

September 13th & September 14, 2024

Environment Law Moot Proposition

Sindhu is a country - a Union of States - that used to be extremely rich in biodiversity. For hundreds of years, it had thousands of streams and rivers, forests with a huge number of animal and bird species, many forested mountain ranges, and an extensive coastline where fishes and turtles could be found in large number. People inhabited villages along most of the long coastal strip. They also lived in towns along the rivers and in the valleys.

Fast forward to the 21st century: most of the wildlife has been extinguished, the rivers have dried or turned into drains for cities which do not have sewage treatment plants, and people are constructing millions of cement homes and office buildings in towns, cities, valleys, and in the process, generating massive waste dumps, cutting down trees, and draining as well as polluting the groundwater and rivers. Usage of pesticides in agriculture has spoiled the water system and toxins are now found in the food. Thousands of corporations have, meanwhile, made tremendous profits by freely extracting from nature - the lumber, the minerals, the sand, the coal, etc. – at low to zero cost, leaving behind denuded and dry landscapes showing no sign of life. Meanwhile, the cities shine with the veneer of metals, plastics, and glass, and modern architecture, and project the image of wealth and comfort for their residents.

Only a small percentage of the old forests in Sindhu remain in semi-intact condition. There, smaller groups of people live, in a long historic relationship with the trees and wildlife. They take care of their living environment and have passed on their traditions of knowledge and care to their children. These people, whose livelihoods derive from the produce of the forest, have been categorized as Scheduled Tribes in the Constitution of Sindhu, and special provisions have been made in the Constitution and specific statutory Acts for their benefit. These laws are all *pari passu* with the laws of India and the state of Odisha. Their areas of living are notified as Schedule V Areas, and have their own additional set of governance laws, which take into consideration their livelihood and cultural interests. In the States with a higher proportion of Scheduled Tribes, the forests, streams, and mountains are noticeably in better condition in comparison to the drastic transformation that has taken place elsewhere in Sindhu.

It has now come to the notice of Sindhu-owned and foreign mining corporations, looking, in particular, for bauxite to produce aluminium, that there are tremendous bauxite reserves under

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and near some of the protected forests found in Schedule V areas. The corporations lobby the State governments to auction off sections of the State land under long-term leases so that they can carry out mining operations. One of the corporations called Hydanta already has a giant alumina refinery. It needs the local bauxite as an input material. It obtains one of the leases in the State auction, in an area called Tijimali, which is conveniently located near its refinery.

The people living in Scheduled Tribe villages in Tijimali are mostly of the Dongra tribe. They mostly speak Dongi, a few speak Hindi as well, but most do not read any language fluently. The people are unaware when the auction happened and that they are now living on leased land. No State official has come and gained their consent or even informed them of the changes underway. They begin to see trucks going up hillsides, and on unmarked trails, and they see new and strange people all over the place, including coming to their villages. They quickly hear of the grant of a large lease for bauxite mining in their area, and that they will have to leave, and be given land elsewhere, but they do not know when any of this will happen. They begin to worry that there will be widespread environmental destruction and their streams will dry up or get polluted, as they have seen this in other places. They are deeply concerned that they will no longer be able to worship particular hills and streams, as was their custom, if these hills and streams are destroyed. They have no desire to live in towns and cities.

They take a collective decision to stop the incursion of Hydanta into Tijimali for bauxite mining. They begin to launch protests, with banners and slogans, asking Hydanta to leave their area alone.

Meanwhile, there are numerous environment clearances that Hydanta still has to get, to undertake mining in Tijimali. It begins the application process. It claims that there are no forests within 10 km of the proposed mining areas. It claims there will be no environmental damage and that there are no natural waterbodies or streams in the earmarked areas. The Tijimali people begin to collect the data to prove that these alleged facts are untrue. They know that there are two hills in the proposed mining area, which were sacred to the people, and where annual festivals were held. These hills were the source of many of the streams that flow through the area. The hills are revered as deities.

Passions are hence high on both sides. The opposition between the two sides becomes on one occasion violent. It is not clear who was the instigator and who was responding.

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Representatives of Hydanta also come to the villages of Tijimali and went house to house offering money for people to not oppose them, and in some cases, they offer them jobs in the mining project. A few people secretly accept their money, but most do not trust them and ask them to leave.

Seeing that thousands of people were now mobilizing and were alert to their rights under the Constitution and statutory Acts, the State government and Hydanta begin to coordinate their actions to bring the protests to a stop. Ten of the prominent leaders of the protests are picked up and put into jail. A hundred others are named in FIRs. A fear of repression begins to settle over the people of Tijimali. Yet, the women continue to hold daily and nightly protests, blocking trucks from entering, and also raise money to get their family members bail.

