3. The Formation of a Public–Private Alliance

With the Samatha judgment only making allowance for mining by public sector and tribal cooperatives in Andhra Pradesh, and the cancellation of a bauxite project proposal by Dubai investors in the state in 2003, it might have been assumed that no further attempts would be made to exploit the state's bauxite deposits of the state, at least for a while. But once the Congress Party returned to power in 2004, both nationally and in Andhra Pradesh, it was only a year or so before a new memorandum of understanding (MoU) was signed, this time with Jindal South West (JSW).

At the time, this project was but one of many of similar size and importance to the state's economy, and since measures to attract private-sector investment had been the norm for a number of years, there was nothing extraordinary about the government signing an agreement with a private company. What was crucial, however, was the fact that this was a proposal for industrial development in the Scheduled Areas, and this was an issue that had been contested for many years, resulting in strong protective legislation and a vigilant civil society. From the outset, the MoU had to be drafted in a complicated manner to ensure that the ore could be exploited in collaboration with a private company that was not allowed to operate in, or even be seen as to benefit directly from resources contained within, the Scheduled Areas. If the MoU did not comply with the land legislation, it was obvious that civil society organisations would challenge it in courts, and the challenge would have a good chance of being successful.

The starting point for a closer examination of the conflict over the proposed bauxite project is to detail the way in which it was planned and the identity of the proponents. From there we can proceed to an examination of the distributional outcomes by looking at the potential public benefits to be derived from the agreement.

Project Formation

With the Essar, Jindal and Birla conglomerates already involved in the aluminium industry or planning to enter it, the Tata Group was the only one of the major domestic metal producers not currently pursuing the bauxite ores of central India (see Table 3.1). As many as 12 bauxite mining and refining projects were at various stages of development in Odisha (Reddy 2006), with three in Andhra Pradesh, but the only recently opened bauxite mines anywhere in India were the two with low grades in Chhattisgarh and Maharashtra and one with non-metallic grades in Gujarat. However, a number of aluminium smelters had been constructed in areas without bauxite deposits, and some of the older refineries had recently been upgraded or expanded to accommodate new technology without the acquisition of additional land, thereby avoiding controversies related to displacement. An increase in the ability and interest of mainly Indian big business to establish an aluminium industry was countered by the strengthening of resistance on the part of oppositional groups in civil society who were able to mobilise across geographical scales. Between these two positions were state and national governments that had increasingly, but not invariably, supported industrial interests.

Table 3.1 Alumina refineries in central India.

Operator or proponent	Location	Commencement
Hindalco	Muri, Jharkhand	1948
Hindalco	Renukoot, Uttar Pradesh	1962
Balco (Vedanta since 2001)	Korba, Chhattisgarh	1965
Nalco (Government of India)	Damanjodi, Odisha	1986
Utkal Alumina (Hindalco)	Kashipur, Odisha	1992
JSW Aluminium	S. Kota, Andhra Pradesh	2005
Vedanta Aluminium	Lanjigarh, Odisha	2007
AnRak Aluminium (Penna Cement and Government of Ras al-Khaimah)	Makavarapalem, Andhra Pradesh	2007

Much about the way that the JSW bauxite project came into being remains unknown, but it must clearly have involved a significant planning effort due to the size of the investment and the complexity of the land situation. As far as is known, there was no tender process for the investment, though discussions were held with other potential investors, including Nalco (Andhra Pradesh 2005a). It would have been difficult for members of the state government to initiate plans just when the Congress Party had unexpectedly returned to power after 10 years in opposition. In any case, a generally poor level of state government capacity makes it harder for local bureaucrats to pursue plans that necessarily combine complex technical, economic, political and legal aspects. The Jindal Group, headquartered in the north Indian state of Haryana, which until now had been almost exclusively a steel producer, did not have any major operations in Andhra Pradesh, making it a somewhat unlikely investment partner. For these reasons, the project was seen by some parties as a central government initiative rather than a state one.

The project proponents and their consultants were able to plan and formalise their cooperation in a business agreement without engaging in public debate on a known issue of concern, and yet the Land Transfer Regulation could not be changed. Instead, the 2005 agreement explicitly accepts the special protection of tribal people's land affirmed by the Samatha judgment. It even includes a reference to an old government ruling from 1975 to further justify the supply of ore by a public company to a private investor:

> Whereas, the State of Andhra Pradesh is having rich bauxite deposits in Visakhapatnam and East Godavari (EG) Districts, consisting of about 550 million tonnes of metallurgical grade. Keeping its importance in view, the GoAP have reserved the entire deposit bearing areas available in EG District and Visakhapatnam District through [Government Order] No. 999 … 25/10/1975 for exclusive exploitation by the public-sector undertaking. Further, all these areas are falling under reserve forest as well as notified tribal areas. As per the AP Land Transfer Regulation 1959, transfer of these areas to non-tribals is prohibited. Further the Hon'ble [sic] Supreme Court of India in Samatha vs. State of AP case gave ruling that the state-owned Corporation can mine these areas and in case state owned Corporations are involved in mining, it does not amount to transfer of the areas to non-tribal. Considering these facts, GoAP is looking after a highly competent and financially sound entrepreneur who can establish value-added industry to produce end-products, based on these valuables, mined by APMDC Ltd (Andhra Pradesh 2005b: 1).

