

5. Government Mediation or Facilitation?

We have seen that concerns with Adivasi rights were relatively weak in the design of the bauxite project. Economic benefits would mainly be directed to the private investor, while Adivasi farmers would lose land to the project with only marginal compensation. While initial conditions thus looked unfavourable, implementation processes were still important. The way that the state government handled its multiple and often contradictory commitments, ensuring that due legal process was followed while facilitating project approvals and promoting private investment, became crucial in determining actual outcomes. The company itself was rarely visible in these processes, except at high-level meetings in Delhi or Hyderabad, but this was how the bauxite alliance had been formed. The state government was not expected to contribute any significant financial, technical or human resources to the actual establishment and operation of the project. Mediation is what the government, and especially top politicians, would do to justify a role in the alliance.

Mediation processes on the part of state and national government agencies determined the way in which the many existing concerns over what should happen to people, land, water, forests and minerals would be translated into actual outcomes. These took place in the complex system of regulatory control over investment approvals across national, state and local decision-making forums. At issue, though often couched in apolitical technical language, were power struggles over who should make decisions and who should benefit. The struggles over representation were not settled merely—or even mainly—in legal texts and policies,

or even in the memorandum of understanding (MoU), but in these regulatory processes. This chapter therefore examines the extent to which democratically elected local bodies were able to make their voices heard, especially with respect to environmental issues.¹ If the mining and refining of bauxite ore were presented in technical reports as activities that would directly or indirectly affect local livelihoods, this could determine people's ability to demand inclusion in the decision-making process or their right to demand compensation from the result.

Recent Reform in the Approvals Regime across Federal India

India's federal government structure largely dictates the location of decision-making power with respect to mining investments. Since the Constitution says that land, water and minerals are all state matters, state governments should be firmly in charge. However, this has not generally been the case because the central government has had various ways of ensuring its own influence, initially through control of administrative licensing and funding approvals, and more recently through environmental and forest policy measures, as well as by virtue of its stronger financial position. In recent years, India's economic reform program has also involved significant changes to industrial and trade policies, with new openings for international trade and investment. This particular bauxite project would not have been possible without such policy reform, given its reliance on imported technology, some international funding and global markets for the end product.

Much attention has been paid in recent years to the transformation of India's interventionist state into a regulatory state (Rudolph and Rudolph 2001b). This has involved the setting up of independent regulatory bodies in sectors such as electricity or telecommunications in an attempt to avoid political interference. In other sectors, expert committees have been created to provide rule-based and 'scientific' forms of decision-making. The Ministry of Environment and Forests (MoEF) exemplifies this second form of regulation.

1 See Oskarsson (2015) for a previous version of this discussion.

The key government approvals for investment in mining and mineral-processing operations are those related to the environment, to forests and to land acquisition (India 2002c), as well the grant of actual mining leases (India 2006a: 2). Environmental impact assessment (EIA) was made mandatory for certain activities, including large-scale mining, in 1994 under the terms of the *Environment (Protection) Act 1986* and its subsequent amendments (India 2008f). Changes in the use of 'forest land' have to be approved by the central government under the *Forest (Conservation) Act 1980*, and proposals covering more than 40 hectares are examined by the Forest Advisory Committee under the MoEF (India 2008f). Licences to exploit 'major minerals', including bauxite, are covered by the *Mines and Minerals (Development and Regulation) Act 1957* and the National Mineral Policy of 2008 (which replaced an earlier policy from 1993). These three types of approval affect state government decisions to approve land acquisition, which may involve the exclusion of an industrial site from limits already placed on the extent of such acquisition, the re-zoning of land from agricultural to industrial use, or the removal of an industrial township from the jurisdiction of the local panchayat.

Examination of these approval processes in the present case suggests that the process of government mediation has limited utility. For all the plans and other documents that are produced, there is little mitigation of actual negative consequences for local people or their environments. Independent analysis of the issues is only really possible when activists pursue court cases or in those (rare) cases when media reports trigger further investigations. State government procedures are especially opaque and hard to follow.

Despite the economic reforms, the bureaucracy surrounding investment decisions has retained its complexity. In 2002, it was found that a typical mining project required 37 separate approvals at the central government level and 47 at the state government level (India 2002b). Existing regulations have been seen as major obstacles to investment and economic growth, even in official circles. A committee was already established under the Ministry of Commerce in 2002 with a view to speeding up the process and 'ensuring that scarce resources are deployed effectively' (India 2002c: 1). It was noted that 'while overall policy has been liberalised, reforms in institutional mechanism and procedural simplification to translate policy liberalisation into ease of doing business have generally lagged behind' (India 2002d: 7). Forestry and environmental approvals were found to be major stumbling blocks. The approval process might

normally take about six months, but in some cases would take up to three or four years, which suggested a lack of procedural clarity and a case-by-case approach to regulation. The committee concluded that ‘in order to simplify the procedures for grant of approvals, reduce delays and simplify regulation of projects during their operational phase, re-engineering of the regulatory processes ... is an immediate necessity’ (India 2002d: 15).

Over-regulation was also identified as the main problem to be addressed in the new National Mineral Policy, which could explain why ‘the [mining] sector is unable to contribute to growth of the gross domestic product (GDP) of the country in any significant way, let alone up to its potential’ (India 2006a: 12). The delays in procedures for granting reconnaissance permits, prospecting licences and mining leases under the Mines and Minerals Act became the main focus of the mineral policy committee, but this committee also stressed the need for the forest and environmental approvals to be ‘speeded up’ (ibid.: 2).

