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Report

NAGARNAR

An Investigation into land
acquisition and state repression
in Nagarnar, Bastar, Chhattisgarh

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**An Investigation into land acquisition and state repression in Nagarnar,
Bastar, Chhattisgarh**

September 2002

The Indian People's Tribunal on Environment and Human Rights

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PANEL MEMBERS

Justice S.N. Bhargava born in February 11, 1934 in Rajasthan, studied law in Allahbad, U.P. and practised law in Rajasthan and in the Supreme Court before joining the judicial services. He was elevated to the bench of the Rajasthan High Court in 1993 and retired as Chief Justice of the Sikkim High Court in 1996. Post retirement he has been the Chairperson of the Assam Human Rights Commission and has been serving as Chairperson of the Manipur Human Rights Commission since 1998. His father late Pt. Mukut Behari Lal Ji Bhargava was a freedom fighter, one of the Members of the Constituent Assembly and one of the first members of the Lok Sabha. As a child he watched his father and others fight for independence. The experiences of early childhood strongly shaped his perceptions and imbued an undying quest for justice. Justice Bhargava lives at the moment in Jaipur and is actively associated with the legal aid mission and other human rights activities.

Mr. Lapalikar is a senior free lance journalist who has been associated with the media for nearly 25 years. He apart of the National Front for Tribal Self Rule and is associated with several people's struggles. He graduated with Bachelors in Journalism and lives presently in Nagpur with his wife and children.

IPT Secretariat

Deepika D'Souza, Devlyn Newnes, Sunil Scaria, Sunita Dubey & Minu Jose

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PART I

INTRODUCTION

In April 2002 the Indian People's Tribunal on Environment and Human Rights (IPT) was requested by local organisations in Chhattisgarh to investigate into what appeared to be an ongoing conflict between the local administration and the local people majority of whom are tribals in Bastar district, Chhattisgarh. The genesis of the conflict was the acquisition of land for setting up of a steel plant by the National Mineral Development Corporation in the area.

The area where the conflict took place is in the surrounds of the villages of Nagarnar, Amaguda, Kasturi and Maganpura. These villages are situated near the border of Orissa in Bastar District of Chhattisgarh, approximately 20 kms from the town of Jagdalpur. The villages are surrounded by some of the most fertile lands Bastar. Agriculture is one of the main occupations of the people in this district. Flanked on three sides are the forests of Bastar and at a distance on the fourth side the Indravati River. The land comes under Schedule V of the Constitution (a Constitutional Provision which protects the lands of tribal people - copy of the Schedule in Annexure III).

The area is predominated by tribals who make up approximately 80% of the population, dalits 5% dalits and about 15% of the people are from the Sethia community. Most of the people of the area are illiterate or high school dropouts. In a population of 50,000, about 90% own land, while the rest are landless labourers who work on the fields of the landowners and eke out a living from the forest and in the town of Jagdalpur. The area is well irrigated and the villagers usually get atleast two crops, the main one being rice, while vegetables are grown during the winter season.

During the months of February and March 2002 the IPT was informed of a serious clash between the local administration and the residents of these villages. Over 250 people had been arrested while several had fled in terror, overnight the peace and relative security in the area had changed to one of fear and repression

On the basis of the information received, the Tribunal constituted a panel headed by Justice S.N. Bhargava, retired Chief Justice of Sikkim High Court and member of the Manipur State Human Rights Commission. He was assisted by Mr. Vijay Lalikar, senior freelance journalist, Deepika D'Souza, Co-Convenor of the IPT and Sandhya Khare, social worker.

The team visited with the definite mandate of looking into the issues behind the conflict:

- *Present situation, particularly the events that have lead to mass arrests and detention of the villagers on March 9, 2002.*
- *Events that followed*
- *Facts surrounding the construction of the steel plant*
- *The norms for setting up the plant*

The Tribunal visited the area from April 15 to 19, 2002. The investigation team met in Raipur and proceeded from there to Jagdalpur. That night itself a public hearing was held in Maganpura. On April 16, 2002 a site visit was conducted and a tour of four villages was conducted. During the public hearing and the site visit the Tribunal members met with the affected people, the people who were protesting against the take over of their land as

well as the people who were in favour of their land being acquired by the government for the Steel plant.