The MoU specified which deposits would be mined by the state-owned Andhra Pradesh Mineral Development Corporation (APMDC) to produce the ore required for about 30 years of alumina refining:

> GoAP shall direct APMDC to supply bauxite from out of the areas applied by them in Araku (Galikonda, Raktakonda & Chittamgondi) & Sapparla Groups, consisting of approx. 2446 ha. and containing approximately 240 million tonnes of bauxite ore (Andhra Pradesh 2005b: 2–3).

The MoU also specified that the privately owned refinery must be located outside of the Scheduled Areas in order to comply with the Land Transfer Regulation. The agreement states that JSW Holding Ltd (JSWHL):

> or its subsidiaries undertake to incorporate and promote a company … which will set up an alumina and aluminium refinery and smelter to produce about 2.5 lakh [250,000] tonnes of Aluminium per annum initially, with a provision for suitable expansion, in the State of AP. at the locations other than the scheduled areas mutually agreed to by the two parties and with a capital outlay of about Rs 9000 crores [90 billion rupees] (Andhra Pradesh 2005b: 2).

The proposed operations might seem to follow the law, since the government would be allowed to mine in the Scheduled Areas and the refinery would be built on non-scheduled land. However, the terms of the proposed cooperation between them are crucial, since the Land Transfer Regulation not only prohibits direct ownership of the resource by a non-tribal entity, but also the so-called *benami* operations undertaken in the name of a tribal entity but for the benefit of a non-tribal entity—in this case a private company. The MoU contained no detailed discussion of the benefits of the proposed project, or indeed of who would be planning, financing and undertaking the actual mining operations that must legally be confined to the public sector. But a number of passages appear to cast some doubt over the existence of any public benefits, or even any public involvement. The MoU made it clear that APMDC would not be able to bear the costs of mining, and might also need the expertise of JSW to prepare its plans, as illustrated in these extracts from the MoU:

> JSWHL or its subsidiary company shall bear all the expenditure in preparation of mining plans, cost of afforestation, net present value being payable to the Forest Department, etc.) …
>
> APMDC shall take the expertise of JSWHL or its subsidiary in preparing the feasibility reports, mining plans, etc. required for getting clearances from MoEF [Ministry of Environment and Forests], Govt of India for further leases …

> JSWHL/subsidiary shall provide machinery required for mining lo APMDC on hire basis. The hire charges shall be fixed by a [government-appointed] Committee …
>
> JSWHL/subsidiary shall provide cost of infrastructure required for development of mines as fixed by the Committee constituted by GoAP (Andhra Pradesh 2005b: 3–4).

Apart from allocating the ore to the private investor, the state government had one specific role to play in the agreement, which was to acquire land on behalf of the company.

> JSWHL … shall identify suitable land other than the land in scheduled areas. The same will be acquired and handed over to JSWHL … by GoAP/Collector (ibid.: 3).

Despite the legal terms of the agreement, and the anticipation of a three-year implementation period, progress on the ground was very slow. The refinery was approved and land was acquired after two public environmental hearings, but the mining operation had not undergone the environmental clearance process by 2012. A public hearing was promised in October 2009 but this was later cancelled for unknown reasons.

In February 2007, a second bauxite project was announced, replicating the earlier arrangement with JSW. The private-sector partner in this project was AnRak Aluminium, a joint venture between the Government of Ras al-Khaimah, one of the United Arab Emirates, and Andhra Pradesh–based Penna Cements (see Figure 3.1). This project has not only moved much faster and overtaken the APMDC–JSW project, but has been openly described as a 'Congress Party project'. Evidence pointing towards a local Congress Party connection was initially somewhat slender, since emphasis was placed on the foreign investor, but it turned out that Penna Cements, a company owned by the treasurer of the Andhra Pradesh State Congress Party, had made an investment in a cement plant in Ras al-Khaimah a few years earlier (Ras al-Khaimah 2006). Interviews conducted in 2007 and 2008 identified the same treasurer as an investor in AnRak Aluminium itself, along with other Andhra Pradesh Congress politicians. In 2012, the AnRak Aluminium website made it clear that Penna Cements was the primary investor in AnRak Aluminium; and interviews at the almost completed refinery revealed that Penna management was mainly responsible for day-to-day operations (Oskarsson 2012). The importance of political connections in the award of mining contracts was thus reaffirmed.

Figure 3.1 Construction of AnRak Aluminium's alumina refinery in Visakhapatnam District.
Source: Photo by author, July 2012.

In 2009, after many years of negotiations, Nalco was announced as the investor in the last remaining bauxite deposits available in Andhra Pradesh. However, this project has made no progress since the announcement.