Nevertheless, much of the delay in the grant of mining leases was blamed on perceived state government interference. The federal mining minister, T. Subbarami Reddy, made this point at a conference of the Mining Engineers Association in Hyderabad in April 2007:

Today it takes too much time to get all the licences you need for operations. There are too many clearances that act as hindrances. State governments have demanded value addition within their borders for granting of leases and this we want to limit. They will still be allowed to put up conditions but there will be time limits to how long this can go on before mining is freed.

Actual approval rates remained quite high during the period of national policy reform between 2006 and 2008. None of the 952 industrial projects, and only 10 out of 587 proposed mines, were rejected on environmental grounds (Dutta 2009). From 1998 to 2005, the MoEF had approved an average of 125 mines, involving 3,500 hectares forest land, each year, and the rate was now increasing (Bhushan and Zeya Hazra 2008). It would thus seem that delays in central government approvals were already having less of an impact on the development of new mineral projects. However, the push for reform was maintained in further committee reports (India 2008f), as well as in the 2012 proposal to set up a National Investment Board to ensure faster processing of especially large projects.

A closer reading of the actual legislation makes the regulatory changes seem less dramatic than the statistics on project approvals might indicate. The 2006 amendments to the Environment Act actually increased the scope and detail of the EIA regulations applied to the mining industry (India 2006b; Amnesty International 2011). This suggests that outcomes may have more to do with the changing priorities of decision-makers than with actual policy reform. Further evidence in this regard is the marked difference in the implementation of environmental regulations after the Congress Party's Jairam Ramesh became the responsible minister in 2009 and issued a note on the need to implement the Forest Rights Act of 2006 before any forest land could be used for industrial purposes (India 2009a). This had not been a concern for the previous minister, who had granted approvals for mining without regard to this legislation.

The terms of reference for the policy reform committees were not greatly concerned with the need to improve the quality of environmental regulation or take more account of the concerns of affected people. Nevertheless, the new mineral policy did include statements on the importance of sustainable development and support for Adivasi people:

[A] framework of sustainable development will be designed which takes care of bio diversity issues and to ensure that mining activity takes place along with suitable measures for restoration of the ecological balance. Special care will be taken to protect the interest of host and indigenous (tribal) populations through developing models of stakeholder interest based on international best practice (India 2008d, para. 2.3).

State-level reform has proceeded with less debate in recent years, but along similar lines to the national process. For example, a 'single window clearance' office has been created for all investment applications in the Industry Department in Hyderabad, although this is only a case management office since approvals are still granted by each of the relevant departments. One informant told me that the main innovation consisted in the introduction of timelines and regular meetings to keep information flows moving between departments in order to prevent delays.

Despite the efforts of successive reform committees, central government legislation and regulations were still being added or amended at a fairly high rate, and the Forest Rights Act was one example that had a particular impact on the mining industry. State governments were operating in much the same manner, by amending existing policies and laws with 'government orders', such as those applied to compensation for land

acquisition for the Jindal South West (JSW) bauxite project. Not only is it difficult to understand the overall policy intent of some of these changes, but frequent amendments at central and state levels have created a lot of uncertainty about what the law actually says. Civil society has shown some capacity to demand greater transparency in central government amendments, but changes at the state level have received less attention.

The uncertainty surrounding environmental regulations was compounded by legislative amendments in 2006 and 2008, additional ministry circulars, requirements contained in project-specific terms of reference documents, and the outcomes of court cases or the findings of special reports. For example, the controversial Lanjigarh alumina refinery and Niyamgiri bauxite mine in southern Odisha were together subject to at least seven special reports made on the initiative of the Supreme Court or the MoEF (India 2005a, 2007b; CMPDI 2006; WII 2006a, 2006b; Ramanathan 2010; Saxena et al. 2010). Additional reports on the JSW project included a watershed report (not made public) and a wildlife report (Azeez et al. 2008). As controversy has continued to follow bauxite projects in Adivasi parts of India, governments have typically responded by adding more and more information on which to base regulatory decisions, thus adding further complexity and opening opportunities for new challenges.

Public Consultation in the Approval Process

The only mandatory public consultation in the investment approval process is the environmental public hearing. This hearing, held at or close to the proposed project site, deals with information provided in the EIA report, but is only a source of advice to the ministry's grant of an environmental permit. However, wider public representation in matters of local natural land and resource use is possible under the *panchayat raj* legislation, with its vision of democratically elected local councils being part of a move towards greater decentralisation and self-governance. Although panchayats have been established in Andhra Pradesh since 1957 (Srinivasulu 2002), 73rd Constitutional Amendment of 1993 formalised the institution of *panchayat raj* as a mechanism of local governance in rural areas across the whole of India.

Panchayats operate in a three-tier system, from the village-level (*gram panchayat*) to the sub-district (*panchayat samithi*, known as *mandal parishad* in Andhra Pradesh) and the district-level (*zilla parishad*). At the village

level, direct elections every five years hold panchayat members to account, but there are also village assemblies (*gram sabha*), comprising all eligible voters, that are intended to work as public forums for the maintenance of transparency and accountability (Johnson et al. 2003). Some panchayat seats are reserved for members of Scheduled Tribes, Scheduled Castes and Other Backward Castes, depending on their proportions amongst the local population, and 33 per cent of all seats are reserved for women.