The Tribunal also met with the local police authorities in Nagarnar and elected members of the Panchayat. On April 16 the IPT panel met with the Collector, the Sub Divisional Magistrate and Superintendent of Police and was given permission to enter the prison to meet with the villagers who had been arrested and taken into custody in Jagdalpur Prison. During the enquiry, the panel met with several eminent local people like Advocate Gorelal Jha - a well known senior criminal lawyer as well as other citizens who gave the Tribunal an understanding of the present situation and the events that had lead to this conflict.

On concluding the visit the Tribunal sought to meet with the Chief Minister to apprise him of the situation. Two weeks prior to the Tribunal's visit a letter was sent to the Chief Minister and other concerned government officials informing the Government of Chhattisgarh of the Tribunal's visit to the area. A letter was sent to the Chief Minister requesting for an appointment, inspite of several phone calls and faxes, the Chief Minister refused to grant a meeting with the IPT Panel.

BACKGROUND TO THE EVENT

The following data has been garnered through the meetings with the local people, concerned citizens, local administration, newspaper reports and from reports written by various civil liberties groups.

The National Mineral Development Corporation (NMDC) wants to establish a steel plant in Bastar district and had in the past-identified land in the vicinity of village Hiranar. The NMDC, however, had to give up the idea due to the fierce resistance from the people in Hiranar and nearby villages, particularly since the mandatory consultation process provided for in Act 40 of 1996, Provisions of The Panchayats (Extension to Schedule Areas) Act was not complied with. NMDC then started to look for alternative sites namely the land belonging to four villages - Nagarnar, Kasturi, Amaguda and Maganpura in Jagdalpur Tehsil of Bastar district to locate the steel plant. NMDC wished to acquire 11000 acres of land owned by people of all the four villages.

CHRONOLOGY OF EVENTS

May 2001 - Application For Land Acquisition

The NMDC moved the district administration in May 2001 with the request to acquire land for the purpose. As a part of the statutory obligation of consultation with the concerned Gram Sabhas before starting the process of land acquisition, a notice was sent to the concerned persons about land acquisition and to participate in the Gram Sabha to give their opinion. It was, however, alleged by the local people that many of them did not get the notice.

June 11 & 13, 2001 - Gram Sabha Meeting Was Convened

Nevertheless consultation meetings of the concerned Gram Sabhas were held on June 11 & 13, 2001. The villagers were told that the plant would use a new technology to process the iron ore mined in Bailadila, Chhattisgarh. According to the statement recorded by the Gram Panch Pralad Singh Bagair the proposal to set up this plant was unanimously rejected by the villagers. The tribals present there did not approve of the proposal of land acquisition because their economic interests would be adversely affected. However

inspite of strong protests it was alleged that the Collector issued a press statement in High Way Channel (local newspaper) stating that the villagers were in favour of the plant.

June 16, 2001 - Alleged Forgery Of The Gram Sabha Minutes Book

It was also alleged by the affected villages that subsequently the district administration manipulated the records of the meeting of the Gram Sabha. The villagers claimed that the minutes book of the Gram Sabha which is normally kept in the Panchayat office was taken away by the Nodal Officer and then replaced some days later. In some of the books, pages were missing and a new set of minutes had been written.

August 2 & 31, 2001 - Complaint Made To The National Commission For Scheduled Castes And Scheduled Tribes (Ncss)

Aggrieved by the chain of events that were about to overwhelm them, the people approached the NCSS. The local administration did not take heed of the complaints being made with the NCSS in which serious allegation had been made and sent routine replies to the Commission.

September 29, 2001 - Final Award For Land Acquisition

Inspite of protests, complaints and subsequent investigations by the NCSS the process of land acquisition continued uninterrupted. Under Section 9, a notification was issued on August 8, 2001 and the final award was passed on September 29, 2001. While the villagers from the various Gram Panchayats were rejecting the proposal to set up the steel plant, it was alleged that some villagers were called and told that they were being provided finance for the purchase of agricultural implements and material. For example: Janki claimed that her husband was told that finance would be provided to him for the purchase of a bullock cart. Her husband was taken to the Collector's office and was asked to sign on some documents that he could not read and a cheque was given to him before the Collector. Later, her husband was told that the motive was to fraudulently acquire their land and not to provide finance; she tore up the cheque. She was unable to tell us the amount of the cheque.

