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An update on news, views and developments in India's EIA process

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Criminal Action for Uncivil Acts

India's environmental decision making is leading to fatal consequences. Perhaps never before has so much blood flowed due to faulty decision making. Last month saw the death of three villagers in police firing since they were opposing the construction of a thermal power plant in Sompeta, Srikakulam District of Andhra Pradesh. Agencies after agencies have certified the area as a 'degraded barren and waste land' whereas in reality it was a marshy land with significant cultivation. Just a year back at Karwar in Karnataka, the opposition against the Hankon Thermal Power Plant had turned violent with the police resorting to violence and detention of villagers opposing the setting up of the plant. In both the cases, the environmental clearances were quashed by the National Environment Appellate Authority. The question which arises is do people have to die or get seriously injured for winning a legal battle?

Unfortunately, to a large extent Civil Society attention is also directed towards these tragedies and not to issues where there is no 'media attention'. 'Sompeta' became an overnight national environmental issue after the death of three people but the neighboring wetland

Naupada where a similar thermal power plant is under construction has escaped national attention. Naupada is no less important as a wetland than Sompeta, and the violation of law is no less serious. The only difference is that people have not yet been killed. This is the situation with mining projects across the country.

There are other lessons to be learnt. The order of the NEAA in Sompeta Thermal Power project led to the cancellation of the approval granted. The party most affected by this order is obviously the project proponent. The attention of affected groups and Civil Society is being directed towards the project proponent and to a large extent rightly so. But this misses the larger picture: What is the liability of those who have approved the project? The officials of the Ministry of Environment and Forests and the members of the Expert Appraisal Committee (EAC) visited the area and certified the wetland as a 'barren degraded land with no marshy land'. The Forest officers meekly agreed to whatever was said by the higher authorities. Why are we not holding them accountable? What is the liability of the EIA consultants and the Professors from various so called 'reputed institutes' who merely acted as rubber stamps? In the decision making process with respect to the Sompeta Project, the only action the MoEF has taken after the violence is to suspend the clearance – that too after the NEAA had already quashed the clearance. (How a clearance which is no longer valid can be suspended – is a question better left unanswered.) Action is yet to be taken against those, who by their deliberate action of providing wrong data, led to approval of the project. If we are to avoid the recurrence of such patently wrong decisions, then quashing the decisions is no longer enough - the decision makers must be held criminally liable for their actions (inactions).

A Protestor opposing the Thermal Power Plant at Sompeta, Srikakulam, Andhra Pradesh



As environmental groups across the country see a ray of hope in Jairam Ramesh, it is essential to remember that even the most energetic and dynamic Minister with all the good intentions can do little to undo the rot that has got firmly entrenched into the system. It is no longer a simple *Politician - Bureaucrat - Criminal* nexus that the Vohra Committee had dealt with at length in 1993 but one that involves *Industrialist- Scientists- Politicians/bureaucrat*.

This dangerous nexus degrades not just the ecology but the social fabric of the society. It manifests itself at times in its most ugly form: illegal

As environmental groups across the country see a ray of hope in Jairam Ramesh, it is essential to remember that even the most energetic and dynamic Minister with all the good intentions can do little to undo the rot that has got firmly entrenched into the system.

detention and killing as in the tragic death of Gujarat based activist Amit Jethwa. It is high time that an independent probe into the nexus be taken up with some degree of seriousness.

The next stage of environmental litigation should clearly move from civil action to criminal, targeting not just the project proponent but the 'experts' and 'officials' who approved the project. Perhaps then people will not have to die to win cases or even catch the attention of the MoEF.

Ritwick Dutta
Co Convener eRc

EIA News

NEAA QUASHES APPROVAL GIVEN FOR MINING AT GOA

The National Environment Appellate Authority (NEAA) in a significant decision (and for the first time ever for Goa) has quashed the approval granted by the Ministry of Environment and Forests for mining in the Careamol iron mine in Pirla village in South Goa. The mining was granted in favour of Jaisinh Maganlal in 2007 and was challenged by local group *Gomantak Shetakari Sanghatan*. The project was stayed in May 2010 by the NEAA along with the Pirna Mine of Sesa Goa. The NEAA quashed the clearance on the ground that the Ministry of Environment and Forests had failed to take into account the adverse impact due to mining on livelihood, the rivers and streams which adjoin the mining lease area and the long term impact on the ecology.

(The Ministry of Environment and Forests order in this regard is available at http://moef.nic.in/downloads/public-information/Careamol_Iron_Ore_Mine.pdf)



Village Rivona – the mining site

The main contentions of the Petitioners were:

- The Company had concealed several crucial pieces of information - the rich biodiversity including 2 ha. of natural forests and cashew and coconut plantations in the core and buffer area of the lease area; the important archaeological sites 500 m from the mining site; the real impact of the project on the ground water and surface water sources.
- The Public Hearing for the Project was held 50 km away from the project site which made it very difficult for affected people to attend the Hearing. Those who could attend the Hearing were faced with a biased Panel.
- Several faults were found in the EIA report by environmental experts including the fact that the EIA report was prepared based only on the winter season and the hydrological and ecological impact assessment was entirely inadequate.
- Even though the Project site was within 10 km of two wildlife sanctuaries, no prior clearance was taken from the National Board of Wildlife as required by the Supreme Court in its order dated 04.12.2006 in the *Goa Foundation* matter.

The Member of the Authority – Mr. JC Kala – undertook a site visit of the mining site on 17 June 2010. He inspected the site and spoke to persons affected by the project.