Three main criticisms have been made of panchayat institutions over the years: states have been unwilling to devolve significant power to them; a resistant bureaucracy has limited their actual effectiveness; and local elites have influenced the outcomes (Srinivasulu 2002; Johnson 2003). In Andhra Pradesh, in recent years, the panchayats have often been bypassed in the allocation of development funds through the creation of a number of other institutions such as water user associations, self-help groups and joint forest management committees, while much of the actual control over development programs has remained with the bureaucracy. This was most noticeable during the rule of the Telugu Desam Party because the panchayats have traditionally been dominated by the Congress Party (Johnson et al. 2003).

The right of panchayats to be consulted over land acquisition was established in Andhra Pradesh after much protest and litigation, leading to a situation in which the gram panchayat and the gram sabha both had to provide their consent. However, once the right of consultation had been secured by litigation, the underpinning of the judgment could still be removed by changing the law, as happened in the High Court case over the construction of the Surampalem dam. According to Samatha activist Ravi Rebbapragada, the Andhra Pradesh Government introduced a resettlement policy that invalidated the earlier regulations.² In the case of the JSW alumina refinery, it was only thought necessary to consult the gram panchayat. Demands for the right of consultation have proven to be an ongoing struggle in which pressure has to be continually re-asserted.

The *Panchayat Extension to Scheduled Areas Act 1996* (PESA) was meant to establish panchayats in all of India's Scheduled Areas. The federal version of PESA gave priority to the gram sabha over the smaller gram panchayat, and empowered it to prevent land alienation, to be consulted on land

² This assertion was made at a public meeting in Visakhapatnam on 26 March 2010.

acquisition, to have ownership rights over minor forest products, and the power to control local resource development plans and the grant of minor mineral leases. Section 4(i) of the Act stated:

the gram sabha or the panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas.

These provisions were stronger than those pertaining to land acquisition in non-scheduled areas, although the national legislation did not fully specify whether consultation actually meant seeking consent or simply an opinion from the gram sabha.

Actual implementation of the PESA has been weakened and varies by the requirement that specific legislation be passed by each of the states. The *Andhra Pradesh Panchayat Raj (Amendment) Act 1998* locates the process of consultation and planning at higher levels than the gram sabha. Consultation is supposed to take place at the sub-district level in the mandal parishad, while the actual planning and implementation of projects is coordinated at the state level. Decisions about the use of forests, water, land and minerals have never been fully devolved to the panchayats.³

Even this weaker Andhra Pradesh version of the PESA had questionable force, since the regulations required for it to come into effect were not published for more than 10 years (Dandekar and Choudhury 2010; Reddy and Mishra 2010). This legal technicality was not well known to members of the public who could see that panchayats exist, were participating in elections in the Scheduled Areas and were aware of the potential impact of the legislation.⁴ The PESA regulations were finally made public in 2011, but by then the bauxite project plans had already been stalled for other reasons.

3 For example, the exploitation of minor forest products is still monopolised by the state government's Girijan Cooperative Corporation, with profit sharing but no real decision-making role for the panchayats (Reddy et al. 2004).

4 This type of technical delay is a tactic that had already been used in Andhra Pradesh, as it was with the Land Transfer Regulation of 1959, at least until a rebellion broke out in 1970 (Balagopal 1989).

The PESA legislation has not been implemented uniformly across central India. In Jharkhand and Odisha, panchayats are routinely ignored or else forced to agree to major land acquisitions by the presence of police (Bhaduri 2007). Saxena concludes that the legislation:

has almost been forgotten and has not become part of mainstream political or policy discourse. ... The implementation of the law has been severely hampered by the reluctance of most state governments to make laws and rules that conform to the spirit of the law. Weak-kneed political will has usually led to bureaucratic creativity in minimalistic interpretations of the law (Saxena 2005: 25–6).

The reluctance of the nine states with Scheduled Areas to implement the PESA has been explained by a former Madhya Pradesh chief minister, who said that '[i]ts implementation would put an end to mining projects' (Dandekar and Choudhury 2010: 18). However, such laws cannot be completely removed from the policy framework because of electoral pressure, and they remain as potential tools in political struggles to secure better representation for the poor.

Inter-Agency Disputes

While environmental public hearings have involved local people to some extent, the grant of forest clearance and mining permits has historically been the exclusive preserve of governments. However, this has not prevented contention between different levels of government or different agencies within them. As state governments have been given more freedom and responsibility to pursue their own economic development programs, disputes with the centre seem to have reduced in intensity, but they have not completely disappeared, as was evident in conflict over implementation of the new mineral policy.

A high-level meeting of key Andhra Pradesh state government departments was convened on 2 July 2005, the day after the bauxite project MoU with JSW had been signed. Attending this meeting were ministers and bureaucrats representing the Revenue, Forest and Environment, and Mines and Geology departments. Andhra Pradesh Mineral Development Corporation (APMDC) was also present and was given a key role in coordinating all activities to ensure that the necessary approvals would be forthcoming. This was important because of the record of previous conflict between the different agencies. The Forest Department had

opposed plans to exploit the bauxite deposits ever since they were initiated in the 1980s, and had reiterated its opposition as recently as 2001 on the grounds that ‘local people/NGOs [non-governmental organisations] were against plans; the proposed area is in notified tribal area; and the forest area is rich in flora and fauna’ (Andhra Pradesh 2005c: 3). However, at this latest meeting, their minister reversed this position:

The Hon’ble Minister for Forest informed that the mining of Bauxite will help in industrial growth of the nation and as bauxite capping is devoid of any forest, the Forest officials will immediately take steps for giving necessary clearances from the state government (ibid.: 4).