October 1, 2001 - Ncss Calls For A Detailed Report On The Forgery Incident From The Local Administration

This situation became aggravated when the NCSS asked for a detailed report on the comprehensive complaint filed by the people on October 1, 2001 in which allegation about criminal offences against senior officers, including the Collector were made. It is alleged that repressive measures were started undertaken after the complaint reached Jagdalpur for inquiry.

October 23, 2001 - Illegal Arrest And Detention Of The Leaders Of The Movement

Subsequent to this, as per the statement of Digamber Sethia, there was a ceremony to honour the death of Pyari's mother who had passed away a few days ago. Some of the women were coming from Nagarnar to Pyari's house. They saw Banmali, Chairman of Nagarnar Gram Panchayat about to perform a sacrifice in the temple of the village goddess. They chastised him for performing a sacrifice, when there was a death in the village. This matter was referred to the Sarpanch of the village of Nagarnar. There the women were abused, assaulted and chased away. The women then tried to file a complaint with the police but they refused to register one, instead they registered a complaint on behalf of Banmali. The women of the village were charged with harsher offences. The complaint registered against Banamli was petty in nature. The women only later came to know through the newspapers that there was a case registered against them.

The villagers felt that Banmali who is among a small minority in favour of the plant was going to perform this sacrifice as Bhoomi Pooja to mark the beginning of the construction of the steel plant.

Mr. Satyanaryan Sethia, acknowledged as a local leader, had in the past mobilised protest against the setting up a Steel Plant in the village of *Mavalibhata* in 1992. Every year an annual celebration is held on October 24, 2002 to mark the success of this protest and the effect the people's resistance had in averting the construction of the Steel Plant.

On October 23, 2001 the police came to Satyanarayan Sethia's house stating that they had come to investigate the offence involving the fight between Banmali and the women. However, later they said that they were investigating into a case of October 21, 2001 when Satyanarayan found a drunken person from Nagarnar on the road and assisted him to his house. According to Digambar Sethia, the drunken person belonging to Banmali's group thereafter filed a false case against Satyanarayan implicating him in for causing an accident. Satyanarayan Sethia was taken along with Duryodan to Jagdalpur for what appeared to be an investigation in relation with the case of accident and detained in the police station on October 23, 2001. The villagers, however, felt that he was arrested mainly to prevent him from attending the celebration which the authorities felt would give further impetus to the struggle against the NMDC plant.

At about 9:00 p.m. the same night another activist and community leader Samson Kashyap was also arrested. A group of police officers came to his house gathered around and forced Samson to come to the police station. Champabai, Samson's mother, questioned the police as to why they were taking him into custody. They were unable to provide her with any reason. As soon as he was lead away she immediately gathered the women and approached the police station. They questioned the police officer in charge as to why he had been arrested and requested the police to release him that night and if necessary re-arrest him in the morning. The police asked them to bring their village Sarpanch who then came and repeated the plea to the police. The Station in Charge told them that he did not have orders from his superiors to release Samson. When the women heard that the police were not going to release him, they decided to sit before the police station in protest.

Lathi Charge on the Women

The word of Samson's arrest and of Satyanaryan's and Duryodhan's arrest spread like wild fire and slowly hundreds of women gathered around in silent protest outside the Nagarnar police station. At around 10.00 p.m. the Thanedar lathi charged the women. Several were injured in this show of force by the police. The boys of the village took them to the hospital where first aid was given to them. However this did not deter the women. Throughout the night they continued to sit in protest before the police station.

Mungai a women from the village, aged 45 stated that while they were at the dharna, the police officers turned the lights off and pelted the women with stones. One large stone hit her on her back and she fell unconscious. At around 12.00 p.m., when she recovered consciousness the police beat her again and clamped her mouth to stop her screaming. They hit her with slippers, then stripped and manhandled her. This treatment continued until 8.00 a.m. in the morning. She was then taken to the hospital where the medical staff refused to keep her and discharged her after giving her some first aid.

At around 12.00 p.m. in the night a police force of about 150 policemen was sent to the village police outpost at Nagarnar. The Magistrate, Sub Divisional Magistrate and the Chief Superintendent of police accompanied them. The women police accompanying the force called the three women and beat them mercilessly. Some of the women who were beaten were taken to the local hospital where they were given some first aid and then sent away.

