

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH  
AT HYDERABAD

W.P.No. 1571 OF 2006

Between:

"DHIMSA", a society registered under  
A.P. Societies Registration Act 2001 (No. 938 of 2003)  
having its office at D. No. 9-22,  
Lochaliputtu colony, Near Degree College,  
Paderu, Visakhapatnam District  
represented by its Secretary, K. Krishna Rao  
and another

... PETITIONERS

AND

Government of Andhra Pradesh rep. by its  
Principal Secretary to Government,  
Industries and Commerce (Mines) Department,  
Secretariat, HYDERABAD  
And others

... RESPONDENTS

**REPLY AFFIDAVIT FILED ON BEHALF OF THE PETITIONERS**

I, Dr. P. Sivaramakrishna, son of late Venkatanarsaiah, Hindu, aged about 55 years, Director, 'SAKTI', a voluntary social organization, Rampachodavaram, presently resident of Hyderabad, do hereby solemnly and sincerely affirm and state as follows:

1. I am the Director of the 2<sup>nd</sup> Petitioner organization and as such I am well acquainted with the facts of the case. I am authorized to file this affidavit on behalf of 1<sup>st</sup> petitioner organization also which is also working for the welfare of tribals in Paderu area covering 11 tribal Mandals and 5 sub-plan Mandals of Visakhapatnam district. I have read the counter affidavit filed on behalf of the 1<sup>st</sup> Respondent and deny all the averments which are not specifically admitted herein and the 1<sup>st</sup> Respondent is put to strict proof of the same.

2. At the out set I submit that the counter affidavit is bereft of details with regard to the project undertaken by the 7<sup>th</sup> Respondent and details of the decision making process involved in the Agreement dated 1.7.2005. It is not known how the government is involved in a matter relating to the contract between the 6<sup>th</sup> and 7<sup>th</sup> Respondent and whether the Cabinet was taken into confidence before entering into such a policy decision is not clear from the counter affidavit of the 1st Respondent. I submit that when the Government already issued G.O.Ms.No.999, Industries &

Commerce (Mines) Department, dated 25-10-1975 to excavate the minerals through public sector corporations and also issued G.O.Ms.No.187 dated 20-09-96 allotting the mining rights of valuable minerals including Bauxite to the 6<sup>th</sup> Respondent in order to enable to transfer its rights to an appropriate entrepreneur and collect fees or rentals on it as agreed to by the Government, the interference by the Government at the highest level with 7<sup>th</sup> Respondent without inviting any global tender is highly arbitrary and against public interest. The 1<sup>st</sup> Respondent has not filed even a single scrap of paper except swearing a vague affidavit in reply to the averments made in the affidavit filed in support of the Writ Petition. It is further submitted that a meeting was conducted on 2.7.2005 and the senior officers were directed to take up follow up action and complete the tasks allocated to them by 15.7.2005 as desired the Hon'ble Chief Minister directly under intimation to Secretary (Industries & Commerce Dept.)/ Principal Secretary (EFS & T)/ Special Chief Secretary, Revenue and even the details of the follow up action taken is not revealed in the counter affidavit filed. Thus the 1<sup>st</sup> Respondent appears to be deliberately suppressing the information to this Hon'ble court. This Hon'ble court may call for the entire record relating to the said project in order to properly appreciate the contentions raised by the petitioners.

