsequent permission given in haste for the withdrawal of the forestry clearance proposal without proper examination, the alumina refinery construction work could not have been started / continued.

The Regional office of the MoEF has made adverse observations against the splitting of the project in two separate proposals and has recommended in depth study through reputed institutes on effect of the project on wildlife, water regime and on soil erosion before taking a view on the proposal. Though use of 30 ha. of reserved forest is necessary for the project, presently it is neither part of the refinery project nor that of the mining proposal.

The allegations about the improper rehabilitation and the forceful eviction needs to be looked

into carefully through an impartial and unbiased agency. The alumina refinery project should have been allowed to be constructed only after carrying out in depth study about the effect of the proposed mining from Niyamgiri Hills on water regime, flora and fauna, soil erosion and on the Dongaria Kandha tribes residing at Niyamgiri Hills and after careful assessment of the economic gains vis-à-vis environmental considerations. By delinking the alumina refinery project from the mining component an undesirable and embarrassing situation has been allowed to happen (by the MoEF) where in the event of Niyamgiri Hills forest not being approved under the FC Act for mining lease, the entire expenditure of about Rs. 4000 crore on the alumina refinery project may become infructuous as the project is unviable in the absence of Niyamgiri Hills mines.

RECOMMENDATIONS

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 endoned at this site.

33. 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.

This Hon'ble Court may please consider the above report and may please pass appropriate orders in the matter.

(M.K. Jiwrajka)
Member Secretary