In order dated 12 July 2010, the Authority has commented on the fact that the Ministry, by not requiring a prior clearance under the Wildlife (Protection) Act 1972, had gone against the order of the Supreme Court. The Authority held that the correct procedure was not followed during the public hearing as the Panel framed the minutes of the

meeting almost six weeks later instead of reading out the minutes to the audience of the Public Hearing.

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The Authority held in its order –

11. the Authority has thus come to the conclusion that the EAC (expert Appraisal Committee of the MoEF) has failed to appreciate the vital impacts of mining on the livelihood of the people of the area and the long term impacts on the ecology and environment. It was also observed that the mitigative measures and the safeguards proposed can hardly take care or compensate the damage mining would cause to the area in the short and the long term. Authority also feels that the contribution of this inferior iron ore to the State's exchequer does not call for striking a balance between development and environment protection of the area.

12. to sum up, mining of iron ore in this area is not justified on environmental consideration even without taken into account its effects on sanctuary and the eventual orders of Hon'ble Supreme Court on the distance in the context of Goa.

APPROVAL TO THERMAL POWER PLANT OF NAGARJUNA CONSTRUCTION COMPANY (NCC), SRIKAKULAM QUASHED BY NEAA



The National Environment Appellate Authority on 14.7.2010 quashed the approval granted by the Ministry of Environment and Forests to the proposed 1980 MW Thermal Power Project of Nagarjuna Thermal Power Plant located in Sompeta, Srikakulam District of Andhra Pradesh. The project was granted approval by the Ministry of Environment and Forests on 9 December, 2009. It was challenged before the NEAA by local affected groups and a total of six appeals were filed. The NEAA decided to undertake a Site Visit during the last week of June 2010. The Project Proponent relied on studies done by over 8 institutes including the National Institute of Oceanography (NIO), University of Hyderabad, University of Andhra Pradesh to state that the area is 'barren waste land without any cultivation and habitation'. The Site visit was conducted by Member of the NEAA, JC Kala, along with wetland expert from MoEF Dr. S Kaul. The Authority in its order noted:

'The Authority found that the land is a typical wetland of great ecological importance and a source of water for nearby villagers upon which three important lift irrigation projects of the Government depend. **The report of the various agencies including**

the sub committee of the EAC was found misleading. The EAC was also carried away by these reports and reversed its (earlier) decision.....

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The Authority is thus convinced that the Environment Clearance accorded by the Ministry (was) based on wrong information and thus liable to be quashed'

The NEAA also directed that the Ministry should undertake a survey of all wetlands in Srikakulam District for their ecological sensitiveness as soon as possible and pending this no project should be cleared in such location.



Site Visit by NEAA to Sompeta and Naupada

POLAVARAM PROJECT: IMPACT ASSESSMENT STUDIES AFTER APPROVAL FOR DIVERSION

The MoEF has been following a unique method of applying the 'Polluter Pay Principle' first and the precautionary principle later i.e. after approval of the project. This is evident in the Forest Clearance granted on 28 April 2010 to the Indira Sagar (Polavaram) multi-purpose project in the State of Andhra Pradesh. The MoEF approved the diversion of 3731 ha. of Forest land subject to certain conditions. An interesting condition is that:

‘the impact assessment of impounding of water by construction of the dam on the river on aquatic flora and fauna shall be taken up immediately ...through a reputed national institute having expertise on aquatic flora and fauna.’

The user agency shall submit to this Ministry a report of a detailed study at (sic) the project being undertaken by the Wildlife Institute of India (WII), Dehra Dun to assess the effect of the project on the flora and fauna and to suggest appropriate mitigative measure.

Reservoir created under the project shall be declared as Reserved Forest under the Indian Forest Act, 1927 with regulated fishing rights.’

Many questions arise when one peruses the forest clearance letter issued by the MoEF:

- Why the hurry to approve the project without waiting for the study on impact assessment due to impounding of water?
- Why did the MOEF not wait for the report of the Wildlife Institute of India ?
- What is the logic of declaring the reservoir created by the project to be declared as a Reserved Forest?

The Polavaram approval is not an exception but just one of the many projects which have been approved based on similar conditions.

Special Focus

MINING IN THE NIYAMGIRI HILLS, ORISSA- FACT SHEET ON THE VIOLATIONS OF THE ENVIRONMENT CLEARANCE PROCESS BY THE MoEF

BACKGROUND

The Ministry of Environment and Forests (MoEF) granted Environment Clearance for mining in the Niyamgiri Hills on 28 April 2009. The Mining lease is in favour of Orissa Mining Corporation but it is meant for supply of bauxite to the Alumina Refinery Plant at Lanjigarh of Vedanta Alumina Ltd. and later on to the Smelter plant at Jarsuguda, also of Vedanta.

It is important to point out that the Supreme Court in its Judgment on 8 August 2008 had considered the issue of Forest Clearance. **The issues and the illegalities with respect to the environment clearance for the Niyamgiri hills was never dealt by the Supreme Court of India in any of its orders.**

After the grant of Environment Clearance on 28 April 2009, the local Tribals and other concerned persons including the Dongaria Kondhs challenged the project before the

National Environment Appellate Authority [*Kumati Majhi and ors v. Ministry of Environment and Forest, Srabhu Sikka and ors v. Ministry of Environment and Forests, R Sreedhar v. Ministry of Environment and Forests, Prafulla Samantara v. Ministry of Environment and Forest and ors* **Appeal No. 18, 19, 20 and 21 of 2009**]. Under the provisions of the National Environment Appellate Authority Act, 1997, an Appeal against the grant of Environment Clearance can be filed before the NEAA. **It is important to highlight that this is the first time that the Dongria Kondhs have directly challenged the project in the Court of law.**