As tends to be the case with official documents, and despite explicit reference being made to the earlier conflict, no detailed reasons were provided for this reversal. Local people and NGOs were still opposed to the plans, it was still a notified tribal area, and it was unlikely that that any significant change to the local flora and fauna could have occurred since 2001. Nevertheless, the minutes of the meeting record that:

It is decided that the Forest Department shall go through the proposals of APMDC submitted for forest clearance for Araku group of areas and accord clearance for the said areas and submit the proposals to the Government of India under Section-2 of the Forest Conservation Act 1980. If at all there are any procedural hurdles, the same shall be sorted out by way of direct interaction with the APMDC (Andhra Pradesh 2005c: 3).

An important element in the reduction of conflict between forestry and mining departments across India has been the principle of ‘compensatory afforestation’ established through the intervention of the Supreme Court. Application of this principle involves the payment of a calculated net present value for the existing forest and the planting of new forest elsewhere. Despite the many uncertainties surrounding its implementation, companies have seemingly been willing to pay the significant sums of money involved in order to allow their projects to move ahead, and forestry departments have been willing to exchange currently held land for new land somewhere else.

If forest clearance for the bauxite project mining had ceased to be issue within the state government, it became a problem when JSW was asked to pay for the net present value of the forest at the proposed mine sites. Two new MoUs were signed in 2007, two years after the initial agreement, to deal with this issue. The first required that the money should be paid

‘upfront’ (Andhra Pradesh 2007e), but the second, signed three months later, omitted the whole clause on forest compensation without further explanation (Andhra Pradesh 2007f). It is not clear whether the Andhra Pradesh Government had agreed to pay the costs itself, or whether JSW had agreed to pay on condition that there was no official record of its agreement. The payments could not simply be ignored or waived because the Supreme Court was monitoring the implementation of the compensatory afforestation principle.

In any case, the project came to a halt, from which it has not recovered, when the rare Blewitt’s Owl (also known as the Forest Owlet) was reportedly sighted in the proposed mining area. As tends to be the case, a new study was commissioned by the government to find out whether the bird was indeed present and, if so, what could be done to mitigate the impact of mining on its habitat. The year-long study failed to find this owl, but 11 other species of owl were found instead (Azeez et al. 2008).

The most interesting aspect of this study was its limited frame of reference. For some unknown reason, it was restricted to the Araku Valley and the JSW project area, and paid no attention to the AnRak Aluminium project area, despite clear indications that the same owls might be present there.

The Orissa Bird and Bio-cultural survey have undertaken an ornithological survey of the Eastern Ghats and ... rediscovered the highly endangered bird ‘Blewitt’s owl’ near Araku and proposed to designate the entire belt covering Sileru to Lammasingi, Paderu to Araku and Ananthagiri, etc. as an ‘Important Bird Area’ (IBA) of the country (Andhra Pradesh 2007g: 2).

The area designated in the Forest Department’s terms of reference covered all the bauxite ore deposits, which implied that the new study should cover the whole of the Agency. The omission of the Jerrila area could have been due to some oversight, but the implications were significant. Since they were not covered by the new study, AnRak Aluminium’s Jerrila mines were quickly granted their environmental permits in May 2009. The timing of this approval turned out to be crucial, just ahead of elections that enabled a new environment minister to take charge, with a more stringent interpretation of the law.⁵ However, it has since seemed unlikely that the Jerrila mines would gain final approval for forest clearance.

5 This also occurred at a time when Vedanta’s controversial Niyamgiri bauxite was making headlines nationally and internationally (Kumar 2014).

The Exclusion of Local Decision-Making

The opportunities for local deliberation over the JSW project came to focus on the proposed refinery rather than the mining proposals. That was partly because the Andhra Pradesh version of the PESA had not been made effective at the time, and partly because no environmental public hearings had yet been held for the mining proposals.

Land Acquisition and Panchayat Raj

As we have seen, the land required for the alumina refinery was spread over five panchayats in S. Kota Mandal and thus required separate decisions to be made for each one. Despite being named as a single village council, each of the panchayats in S. Kota consists of a number of independent villages and hamlets, none having more than a few hundred inhabitants and sometimes only a few families. Within each of the panchayats there was only a relatively small amount of land to be acquired, which meant that many of the panchayat members would neither be losing their own land nor be resident in the affected villages. Since the S. Kota area is non-scheduled, the elected panchayat members included a mixture of tribal and non-tribal people. The five panchayat heads (*sarpanches*), though not especially wealthy, were significantly better off than most other residents and were somewhat isolated from the demands of the villagers threatened with the loss of land. Perhaps more crucially, all five were non-tribal people aligned with the Congress Party, even though they were not meant to be affiliated with any political party, while many of the project's key opponents were supporters of the main opposition party, Telugu Desam.

Panchayat approvals were provided soon after the refinery site had been chosen. The first step was an administrative order that directed the relevant local government employees to organise panchayat meetings before the end of December 2006 (Andhra Pradesh 2006c). According to interviews I conducted in March 2008, the five panchayat heads presented almost identical resolutions to the five meetings, which had been drafted 'in consultation with' an influential Congress politician on the zilla parishad. The only difference between them consisted of the details of the land parcels to be acquired (KGP 2006; MGP 2006).