A Public Hearing on the project, as required by the Sindhu Environmental Impact Assessment Notification 2006, was suddenly announced for a location inside Tijimali. This was now September 2023. A physical copy of the TOR and the preliminary EIA report which was to be presented and debated at the Hearing, was available in English and in the District Collector's office. There was no time for the villagers to have it translated into Dongi. They remained unaware of how many persons would be affected and how many forced to resettle.

Two nights before the scheduled Hearing date, many more people are arrested. A total of 30 people are inside jail during the hearing. Nonetheless hundreds of villagers line up overnight so as to enter the Hearing venue and to be able to make their voices heard at the Public Hearing. Yet, there was a huge police presence at the Hearing which rushed the whole process. The Hearing was over in 2 hours. The project was presented in brief terms, with no clear mention of how many persons would be displaced, or any rehabilitation facilities for them. The villagers could see from the maps that their villages fell within the impacted area. Only twenty people from the public were allowed on the stage, 15 of whom were villagers who were opposed to the project, and who spoke in Dongi, 5 were local people who supported the project, who all spoke in Hindi, which was not understood by the rest of the villagers. The process of the Public Hearing ended without the District Collector, who was presiding, giving a summary of the input. The villagers are aware that the DC did not understand Dongi and nobody had been translating for him.

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In fact, it all happened so fast that people were unsure of what just happened. Even though many of the villagers mentioned that there were people under arrest at the time, this was not addressed by the District Collector. Even though villagers stated that no Gram Sabha meetings had been held to gain the consent of the villagers, this was not addressed by the District Collector. Even though villagers stated there were sacred hills in the area, this was not addressed by the District Collector. No Minutes were later released of the meeting.

The people dispersed and returned to their villages. They decided that they would approach the court in order to complain that the Hearing was illegally conducted, and should be declared null and void. They were advised by some lawyers that even if the court agreed with their position, the Central Environment Ministry could still go ahead and approve the project. They decided to take the risk.

The villagers approached the National Green Tribunal, which had jurisdiction over Tijimali. The Tribunal Members found that the case was premature, and the villagers should wait for the outcome of the process, and first see if an Environmental Clearance was granted for the bauxite mining project, after which they could Appeal it, if they wished. The villagers had been very hopeful that they would get a favourable ruling and were very disappointed with the Tribunal. A few weeks later, the villagers learn that a 30-year Environmental Clearance had been granted on January 1, 2024, by the competent authority to Hydanta to proceed with the bauxite mining operation in Tijimali. All the objections they had made in the Public Hearing had been ignored. A few of the villagers were still in jail. However, the Clearance was contingent on the Forest Department first giving its clearance that there was 1. no forest within 10 km of the proposed mining area, and, 2. that no other permission or consent was required.

The Forest Department appoints a 3-person Committee of Experts to investigate the project area. The Committee produces a Report that had facts quite consistent with the villagers' own meticulous documentation of the copious wildlife, hills, streams and forests. However, it also found that, while there were forests in the proposed mining area, the required acreage could be diverted for mining purposes, as they had not been recorded as forests in government records as on October 25, 1980, and, secondly, that, under the existing laws and rules, Gram Sabha consent was not necessary for either diversion, or bauxite mining in the area.

The Forest Department, with Central government consent, grants the diversion request.

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The competent authority hence grants the Final Environmental Clearance to Hydanta, after following all due procedure, though it withholds permission to mine at one of the two sacred hills. It chastises the Tijimali villagers for having wasted time through their protests and notes that the delays caused therein had cost Hydanta and the State an estimated 1 million rupees. Having obtained the Clearance, Hydanta begins clearing the land to commence mining.

The villagers immediately approach the High Court under Sindhu Constitution Article 226, rather than risk another failed NGT hearing. In their petition, they request *inter alia* the Court to

- i. quash the diversion Order,
- ii. quash the Environmental Clearance granted to Hydanta, and
- iii. overturn the NGT Order on maintainability;

and they further pray to receive Rs. 5 lakh compensation for each person arrested and Rs. 10 lakh for each person still in jail and for their immediate release.

The High Court awards a Stay on the diversion, and the Clearance, and then proceeds with the Hearings.

The Moot takes place at these High Court proceedings. The THREE questions that are to be decided are:

- 1. Whether the High Court is the right forum to hear this matter;**
- 2. [assuming the HC is the right forum] Had the NGT been right to refuse to hear the matter, and in finding the case premature;**
- 3. [assuming the HC is the right forum] Was the Final Environmental Clearance provided by the competent authority in compliance with the existing law, and, reasonable by a Wednesbury standard.**

You must ground your argument in a good awareness of the governing laws and rules and caselaw of the issues raised above, as well as of pending cases in the Supreme Court. You may introduce relevant, non-controversial, contextual facts, in order to bolster your argument - but be explicit as to what these are.