At about 5.00 a.m. a large number of people had gathered around the station demanding the immediate release of the three activists arrested. The police attempted to take Samson away from Nagarnar. They even asked Samson to get the crowd to disperse. The crowd resisted and asked the police to release their leaders. After repeated attempts to take Samson to Jagdalpur the police then resorted to lathi charge, teargas and there was some kind of firing from around 10.30 to 11.00 a.m. In this firing three people sustained wounds and several people were hurt by the stones and lathis wielded by the police.

Some of the men threw the tear gas shells back at the police. The altercation lasted for about 2 hours resulting in damage to the police vehicles in the compound. About 45 villagers were injured in the process. They were taken to the hospital and discharged after 20 minutes of medical attention. The hospital staff was abusive and refused to treat many of the persons. Champabai was discharged immediately even though she had a collarbone fracture and in spite of her telling the staff that she was feeling giddy. They refused to accede to any of her requests. She still remembers the incident with fear.

The team also met with Dhaneswar who was one of the victims of police firing. He is a student who works part time in a veterinary clinic. He was operated in Raipur as per the medical report, a metal plate was recovered from his right ankle. As per the facts stated by him: *"There was a loud noise from the village when he went to see the cause of the commotion he found that thousands of people were staging a peaceful protest which turned violent when the police brutally charged and fired tear gas shells on the women protesters."* Dhaneswar told us that there was no prior warning. Since their leaders were not there, he decided not to file a complaint against the police.

Another villager by the name of Butia was also injured during the firing, but as per the medical examination conducted by a Government doctor, a stone was found embedded in his right ankle. Butia too did not file an F.I.R, but a report of the lathi charge and firing has been given to the Bhuria Commission.

The villagers particularly complained about the behaviour of the Sub Divisional Magistrate A.K. Toppo. The villagers accused of him of being drunk at the time the police station was gheraoed and of repeatedly abusing the women and calling them prostitutes.

Thereafter the villagers told us that the village Sarpanch and a few prominent individuals went in and tried to resolve the matter amicably. At around 12.00 noon a water tanker was brought to disperse the crowd.

Statement of Samson Kashyap

"A single police officer came to the village and told me - (Samson) to come to the station, as we just want to talk to you. As soon as I decided to go and moved past the village meeting place about 15-20 police officers jumped on me and pointed their guns at me. This scared me as I realised that this was more than a mere discussion. The news of my arrest resulted in a dharna by the women of my village, which turned violent when the police lathi charged them resulting in injuries to a few women. Thousands of people gheraoed the place and the police opened fire in the morning. From inside I realised that the police were very tense and fired before they received any order to do so from the Magistrate. I am making these observations because I was in the police station at the time of the clash."

The statement of Kachra Bai

"In the morning the Collector came alongwith the Inspector General of Police. The Collector tried to bypass the women but could not do so as they had blocked the approach

road and kept her waiting for nearly 3 hours .The Collector complained to the villagers about this to which the villagers told her that they were waiting for 18 hrs and had not even had a morsel of food to eat. The Collector asked the people whether they would peacefully disperse if the three activists were released. The women then told her that their struggle was not against the State but against the Company N.M.D.C setting up a plant on their fields, which is the only source of employment and sustenance.

The three detainees were later released. The entire incident of police action has been totally denied by the administration.

October 25, 2001 - Injured Are Admitted To Hospital But Discharged

Most of the injured were discharged on the apprehension that the Chief Minister (CM). who had come to the town may visit the hospital. C.M. however feigned ignorance about the incident, referring to it as a possible minor law and order issue

Novemer 23, 2001 - Final Meeing Of The Ncss

The NCSS held that the last meeting which was attended by the Secretary of Panchayats, Government of Chhattisgarh and C M D of NMDC besides the complainant and representatives of the Central Ministries.

December 12, 2001 - Order Of The Ncss In Favour Of The Villagers

The recommendations of NCSS are conveyed to the Collector, the Chief Secretary and the Chief Managing Director of NMDC. It was held, *inter alia*, that

- (i) land acquisition was *ab initio*, null and void,
- (ii) criminal offences have been committed whose responsibility cannot be disowned by the Collector and Chief Executive NMDC,
- (iii) the Guidelines have not been followed about rehabilitation etc, and
- (iv) the entire process should be redone.

December 26, 2001 - Contract For Boundary Wall Finalised

Ignoring the recommendations of the NCSS the contract for the boundary wall was finalised.