A tribal panchayat member from the village I surveyed during my fieldwork, who appeared to be drunk most of the time, said that he knew nothing of these plans, but admitted that (being illiterate) he usually put

his thumbprint on any document with which he was presented. I was not able to find any signed and verified copies of the panchayat and gram sabha resolutions, and I am sure that none of the affected villagers had ever seen them either. One can only assume that the resolutions were adopted because the process of land acquisition and environmental approval actually moved ahead.

The long reach of the bauxite alliance into the refinery site had its roots in the control it exercised over local political institutions. The exact nature of this control is difficult to grasp but it involved the distribution of money and power and a measure of control over the local bureaucracy. The influence of the Congress politician on the district council was not only derived from his elected position but also from the fact that his family were the biggest landowners in the area. His influence in the district was closely linked to his relationship to the regional 'strongman', a Congress politician and state government minister at the time, who had direct access to the chief minister.

Had it not been possible to secure the panchayat approvals quickly and then conceal them from public view, a local opposition movement could have gained in strength. An interview with an agricultural extension worker, who was frequently sent out to undertake surveys for land acquisitions in the area, confirmed the way that these approvals were handled. Administrators normally keep out of the way while party workers and politicians figure out ways to deal with potential opponents. The prevention of meaningful deliberations over land acquisition is consistent with the broader Indian experience in which 'decentralisation has failed to prevent a local (and primarily landed) elite from controlling the local bodies' (Johnson et al. 2003: 2).

Bureaucratic interventions in land acquisition in Andhra Pradesh have thus tended to favour displacement with a minimum of local deliberation. The process of land acquisition for 'special economic zones' in Andhra Pradesh has been described as follows:

The role of local revenue administration ... is crucial in making or rather pressurizing farmers to concede without resistance to the establishment of an SEZ. Using their connections with the local pyravikaars [fixers] and the Panchayat raj functionaries, the subaltern bureaucracy of the Revenue Department could successfully spread the message that there was no point in resisting land acquisition as the government has supreme power to acquire 'any land, any where, any time' (Srinivasulu 2010: 13).

The author of this observation does not say whether the administrators were operating on their own initiative or at the direction of people above them, but in the case of the JSW refinery, local bureaucrats were rewarded for work that was controlled by politicians at higher levels who would make phone calls to various departments to make sure that land acquisition tasks were completed.

While it was possible for JSW to swiftly secure panchayat and gram sabha approvals through Congress Party connections that reached all the way to the proposed refinery site, much energy was also spent on avoiding the same procedures for the proposed mines in the Agency. It is not clear why it would have been more difficult to get the desired decisions in a similar manner for the mines, given that I found the Araku panchayats to be politicised in much the same way. Perhaps it was due to earlier difficulties encountered in attempts to convince members of the Tribal Advisory Council of the benefits of bauxite mining (Prasad 2000), or else because the uncertain status of panchayat regulations in the Agency created greater risk of messy discussions or negative newspaper coverage.

On several occasions, APMDC expressed the view that there was no need to consult panchayats before mining could be approved in the Agency, but gave different reasons on different occasions. At one point, the argument was that 'major minerals' like bauxite do not require consultation as the PESA only grants local decision-making rights over minor minerals (Anon. 2008c; HRF 2008a). A subsequent argument was that the environmental public hearing would be sufficient as a form of consultation. One unnamed 'senior officer' from APMDC was quoted as saying that '[a]s per the Mines and Minerals Regulations the outcome of the public hearing is construed as the consent of the people' (Anon. 2009b). These occasional statements from APMDC could be easily countered in the media by arguments that the PESA also grants decision-making rights over forest products and water bodies clearly affected by mining, while the environmental public hearing is based on legislation entirely distinct from the Mines and Minerals Act and the PESA. However, arguments made in the press did not lead to greater inclusion in the decision-making process, and so the protests continued (see Chapter 6).

Environmental Public Hearings

Since the refinery was seen as something that would pave the way for the more controversial mines, much of the discussion at the public hearing in S. Kota was about the mining proposal rather than pollution control measures at the refinery itself. About 1,000 people attended the hearing that was held on 4 June 2007, including party activists, NGO representatives and some of the affected people. The JSW representative gave a detailed explanation of the benefits to the government, to construction contractors and to local people, concluding with an assertion that ‘there will not be any adverse environmental impacts in the surroundings due to the proposed industry’ (Andhra Pradesh 2007h). The minutes of the meeting record that some 40 people spoke, and 96 per cent of those attending were opposed to the project.

The environmental public hearing has only a consultative status, so there is no requirement for its recommendations to be implemented. However, it was not possible to completely ignore such a level of opposition. Further discussions on the environmental approval took place at a meeting of the Expert Committee of the MoEF in Delhi’s central administrative district in October 2007. Representatives of the Andhra Pradesh Government and JSW had been invited to respond to questions about why people were opposing the project. According to the minutes of this meeting:

Representatives of the Government of A.P. informed the Committee [that] [m]ost of the persons [who] attended the Public Hearing were outsiders and not the real stake holders and directly affected parties ... [A]ll the local authorities concerned with the project whose consent is necessary and all the Sarpanches/Panchayats/Hamlets have supported the project without any reservation (India 2007d).

Once blame had been laid at the feet of protesters who were outsiders, the signatures of the local Congress Party sarpanches would be sufficient to verify that the *real* project-affected people were indeed in favour of the refinery. This was seemingly sufficient to satisfy the MoEF experts and the refinery was thus approved six months after the stormy public hearing (India 2007e).