The Government of Andhra Pradesh

The political component of the bauxite alliance initially involved a small circle of top state Congress politicians. Of paramount importance was Chief Minister Y.S. Rajashekhara Reddy ('YSR'), a powerful factional leader from the southern Rayalaseema region of the state, who had managed to unite the Congress Party and remove the seemingly unbeatable Chandrababu Naidu of the Telugu Desam Party in 2004 (Balagopal 2004). Virtually all decisions of economic importance apparently needed his approval, and minutes or notes of meetings about the bauxite project confirm that he was present. Chief Minister Reddy also played a key role in the state government when acting as its spokesperson on economically important projects and lobbying for administrative approvals from the national government. As one journalist put it: 'The CM is acting like a public relations officer for the companies when he comes to Delhi' (interview, Delhi, 2 May 2008).

While nominally belonging to the same governing party, the politicians seen as crucial in the formation of the bauxite alliance were of mixed regional, caste and class backgrounds, with the Reddy caste in a dominant position. For the purpose of alliance formation politicians only need to have a shared interest in the implementation of one major project. Allegations of favouritism in awarding contracts have been particularly common in the case of irrigation and mining projects in Andhra Pradesh. According to one local investigator:

> All irrigation projects are [implemented] by politicians but there are also some TDP [Telugu Desam Party] contractors. Congress said openly that we are also giving you contracts so stop complaining. They will all cooperate on this and also did [under] earlier governments (interview, Hyderabad, 28 February 2008).

An investigator in Visakhapatnam agreed:

> things move only through favours and you need political support which is unfortunate. The CM's son gets things done super fast (interview, Visakhapatnam, 7 February 2008).

Any major investment is given preference in a state where economic growth is high on the agenda, but certain investors with direct links to the state government are given special priority. As K. Balagopal, a well-known commentator on politics in Andhra Pradesh, expressed it at the Southern Regional Strategy Meeting on Special Economic Zones held in Chennai in 2008:

> In Andhra Pradesh all the developers are relatives of the Chief Minister. Tata and Jindal come second in the state.

We might thus expect that Jindal's bauxite project would be given somewhat lower priority if other investors with closer personal relations to the state government also needed support. One such would be AnRak Aluminium.

This is related to the fact that many—if not all—of the most powerful politicians in Andhra Pradesh are also businessmen these days. The chief minister's son, Y.S. Jagmohan Reddy, oversaw the development of a major business empire during the period from 2004 to 2009, which included a state-wide newspaper and TV news channel called Sakshi, a cement plant associated with a limestone mining lease, and information technology parks. Meanwhile, the former treasurer of the Andhra Pradesh Congress Party, P. Pratap Reddy, another relative of the chief minister, was the owner of Penna Cements and hence an investor in AnRak Aluminium.[1]

The promise of land set out in the MoU for the Jindal project was such as to ensure that select members of the legislative assembly (MLAs) from the project area would be actively involved. For example, it was the housing minister from Vizianagaram District and the commercial taxes minister from Visakhapatnam District, rather than the mining or industry ministers, who were recorded as supporting the project in minutes of meetings about it. On the other hand, the MLA for the tribal reserve of S. Kota, including the proposed mining area of Araku, does not seem to have been involved in the decision-making process, but did not voice any opposition to plans that were unpopular among his constituents. Being part of the circle around the chief minister and in control of personal networks of influence at the project sites seems to have been more important than nominal responsibility for portfolios like industry, mining or tribal welfare.

Of course, politicians are not only—or even mainly—concerned with making money, since they also need to maintain favour with the voters in order to get themselves elected or re-elected. For this purpose, a pro-poor image is essential since the poor make up the majority of voters. In Andhra Pradesh, the promotion of business is never presented as something opposed to poor people's rights to land and livelihoods. However, key politicians from the southern parts of the state are not especially aware of the important role that tribal land rights legislation plays in the Scheduled Areas. One senior administrator, who attended a high-level meeting in Hyderabad during the period when the bauxite project MoU was being finalised, commented as follows:

> YSR was talking about so-and-so much money being spent on tribals and I got a bit agitated. I said I wanted to speak to give a reply. I told the CM, 'Look Mr Chief Minister, for heaven's sake don't keep talking about this. Because the money you spend in the tribal areas goes to contractors and intermediaries; it doesn't really reach the tribals. What the tribals need is not money; they want their rights. The problem is that as soon as some officer tries to transfer land [back] to tribals you will transfer

1 They were connected to the central government through the federal mining minister, T. Subbarami Reddy, who has been involved in road and dam construction through the publicly listed company Gayatri Cements, notionally run by his own son.

> that officer. Your government will not allow land to be restored to tribal people. Basically what they want is the right to be recognised. They want the ability to supervise their own schools, their own hospitals. Give them the chance to become involved. Not money.' You know the reaction of the Chief Minister? I was sitting at a table with the Chief Secretary next to me and then the Chief Minister. The Chief Minister was whispering in the ear of the Chief Secretary. He was asking, 'What is this land transfer regulation?' (interview, retired Indian Administrative Service officer, Visakhapatnam, 20 October 2006).