January 1, 2002 - People Sit On Peaceful Dharna

The people began to apprehend forcible occupation of land amidst rumours of NMDC and local administration ignoring the recommendations.

January 31, 2002 - Surprise Attempt By Nmdc To Enter The Village

There was a surprise attempt by NMDC officials with the help of the Sub Divisional Magistrate to enter the village start construction of the boundary wall even as dharna was in progress. The people resisted. Cases were framed against a large number of people but no arrests were made.

March 2, 2002 - Joint Gram Sabha Meeting Convened

A joint Gram Sabha was convened to discuss the situation and plan of action. Eminent citizens from various parts of India who came especially to attend the meeting to extend support to the villagers, were detained by hooligans on the way to Nagarnar. Police took them back from Bastar 20 kms short of Jagdalpur. Over 200 delegates from Charama were forced by the police to leave Amaguda, but not before a hostile crowd smashed three

vehicles manhandled the women and forced the people to flee into forest and trek 35 kms in the night before reaching home.

A Joint Gram Sabha meeting with 3,504 persons including 2,002 women was held. Resolutions were passed stating that people were not against steel plant but required certain assurances from the administration on the basis of which they would decide whether their land could be acquired. These were put down as ten demands made by the village to the administration (Annexure I)

March 9, 2002 - Nine Of Ten Demands Of The Villagers Are Met

This led to a series of talks with the local officials and the villagers. On March 9, 2002 a meeting was held with the Collector and Inspector General of Police and the villagers. At this meeting the officials conceded to 9 of their 10 demands. The villagers requested that the promises made in the meeting be put down on paper. However, before this could happen the local administration unleashed a reign of terror in the village from March 10, 2002 onwards. The IPT was called shortly after this to investigate into the matter and what had led to this clash. On March 11, 2002 construction of the boundary wall was initiated.

Disturbed by these events, Dr. B. D. Sharma the president of Bharat Jan Andolan also moved the National Human Rights Commission (NHRC) seeking protection for the people. An NHRC team visited Bastar between March 12-14, 2002 its report is awaited.

April, 2002 - Entry To The Village Is Barred By Local Hooligans

Local goons from Jagdalpur thrashed the PUCL team and denied them entrance to the area. Similarly, Medha Patkar is also denied entrance to the area.

THE TESTIMONIES OF THE VILLAGERS REGARDING THE MARCH INCIDENT

The following narrative was elicited through the public hearing held at Maganpura, as well as from the arrested people, the local newspapers and a few eminent people that the Panel met with.

On March 9, 2002 the people of the four villages met with the Collector and the I.G. At this meeting they put forward a list of the following demands (Annexure I). After a long meeting the authorities finally agreed to 9 of their 10 demands. The villagers requested that these promises be put down on paper. After which they would reconvene a Gram Sabha to decide whether they would give their land to the steel plant or not.

However, before they could do this by mid-morning of March 10, 2002 the police entered the village of Nagarnar in several vans and started announcing on the megaphone "*now you have agreed to give over your lands come and collect your cheques.*" Hearing this, the villagers were astonished and a large number of women of Nagarnar and Kasturi gathered on the highway, wondering what was happening. Suddenly the police ordered a lathi charge and the women were surrounded beaten and arrested.

While the police were arresting, the women some women managed to escape through the fields and inform the men of what was happening. Hearing of the women's arrest, the men ran to the highway and attempted to barricade the highway to prevent the police from taking the women to Jagdalpur prison. The police evaded their barricade by using a dirt track through the forest and took the women to Jagdalpur. In the aftermath of this, several of the men were arrested and also taken to Jagdalpur.

I Satyanarayan Kamlochan Sethia a resident of Kasturi village, a farmer by occupation and President of the Kisan Sangharsh Samiti state "The Samiti was displeased with the illegal land acquisition process and the fabrication of the Gram Sabha Minutes Book. We had made a complaint to the NCSS. The NCSS had investigated into the matter and ruled in our favour. Then on March 9, 2002, after the district administration had assured us that all, but one of our demands would be met and that after Shivratri, a formal decision would be taken, a large police force descended on the village, arrested and beat the women who had gathered on the highway. All the people in the village live in an atmosphere of terror and I fail to understand why the administration has let loose a reign of terror particularly when it had conceded to most of our demands?"

