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## ORISSA MINING CORPORATION LTD VS MINISTRY OF ENVIRONMENT & FOREST & ORS

~ *Kaanan Bhatia*

### INTRODUCTION

The **Orissa Mining Corporation Ltd vs Ministry Of Environment & Forest & Ors.**<sup>1</sup>, popularly known as the Niyamgiri Case, stands as a watershed decision of the Supreme Court of India on the protection of indigenous communities, environmental governance, and constitutional principles. Delivered on 18 April 2013 by a Bench of Justices K.S. Radhakrishnan, Aftab Alam, and Ranjan Gogoi, the judgment addresses the conflict between industrial development projects (bauxite mining by M/s. Sterlite (parent company of Vedanta in the Niyamgiri Hills, Odisha) and the constitutional rights, cultural identity, and survival of tribal groups (Dongria Kondh and Kutia Kandha). The case also served as a textbook example of good usage of FPIC (free, prior and informed consent). The FPIC from the indigenous communities before introducing a project on their territories proves to be a major shift from mere consultation or mere participation in decision-making.

### FACTS

- M/s Sterlite sought environmental clearance on 19.03.2003 from MoEF for an Alumina Refinery Project (ARP) at Lanjigarh, asserting no forest land within 10 km, while Vedanta moved the Supreme Court on 06.03.2004 for clearance to use 723.343 ha (including 58.943 ha reserve forest) for setting up of an aluminium refinery.
- Proceeding on Sterlite's representation of "NIL" forest involvement, MoEF on 22.09.2004 granted environmental clearance for a one million tonne per annum refinery and a 75 MW coal-based captive power plant over 720 hectares, expressly delinking it from the mining project, despite the State informing MoEF on 24.11.2004 that 58.943

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<sup>1</sup> Orissa Mining Corporation Ltd vs Ministry Of Environment & Forest & Ors (2013) 6 SCC 476

hectares of forest land were involved and that a show-cause notice had been issued on 05.08.2004 for alleged encroachment.

- On 28.02.2005, the State forwarded to MoEF a proposal to divert 660.749 hectares of forest land for bauxite mining in favour of OMC, while the Central Empowered Committee advised MoEF on 02.03.2005 to defer decisions pending its examination.
- After expert studies by CMPDI and WII and a 27.10.2006 FAC recommendation with conditions, the Supreme Court on 23.11.2007 declined clearance at Vedanta's instance but left the door open subject to unconditional acceptance of an elaborate "Rehabilitation Package," including SPV creation, profit-linked area development, NPV payments, wildlife plan, tribal development spends, compensatory afforestation and strict environmental safeguards, which were accepted by Sterlite, OMC and the State by order dated 08.08.2008, leading to clearance in principle for diversion of 660.749 ha on Niyamgiri Hills with directions to MoEF to proceed "in accordance with law."
- MoEF issued Stage-I forest clearance on 11.12.2008 with 21 conditions and granted Environmental Clearance for the mine on 28.04.2009 subject to final forest clearance, but the FAC on 04.11.2009 insisted that rights under the FRA be first ascertained.
- Following site inquiries by the Usha Ramanathan Committee and the Naresh Saxena Committee, the FAC recorded prima facie violations of FRA, FCA and EPA and recommended against Stage-II clearance, which MoEF rejected on 24.08.2010 invoking the precautionary principle; OMC challenged the rejection citing separability of the mine and refinery and the binding effect of the Vedanta and Sterlite orders.

## LEGAL ISSUES

1. Can MoEF deny Stage-II clearance despite prior Stage-I clearance and SC's directions in Vedanta<sup>2</sup> and Sterlite<sup>3</sup> case?
2. What is the scope of the FRA (2006) in protecting the rights of Scheduled Tribes (STs) and Traditional Forest Dwellers (TFDs)?
3. Whether the cultural and religious rights of tribals under Articles 25 and 26 of the Constitution extend to worship of Niyamgiri Hills?

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<sup>2</sup> T.N. Godavarman Thirumulpad (104) v. Union of India (2008) 9 SCC 711

<sup>3</sup> T.N. Godavarman Thirumulpad (106) v. Union of India (2008) 2 SCC 222

4. How should courts balance state-led industrial development with constitutional protections for vulnerable indigenous groups?

## COURT'S REASONING

After listening to the arguments by both the petitioner and the respondents, the Court began by recalling its earlier orders in the Vedanta and Sterlite matters. While it was not opposed “in principle” to the project, any clearance was subject to stringent safeguards and compliance “in accordance with law.” Stage-I (in-principle) approvals under the Forest (Conservation) Act, 1980 and environmental clearance under the EIA regime were expressly conditioned on satisfaction of further statutory requirements, notably compliance with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 Forest Rights Act (FRA) and the Ministry of Environment and Forests (MoEF), and before the Stage II clearance, the FAC upon reports of the Usha Ramanathan and Saxena Committees, found prima facie violations of the FRA and the Forest (Conservation) Act, 1980.

Rejecting the petitioner’s argument that the Alumina Refinery and the Bauxite Mining Lease were wholly separate, the Court noted the projects had been treated as an integrated unit in prior orders and wrongdoing in one could bear upon the other. Nonetheless, the Court confined its adjudication to the rights of Scheduled Tribes (STs) and other Traditional Forest Dwellers (TFDs) under the FRA.