An important part of the ability of top politicians to influence outcomes lies in their ability to exert pressure on the bureaucracy. This was evident in one meeting of senior state bureaucrats organised by the chief secretary, where the secretary of the Forest Department failed to make an appearance on the grounds that 'all the decisions are made by the CM anyway' (interview, retired Indian Administrative Service officer, Hyderabad, 26 February 2008). Since politicians could not hope to know the intricate details of the many procedures involved in formulation and implementation of the MoU, it was even more important for them to know the administrators would do what they were asked to do. Throughout the planning and implementation of the project, there were few if any noticeable disagreements between them, despite what appears to be a significant level of uncertainty about rule-bound governance, including a number of recent corruption scandals in the state that were related to mining and industrial development.

This was how the political side of the bauxite alliance appeared to be configured during the period of my fieldwork, but after the elections of 2009, and despite the return to power of the Congress Party, both at state and federal levels, the bauxite alliance underwent significant changes. To understand this reconfiguration, it is important to show how politicians might appear to be in a superior position when they are elected, but ultimately have to be concerned about how voters perceive them or else risk being voted out of power.

The project's main promoter at the federal level, the mining minister, lost ministerial office despite remaining as a nominated *rajya sabha* (upper house) MP. One of the main local spokesmen for the project lost his seat in the non-tribal part of Visakhapatnam District and thus his position as state minister for commercial taxes, but Chief Minister Reddy, before his untimely death, strengthened his position after the 2009 elections, and even managed to get his son elected to the state parliament. In addition, Vizianagaram District moved even more firmly into the hands of housing minister Botcha Satyanarayan's family, and hence the Congress Party. Apart from his government ministry, they now accounted for three of the district's seven state MLAs, while Mr Satyanarayan's wife was now a federal MP.

The most important change, however, took place in the central government, where the Congress MP Jairam Ramesh, who had expressed his concern for the future of the Araku coffee growers, became the new environment minister after this position had been held by the Tamil Nadu–based Dravida Munnetra Kazhagam Party in a succession of previous administrations. A stronger enforcement of environmental laws therefore seemed to be forthcoming, most importantly with the prospect of no further environmental approvals for mines across the country until the new Forest Rights Act had been implemented (India 2009a). While the new minister was likely to be placed under pressure to approve the bauxite project by fellow party members in Andhra Pradesh, this was clearly not what local Congress Party representatives had expected when the party strengthened its grip on power after the elections (Anon. 2010a).

Andhra Pradesh Mineral Development Corporation

The state mining company, APMDC, was on the verge of being closed down completely in the 1990s after it had incurred mounting losses. Since then, it had gone through a process of drastically scaling down the number of its own employees while taking part in a growing number of major investment deals. Its own mining operations were confined to a black marble mine in the southern district of Kadapa. With only 230 employees and strict limits on recruitment, the many new mining projects that had been proposed in its name did not indicate any actual increase in mining activity.

It is the mine planning section of APMDC that has taken on a more important role in recent years. Given its close connections to the state's Mines and Geology Department, with which it shares a managing director, the mine planners are in a prime position to apply for leases over new deposits, which are allocated on a first-come first-served basis, when these became available. Once a lease has been secured by APMDC it is usually sold on to a private company. The terms of the transaction, including the selection of the buyer and price charged for the asset, are open to political manipulation, and this has resulted in some of the state's biggest political scandals in recent years. As one Hyderabad-based journalist put it:

> APMDC invites for contracts but what we understand is that these are mafia style decisions. The close links between politicians and the industry and the pricing of ore is strategic (interview, Hyderabad, 25 February 2008).

Another journalist summed up the situation by saying that 'the government always get the contracts for own players when in power while the opposition protests' (interview, Hyderabad, 25 February 2008). It seems clear that political priorities have a significant influence on the way that the APMDC conducts its business. This impression was only strengthened by the arrest of three key state government bureaucrats who were accused of not following state regulations when allocating land and mineral resources to the private sector.

Figure 3.2 APMDC's office in a business centre in central Hyderabad.
Source: Photo by author, March 2008.

However, this method of allocating mining contracts to private companies could not be applied in tribal areas because of the ban on private investment. While smaller deposits have instead been auctioned on condition that only tribal people can apply for leases,[2] the bauxite project was deemed to be too large for this kind of arrangement. An authoritative source with insights into the operations of APMDC explained the situation as follows:

> Basically due to the Land Transfer Regulation in Andhra Pradesh the government has to do the mining in the state. APMDC is a very small organisation and as a government organisation it is difficult to run it efficiently. There will be political interference and we cannot hire competent people because of various rules (interview, Hyderabad, 9 April 2007).

This implies that APMDC is a rather empty public-sector operation that mainly exists on paper in order to supply private ventures like the JSW refinery. Or as one investigator put it: 'Whether public or private, ultimately it is the contractor who will carry out the work' (interview, Visakhapatnam, 7 January 2008).

Having circumvented the Samatha judgment by using APMDC as a front, the APMDC-AnRak Aluminium environmental impact assessment report for the Jerrila bauxite mine in Visakhapatnam District was confident enough to bypass APMDC in reserving a role in mine management for what for what it called the 'mining contractor' (ICFRE 2008: 164–70). This entity was not defined anywhere in the report but, given the activities assigned to it, could only be the company engaged to do the actual mining while APMDC retained responsibility for oversight. But it was still not clear that APMDC had the capacity to perform this function.

