

SUPREME COURT OF INDIA

T.N. Godavaraman Thirumulpad

Vs.

Union of India

(K.G.Balakrishnan, Arijit Pasayat and S.H.Kapadia JJ.)

23.11.2007

ORDER

M/s. Vedanta Aluminium Ltd. (formerly known as "Vedanta Alumina Ltd.") has filed an application before this Court seeking clearance of the proposal for use of 723.343 ha of land (including 58.943 ha of reserve forest land) in Lanjigarh Tehsil of Kalahandi District for setting up Alumina Refinery. The matter has been pending since 6.3.04. The Project consists of setting up of a large integrated aluminium complex in Orissa by M/s.Vedanta Aluminium Ltd. (M/s. VAL, for short).

The short question which needs to be answered is :whether M/s. VAL should be allowed to set up its Refinery/Project known as "Alumina Refinery Project". As stated above the Project involves the proposal for diversion of 58.943 ha of forest land.

As a matter of preface, we may state that adherence to the principle of Sustainable Development is now a constitutional requirement. How much damage to the environment and ecology has got to be decided on the facts of each case. While applying the principle of Sustainable Development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs is Sustainable Development. Therefore, courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and co-ordinated programme to meet its obligation of Sustainable Development based on inter-generational equity (See: A.P. Pollution Control Board v. Prof. M.V. Nayudu, [1999] 2 SCC 718. Mining is an important revenue generating industry. However, we cannot allow our national assets to be placed into the hands of companies without proper mechanism in place and without ascertaining the credibility of the User Agency.

It is not in dispute that in this case mining of bauxite deposits is required to take place on the top of Niyamgiri Hills. MOEF has given an environment clearance for Alumina Refinery Project. All

requisite permissions have been obtained by the said applicant. The Refinery to be constructed by M/s. VAL is one million ton Alumina Refinery at Lanjigarh at an estimated cost of Rs. 4000 crores. The mining lease shall stand in the name of OMC Ltd. (State Undertaking). The agreement between OMC Ltd. and M/s. VAL indicates that it is a joint venture in which M/s. VAL is a contractor. The agreement further indicates that the material will be sold by the lessee to M/s. VAL.

CEC has objected to the grant of clearance as sought by M/s. VAL on the ground inter alia that the Refinery is totally dependent on mining of bauxite from Niyamgiri Hills, Lanjigarh, which is the only vital wildlife habitat, part of which constitutes elephant corridor and also on the ground that the said Project, including the mining area, would obstruct the proposed wildlife sanctuary and the residence of tribes like Dongaria Kandha. According to CEC, Niyamgiri Hills would be vitally affected if mining is allowed in the above area as Niyamgiri Hills is an important water source for two rivers. According to CEC, the Project would also destroy flora and fauna of the entire region and it would result in soil erosion. According to CEC, use of forest land in an ecologically sensitive area like Niyamgiri Hills should not be permitted.

On the other side, we have a picture of abject poverty in which the local people are living in Lanjigarh Tehsil including the tribal people. There is no proper housing. There are no hospitals. There are no schools and people are living in extremely poor conditions which is not in dispute.

Indian economy for last couple of years has been growing at the rate of 8 to 9% of GDP. It is a remarkable achievement. However, accelerated growth rate of GDP does not provide Inclusive Growth. Keeping in mind the two extremes, this Court thought of balancing development vis-a-vis protection of wildlife ecology and environment in view of the principle of Sustainable Development.

At this stage, we may observe that M/s. VAL has obtained all necessary clearances. It now seeks clearance of the Project from this Court before it is placed before the Central Government.