I Lakhpati Sethia a resident of Maganpura state "I am a farmer and have been opposing the illegal take over of our land for the steel plant. On March 10, 2002 Arjun Sethia, Markhand, Banshi Sethia, Gulab Singh some others and I were in the village. On learning that our women were being beaten up and arrested on the highway we rushed to the spot and sought to stop the police van from transporting the arrested persons. Soon there was panic everywhere. My uncle Bhagwandin was arrested by the police. I rushed to have him released from their clutches. They let him off but caught me. I suffered lathi blows. While they were beating others I managed to escape."

"I Gurubandhu Mongra Baghel of Bhatra caste, resident of village Nagarnar, will be losing one acre of land, which has been sustaining me for years. I did not receive a notice in respect of the land acquisition and yet I was told that I should collect the cheque for the land acquired. On March 10, 2002 some police vans entered the

village and started announcing on the mike that we should collect the cheques at the police station or else we will be required to go to Court to collect the cheques. We refused to collect the cheques. Around 7:00 p.m. the police entered the village in large numbers and started arresting the men, women and even children. My wife and my son, who studies in the eighth standard were also beaten. An atmosphere of terror prevailed in the village and many fled from the village. On March 12, 2002 I was taken to Nagarnar police station where a large police force was assembled. I was scared. I was told to collect the compensation cheque and left with no alternative I collected the cheque. The Bank had also been told to open a counter there so my cheque was taken from me and immediately deposited."

After the women were taken away the villagers said that the police went berserk and beat up anyone they came across. Innocent passers-by on the highway were beaten and taken into custody. The panel met quite a few people who were from the State of Orissa on their way to Jagdalpur or to the neighbouring villages to sell goods like rice and/or to purchase some other goods when they were picked up by the police and arrested. One boy had been caught while on his way to meet his sick aunt in the neighbouring village. The following are some of the statements of the people whose relatives were caught or who were witness to the arrests and beatings:

*I, **Lakhinarayan Nandal Bhatra** and resident of village Chokawada state " My 30-year-old brother Nandlal, also a resident of village Chokavada, was on his way to village Dhanpunji to make necessary purchases for the Ramnavami celebrations of the village panchayat when he was stopped by the police and badly beaten up. He was then taken to the Jagdalpur jail. When the Village Sarpanch met him at the jail, he told the Sarpanch that the police took away his cycle and also cash of Rs 150/-. This is inspite of the fact that we do not stand to lose our land."*

*I **Gobaru Dasha Mahara**, resident of village Chokawada, state "My son Loknath was assigned by the Village Panchayat to make necessary purchases for the Ramnavami celebrations. While he was on his way to village Dhanpunji, a group of policemen stopped him and beat him up. This was on March 11, 2002. He did not return for a long time and later we learnt that he was taken to the jail. He later told us that he was severely beaten before being removed to the jail. We do not stand to lose land because of the steel plant."*

*I, **Samson**, son of Basudao Kashyap, caste Bhatra, and resident of village Nagarnar, state "I am a farmer who had complained to the National Commission for Scheduled Castes and Scheduled Tribes against the illegal land acquisition process for the steel plant. Later several meetings of the villagers were organised at Jagdalpur, Nagarnar and Amaguda by the district administration where the Collector, the Superintendent of Police, the Deputy Inspector General of Police and Divisional Commissioner were present. The Kisan Sangharsh Samiti put forward its demands. On March 9, 2002 the Divisional Commissioner told us that all but one of our ten demands had been conceded by the administration. Suddenly, in a volte face, on March 10 a large police force descended on the village and arrested and beat up the villagers including women. Police entered my house to look for me and finding that I was not there, they damaged my house. They arrested my old mother and took her to Jagdalpur jail. Several other women were also arrested. I am on the run because of police terror. I am the treasurer of the Kisan Sangharsh Samiti, we innocent tribals are being victimised by the police."*

I, Kamlochan Somkhamram Kashyap, caste Bhatra, and resident of Nagarnar state "I have been a farmer until the district administration sought to acquire our land for a steel plant. Hurt by the illegalities in the land acquisition process, we approached the National Commission for SCs STs and it ruled in our favour on December 10 2002. A peeved administration then involved us in false cases and let loose a reign of terror. Ironically, this was done after the administration assured us on March 9, 2002 that almost all our demands had been conceded by the government and that a formal announcement would be made soon. Suddenly, the next day (March 10, 2002) police entered our village and started beating and arresting men and women. I escaped their wrath and have since then been living in terror and staying wherever I can find shelter."