In the case of the JSW project, the role of the contractor would not be confined to the funding, planning and implementation of actual mining operations. The minutes of an APMDC board meeting also detail a range of social activities that APMDC itself planned to carry out in the proposed mining area with funding provided by JSW, though without any mention of the extent to which JSW would receive any public recognition for doing so.

> [A]bout 200 tribal youth will be trained in the mines of the Corporation at Barytes Mines, Mangampet, Galaxy Granite quarries at Chimakurthy etc. The total expenditure for imparting training to 200 tribal youth for a period of 2 years would be about Rs 2 crore as estimated. Further the Corporation would be providing mobile clinics at an estimated cost of

2 One example of this was the advertisement of sand mining leases in the riverbeds of tribal Visakhapatnam in *The Hindu* and *Sakshi* newspapers on 31 March 2008.

> Rs 10 lakhs. The Corporation will also provide the distribution of school uniforms to about 2000 school children by providing 2 pairs of uniforms, boots, and tie at an estimated cost of Rs 15.00 lakhs. The Corporation will also provide potable water initially for 2 villages i.e. Bisupuram and Nandivalasa which are near to bauxite deposits in Rakthakonda, Galikonda and Chittamgondi. The Corporation will also undertake public awareness programme by sending the public representatives to Nalco Project at Damanjodi, Orissa and conduct Gram Sabha [village assembly] and other meetings with villagers at a cost of Rs 5.00 lakhs. The total expenditure incurred on the above programmes will be reimbursed by M/s Jindal (Andhra Pradesh 2007a: 8).

One retired officer of the Indian Administrative Service confirmed that this was a widespread practice designed to create a public facade for private mining operations.[3]

Jindal South West

India's big business families have confronted very different operating circumstances in the last two or three decades. Some have been unable to deal with new sources of competition while others have diversified out of the sectors in which they were traditionally protected (Kochanek 2007). It is was therefore no surprise to see JSW, a subsidiary of the Haryana-based O.P. Jindal Group, move away from steel production, not only into aluminium but also to cement and power production.

From the operation of two small pipe manufacturing plants in West Bengal and Haryana in 1952, the Jindal Group had expanded into steel production as recently as 1970, and had since grown into a US$10 billion conglomerate, which by 2008 had made the Jindal family as the 12th richest in India, with an estimated fortune of US$2.9 billion (Karmali 2008). By then the group had 12 steel plants in India and two more in the United States, but was already divided into four main sub-groups—JSW, Jindal Stainless, Jindal SAW and Jindal Steel and Power—each controlled by one of the sons of the group's founder, O.P. Jindal. When he died in 2005, his wife Savitri Jindal assumed the role of group chairman.

3 The only exception may be found in the state of Gujarat, which has the only state mining corporation that is able to carry out large-scale mining operations on its own account.

The four Jindal brothers had substantial political and business connections between them, although they kept a lower profile than the heads of other business groups like Reliance, Tata or Birla. Naveen Jindal, the head of Jindal Steel and Power, was elected as a Congress MP from Haryana, and was said to be part of the group of young Congress MPs who were close to Rahul Gandhi. The JSW chairman, Sajjan Jindal, was the head of the Associated Chamber of Commerce, one of the top three business peak bodies in India, when the bauxite project was proposed in Andhra Pradesh.

JSW Steel was not only the main subsidiary of JSW, but also the biggest company in the entire Jindal Group, having grown to become India's largest domestic steel producer, just ahead of Tata Steel. While the group's headquarters were in Delhi, JSW was based in Bombay. As of 30 June 2009, its 8,500 employees were operating in a number of locations across India, with a major presence in the state of Karnataka. Two of its subsidiaries—JSW Steel and JSW Holdings—were already listed on the Bombay Stock Exchange, with JSW Energy planning to follow suit (JSW Energy 2008). Two other subsidiaries—JSW Cement and JSW Aluminium—were then planning to start operations in Andhra Pradesh.

The company's new projects would place considerable pressure on its finances. Steel and power investments alone were expected to require Rs 40,000 crore (about US$8 billion). The cement division of the company announced it would look for a partner for its limestone mining and cement plant in Andhra Pradesh (Kalesh 2009). Twenty-five per cent of the Rs 4,000 crore required to finance the alumina refinery would reportedly come from internal company sources, with the balance supplied by a domestic bank consortium (Rama Raju 2009), but an announcement of this arrangement was accompanied by another media statement saying that the plans would be put on hold until the market picked up (Joshi Saha 2009). It was not clear whether this was a strategic move designed to speed up the approval of the bauxite mine or whether the financial constraints created by an economic downturn warranted a greater focus on steel production and power generation, especially when power supplies were crucial for the company's other operations.

