

SC stalls Vedanta's BMP, Gram Sabhas to decide forest rights

By PTI - NEW DELHI

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Vedanta Group's Bauxite Mining Project in Niyamgiri hills of Odisha would remain stalled as the Supreme Court today directed that clearance to the venture would be subject to the Gram Sabha deciding the cultural and religious claims of the tribes and forest dwellers of Rayagada and Kalahandi districts.

The apex court directed the state government to place issues concerning individual, community, cultural and religious claims of Scheduled Tribes (STs) and Traditional Forest Dwellers (TFDs) before the Gram Sabha which would decide the same in three months.

The court also directed that the "proceedings of the Gram Sabha shall be attended as an observer by a judicial officer of the rank of the District Judge, nominated by the Chief Justice of the High Court of Orissa."

"The judicial officer shall have to sign the minutes of the proceedings, certifying that the proceedings of the Gram Sabha took place independently and completely uninfluenced either by the Project proponents or the Central Government or the State Government," a bench comprising justices Aftab Alam, K S Radhakrishnan and Ranjan Gogoi said.

The court also said that the "Alumina Refinery Project (of M/s Sterlite) is well advised to take steps to correct and rectify the alleged violations by it of the terms of the environmental clearance granted by Ministry of Environment and Forests."

It clarified that the corrective measures taken by it shall be considered by the MoEF while taking any final decision.

The bench said once the Gram Sabha has determined all the claims submitted before it, the Ministry of Environment and Forests will take a final decision on the grant of Stage-II clearance for the Bauxite Mining Project in the light of the decisions of the Gram Sabha within two months.

Keeping the "focus mainly on the rights of the Scheduled Tribes and the Traditional Forest Dwellers under the Forest Rights Act", the court said right of the tribals and forest dwellers to worship their deity Niyam-Raja has to be protected and Gram Sabha has a role to play in safeguarding their customary and religious rights under the Forest Rights Act.

It also said, "the Scheduled Tribes and other forest dwellers residing in the Scheduled Areas have a right to maintain their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands."

The bench gave the directions on the petition moved by state-owned Orissa Mining Corporations (OMC) challenging MoEF's decision to cancel the stage two environmental clearance granted to the Niyamgiri Bauxite Mining Project (BMP) of Sterlite Industries Ltd, the Indian arm of UK-based Vedanta Group.

The ministry had refused the next stage forest clearance to OMC and Sterlite's mining project in Niyamgiri Hills area in Lanjigarh in Kalahandi and Rayagada districts, accepting the Forest Advisory Committee's (FAC) recommendation for withdrawal of the clearance.

The apex court said the "Forest Rights Act confers powers on the Gram Sabha constituted under the Act to protect the community resources, individual rights, cultural and religious rights."

Source: http://zeenews.india.com/business/news/companies/sc-stalls-vedantas-niyamgiri-mining-gram-sabhas-to-decide-rights_74415.html

SC stalls Vedanta's Niyamgiri mining, Gram Sabhas to decide rights

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The apex court said the "Forest Rights Act confers powers on the Gram Sabha constituted under the Act to protect the community resources, individual rights, cultural and religious rights."

Under the Panchayat (Extension to Scheduled Areas) Act, recommendation of gram sabha is mandatory prior to grant of prospecting licence or mining lease for minor minerals in the Scheduled Areas, the court said.

Emphasising on the right to freedom of religion under the Constitution, the apex court said the right of the tribals to worship the deity Niyam-Raja has to be protected and preserved.

"We are of the view that the question whether STs and other TFDs like Dongaria Kondh, Kutia Kandha and others have got any religious rights, i.e, rights of worship over the Niyamgiri hills, known as Nimagiri, near Hundaljali, which is the hill top known as Niyam-Raja, have to be considered by the Gram Sabha.

"Gram Sabha can also examine whether the proposed mining area Niyama Danger, 10 km away from the peak, would in any way affect the abode of Niyam-Raja," the bench said.

"Needless to say, if the BMP, in any way, affects their religious rights, especially their right to worship their deity, known as Niyam Raja, in the hilltop of the Niyamgiri range...That right has to be preserved and protected," the court said, adding that this particular aspect has not been placed before the gram sabha.

The bench clarified that the Gram Sabha is also free to consider all the community, individual as well as cultural and religious claims.

The claims which have already been received from Rayagada and Kalahandi districts and any fresh claim can be filed before it within six weeks.

It also directed the state government and the Ministry of Tribal Affairs to assist the gram sabha for settling of individual as well as community claims.

The bench noted "tribes have great emotional attachment to their lands" as it is most important natural and valuable asset and imperishable endowment from which they derive their sustenance, social status, economic and social equality, permanent place of abode, work and living.

The court said India is a signatory to the Convention on Biological Diversity adopted at the Earth Summit (1992), which highlighted necessity to preserve and maintain knowledge, innovation and practices of local communities relevant for conservation and sustainable use of bio-diversity.

The apex court also noted that customary and cultural rights of indigenous people have also been the subject matter of various international conventions like the International Labour Organisation, to which India is a signatory.

On Odisha government's contention that the ownership of mines and mineral deposits beneath the forests rests with the state and the Gram Sabha does not have any right to adjudicate the claims raised by Scheduled Tribes and Traditional Forest Dwellers, the court said, "State holds the natural resources as a trustee for the people."

It also said under the Forest Rights Act, Gram Sabha is the authority to initiate the process of determining the nature and extent of individual or community forest rights or both of forest dwelling tribals.

The bench also stressed on the vital role played by tribals in environment management and protection of their rights and also enumerated the guidelines issued by the Ministry of Tribal Affairs dealing with tribals' rights to forest produce, forest land, relocation, against eviction and such issues.

The bench further said, "Many of the STs and other TFDs are totally unaware of their rights. They also experience lot of difficulties in obtaining effective access to justice because of their distinct culture and limited contact with mainstream society.

"Many a times, they do not have the financial resources to engage in any legal actions against development projects undertaken in their abode or the forest in which they stay.

"They have a vital role to play in the environmental management and development because of their knowledge and traditional practices. State has got a duty to recognise and duly support

their identity, culture and interest so that they can effectively participate in achieving sustainable development," it said.

The court disposed of the petition with directions that its judgement be communicated to the Ministry of Tribal Affairs, the gram sabhas of Odisha's Kalahandi and Rayagada districts and the Chief Justice of Orissa High Court for further follow up action.

The bench also rejected contention of the Orissa Mining Corporation (OMC) that MoEF in its August 2010 order wrongly cites violation of certain conditions of environmental clearance by 'Alumina Refinery Project' as grounds for denial of Stage II clearance to OMC for its 'Bauxite Mining Project'.

"The contention is based on the premise that the two projects are totally separate and independent of each other and the violation of any statutory provision or a condition of environmental clearance by one cannot be a relevant consideration for grant of stage II clearance to the other," the court noted.

It, however, said, "OMC's assertion that Alumina Refinery Project and Bauxite Mining Project are two separate and independent projects, cannot be accepted as such, since there are sufficient materials on record to show that the two projects make an integrated unit."

The apex court said in its two earlier orders dealing with Vedanta and Sterlite case also, the two projects are seen as comprising a single unit.

"Quite contrary to the case of the petitioner (OMC), it can be strongly argued that the Alumina Refinery Project and Bauxite Mining Project are interdependent and inseparably linked together and, hence, any wrongdoing by Alumina Refinery Project may cast a reflection on the Bauxite Mining Project and may be a relevant consideration for denial of Stage II clearance to the Bauxite Mining Project.

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