I, Shankarsingh Narsingh Sethia state "I am a resident of village Maganpura and have been a farmer. After the illegal acquisition of land, we approached the National Commission for SCs and STs. Incensed by the Commission's order in our favour, the district administration let loose a reign of terror on the villagers and implicated them in false cases. Police arrested my son, daughter, nephew and son-in-law although the latter two were visitors to the village. The police damaged my vehicles and also served a notice for the removal of my shop. They also took away a two-tola gold chain from my son."

I, Mohan Angadram Sethia, resident of village Markel state "My brother Suryanarayan had left the village on March 10, 2002 for making some purchases. The police beat him up and arrested him for no rhyme or reason. Our village will not be affected by the steel plant and yet my brother has been jailed."

"I, Raila Sampat Dhurwa, resident of Maganpura say that my husband was looking for our grandchildren who were playing in the village and the police caught him and took him away. He is a casual labourer and with him imprisoned we face a dark future."

I, Kamla Paik, resident of Nagarnar state "My son, Navino runs a cycle shop. On the fateful day, police arrested my son for no reason. He had raised a loan of Rs. 10,000 to run the shop. Police took away all the cycles and also removed cash from the cash box after breaking it. They also took away our clothes."

I, Lalit Budhra Bhatra, resident of village Amaguda state "My wife Lachchu was taken away by the police. I fled and escaped being arrested. I also state that I heard that the police had purchased bows and arrows at village of Tonguda and Jeevagaon to plant these in our homes. It is now on record that they are ours but the fact is that they were planted by the police."

The beatings and the arrests did not end on March 10, 2002 but went on for the next few days. People who deposed before the Tribunal stated that from March 12, 2002 onwards the police entered the villages and went on a beating and looting spree. The repression was so severe that several students were afraid to leave their homes to give their final exams.

I, Nilaram Sethia have been blind since birth. I live at Maganpura." On the fateful day a large number of policemen entered our house and I was caught since I could not flee. They beat me up and dragged me for a long distance and kept on asking me about the whereabouts of the others. Meanwhile, I realised that my nephew Bhuwaneshwar was being assaulted by the police. They banged his head against a door. Sheshanand and another nephew were also dragged out and beaten.

Ramnarayan, a son -in-law of my elder brother and a resident of village Murma was also beaten. Police also stole approximately Rs. 15,000 raised from the society funds."

I, **Dhoblu**, son of Photku Mahara, Resident of village Chokavada, Tahsil Jagdalpur, District Bastar (Police Station Nagarnar) state that "My son Sitaram was arrested by the police on March 11, 2002 although he was in no way connected with the agitation against the Nagarnar Steel Plant. He was arrested at village Kasturi and later taken to Nagarnar Police Station. He was then taken to Jagdalpur jail where he continues to be detained for no fault of his."

I, **Ashok Kumar Shankarsingh**, caste Sundhi, am a resident of village Maganpura, "My brother has a cycle shop along Amaguda main road. On the relevant day the police entered the shop and took away 15-16 bicycles after damaging them. They also took away some 50 chickens and arrested my brother for no reason. They beat him mercilessly and later shifted him to the Jagdalpur jail. Then some policemen entered the shop in the night and took away approximately Rs. 20,000 in cash."

I, **Rajendra Bagel**, resident of Nagarnar am a member of the Village Panchayat and a farmer, "On March 10, 2002 I was at home and unaware of the police excesses. I hid in the house and did not stir out. Police came to my house in the evening and started harassing my guests Sonsingh and Baidyanath. They secured Baidyanath, a resident of Orissa, with a rope and sought information about me. Baidyanath kept quiet. The police damaged their bicycles. The police returned at around 1:00 a.m. and beat up my 'jijai' (sister's husband). Some pro-plant people who had accompanied the police took away two pairs of trousers and shirts, a hen, shoes, three bags of paddy etc. Among them were: Baliram, Lamu (Jaikishore), Dabal, Devanand, Vishwas Joyal, Ramlal Patel, Dupurta Baghel, Sudhir Patel, Virendranth (Raja), Rajendra Masih, Nirmal, Sandip Jacob and Ghasi Sethia. All of them belong to Kasturi. My guests, Digambar, Madan and Chandan were present on the spot. I fled from the house in the night and ever since then I have been on the run. I am terribly worried about everything back home."