The MoU with the Andhra Pradesh Government chose to emphasise the capabilities of JSW in general rather than its knowledge of aluminium production:

> The [JSW] Group has rich experience in mining, ore transportation, metallurgical processing, refining, smelling, rolling of metals (ferrous and non-ferrous), power generation, port operation and industrial gases … It is clear that the Jindal group has the financial capacity, the organizational strength and the operational experience to set up large capacity, value addition plants of refining and smelting of bauxite ore (Andhra Pradesh 2005b: 2).

JSW did recruit some experienced staff, including the chief executive of JSW Aluminium, R.C. Swain, a former assistant vice-president with Vedanta Alumina, but most of the preparatory work was undertaken by consultants. The company even chose to operate without a permanent office in the area, instead using a few rooms in the housing estate built for employees of the Jindal Ferro-Chrome factory on the outskirts of Visakhapatnam city. A local consultancy undertook the land surveys for both the refinery and the mine, and one of its employees later became the site manager (and only on-site employee) at S. Kota. The tasks of site preparation and plant construction were also outsourced to other companies.

Regardless of who actually carried out the work, JSW Aluminium was credited as the author of the official land acquisition map for the refinery (JSW Aluminium 2007a), despite this being a task that the government was supposed to perform under the terms of the MoU. It was likewise JSW that supplied copies of official government documents to the consultants engaged in the environmental impact assessment of the mining operation, as evident in the company's office fax number on the top of each page (ICFRE n.d.). JSW thus appeared to function like a back office that processed and distributed information between government agencies and private consultants or suppliers engaged in various administrative tasks. An activist in Delhi claimed that this mode of operation was common practice amongst private mining and metals companies in India.

> Basically all these mining companies do the same; they stay away from doing actual work. Vedanta has contracted an Australian company to build their refinery and will then subcontract the mining to smaller companies. They only manage the money (interview, Delhi, 11 December 2007).

Apart from operational concerns, this poses questions about how social and environmental concerns could be handled properly with such limited experience of bauxite mining and alumina refining on the part of both of the main partners in the public–private partnership.

For the opponents of the bauxite project, JSW was a name without a face, a company coordinating work behind the scenes without ever revealing itself. The portrait of a 'highly competent and financially sound entrepreneur' in the MoU is thus of a company venturing into a new line of business, with limited in-house experience and a limited presence in the state, but an ability to mobilise the required economic, technical and political resources. At least that was the case until the economic crisis of late 2008 changed world market prices and the prospect of financing the project (Joshi Saha 2009; Rama Raju 2009).

Distributional Outcomes

Planning for large-scale mining and refining of bauxite ore in an ecologically fragile and economically poor region is a very complex matter that needs to take social, environmental, cultural, technical and economic costs and benefits into account. While the environmental and social impacts are discussed in Chapters 4 and 6, we can now consider the distributional outcomes of what was being proposed from an economic point of view, despite the difficulty of doing so when the proponents had presented broad visions rather than detailed plans. The MoU was based on a 'vision to augment growth and development in the State of Andhra Pradesh' (Andhra Pradesh 2005b: 1), while meeting minutes recorded that plans were being made 'in the interest of development of the area and tribals' (Andhra Pradesh 2005c: 2).

The project plans had to take account of material circumstances as well as the choices made in the creation of a business agreement. The fact that the bauxite ore was only present in certain locations in tribal Visakhapatnam District was impossible to ignore, but beyond this a range of different choices had to be made. An economic interest in keeping the refinery as close as possible to the mine in order to reduce transport costs had to be combined with the need to find an area of flat land on which it could be built, sufficient water to process the ore, specific methods of transporting millions of tons of ore and alumina each year, and a competent production workforce.

Given the choices that were made, it seems that the proponents opted for a complex project design that would deliver narrow economic outcomes. Had the actual goals been to augment public revenues or support a wider process of industrialisation, other choices would have been more appropriate. The evidence for this is not only the low level of forecast revenues and employment, but also the existence of a counterfactual alternative in the form of the public-sector company Nalco. Had Nalco been allowed or encouraged to invest in the project, public revenues would have been higher implementation would have been more straightforward because a public company can own land in the Scheduled Areas.

Meagre State Income from Mining

The first problem for public revenue is the low level of compensation that state governments receive directly from mining. A mineral royalty is levied on all forms of mining across the country, and determination of the royalty rate has been an ongoing issue in federal–state relations for many years. Although the states are recognised as the owners of what are known as major minerals, including bauxite, iron, coal and zinc, the royalty rates have been set by the national government. The state governments have protested, because they have to deal with the social and environmental costs of mining under severe budget constraints, but they have only been able to gain fairly modest increases in recent years (India 2006a).[4] The national government has not agree to higher increases because of its interest in supporting industrialisation and energy generation and, at least in the past, because this would reduce the profits that could be made by its own public-sector companies like Coal India or Nalco. While Andhra Pradesh has a more diversified economy than central Indian states like Odisha, Jharkhand and Chhattisgarh, and is therefore less dependent on revenues from mining,[5] it has come up with similar responses when attempting to find other ways to increase such revenues.