THE VIOLATION OF THE EIA PROCESS

Some of the key violations of the EIA process while approving the Mining proposal of Vedanta Alumina Ltd. are:

- **A CASE OF TWO EIA'S:** A perusal of the information obtained under RTI Act reveals that there were two EIA Reports for the Mining project: one prepared in 2002 by **TATA AIG Group** and the next prepared by **VIMTA LABS in 2005**. The second EIA report of 2005 does not mention the existence of the earlier EIA report of 2002. The Ministry of Environment and Forests in its Affidavit before the National Environment Appellate Authority has clearly stated that it is not aware of the 2002 EIA Report prepared by TATA AIG Group. The question which arises then is: Why two sets of documents were prepared for the same project? The EIA Notification 1994 does not provide for a draft or Final EIA report. Therefore having two EIAs is not only misleading but clearly illegal.
- **Faulty Public Hearing:** The EIA Notification 1994 provides that the affected persons must be provided access to the Executive Summary *and* the EIA Report. **However the Notice for Public Hearing issued by the Pollution Control Board only mentions of the Executive Summary of the EIA report and *not* the full EIA report.** Even more shocking is the letter of the Orissa State Pollution Control Board dated 21 January 2003, which states that the Executive Summary may be photocopied at their own cost. One is not aware of any project in India where the affected people are told to photocopy the Executive summary of the EIA report. Can one expect poor tribals to pay for photocopying the Executive Summary when a company investing Rs 45000 Crore is unable to pay the same?
- **The EIA Report of 2005 was never before the Public:** The EIA Notification is clear that the document on the basis of which the project is approved has to be also before the Public. The EIA report of VIMTA Labs was prepared in 2005 and the Public Hearing took place in 2003. Clearly the EIA report on the basis of which the project was approved was never shared with the Public. **This makes the whole environmental clearance illegal.**
- **No comprehensive EIA done.** There are two types of EIA - Rapid and Comprehensive EIA. The difference between Comprehensive and Rapid is the time scale of the study. Rapid EIA is a speedier process and involves collection of baseline data of only one season. Comprehensive EIA report involves collection of four seasons data. According to the EIA guidelines the view of a Rapid EIA would reveal whether a

comprehensive EIA is required or not. In respect of Niyamgiri Hills, the Ministry of Environment and Forests vide letter dated 12-7-2004 had clearly directed the project proponent to prepare a comprehensive EIA report. This has clearly not been done by the project proponent. The EIA Report prepared in 2005 clearly mentions that it is a “Rapid EIA Report”. Thus for a project of such massive social and environmental implications no comprehensive EIA was done.

All the above issues are currently subject matter of the litigation before the National Environment Appellate Authority

News From the Court

DELHI HIGH COURT DECISION ON PUBLIC HEARING UNDER EIA NOTIFICATION

The Delhi High Court in *Samarth Trust and Another Vs Union of India and others* [Writ Petition (Civil) No. 9317 of 2009] clarified many of the issues with respect to Public Hearing conducted in accordance with the Environment Impact Assessment Notification, 2006. The decision came in response to a Writ Petition filed challenging the approval granted by the Ministry of Environment and Forests for the setting up of an asbestos unit at Uttarakhand. The selected excerpts from the judgment are reproduced:

What is the purpose of a public hearing? Can largely rural people effectively articulate their concerns on sometimes) complex environmental issues? Is a public hearing a procedural formality motions that have to be gone through because of legal requirements? A public hearing is a form of participatory justice giving a voice to the voiceless (particularly to those who have no immediate access to courts) and a place and occasion to them to express their views with regard to a project. Participatory justice is in the nature of a Jan Sunwai where the community is the jury. Such a public hearing gives an opportunity to the people to raise issues pertaining to the social impact and the health impact of a proposed project. The advantage of a public hearing is that it brings about transparency in a proposed project and thereby gives information to the community about the project; there is consultation with the affected parties and they are not only taken into confidence about the nature of the project but are given an opportunity to express their informed opinion for or against the project. This form of a social audit, as it were, provides wherever necessary, social acceptability to a project and also gives an opportunity to the EAC to get information about a project that may not be disclosed to it or may be concealed by the project proponent.”

From the terms of the Notification dated 14th September, 2006 it seems, prima facie, that so far as a public hearing is concerned, its scope is limited and confined to those locally affected persons residing in the close proximity of the project site. However, in our opinion, the Notification does not preclude or prohibit persons not living in the close proximity of the project site from participating in the public hearing they too are permitted to participate and express their views for or against the project. **[Para 11 of the Judgment]**

The second aspect of the public consultation, as already mentioned above, is obtaining responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project or activity. If this is contrasted with a public hearing (which is confined to locally affected persons in the close proximity of the project site) **then it appears, prima facie, that the responses are required to be invited from persons not necessarily in the close vicinity of the project site (and therefore at a distance).**

A condition attached to this is that those persons should have a plausible stake in the environmental aspects of the project or activity. It is not clear who determines (and how) whether or not a person has a "plausible stake" the environmental aspects of the project or activity. **[Para 13 of the Judgment]**

....in our opinion, the Notification (EIA) does not preclude or prohibit persons not living in the close proximity of the project site from participating in the public hearing they too are permitted to participate and express their views for or against the project

It must be clearly understood that while the above provisions for public consultation postulate the physical presence of locally affected persons at a public hearing, they are not barred from giving their responses in writing to the concerned authorities involved in the public consultation process, even though they may not have attended the public hearing. Nor, for that matter, do the provisions of the Notification preclude persons at a distance from attending a public hearing **[Para 14 of the Judgment]**

Guidelines for Conducting a Public Hearing

Therefore, taking the nature and scope of a public hearing into consideration, as mentioned above, the following requirements are necessary by way of laying down ground rules or providing a methodology for conducting a meaningful and purposive public hearing:

- **Adequate notice must be given to all the concerned parties:** In our opinion, adequate notice has three vital components. They are adequate time for preparation, adequate publicity for the benefit of all concerned and availability of all relevant information. The reason for this is that if adequate time is not given for the preparation of views, comments and suggestions to those

participating in the public hearing, that public hearing may not be meaningful enough. In *Canara Bank v. Debasis Das*, (2003) 4 SCC 557 the Supreme Court noted (though in a different context) that time for making a representation should be adequate and that this is a facet of natural justice.