The matter was heard at length on 26.10.07. At that time, we were informed that M/s. VAL is a subsidiary of M/s. Sterlite Industries (India) Ltd. (M/s. SIIL, for short) and that M/s. SIIL shall provide jobs on permanent basis to the tribals, particularly, land-losers. Since then we have received two affidavits both dated 2.11.07. In the first affidavit, filed by M/s. VAL, it is stated that plant maintenance, power plant operations, house keeping, canteen, material handling etc. Will be outsourced. There is no positive statement as to the number of persons who would get jobs on permanent basis. The statement refers only to the potentiality to employ. There is no study made in that regard. There is no statement as to in which category they would be fitted. It is important to note that the Project is funded by Vedanta Resources (a U.K.- based company). According to the newspaper reports Vedanta Resources has been banned from Norway for non-compliance of labour laws and for violation of human rights. We quote hereinbelow the extract from the economic daily which is recently appeared in one of the dailies:

"Norway dumps Vedanta from oil fund Reuters OSLO NORWAY has dropped British mining and metals group Vedanta Resources from its \$350 billion oil fund at the recommendation of the fund's ethics council, which blamed it for environmental damage and human rights violations, the finance ministry said.

Norway's Government Pension Fund invests Norway's petroleum wealth in foreign stocks and bonds

to save for when the oil and gas run out. It is one of the world's biggest sovereign wealth funds. "According to the recommendation (of the council), the Fund runs and unacceptable risk of complicity in present and future severe environmental damage and systematic human rights violations by continuing to invest in the company", the finance ministry said.

Vedanta Resources' core business is mining and production of copper, aluminium and zinc in India. It also has operations in Australia, Zambia and Armenia. " Vedanta Resources is accused of having caused environmental damage and contributed to human and labour rights violations", the ethics council said. "Vedanta is accused of having caused environmental damage and contributed to human and labour rights violations", the ethics council said."

We do not wish to express any opinion on the correctness of the said Report. However, we cannot take the risk of handing over an important asset into the hands of the company unless we are satisfied about its credibility. As stated above, under the Agreement between OMC Ltd. and M/s. VAL, the name of the contractor is M/s. VAL. The Agreement states that M/s. VAL is the subsidiary of M/s. SIIL. However, the Financial Statements annexed to the affidavit of M/s. SIIL dated 2.11.07 shows that M/s. VAL is an associate company and not a subsidiary of M/s. SIIL (See: page 31 of the affidavit filed by M/s. SIIL). On going through the Financial Statements of M/s. SIIL, we find that the operating profits from aluminium segment is negligible for the years ending on 31.3.06 and 31.3.07 (See: page 65 of the affidavit filed by M/s. SIIL). However, under Segment Reporting (in the Audited Financial Statement) the income from aluminium segment is Rs. 455 crores (See: website of SIIL). We do not have the list of assets of M/s. VAL. Lastly, as stated above, M/s. VAL is a joint venture partner with OMC Ltd. Nothing prevents M/s. VAL from terminating joint venture agreement. We do not have even the Accounts of M/s. VAL. In the circumstances keeping in mind the totality of the above factors, we are not inclined to clear the Project.

Suggested Rehabilitation Package:

Liberty is, however, given to M/s. SIIL to move this Court if they are agree to comply with the following modalities as suggested by this Court. It is made clear that such an application will not be entertained if made by M/s. VAL or by Vedanta Resources.

(i) State of Orissa shall float a Special Purpose Vehicle (SPV) for scheduled area development of Lanjigarh Project in which the stake-holders shall be State of Orissa, OMC Ltd. and M/s. SIIL. Such SPV shall be incorporated under the Companies Act, 1956. The Accounts of SPC will be prepared by the Statutory auditors of OMC Ltd. and they shall be audited by the Auditor General for State of Orissa every year. M/s. SIIL will deposit, every year commencing from 1.4.07, 5% of its annual profits before tax and interest from Lanjigarh Project or Rs. 10 crores whichever is higher for Scheduled Area Development with the said SPV and it shall be the duty of the said SPV to account for the expenses each year. The annual report of SPV shall be submitted to CEC every year. If CEC finds non-utilisation or mis-utilisation of funds the same shall be brought to the notice of this Court. While calculating annual profits before tax and interest M/s. SIIL shall do so on the basis of the market value of the material which is sold by OMC Ltd. M/s. SIIL or its nominee.