Neither activists nor those losing land had any knowledge of such high-level meetings in faraway Delhi. Agendas for such meetings are usually posted in advance on the MoEF website, for those who can access it, but the minutes would at that time not normally be available until

more than a month after the meeting had actually taken place. This gave the planners a significant time advantage. Land acquisition actually commenced only a few days after the environmental permit was issued on 18 December 2007.

No public hearing was held for the proposed mines during the course of 2007 or 2008, but indications of how it would proceed could be inferred from the hearing that took place in October 2008, in Chintapalli town, for AnRak Aluminium's proposed Jerrila mine. A large gathering of protestors arrived at the site of the hearing, but so did a large contingent of police, who stopped and checked all approaching vehicles for suspected Maoists. No discussions under the terms of the PESA had so far been held in that area, and although titles had been claimed under the Forest Rights Act, none had so far been granted. The distance of the hearing from the proposed mine site, combined with the obstacles placed in the way of people's attendance, resulted in a walkout by opponents who were present. That left the APMDC representatives and one university professor from Visakhapatnam. The hearing was seen to have been completed, and the environmental permit was subsequently approved in May 2009.

The environmental public hearing remains the only mandatory forum for public information and debate about major project proposals despite its inadequacies. In some cases, it has at least provided information about forthcoming land acquisitions that represents a risk for project proponents in case opposition builds. To avoid this 'risk', the Andhra Pradesh Government was able to acquire land for the AnRak Aluminium refinery without a public hearing by declaring the site to be part of an industrial park that would count as a 'special economic zone', where a number of companies would have to commit to an investment before its environmental impact could be assessed. In this case, it turned out that there was only one company in the park, but by the time that the hearing was held, all the required land was already in the hands of the government. The result was that there was really very little left to discuss at the hearing, other than the amount of money that local people should receive by way of compensation, and the environmental permit was granted in August 2008.

Water for the Refinery or for Visakhapatnam City?

Even the municipal councillors of Visakhapatnam city, the second largest city in the formerly undivided state of Andhra Pradesh, have found it difficult to withstand the influence of the chief minister over access to vital local resources. Water access is a very sensitive topic in this city because of frequent scarcity in the dry summer season. The JSW refinery would be located right next to the Tatipudi reservoir and would need as much as 30 million litres of water per day (see Figure 5.1). The water in this reservoir had so far been used for domestic consumption and local agriculture. The EIA report on the refinery did not clearly state how its water requirements would be met. It said that the water might be obtained from the Raivada reservoir, which was somewhat further away, 'or from such other sources or from any existing water reservoir with approval of Govt of Andhra Pradesh which have no impact on local environment' (Vimta Labs 2007: C2–3).



Figure 5.1 The Tatipudi reservoir next to the proposed JSW alumina refinery.

Source: Photo by author, January 2008.

On 28 May 2007, one week before the public hearing, JSW issued a press release stating that the water would be derived from a pipeline controlled by the Greater Visakhapatnam Municipal Corporation (GVMC), and not from the Raivada reservoir, 'in view of apprehensions expressed by some sections of people in the media' (JSW Aluminium 2007b). Meeting minutes from the chief minister's office reveal that this change of plan had been made at a high-level meeting in that had just been held in Hyderabad (Andhra Pradesh 2007i, 2007j).

This proposal would not be popular with the residents of a rapidly growing city that was already short of water. The water in question would have to be derived from the giant Polavaram dam across the Godavari River, but construction of this dam had been blocked by litigation for several years and, in any case, water from this source had already been promised to farmers who given up part of their share in water from the Raivada reservoir when its water was diverted to Visakhapatnam city in 1997 (Andhra Pradesh 2007k). Furthermore, existing sources were already insufficient for the future needs of Visakhapatnam city, whose domestic requirements were projected to grow dramatically from 304 million litres per day in 2007 to 614 million in 2021, while industrial requirements were expected to reach 1,151 million litres per day in the same year. In 2007, the daily supply was down to 54 million litres because of recent drought conditions. The Godavari water would add another 810 million litres per day, but this was a long way short of meeting the projected requirements (Andhra Pradesh 2007l).

Nevertheless, a water supply contract was signed with the Visakhapatnam Industrial Water Supply Corporation (VIWSC), a joint venture between GVMC, the central government company Vizag Steel and the private company Larsen and Toubro, with GVMC holding a 51 per cent majority stake. Newspaper accounts in the month following the public hearing revealed intense debate about the terms of the water supply agreement amongst the city councillors, which initially led them to revoke it (Anon. 2007a). Subsequent articles indicated that they were pressured to approve it after all, but did not indicate the nature of this pressure or who was exerting it (Anon. 2007b, 2007c; Patnaik 2007). A few weeks later, the mayor declared that the approval had been given (Anon. 2007d), but once again there was no explanation of this change of mind nor any account of how GVMC would manage to supply its different customers in future. One activist told me in an interview that the 'city council is just following what the [chief minister] wants whether there is enough water or not' (29 March 2008).