- **Similarly, it is absolutely necessary that due publicity must be given to the public hearing** so that the locally affected persons can participate in large numbers and voice their views. In the absence of adequate publicity, interested persons may remain unaware of the project and of the importance of either supporting or opposing it.
- **Finally, unless all necessary information is available, no effective public hearing can be conceived by the locally affected persons.** Looked at from another point of view, if the draft EIA or its summary is not available to the local populace, their participation in the public hearing will be nothing but a farce.
- **A panel must be available to conduct the public hearing in a disciplined manner:** A District Magistrate or if he is not available, then his representative not below the rank of an Additional District Magistrate must preside over and supervise the public hearing. He should be assisted by a representative of the State Pollution Control Board, who can provide impartial technical inputs, if necessary. The necessity of their presence is to ensure that the public hearing does not go out of control for if it does, then it may be scrapped if a report is given to the concerned Regulatory Authority that it is not practicable to hold a public hearing. Therefore, it is absolutely necessary for the participants to maintain discipline during the course of the public hearing otherwise they will lose an opportunity to express their views with regard to the project and it is the duty of the Presiding Officer of the public hearing to ensure this.
- **A faithful record of the views expressed must be maintained:** A public hearing naturally postulates that both immediately preceding the date of hearing and during the hearing itself, the concerned authorities may receive written representations. They need to be compiled and tabulated in the form of a chart so that all the concerns expressed may be addressed by the project proponent. It is more than likely that at the public hearing oral representations will be made and it is for this reason that there must be a faithful video- recording of the proceedings and a faithful recording of the Minutes so that the views that are orally expressed can also be compiled and dealt with by the project proponent and the EAC.
- **The public hearing must be fair to all participants:** There can be no doubt that a public hearing must be fair. This necessarily postulates that those who support the project should not be shouted down by those who oppose the project and vice versa. The whole purpose of a public hearing would be lost if a free and frank expression of views is stymied by a handful holding a particular viewpoint. The Supreme Court has said in *Biecco Lawrie Ltd. v. State of West Bengal* (2009) 10 SCC

32 that a proper hearing takes within its ambit a fair opportunity to express views. In a sense, this is an important aspect of natural justice.

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The representations, whether written or oral, serve as a social audit of the project and must be given the due importance and seriousness that they deserve.

- **Structured public hearing:** Since the public hearing may be quite prolonged depending on the number of speakers, in our opinion, it is absolutely necessary to structure the public hearing. It would be advisable if the District Magistrate collects information a day before of the number of speakers and makes a list of speakers at the public hearing and

how long they propose to speak. This is necessary for otherwise, the proceedings may be hijacked by local leaders who may have political or other considerations on their mind rather than environmental considerations.

The High Court stated that “We are of the view that these broad procedures (which are certainly not exhaustive) must be followed for conducting a meaningful and effective public hearing postulated by the Notification dated 14th September”

Feature

NEITHER EXPERTS NOR ANY APPRAISAL: THE CONTINUING SAGA OF EXPERT APPRIASAL COMMITTEE OF THE MoEF

Appointment of electricity regulators as environmental experts, restriction on site visits, appraisal in a single sitting makes a mockery of the EIA process

...the Ministry's recent decision to reconstitute the EACs and to issue fresh Terms of Reference (TORs) to the newly constituted EACs was welcome - but its result, worrying.

For those who thought that the change of guard in the Ministry of Environment and Forest would mean a fundamental revamping of the MoEF were in for a shock when in June 2010, the MoEF appointed two new chairpersons of the Expert Appraisal Committee who had no background in environmental issues but rather represented the very industry they were supposed to regulate. This is the case of V.P Raja and Rakesh Nath, the new chairperson of the EAC on thermal power projects and River Valley projects.

While the latter is the chairperson of the Maharashtra State Electricity Regulatory Authority, the latter is the former chairperson of the Central Electricity Regulatory Authority. In fact, very few events over the last one year have surprised the environmental community more than these two appointments. This has

led to a fundamental question being raised by civil society at large: will any concrete change actually happen in the MoEF beyond the Minister?

By way of background, the Expert Appraisal Committees (EAC), constituted by the Ministry of Environment and Forests to assist it in the Environmental Clearance process, serve a very significant function of appraising projects which have applied for clearance and then giving their recommendations. The High Court of Delhi has considered this 'outsourced task of evaluation' as a 'valuable input' in the decision making process. Therefore, it is crucial that the credibility and integrity of the EACs are of the highest order. In the past two years, two chairpersons of EAC have been removed (or made to resign) on the ground of conflict of interest and it has cast several questions on the appointment and functioning of the EACs. Given this, the Ministry's recent decision to reconstitute the EACs and to issue fresh Terms of Reference (TORs) to the newly constituted EACs was welcome - **but its result, worrying.**

The reconstitution of three EACs (River Valley Projects, Thermal Power and Coal Mine Projects, and Infrastructure, building/construction and industrial estates and Miscellaneous projects) and the fresh TORs that were issued were worrying for several reasons.