3. Regarding averments in para 4 of the counter affidavit of the 4<sup>th</sup> Respondent, I submit that out of 612 million tones of bauxite reserves available in A.P., the Government is committed to supply 240 million tones of reserves to the 7<sup>th</sup> Respondent at an unspecified price. The commitment was made even before the tasks with a Government of India undertaking, M/s National Aluminum company are in progress. When the matter relating to amendment to Land Transfer Regulation came up for consideration before the Tribes Advisory Counsel way back on 15.9.1994, it was advisedly decided to wait for decade or so in view of the experience of tribal exploitation in Biladilla in Madhya Pradesh and non accrual of any benefit from Bhadrachalam Paper Mills in Khammam District and Devapur Cement Factory at Adilabad District. But the present Agreement was entered without going through the process of obtaining the views of the Tribal Advisory Council and weighing the benefits and losses to the tribals living in that area. It is submitted that the amendment to the Mines & Minerals (Regulation & Development) Act, 1957 was made with effect from 14-08-1991, whereas the judgment in Samata case was rendered on 11-07-1997 and the Hon'ble Supreme Court took note of the said amendment while rendering the judgement. But, the validity or otherwise of the above amendment did not come up for consideration in the said judgement. The 6<sup>th</sup> Respondent being a 'State' within the meaning of Article 12 of the Constitution of India is supposed to offer the excavated Bauxite to the highest bidder but not to the company of Government choice. The supply of material only to the 7<sup>th</sup> Respondent by the 6<sup>th</sup> Respondent and a commitment for the same even before the leases was granted in its favour clearly shows the interest of the Government in favour of the 7<sup>th</sup> Respondent. The 6<sup>th</sup> Respondent is thus a conduit for the 7<sup>th</sup> Respondent to obtain the

raw material for its proposed refinery and smelter for manufacture of Alumina and Aluminum. It is further submitted that the valuable Bauxite reserves are not only meant for the tribals living in those areas, but is a gift of nature given for the benefit of the people of Andhra Pradesh. The Respondent has not disclosed the benefit to the people from the sale of Bauxite mineral except an unregulated promise of spending 0.5% of the revenue on social infrastructure like health, training and welfare of tribals etc. The Government, being the trustee of people should not have frittered away the natural wealth at a single stroke for an unspecified price.

4. Regarding the averments in para 5 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that though the Bauxite deposits are located on top of the hills and away from the villages, the approach to those deposits would be through the villages and thick forest. The 1<sup>st</sup> Respondent ought to have disclosed the mining plans merely because the mining would be taken up in a phased manner, it does not mean that there will not be any disturbance to the flora & fauna in the area. As already submitted in the affidavit filed in support of the Writ Petition, there are rare birds in the area and it is not correct to state that there are no endangered species. As per the report of the Andhra Pradesh Natural History Society, Visakhapatnam prepared in November 1987, in respect of Andhra Bauxite Project, they found 18 northern migrant bird species passing through the area, 12 of which are forest dwelling forms and probably depend on the Eastern Ghats as a habitat corridor for seasonal movement. It was also stated therein that the continued and accelerated clearing of forest, even in small bits, adds up to the threat to these birds and also to the few surviving mammals like Sambhar, Barking deer, etc. The Government should have come up with a factual report instead of denying the existence of flora in those areas without any basis. It is submitted that a thorough environmental plan will be prepared before undertaking any project and the counter affidavit is silent with regard to this aspect. I further submit that there is no mechanism envisaged in the Agreement for supervising and regulating, the various control measures indicated in c) to o) of the said paragraph except indicating that an environmental cell will be set up which will be an internal management wing of the company. It is not known why the Government hurried into an agreement without obtaining clearances from the respective departments by the Respondents 6 & 7.

5. Regarding the averments in paras 6 to 9 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the experience of M/s NALCO in the State of Orissa cannot be applied to the Andhra Pradesh as the situation of forest is altogether different in the two States. The counter affidavit states on one hand that every precaution and care will be taken not to disturb tribal habitations while on the other hand, rehabilitation of about 5000 tribal families would be taken up on the lines of rehabilitation plan approved by Irrigation Department specific to the area. It is not known whether rehabilitation takes place prior to the implementation of the project or

after uprooting their families. The counter affidavit is silent with regard to the details of families that are likely to be affected by the project. The statement made in the counter affidavit that the entire expenditure of the order of Rs. 300 - 500 crores will be earmarked by 6<sup>th</sup> Respondent by charging the expenditure to the project when read together with the future pricing of the excavated material shows that there is no concrete rehabilitation measures before undertaking the excavation.