For the protection of the rights of indigenous communities, the court analysed and placed reliance on the following: -

- Article 244 and the Fifth Schedule, read with Part X of the Indian Constitution, aim to preserve tribal autonomy, culture, and economic security in Scheduled Areas, as elaborated in *Samatha v. State of A.P.*<sup>4</sup>.
- Part IX (Panchayats) and the section 4 of the Panchayats (Extension to Scheduled Areas), 1996 (PESA), enabled by Articles 243-B, 243-C, and 243-M(4)(b) of the Indian Constitution, mandates Gram Sabha–centric governance in Scheduled Areas and require consultation/ recommendations of Gram Sabhas for land acquisition, rehabilitation, and even prior to grant of licenses/leases for minor minerals.

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<sup>4</sup> Samatha v. State of Andhra Pradesh & Ors (1997) 8 SCC 191

- Articles 25 & 26 of the Indian Constitution, ensures securing freedom of religion, including rituals integral to faith. Here, the Dongaria Kondh's worship of Niyam-Raja on the Niyamgiri hills is constitutionally protected
- The Court further relied upon *Union of India v. Rakesh Kumar*<sup>5</sup> when the constitutional validity of the proviso to section 4(g) of the PESA Act was challenged.

The Court emphasized that the Forest Rights Act, 2006 (FRA) is a remedial and welfare statute to be construed purposively, recognising a wide spectrum of individual, community, customary, habitat. It placed special reliance on Section 6, which vests the Gram Sabha with primary statutory authority to receive, verify, map and resolve claims, reinforced by the detailed 2007 and 2012 Rules and the Ministry of Tribal Affairs' Guidelines of 12.07.2012.

While affirming the State's public-trust ownership of minerals under the Mines and Minerals (Regulation and Development) Act, (MMRD), the Court clarified that nothing in the FRA divests the State of mineral title, yet, forest diversion and project clearances remain contingent on prior identification, recognition, and protection of FRA rights, including community and sacred/religious rights.

Applying these principles, the Court found that although some individual and community claims had been processed in Kalahandi and Rayagada, the cultural/religious claims in particular the Dongaria Kondh's right to worship Niyam-Raja and the possible impact of the mining area in Niyama Danger had not been placed before or decided by the Gram Sabha.

Accordingly, the Court concluded that determination of community and religious rights under the FRA must rest primarily with the Gram Sabha. Since such claims had not been considered with respect to religious rights of worship at Niyam Raja, the Court directed the State of Orissa to place the issue before Gram Sabhas for a final decision.

## **RATIO DECIDENDI**

It was held that before granting Stage II clearance for diversion of forest land for the Bauxite Mining Project in Niyamgiri Hills, the Gram Sabha must determine whether the proposed mining affects the religious, community, or cultural rights of Scheduled Tribes and Traditional

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<sup>5</sup> *Union of India v. Rakesh Kumar* (2010) 4 SCC 50

Forest Dwellers under the Forest Rights Act, 2006, read with Articles 25 and 26 of the Constitution, the Fifth Schedule, and the PESA Act, 1996. The right of worship of Niyam Raja being an integral religious right, if found to be infringed, must be preserved and protected.

## **SIGNIFICANCE**

1. It is a significant judgement as the Court constitutionalised the protection of tribal religious practice by expressly locating the Dongaria Kondh's right to worship Niyam Raja within Articles 25 & 26 of the Indian Constitution, thereby elevating indigenous spiritual relationship with land from a mere cultural interest to a fundamental right that must condition any administrative clearance concerning forest diversion.
2. The decision harmonises the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, the EIA regime and the Forest Rights Act, 2006, holding that environmental approvals cannot be insulated from, or proceed in disregard of, community and religious rights; compliance under one statute is insufficient where cognate statutes create antecedent rights and procedures.
3. The judgment entrenches a participatory, rights-first model of sustainable development by requiring a transparent, community-centred fact-finding process through Gram Sabha proceedings overseen by a District Judge, thereby strengthening due process protections for Scheduled Tribes and Other Traditional Forest Dwellers against asymmetries of power in large projects.
4. In aligning domestic constitutional guarantees and the FRA framework with international norms recognising indigenous peoples' spiritual and territorial rights (e.g., ILO Convention No. 107; UNDRIP principles), the ruling situates Indian environmental-tribal jurisprudence within a broader rights-congruent paradigm without displacing the State's trustee role over minerals.

## **CRITICAL EVALUATION**

The Court's approach in the case is balanced and cautious. Rather than conclusively determining all interlinked controversies, it situates its decision within the statutory framework of the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, the Forest Rights Act, 2006, and the PESA Act, and channels the inquiry to the Gram Sabhas. By remitting core questions especially the scope of religious and cultural rights over Niyamgiri and the potential impact of mining to the Gram Sabhas for a determinative say, the Court

effectively shifts a heavy burden onto bodies that often lack legal resources, insulation from asymmetrical power, or the capacity to withstand external pressures. Despite the fact that judicial oversight was provided by designating a District Judge as an observer, the power disparity between local communities and corporate/government actors is still a concern. The judgement is a landmark judgement as it puts the indigenous religious rights (in this case the worship of Niyam Raja) constitutionally guaranteed under article 25 and 26 of the Indian constitution. It also recognises that development cannot come at the cost of erasure of indigenous identity.

## **CONCLUSION**

The Court extended constitutional protection to cover religious rights to indigenous communities. The ruling upholds the idea that development cannot proceed by erasing indigenous identity by giving Gram Sabhas authority and mandating free and informed consent from the indigenous communities before their land or resources are used for development. However, there might be a risk by giving this much responsibility to the Gram Sabhas as these local institutions are vulnerable to power. However, this case is a landmark judgement which reaffirmed the rights of the indigenous communities. The 12 Gram Sabhas held a referendum to obtain consent on the project from the community. They all deposed the magistrate, stating the significance of the Niyam Raja or 'King of Law' that resides at the hilltop and how the abode is interconnected with their identity, culture and interests. They all unanimously voted against it.