First, Chairpersons of two of the EACs - Mr. Rakesh Nath (River Valley Projects) and Mr. VP Raja (Thermal Power and Coal Mine Projects) – were in letter and spirit in violation of the orders of the Supreme Court of India and the High Court of Delhi. The Supreme Court of India in I.A. No. 1126 of 2004 in *T. N. Godavarman Thirumulpad v. Union of India*, W.P. (C) No. 202 of 1995, had considered the issue of appointment of members of the Forest Advisory Committee (FAC) constituted under the provisions of the Forest (Conservation) Act, 1980. The Ministry had appointed civil engineers, mining experts and development economists as non-official members so that a technical review of the project could be undertaken. No environmentalists, NGO representatives or people from the field of forestry and allied disciplines were appointed. The Supreme Court in its order dated 28.11.2006 took a strong view of the stand taken by the Ministry of Environment and Forest. According to the Court-



Rakesh Nath

"To say the least, the approach [of the MoEF] ... shows total unawareness of the object with which the aforesaid legislations and, in particular, FC Act were enacted. There are administrative Ministries dealing with the projects that may be under consideration, be it irrigation project or a hydro electric project or a mining project. There are legislations which deal with the extraction of minerals and reclamation and there are detailed rules and regulations regarding the dump areas etc. These are the matters strictly not falling within the domain of the Ministry of Environment and Forests. As the name itself suggests, the specific Ministry has been constituted in Government of India for protection of environment and conservation of forests. If, despite that, any expert for a particular project is needed, the expert cannot be substituted for the three eminent experts in forestry or allied disciplines, as stipulated by Rule 3 of 2003 Rules."

The Court concluded that ‘mining or other developmental projects’ cannot be said to be allied disciplines of forestry. Allied disciplines could be like water harvesting, wildlife protection, bio-diversity. The situation with respect to the appointment of the EAC under the Environment Impact Assessment Notification, 2006 as well as the role expected of the EAC is no different from that of the FAC and therefore those appointed as members of the EAC should have expertise in environment and forests.

Finally succumbing to the pressure from the Court, the Government was forced to appoint non-official members such as Mahesh Rangarajan, Ullas Karanth and Madhav Gadgil as members. Unfortunately, while forest decision making has benefitted from Civil Society inputs, environmental decision making remains firmly within the direct and indirect control of the Industry.

In *Uttakarsh Mandal v. Union of India* [W.P No. 9340/2009 and CM Appeal No 7127/09, 12496/2009,] the High Court of Delhi had dealt at length with the manner in which Expert Appraisal Committees function and their constitution. One of the issues that came up before the Court during this case was the appointment of Mr. ML Majumdar as the Chairperson of the Expert Appraisal Committee (Mines). Mr. ML Majumdar, a retired Additional Secretary and Joint Secretary, Ministry of Mines was at the time on the Board of Directors of four mining companies. The High Court of Delhi held:

“As regards the EAC (Mines) it is surprising that the 12 member EAC was chaired by a person who happened to be Director of four mining companies...Appointing a person who has a direct interest in the promotion of the mining industry as Chairperson of the EAC (Mines) is in our view an unhealthy practice that will rob the EAC of its credibility since there is a direct and obvious conflict of interest”
(emphasis added)

The appointment of Mr. Rakesh Nath and Mr. V.P. Raja is in direct contravention of this order of the division bench of the Delhi High Court which has attained finality and is therefore binding on the Government. Neither person has any credentials with regard to environmental issues, and their expertise lies elsewhere. Given their appointment as Electricity Regulators, both of them have interest in the promotion of the electricity sector. Therefore, undoubtedly there is a “direct and obvious conflict of interest” between their appointment as Chairmen of EACs which are to scrutinize environmental impacts of proposed power projects and their affiliation to the electricity sector.



VP Raja

Second, according to the Terms of Reference that have been issued to the newly constituted EACs, there is a duty to record reasons only while rejecting a project and not while recommending it for clearance. This is clearly arbitrary and in violation of the principles of natural justice. Given the high rate of approval of projects and the public opposition to many of the environment damaging projects, it is essential that the recommendations of the EAC approving a proposed project equally merit detailed reasons

One can only regard it as natural, that the EAC while recommending a project for approval must also give reasons commenting on various aspects of appropriateness of the proposed project in question along with reasons as to how objections raised during the clearance process, particularly the public consultation stage have been overcome/ responded to. Mere enunciation of mitigative measures (as provided in the TORs) against environmental damage cannot be considered to be adequate reason to merit approval to a project.

Surprisingly when it comes to the National Green Tribunal, the MoEF cites principles of Natural Justice in allowing appeals to be filed even if a project is rejected by the MoEF. Clearly, the Ministry is selective so far as application of Principles of Natural justice is concerned. Given the fact that many projects which are granted approval will be challenged before the National Green Tribunal and other forums, it is essential that reasons be given for approving the project.

Third, in the TORs it has been mentioned that project proposal will ordinarily be decided in a single sitting. Given the importance of the Appraisal stage in the Clearance process, it is imperative that the EAC is able to give due consideration to the proposals at length. A time-limit on decision making, even if recommendatory, has the impact of hastening the process. Not only has the Ministry set this time limit, it has not put any bar on the number of projects which can be reviewed on a single day. A perusal of the minutes of various meetings of the EACs over the past few years, reveals that the members of the EAC in their hurry to clear projects often do not apply their mind to project proposals to the extent they should which is reflected by the absence of reasons/explanation in the minutes as well as the number of projects that are discussed in one day. The High Court of Delhi in the *Utkarsh Mandal* order had made the following observation-

EAC/MoEF Entering the Guinness Book of Records?