Aside from royalties, there were three main ways for the Andhra Pradesh Government to raise revenues from this bauxite project: by making a profit on the sale of ore to the refinery; by taxing the refinery itself; and by imposing additional taxes and fees on the land used for mining. Of these, the first two were ruled out by provisions of the MoU that set the price of the ore as 'the price as fixed by a committee formed by Govt of

4 The royalty on bauxite has notionally been tied to the world market price of aluminium but was roughly Rs 80 (less than US$2) per tonne during the period under discussion.

5 Even though Andhra Pradesh is the second biggest mining state in India in terms of royalty collection, its income from this source was only Rs 865 crore (about US$190 million) in 2004/05, or roughly 3 per cent of the state's total revenues. Odisha and Chhattisgarh received Rs 664 and 695 crore respectively from the same source (Bhushan and Zeya Hazra 2008).

AP, based on cost of production' (Andhra Pradesh 2005b: 2–3), and that declared the refinery to be a Special Economic Zone with wide-ranging tax exemptions.

Selling ore without making a profit might have necessary to attract JSW's interest in the project. The problem (for the promoters) was that the Samatha judgment required 20 per cent of profits to be set aside 'so that the constitutional objectives of social, economic and human resource empowerment of the tribals could be achieved' (India 1997: para. 114). If the profit was less than the market price for bauxite ore would have provided, then it could be argued that the bauxite project was in contravention of the judgment. A high-level committee of the Andhra Pradesh Government, with advice from PricewaterhouseCoopers, spent a significant amount of time trying to figure out how it could sell the ore at cost price to JSW, as promised in the MoU, while making it appear as if the price and the profit shared with tribal groups were both based on market conditions. The committee's solution was not to determine a market price directly, but rather to sell the ore at 1.25 times the royalty rate. Since the royalty rate was based on a formula that took account of the international price of aluminium on the London Metal Exchange, it could then be said that the ore price was based on a market price (Andhra Pradesh 2008a).[6]

The prospects for securing revenue from a land tax were unclear. The *Andhra Pradesh Mineral Bearing Lands (CESS) Act 2005* was meant to yield additional state government revenue from this source, but its effectiveness was thrown into doubt when a steel company took the government to court over the proposed tax of Rs 100 per tonne of iron ore being levied on top of the royalty of Rs 20 per tonne (Venkateshwarlu 2007).

The prospect of raising state revenues is not the only reason for a state government to encourage investment in an alumina refinery. There is also the prospect of investment in infrastructure, and other facilities that come with its construction, and the potential creation of additional employment. The problem for state governments is that there is no legal basis for demanding additional local industrial investment as

6 This approach was first established when the Ministry of Environment and Forests (MoEF) gave its approval for the Jerrila bauxite mine in 2008, despite admitting that 'the Expert Appraisal Committee has no idea about the reality' of whether 20 per cent of market-based profits would be made available for tribal welfare (India 2008c). I am grateful to Bill Lockhart (personal communication, March 2009) for his insights on this issue.

a precondition for mining. Such demands have been seen as barriers to trade within the country and have generally been struck down by the courts. Without a resolution of the federal–state conflict over how to compensate the resource-rich states, future deals between state governments and private investors are likely to continue to include combinations of mines and plants, despite an effort to limit such deals in the 2008 National Mineral Policy (India 2008d). This is all but guaranteed to cause more delays because of the increased complexity of planning for two projects instead of one and the increased risk of litigation and controversy. However, the separation of related projects may have some benefits for their promoters. In the case of bauxite, for example, where the mines are the focus of controversy, the establishment of a refinery can increase their power to bargaining for the subsequent approval of a mine (Kohli 2006).

Another aspect of this problem is the lack of incentives for states to cooperate. Bauxite ore located in the northeastern corner of Andhra Pradesh will not be processed in nearby Odisha even if the latter has better railway connections to the source or more readily available water or energy supplies. Similarly, ore from Nalco's Panchpatmali mine in southern Odisha is very unlikely to be transported across the border to Andhra Pradesh to avoid the need for new mines in the ecologically sensitive Araku Valley, no matter how technically and economically feasible this might be, since it would reduce Odisha's state revenues. It is possible that Nalco, as a major producer and exporter of alumina, could have supplied alumina to several smelters in Andhra Pradesh, but no plans have been made along these lines (Sivaramakrishna 2007). Indeed, given the interest that Nalco had shown in development of the Andhra Pradesh bauxite deposits, before any other agreements had been signed, we might conclude that an increase in government revenues has not been a high priority for leading politicians in the Andhra Pradesh Government.

Non-Tribal Industry Excluded from the Scheduled Areas

The Andhra Pradesh Government insisted on a combination of mining and refining, but the existence of tribal land rights forced what could have been one bauxite and alumina refinery project in the public sector to become two projects. Several project components caused additional difficulties when it was necessary to obtain bureaucratic approvals and acquire land for two projects instead of one. There was also the question of timing. The Andhra Pradesh Government would insist on the private investor making the first move, but the private investor would be worried that the mining lease or something else would not receive bureaucratic approval, thus creating an issue of trust between the two sides.