6. Regarding the averments in paras 10 to 12 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the present Writ Petition was filed not to know the range of the investment of the 7<sup>th</sup> Respondent, but to point out the adverse affect of the project on the environment, tribal life and public interest and the counter affidavit is totally silent with regard to the firm benefits to the environment and tribal life. The loss to the environment and public life has not been addressed in the counter affidavit except assuring that steps would be taken to protect the environment, tribal culture and forest by the State with utmost caution and care. The 1<sup>st</sup> Respondent has not answered the loss of Rs. 1520.88 crores over a period of 50 years taking the density of the forest area to be as 0.6 (as per 1991 calculations).

7. Regarding the averments in para 13 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the amendment to Section 11 of the Mines & Minerals (Regulation & Development) Act, 1957 was made with effect from 14-08-1991, much before the Tribal Advisory Council meeting dated 20-07-1995, and the judgment of the Hon'ble Supreme Court in Samata case on 11-07-1997 and hence the contention of the 1<sup>st</sup> Respondent that it was valid and sustainable has no force.

8. Regarding the averments in paras 14 and 15 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the 1<sup>st</sup> Respondent has stated in para 8 that the rehabilitation would require an Agreement of Rs. 300 to 500 crores, whereas in para 15 it is stated a provision is made to earmark 0.5% of the revenue, which may be Rs. 12 to 15 crores per annum and these self contradictory statements create doubt in the minds of the public regarding the seriousness of the implementation of rehabilitation package and the capacity of the 6<sup>th</sup> Respondent to implement the same.

9. Regarding the averments in para 16 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the example of M/s Orient Cements was shown in order to buttress the contention of the Petitioners and it is admitted by the 1<sup>st</sup> Respondent that there is violation of the judgement of the Hon'ble Supreme Court in Samata case. The 1<sup>st</sup> Respondent is not quite sure about its stand as could be seen from the averments made in the said para.

10. Regarding the averments in para 17 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that a perusal of the Article 338 would show the role of

the 5<sup>th</sup> Respondent in advising on the planning process of socio-economic development of S.C.s & S.T.s. The regulations framed for conduct of the meetings of Tribal Advisory Council called 'Andhra Pradesh Tribes Advisory Council Rules, 1958' require the advise of the council on any matter pertaining to the welfare and advancement of the Scheduled Tribes in Andhra Pradesh.

11. Regarding the averments in paras 18 to 26 of the counter affidavit of the 1<sup>st</sup> Respondent, it is submitted that the 1<sup>st</sup> Respondent has not disclosed the minutes of the meeting held on 19-12-2005, and without disclosing the same no purpose would be served by stating that all the apprehensions were expressed by the members pertaining to this project were clarified when the entire issue is before the Hon'ble Court. It is submitted that the Principal Secretary, Tribal Welfare Department, would not have raised the point of allowing the tribals to do the mining operations without any feasibility in the meeting held on 22-04-2005 and the averments in para 20 of the counter affidavit is misleading. It is not known the necessity of the Government to enter into an agreement with the 7<sup>th</sup> Respondent hurriedly even before leases were granted in favour of 6<sup>th</sup> Respondent and before preparing a rehabilitation package. It is submitted that the Senior Officers of the concerned departments were requested to take up the follow up actions and complete the tasks by 15-07-2005, but the counter affidavit of the 1<sup>st</sup> Respondent which was sworn on 09-03-2006 is totally silent of the various steps taken pursuant to the agreement on 01-07-2005, meeting held in the chambers of the Hon'ble Chief Minister on 22-04-2005 and the meeting of the Ministers held on 02-07-2005. I apprehend that the 1st Respondent is not disclosing the facts and developments taken in respect of the Bauxite project before this Hon'ble Court. I respectfully submit that there is no mechanism for supervising the various promises made in the interest of the tribals and environment and the agreement of the Government entered on 01-07-2005 is not in public interest.

It is therefore prayed that the Hon'ble Court may be pleased to allow the above Writ Petition with costs and pass such other further orders as this Hon'ble Court may deem fit in the circumstances of the case.

DEPONENT

Solemnly affirmed and signed  
his name before me on this  
23rd March, 2006  
at Hyderabad.

Before me

Advocate, Hyderabad.