R. Sreedhar, eRc

The members of the Environmental Appraisal Committee of the Ministry of Environment and Forests are going to enter into the Guinness Book of Records very soon. In a three day session in July this year, the Expert Appraisal Committee (Industries-I) headed by the former Petroleum Secretary Mr T S Vijayaraghavan (IAS Retired) was scheduled to study, consider, appraise and clear or provide an appropriate Terms of Reference of the Study for a whopping 73 industrial projects ranging from asbestos cement products, auroparts plants, Sponge iron plants with captive power projects and so on. The Environmental Appraisal Committee is making such a mockery of the process, considering the fact that none of the members, except perhaps the Chairperson does this function exclusively. They are teachers or members of some other institution who have significant role in those activities.

Some time ago the Delhi High Court had pointed out the consideration of more than a few in a day was not physically possible however much the EAC members may be efficient. This agenda for the 12th meeting is actually a contempt of court. Such blatant mockery should be immediately stopped. As a first step it must restrict to what it can read, assess and digest.

Second the closed door meeting between the promoters and the appraisers signals deeper malaise and even if the members were functioning honestly the element of suspicion is brought into the minds of the people. Therefore the local communities or their representatives should be allowed and given opportunity to reflect upon the position presented by the promoter.

Third the Ministry could explore more committees instead of clearing them in bulk.

Further if one sees the actual agenda one finds that even the committee is not organised in terms of the geographies. Therefore it wanders over the entire country and is unable to identify projects coming in the same regions and the need for cumulative assessments in various areas.

“45. ...We do not see how more than five applications for EIA clearance can be taken up for consideration at a single meeting of the EAC. This is another matter which deserves serious consideration at the hands of MoEF.”

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The MoEF has completely ignored this observation of the High Court.

Fourth, through the new TORs, process of site visits has been made difficult. As per the TOR (3 (iii)), ‘A site visit as part of the appraisal process may be undertaken where it is considered necessary or reasons to be recorded by the Committee and with the prior approval of the Ministry.’ This provision which is surprisingly restrictive in nature is only meant to discourage Site visits. In the last one year itself several projects were either rejected or stayed when Site Visits were conducted by MoEF after specific orders from the Court or after orders from NBWL, FAC and other such bodies. Given the general practice of undermining the ecological value of the area in EIA reports, Site Visits by members of EAC can be a crucial component in the decision making process. Further, requiring prior approval from MoEF for conducting site visit also robs the EAC of its independence.

The Co-Convenors of the eRc have written two letters to Mr. Jairam Ramesh, the Minister of State (Independent Charge) , Environment and Forests highlighting these concerns. These letters are available at <http://www.ercindia.org/node/230> and <http://www.ercindia.org/node/229>.

Notes from the field

Four Hearings and the Public: The farce of Public Hearing

Shibani Ghosh, LIFE

Principle of participatory democracy, heart and soul of the EIA process, the voice of the voiceless – many phrases have been used to describe Public Hearings. There is no doubt that when the Public Hearing requirement was introduced in the Environmental Clearance process in 1997, it was a very significant policy measure – for the first time people were being given a voice, though a somewhat feeble one, in the process. But like many other laws in this country, the noble objective of public participation in environmental governance is

An analysis of the four Public Hearings reveals a shocking consistency in the illegalities committed during the Public Hearings. If the purpose was to elicit public opinion and to have an informed public debate on the project, these Public Hearings achieved neither

far from being met. Pollution Control Boards across the country and Project Proponents have treated the Public Hearing as a procedural

hurdle in the Environmental Clearance process which has to be overcome by organizing a sham event. Gaurav Shirdkar, eRc, attended four Public hearings in Maharashtra in April-

May 2010 and spoke to project-affected persons and local NGOs. An analysis of the four Public Hearings reveals a shocking consistency in the illegalities committed during the Public Hearings. If the purpose was to elicit public opinion and to have an informed public debate on the project, these Public Hearings achieved neither. Four years after the EIA Notification 2006 came into force, the pollution control board of one of the largest states in the country chooses to be ignorant of the procedure of conducting a Public Hearing. The illegalities in the Public Hearing process occur at various levels some of which are— No proper intimation to the public about the Hearing

- Unavailability of required documents at the designated offices
- Inadequate arrangements to ensure 'widest possible public participation'
- Disallowing effective participation during the Hearing
- Incorrect reporting of the proceedings.



This is a short review of the four Public Hearings, highlighting the illegalities in the process. As stated above all four Public Hearings took place in Maharashtra – in the neighbouring districts of Sindhudurg and Ratnagiri in the Konkan division of Maharashtra. The first of the four Public Hearings attended was the one held on 12 April 2010 for iron ore mining by M/s New India Mining Corporation in Dongarpal Mine, Sindhudurg District, Maharashtra. The second was held on 20 April 2010 for proposed iron ore mining in the North Galel Iron Ore Mine in the Galel village, Sawantvadi taluk, Sindhudurg district by M/s Raw and Finished Products. The third Public Hearing was also for an iron ore mining project – in the Asniye mines - by M/s Sindhudurg Mining Corporation. The Public Hearing for this was held on 22 April 2010. The last of the four Public Hearings was held on 16 May 2010 for a nuclear power plant which is proposed to be set up in Jaitapur, Ratnagiri District.

The EIA Notification has stipulated certain requirements which have to be met before a Public Hearing is held – which includes issuing a notice in two newspapers announcing the Public Hearing at least 30 days in advance. It also requires certain documents to be made available at designated offices and websites of the Ministry of Environment and Forests, the Pollution Control Board and the Project Proponent, so that persons who wish to participate in the Public Hearing can form an informed opinion. It is the responsibility of the State Pollution Control Board to ensure that there is 'widest possible public participation' in a Public Hearing.