What made the chosen setup especially strange is that a superior alternative was already available to the state government. If Nalco had been chosen as the partner, all the facilities could have been located in the Scheduled Areas, since Nalco and APMDC are both public companies.[7] Nalco has been very profitable in recent years, operating one of the largest alumina refineries in the world.[8] It clearly has greater knowledge of bauxite mining and alumina refining technology, and of the particular operational conditions of the tribal areas of central-eastern India, than could be claimed by JSW or AnRak Aluminium.

Nalco had shown an interest in the Andhra Pradesh deposits for many years but had never been awarded a contract, nor had a valid reason for this denial ever been made public. Meeting minutes reveal how the company was willing to invest Rs 46,000 crore (about US$9.2 billion) in April 2005.

> The Chairman & Managing Director, NALCO … expressed their interest to establish industries to produce alumina/aluminium by making use of quality bauxite deposits of Jerrila area. They intend to establish Alumina refinery at Krishnadevapeta (KD Peta) and smelter at Visakhapatnam (Andhra Pradesh 2005c: 1).

The minutes suggest that the state government was agreeable:

> The Hon'ble [sic] Chief Minister instructed that APMDC will take up mining operations and supply the material to NALCO by fixing a reasonable price which includes cost of excavation and 20 per cent profit margin (ibid.: 4).

But despite these undertakings, contracts were signed with JSW and later (in 2007) with the government of Ras al-Khaimah. During this time, Nalco continued to make media statements about its intention to

7 Several public companies operate in the Scheduled Areas of Telangana, including Singareni Colleries and Sponge Iron India Limited.

8 Nalco's annual reports declared after-tax profits of Rs 24 billion (approximately US$520 million) in 2006/07, Rs 16 billion in 2007/08, and Rs 13 billion in 2008/09.

invest in Andhra Pradesh, and in early 2008, the federal mining minister announced that Nalco would soon be awarded a contract (Anon. 2008a), yet none was forthcoming.

Throughout this period, the Andhra Pradesh Government insisted that APMDC should be the mining vehicle, not so much because of tribal land transfer issues but 'for monitoring environmental and tribal welfare issues effectively' (Anon. 2006a). It was never explained why APMDC would be better at monitoring these things than Nalco would, given that Nalco was the company with actual experience of bauxite mining. Only in 2009 was Nalco granted mining leases over the last remaining deposits in the state. These are located on the border of between Visakhapatnam and East Godavari, making them the least accessible of all the state's reserves, and with the highest risk of security threats from the Naxalites. So far as is known, Nalco has not since been able to secure the crucial environmental approvals and move towards mining these deposits.

Where Were the Public Benefits?

Although Nalco's investment plans were frequently discussed in the media, and further details were available in the minutes of government meetings, it is possible that some unknown concern prevented an investment agreement. However, when seen in light of other dubious mining deals, the generally unfavourable position of public companies in Andhra Pradesh,[9] and the lack of public revenues forecast from the APMDC-JSW project, questions about the overall public benefits of this project were only intensified. When these questions could not be answered, the project could only be explained as an example of the rent-seeking behaviour that has often been associated with big mining projects.

The way the bauxite project was organised, with public-sector mining by a mining company that is unable to mine, and a private investor funding the whole project, suggests a legal arrangement designed to circumvent the tribal land transfer legislation that functions as a barrier to the bauxite industry. But a decision to circumvent rather than change the law could only add legitimacy to the continued demand for tribal land

9 Another public company, Vizag Steel, was not allowed to build a port on land it had already acquired, despite the prospect of lower transportation costs, and the privately owned Gangavaram port was instead developed on the same land. Vizag Steel also lost out to the new but politically well connected private company, Brahmani Steels, in its bid for an iron ore mining lease.

rights. At the same time, the legal manoeuvring seems to indicate that were significant limits to the power of the bauxite alliance, which would be open to challenge when the state proved unable to either operate or finance the mine.

Another aspect of the project design was the need for a significant level of trust between the company and the state government. It is not entirely clear how this trust was established or how it was reaffirmed over several years of slow implementation. For example, the company had to make significant up-front payments for the refinery, including the land on which it would be built, before any progress could be made with the mine. Given the history of bauxite mining as a major source of political conflict, what could explain the investor's confidence? Could the investment be seen as a way of securing future access to the ore deposit? If senior politicians were aware of the risk of lengthy delays, over a period in which elections were to be held and potentially lost, how could immediate dividends have been obtained from the unproductive work of securing the MoU and starting the process of land acquisition? Was it possible to secure the benefits of patronage well before the refinery had started production?

Those hoping to prevent mining could have used the prospect of limited public benefits to claim that this project would not contribute to wider economic development, either at the local or the state level, but would only benefit a small number of people. The well-known need for politicians to spend large sums of money in order to win elections could then have been connected to this lack of public benefit with the implication of rent-seeking motives. However, as we shall see in Chapter 6, the protests avoided the distributional issue, as if negotiations for improved economic compensation would have made the discourse on the dangers of mining seem less sincere. If some quantum of monetary or other benefits could compensate for all the negative impacts on Adivasi culture, then concerns about these impacts might not be taken so seriously.

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