There was a further twist to this story when the MoEF's letter of approval for the refinery, written in December 2007, specified the Tatipudi reservoir as its water source. According to this document, the '[t]otal water requirement from Canal/Tatipudi reservoir will be 8 MGD (1400 m³/h) and permission is accorded by the Greater Visakhapatnam Municipal Corporation (GVMC) [via] letter dated 28th May, 2007' (India 2007e: 2). To make matters even more confusing, both the JSW press release and the MoEF letter referred to the same GVMC letter to support their different versions of the project plan. The GVMC letter actually did specify the Godavari River as the source (Andhra Pradesh 2007m), but the MoEF letter appeared to have more authority than a corporate press release, so the uncertainty persisted in a new round of media debate (Anon. 2008d; Patnaik 2008). While the contract to supply Godavari water to JSW was technically still in place, the VIWSC allocated a further 38 million litres per day to the AnRak Aluminium refinery, further deepening the water supply conundrum (Andhra Pradesh 2008g).

This simply intensified the level of public protest. In 2008, the Telugu Desam Party, now in opposition, organised a major strike (*mahadharna*) over the issue, while activists resorted to litigation in 2009 (Anon. 2008e, 2009c). Meanwhile, the state government took no action, at least in public, to resolve the issue. Whether and how water would be provided to Visakhapatnam city, to local farmers or to the JSW refinery would seemingly depend on how much, if any, would be available from the Godavari River, and then on the balance of power between different groups of potential consumers at some point in the not so distant future. If the recent past was any guide to the outcome, it would most likely be the farmers who would lose out, while the elected politicians would find somebody else to blame for their own decisions or lack of decisions to deal with the problem of water scarcity.⁶

6 When water was diverted from the Raivada reservoir to Visakhapatnam city residents in 1997, then Congress Party opposition politician Konathala Ramakrishna went on a hunger strike on behalf of the farmers. In the period from 2004 to 2009, he was the most powerful state government minister from Visakhapatnam District and a strong supporter of the bauxite project. In 2008, Telugu Desam Party politicians were keen to highlight this paradox, but remained silent about the fact that, when in government, they were the ones who had originally decided on the diversion (Anon. 2007e).

Bringing People Back In

The story so far is one of state government attempts to curtail debate about land use and water access. However, this does not represent the whole picture, since there are different opinions on what should be done in the different arms of the government at both state and federal levels. Ongoing negotiations about public participation in decision-making show that new opportunities might emerge as soon as old ones are found to be blocked by vested interests that want to limit the debate.

The existence of internal disagreements in the state government became apparent when the Tribal Welfare Department was encouraging people in Araku to claim land titles under the Forest Rights Act (Andhra Pradesh 2007n), while the Mines and Geology Department was attempting to alienate the same land. Biodiversity conservation concerns focused on the endangered Blewitt's Owl suddenly halted the mining project in Araku and Ananthagiri mandals and offered another chance to settle the forest rights, but many uncertainties remained even if that process could be completed. What legal protection would exist against the acquisition of such forest rights as compared to private land titles, to what extent would people be consulted before such acquisitions took place, and how would compensation be calculated? The Forest Rights Act is silent on these issues, so it was likely that future litigation would have to decide the outcomes.

The most recent of the often bewildering changes taking place in the battle over local representation was the MoEF circular that required gram sabhas across India to be consulted before any land claimed under the Forest Rights Act could be used for other purposes, and also required a majority of members to approve the proposal and the compensation arrangements (India 2009a). The new federal minister's support for the legislation also appeared to support the implementation of the Samatha judgment. However, the fractured openings in an ever-changing and contradictory regulatory system mean that only some of those who might benefit from such openings would actually be able to take advantage of them. Making use of these openings would depend on their ability to access information about their potential rights and then find an appropriate way to approach the government, directly or indirectly, in order to exercise them. The people of the Agency were unlikely to be able to do this on their own, but since tribal welfare and mining issues are pursued by some of the most capable civil society actors in the state, they might end up in a better position than the tribal people on the plains of S. Kota.

Technical Exclusions in EIA Reports

Aside from the bureaucratic procedures that constrain panchayat deliberations, a technical approach to the avoidance of any public deliberation is to frame EIA reports in ways that render people invisible, and thus make all environmental mitigation efforts a matter of scientific rather than community concern. If people and their lives are seen to be affected, either directly from a loss of land or other resources, or indirectly by pollution from a proposed industrial project, this can trigger the application of various legal protections. But if such impacts are concealed, the affected people must first make themselves visible before they can fight for their rights.

EIA reports on bauxite mining in India have tended to discuss pollution as a matter for technical measurement and mitigation practices that are equally applicable in all locations, rather than something that needs to take local livelihoods and environments into consideration (Tingay 2010). Despite these deficiencies, EIA reports have long been the only detailed public documents dealing with this issue, and have therefore received much attention from activists across India, despite their lack of reference to local circumstances (Bedi 2013). While social concerns might be more usefully addressed in a separate social impact assessment, there was no legal requirement for such a process for many years. By 2006, the MoEF guidelines only contained a few clauses relating to social concerns, with a primary focus on the use of agricultural and forest land (India 2006b). Even then, detailed land use information was routinely absent from bauxite project EIA reports (Vimta Labs 2006; BS Envi Tech 2008; Global Experts 2008; ICFRE 2008), but this did not prevent regulators from granting environmental permits.

The task of the EIA process has mainly been confined to measuring existing levels of pollution in a given area, detailing the pollution control techniques to be implemented by project proponents, and then estimating the future pollution levels once the project has started. So long as the future pollution load is within the national limits for all the measurement locations within a 10 km radius of the proposed site, there are few regulatory options for withholding approval. But even with this narrow frame of reference, there have still been reasons to question the technical validity of the reports (Vimta Labs 2006; Bhushan and Zeya Hazra 2008; BS Envi Tech 2008; ICFRE 2008; Dutta 2009; Amnesty International 2011). These include the way in which general statistics are provided for

the whole of the 'study area' rather than for the smaller area that is to be acquired and used. In addition, the discrepancy between planning and implementation is known to be a major issue (Behera 2008; Nayak 2008; Amnesty International 2010).