For the Galel Public Hearing, local people of the area were not aware of any notice that may have been published to advertise the Public Hearing. Before all four Public Hearings, the complete documents were not available at all the designated offices and the websites. For instance, before the Jaitapur Public Hearing, the draft EIA Report and the Summary of the EIA report were not made available on the websites of the Ministry of Environment and Forests, Maharashtra Pollution Control Board or the Project Proponent. The Summary of the EIA report in English and the draft EIA Report was only made available at the District Magistrate's office. Persons who were interested in viewing these documents were asked to queue up outside the office- to enter from one side, view the report and exit from the other door. It was only five days before the Public Hearing that the draft Reports in English were provided to the Gram Panchayat offices of Madban and Varliwada. The other three project-affected villages did not even receive any documents. Given that the proposed project will be world's largest nuclear power plant – ten times the size of the Chernobyl plant – one would think that the Pollution Control Board would have taken special care to ensure that an informed public debate takes place before such a high-impact plant is forced on the people. Instead, not only were the documents not made available before the Public

... in each of the four Public Hearings, the Project Proponent made an almost incomprehensible presentation. Persons were prevented from asking questions or from getting clarifications. In the Dongarpal Public Hearing, the representative of the Project Proponent made his presentation without a break, occasionally pointing to the screen which was hardly visible even to the persons sitting in the first row.

Hearing, the Public Hearing was organized on a day on which the public administration knew people would find it difficult to attend. The date of the Public Hearing (16 May 2010) coincided with *Akshaya Tritiya* - the most auspicious day of the year (according to the Hindu Calendar). An appeal was sent to the district administration to postpone the date of the Public Hearing as many people would be busy with religious activities which are undertaken on this auspicious date. The district administration chose to ignore this representation.

During the Public Hearing, the Project Proponent is supposed to make a presentation explaining the Project and its impact and then each person attending the hearing is supposed to be given an opportunity to ask questions and seek clarifications. However, in each of the four Public Hearings, the Project Proponent made an almost incomprehensible

presentation. Persons were prevented from asking questions or from getting clarifications. In the Dongarpal Public Hearing, the representative of the Project Proponent made his presentation without a break, occasionally pointing to the screen which was hardly visible even to the persons sitting in the first row. The projection of the presentation on the screen suddenly stopped but the representative continued speaking. By the time the projector started the narrator had almost completed more than half of the presentation. When the people started shouting slogans against this and stated that they could not understand a word and also could not see anything, the Collector intervened and said the Project Proponent was doing a favour by making the presentation. After the completion of the Presentation, the representative of the Project Proponent did not once come back to the dias to give any responses to the questions asked by the Public. In the Galel hearing, the Collector informed the people that no clarifications will be given during the Public Hearing.

In the Jaitapur Hearing, the public were allowed to ask questions, but the Project Proponent did not respond to most of them.

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One of the purposes of a Public Hearing is to ensure that the concerns of the people are taken into account while deciding whether an Environmental Clearance should be granted or not. For this, it is important that the proceedings of the Public Hearing are accurately minuted and then read over and explained to the audience so that there remains no doubt that the concerns have been taken on record. This is provided for in the EIA Notification.

After the Asniye and Dongarpal hearing, the summary of the proceedings were not provided to the participants. On being asked, the Collector said it was not possible to prepare so soon. Clearly, he did not think it was necessary to meet the requirements of the law. In the other two Public Hearings – Galel and Jaitapur – the minutes were read out, but they were entirely inaccurate and did not cover several points raised by the public.

It was apparent at all four Public Hearings that the people were eager to exercise their right to participate in the decision making process – in the limited way that they are permitted. At least two of these Public Hearings (Jaitapur and Dongarpal) were marked by widespread public protest against the Project before and even during the Public Hearing. But while the law recognizes the right to participate and protest, the powers-to-be in Public Hearings – the local administration and the PCB (and the Project Proponent) – consider themselves to be above the law. Principle of participatory democracy, heart and soul of the EIA process, the voice of the voiceless – then mean nothing, just hollow phrases.

EIA Critique

NUCLEAR POWER PLANT IN JAITAPUR BY NPCIL

The Nuclear Power Corporation of India Ltd. (NPCIL) is proposing to set up a 10,000 MW nuclear power plant near Jaitapur in the Ratnagiri district of Maharashtra. This would be the world's largest nuclear power plant. Currently, the Kashiwazaki Kariwa Nuclear Power Plant in Japan is has the highest capacity of 8,212 MW. The proposed plant would be ten times the size of the Chernobyl plant. The Jaitapur plant will have 6 reactors with capacity of 1650 MWe. French company Areva has entered into a Memorandum of Understanding (MoU) with the NPCIL to supply the reactors for the proposed plant. The EIA report submitted by NPCIL has been critiqued by Mark Chernaik, Scientist, E-LAW US. He evaluated the EIA Report on three grounds and has come to the conclusion that the assessment is deficient by Indian as well as US standards. The EIA report for the proposed Plant at Jaitapur should inform Indian authorities and the Indian citizens whether the staggering cost of building a new nuclear power plant is a better way forward than investing limited public funds in initiating energy conservation measures or certain new energy generating projects that close the gap between energy needs and energy availability over a much shorter time period.