(ii) In addition to what is stated above, M/s. SIIL shall pay NPV of Rs.55 crores and Rs.50.53 crores towards Wildlife Management Plan for Conservation and Management of Wildlife around Lanjigarh bauxite mine and Rs. 12.20 crores towards tribal development. In addition, M/s. SIIL shall also bear expenses towards compensatory afforestation.

(iii) A statement shall be filed by M/s. SIIL with CEC within eight weeks from today stating number of persons who shall be observed on permanent basis in M/s. SIIL including land-losers. They shall give categories in which they would be permanently absorbed. The list would also show particulars of persons who would be employed by the contractors of M/s. SIIL and the period for which they would be employed.

(iv) The state Government has the following suggestions on this issue:-

1. The user agency shall undertake demarcation of the lease area on the ground using four feet high cement concrete pillars with serial number, forward and back bearings and distance from pillar to pillar.

2. The user agency shall make arrangements for mutation and transfer of equivalent non-forest land identified for compensatory afforestation to the ownership of the State Forest Department.

3. The State Forest Department will take up compensatory afforestation at project cost with suitable indigenous species and will declare the said area identified for compensatory afforestation as "protected forest" under the Orissa Forest Act 1972 for the purpose of management.

4. The user agency shall undertake Rehabilitation of Project affected families, if any as per the Orissa Rehabilitation and Resettlement Policy 2006.

5. The user agency shall undertake Phased reclamation of mined out area. All overburden should be used for back filling and reclamation of the mined out areas.

6. The user agency shall undertake fencing of the safety zone area and endeavour for protection as well as regeneration of the said area. It shall deposit funds with the State Forest Deptt. for the protection and regeneration of the safety zone area.

7. Adequate soil conservation measures shall be undertaken by the Lessee on the overburden dumps to prevent contamination of stream flow.

8. The user agency should undertake comprehensive study on hydrogeology of the area and the impact of mining on the surrounding water quality and stream flow at regular interval and take effective measures so as to maintain the pre mining water condition as far as possible.

9. The user agency should undertake a comprehensive study of the wild life available in the area in association with institutes of repute like Wild Life Institute of India, Dehradun, Forest Research Institute, Dehradun etc. and shall prepare a site specific comprehensive Wild Life Management plan for conservation and management of the wild life in the project impact area under the guidance of Chief Wild Life Warden of the State.

10. The user agency shall deposit the NPV of the forest land sought for diversion for undertaking mining operations.

11. The user agency shall prepare a comprehensive plan for the development of tribals in the project impact area taking into consideration their requirements for health, education, communication,

recreation, livelihood and cultural lifestyle.

12. As per the policy of the State Government, the user agency shall earmark 5% of the net profit accrued in the project to be spent for the development of health, education, communication, irrigation and agriculture of the said schedule area within a radius of 50 Kms.

13. Controlled Blasting may be used only in exigencies wherever needed to minimize the impact of noise on wild life of the area.

14. The User Agency shall undertake development of greenery by way of plantation of suitable indigenous species in all vacant areas within the project.

15. Trees shall be felled from the diverted area only when it is necessary with the strict supervision of the State Deptt. at the cost of the project.

16. The forest land diverted shall be non transferable. Whenever the forest land is not required, the same shall be surrendered to the State Forest Deptt. under intimation to Ministry of Environment and Forests, Government of India.

If M/s. SIIL, State of Orissa and OMC Ltd. jointly agree to comply with the above Rehabilitation Package, this Court may consider granting of clearance to the Project.

CONCLUSION

If M/s. SIIL Is agreeable to the aforestated Rehabilitation Package then they shall be at liberty to move this Court by initiating a proper application. This Court is not against the Project in principle. It only seeks safeguards by which we are able to protect nature and subserve development. I.As. are disposed of accordingly. However, we once again reiterate that the applications filed by M/s. stand dismissed.