Refinery Impact Assessment

There were several ways in which plans for the JSW refinery planning rendered local people invisible, and the land acquisition process left them more vulnerable to pollution than was necessary. The 10 km radius study area contained a potentially affected population of 65,155, but as we have seen, there was a much higher concentration of tribal people in the area immediately adjacent to the site (Table 4.6), and this point was overlooked in all the official plans (Vimta Labs 2007). Furthermore, the stated goal of minimising the level of official displacement was really just an effort to circumvent house sites, leaving hundreds of people in the immediate vicinity of several potential sources of pollution without significant buffer zones. The waste ponds could spread pollution in three ways: as dust in the event of strong winds, as water overflowing the waste pond walls in the event of a flood, or as leakage into the groundwater if the ponds were not properly sealed. Living in close proximity to the waste ponds was thus likely to be a major health risk. Air pollution from the processing plant and the thermal power plant was also a major issue, and local livelihoods were indirectly threatened by a reduction in the productivity of agricultural land.

Water and air samples were collected as part of the EIA process, but the chosen locations had no clear rationale from the point of view of pollution prevention or health risks to the local population. Groundwater samples were likewise collected at locations other than those of the proposed waste ponds. When the report stated all emissions would be within the prescribed limits, it was assumed that there would be no risks to human health and safety or to plants and water sources (Vimta Labs 2007).

The report did not even mention the fishing pond located between the main plant site and the red mud waste pond, nor the Chilikalagedda stream running along the border of the proposed fly ash pond. There was no mention of existing groundwater levels, which were likely to be shallow because of the site's proximity to the Tatipudi irrigation reservoir. No hydrological maps were included to indicate the location of other water bodies and their flows. It was therefore impossible to evaluate the

risks involved in a potential spill from one of the waste ponds. The report gave the general impression that on all accounts the refinery was an opportunity for economic development with only minor risks:

The proposed alumina refinery has certain level of marginal impacts on the local environment. However, development of this project has certain beneficial impact/effects in terms of providing the employment opportunities that the same will create during the course of its setting up and as well as during operational phase of the project (Vimta Labs 2007: C9–1).

Mining Impact Assessment

The Galikonda EIA report described an operation area for the mine where no displacement would take place (ICFRE n.d.). No mention was made of the one village that did exist on top of the hill and whose site would seemingly have to be acquired. By denying the existence of any displacement or compensation issues for local people, the report could be safely framed in terms of compensating the relevant government agency for any forest loss. The exact boundaries of the mining areas were not clearly presented in the EIA report, nor did the report consider the precarious locations of many villages in the valleys below the proposed mine site. Little consideration was given to the potential impacts of dust pollution, water runoff, falling boulders and other debris on agricultural productivity. It simply promised that pollution levels would fall within the prescribed norms.

While the report denied the existence of any measurable risks, it nevertheless stated that ‘local people have the apprehension that their coffee plantation[s] may be disturbed’ and they ‘perceived that the water requirement for the Mines may reduce their water availability’ (ICFRE n.d.: 192), but it did not provide a scientific assessment of these concerns. Instead, it proposed ‘[c]ompensation of local people for their disturbance of agriculture/plantation lands, and deterioration of soil quality due to soil erosion, landslides, flooding, loss of fertility etc.’ and ‘[c]ompensation in terms of loss of agricultural crop/coffee plantations’ (ibid.: 151). It seems as if the environmental experts were not willing or able to side with those who might suffer negative consequences, but were finding ways to recommend some remedies without acknowledging whether local people’s concerns were justified or not. Compensation thus appeared as a form of local welfare rather than a right. Other mining projects might not be obliged to provide even this limited level of support.

Conclusion

Given the closed nature of government (and company) operations, the examination of mediation in this chapter has had to rely almost exclusively on public documents complemented by interviews with outside commentators. This certainly created challenges in determining the nature of top-level government interventions, but could not hide a pattern of political influence over state and federal government decision. The outcome was a pattern of facilitation that almost exclusively interpreted policies and framed interventions in favour of project implementation.

It is clear that, given the many social clauses in relevant legislation, it took a fair amount of effort for the bauxite alliance to facilitate the required investment approvals and avoid responding to outside voices that would not have approved of their plans. This facilitation took place in an extremely dispersed authority structure because of the federal nature of governance in India. Key leaders of the Andhra Pradesh Government were certainly influential within relevant state agencies and were a key part of the national coalition government, but their influence was not unlimited. When chief minister Y.S. Rajasekhara Reddy died in a helicopter accident in 2009, project implementation ground to a halt, since he was the one politician who could possibly have exerted sufficient high-level influence to untangle the complex web of investment approvals.

These complicated procedures did not themselves serve to allay concerns relating to displacement, environmental degradation and water use, and yet the fact that so many protective laws exist, and more continue to be added, indicate opportunities for wider concerns to be raised. There is thus a strong tension between the political efforts to facilitate investment on one hand, and the continued existence of policies that attempt to improve social justice on the other. And government action that mainly worked to facilitate private investment in this project generated a lot of opposition against what was perceived as the planning of unjust outcomes. The next chapter examines the formation of this opposition.

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