The following is a brief overview of his critique:

1) Assessment of the environmental consequences of a severe accident

The EIA for the Proposed Nuclear Power Park at Jaitapur does not contain an assessment of the environmental consequences of a severe accident. In his critique, Mark discusses the requirements under US regulations for new Nuclear Power Plant Environmental Impact Statements and other related regulations. He finds that the following information is lacking in the EIA report submitted by NPCIL:

- Dose consequence analysis for severe accidents at the proposed Plant, including the socio-economic impacts and, where applicable, the impact to biota
- A list of leading contributors to (1) core-damage frequency (e.g., from dominant severe-accident sequences or initiating events), (2) large-release frequency (e.g., from each containment failure mode or accident-progression bin), and (3) dose consequences with and without interdiction (e.g., from each release class and associated source term)
- A summary of atmospheric releases in severe-accident sequences (this includes the accident sequence or sequence group, the probability of the accident sequence per reactor year, and the fraction of the core inventory released)
- A summary of the environmental impacts and probabilities of severe accidents (including the probability of impact per reactor-year, the number of persons exposed to doses greater than 2 sieverts (200 rem) and greater than 0.25 sievert (25 rem), the population exposure, the number of latent cancers, and the cost of offsite mitigating actions) at the proposed Jaitapur Nuclear Power Plant.
- A summary of early fatalities and probabilities (including the probability of impact per reactor-year)
- The average values of environmental risks resulting from accidents per reactor-year
- Consequences of an aircraft impact with the proposed facility and assessment of the consequences of a terrorist attack on the proposed facility.

2) Assessment of the environmental consequences of the transportation of radioactive materials

The report does not contain an assessment of the environmental consequences of the transportation of radioactive materials. In September 2008, the U.S. Environmental Protection Agency published the following guidance: §309 Reviewers Guidance for New Nuclear Power Plant Environmental Impact Statements, EPA Publication 315-X-08-001. With regard to the assessment of the environmental consequences of the transportation of radioactive materials, this document states:

“Overall, potential radiological impacts from transportation include possible exposures of transport workers and the general public along the proposed

transportation routes, and radiation exposure to these groups that may occur through accidents along transportation corridors. ...

“Environmental impact data exist for light water reactors meeting specific criteria, including transportation of fuel and waste to and from light water reactors, but not other reactor types. These data are presented in 10 CFR 51.52 in Table S-4, —Environmental Impact of Transportation of Fuel and Waste To and From One Light-Water-Cooled Nuclear Power Reactor. For reactors not meeting the conditions listed in 10 CFR 51.52 (a) for which the Table S-4 data are relevant, the EIS must present a full description and detailed analysis of the environmental effects of transportation of fuel and wastes to and from the reactor, including values for the environmental impact under normal conditions of transport and for the environmental risk from accidents in transport.”

The EIA report for the Proposed Nuclear Power Park at Jaitapur completely lacks any assessment of the consequences of the transportation of radioactive materials.

3) Assessment of alternatives to the proposed project

The report lacks an assessment of competitive alternative energy sources and systems. Chapter 5 of the EIA (Analysis of Alternatives (Technology & Site)) is a narrow analysis of alternatives excluding any other possibility except for construction of a new nuclear power plant. This narrow assessment fails to examine alternatives involving meeting electrical energy demand without constructing new generating capacity (for example, purchasing from another utility) or initiating energy conservation (including energy efficiency) measures that would avoid the need for the plant. This narrow assessment also fails to examine alternatives not yet commercially available, fossil fuels (taking into account national policy regarding their use as fuels), and alternatives uniquely available within the region (such as hydropower and geothermal).

AFTERWORD

ONLY SPEED BREAKERS?

Even the most diehard critics of the MoEF will accept that some things have changed. Some would say ‘well compared to the Balu-Raja era it is better! But have things really changed in the Ministry of Environment and Forests?

One clear indicator is to see some of the patterns of the decision making adopted by the MoEF. Let us look at three specific instances:

The first relates to a proposed mine in Goa by SESA Goa Ltd. (a subsidiary of the Vedanta Group) called the Pirna Mines. It was approved by the MoEF and an appeal was filed before the NEAA. The NEAA found that there was 100 % opposition of the people to the mining and the Expert Appraisal Committee did not consider the large scale opposition to the proposed mining by the local communities. The NEAA directed that the EAC should visit the site and meet with the locals and reconsider the approval granted. The NEAA also imposed an interim stay on the project. Accordingly, the MoEF team visited the site and met with the locals. And as expected, the MoEF came to the conclusion that the approval was rightly given and that the apprehensions of the locals are unfounded. Accordingly, it recommended approval of the project.

Similarly, in case of Rivona mines of Goa, the Delhi High Court (***Utkarsh Mandal v. Union of India***) directed the EAC to reconsider the approval in the light of the opposition of the people to the project. Accordingly, a site visit was conducted by the MoEF team during the first week of January 2010. The team visited the site but strangely chose not to inform or interact with either the petitioners or the local affected people. It held discussions with officials, mine owners and finally recommended approval of the project.

In case of the JSW Thermal Power Project, the Delhi High Court in 2009 put a stay on commercial operation till detailed studies on the impact on Mangoes and Fisheries are conducted. The Study would have normally taken four years. But here again the MoEF with remarkable speed approved the project with a condition that a monitoring committee would be set up.

This brings out a pertinent question. Why is the MoEF shying away from cancelling project based on wrong data and concealment of information? Civil society groups have been euphoric when a 'stop work' order or a 'stay' is imposed on a project. But then what happens to the projects. Those who have followed the sequence of projects, it is clear that these stop work notices and stay orders are merely speed breakers and no final brake is ever applied.

SUPPORTERS



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**EIA Resource & Response Centre (ERC)
and The Access Initiative, India Coalition**

***ERC** is a joint initiative of the Legal Initiative for Forest and Environment (LIFE), The Environics Trust and PEACE Institute.*

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ERC invites comments, suggestions as well as papers and articles and news of EIA issues. Please send them to-

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