I, **Vidyadhar**, son of Banshidhar Sethia, resident of village, Nagarnar state, "My daughter Suvarna who is 18 presently studying in the tenth standard, was subjected to humiliation on March 29, 2002 when some village boys sprinkled 'gual' on her. When she protested, they hurled abuses at her and also beat her up. When my daughter and I went to the Nagarnar police station to lodge a complaint, the police registered the offence. However, the very next day, the police changed their stance on being told by the boys, who had misbehaved with her, that we were opposed to the steel plant. They let off the mischief mongers and on the other hand they took my daughter, Suvarna into custody on the grounds that she had opposed land acquisition process and also took part in the gherao of the police station at Nagarnar. She was later sent to Jagdalpur jail. Her grandmother, Kacharbai, mother, Sumani and sister Gunmani have also been arrested after being implicated in various cases with respect to the steel plant."

"I, **Haribandhu Dhanarram Baghel**, caste Bhatra, am a resident of village Nagarnar and a student of standard X. My examination was to begin on March 13, 2002 and my centre for the examination was a school in Jagdalpur. I could not, however, appear at the examination as on March 10, 2002 the police came into my village and arrested scores of men and women, including my mother. Terrorised by the police, many residents ran into the forest. I hid myself in the house. I was in two minds whether to appear for the exam or not. When some of my friends told me that the

police was looking for me too, I decided against appearing for the examination. Khageshwar Sethia, Akhil Pralhad, Ramlal, Jagdish and several other boys of the village could not appear at various exams because of the police crackdown."

*I, **Prahlad Baghel**, resident of Nagarnar state "I could not appear at the MA final (Hindi) examination because of police terror in our villages. My mother was arrested on March 10, 2002. Many others were also arrested. The next day too, police came to the village, scared by their arrival many fled from the village. I too fled. Many innocent people have been falsely implicated in several cases."*

Even when the Tribunal visited the village the terror was palpable. The villagers only met with the Tribunal after dark. This was the first time that the villagers had gathered publicly after the March 10, 2002 arrests and beatings. The Tribunal members were taken by the villagers to see the damage done to their homes from March 10, 2002 onwards when the police tried to forcibly enter people's houses. In the Nagarnar police station the IPT panel saw over one hundred cycles that had been confiscated by the police from the four villages.

After the arrests of March 10, 2002 the pressure to accept compensation cheques mounted. Many people accepted the cheques to avoid being arrested. Landless labourers received no compensation. With a sizeable number of the people in jail the construction of the boundary wall began unhampered. It was reported that in the hurry to initiate construction of the boundary wall trainee policemen were used. Later on labourers from another village were hired to construct the wall.

Of the women arrested and imprisoned it was most distressing to see that some of the women arrested were old, infirm and some could not even see properly. There were mothers with infants and young girls too who had been arrested and kept in jail for over a month.

SUMMARY OF THE DISCUSSION WITH THE COLLECTOR AND OTHER OFFICIALS

The IPT panel met Ms. Richa Sharma the Collector, alongwith T John Longkumer - Superintendent of Police and A.K. Toppo - Sub Divisional Magistrate at the Collect orate on April 16, 2002.

The Collector had been posted to the area since 2000 so too the S.D.M. The S.P. has been in the area since 2001.

According to the Collector once the process of setting up a steel plant at Hiranar was halted there was a Collector's meeting at which they were asked to look for land in their areas using the following criteria.

- There should be no standing trees on the land
- No habitation should be affected
- No village should lose more than 25% of its land
- Should not affect an irrigation system
- A disproportionate amount of Tribal land should not be affected.

On the basis of these criteria the land of these four villages was identified. This land is also particularly suitable as it is close to a water source, is near the highway and relatively near a railway line.

She stated that after the Hiranar failure they were very careful to see that the '*Consultation Process*' was completed. The Collector, however, stated that as per her understanding the rule stated that *consulting* the Gram Sabha was mandatory - but the *implementing* the Gram Sabha's decision was not binding upon the administration.

The Collector and the officials present felt that all the norms of *consultation* had been met. They had issued a notice through the gazette, and in two newspapers. They had held the Gram Sabha Meeting and made public the completion of the land acquisition notice. She stated that the allegations of fabrication of the minutes book were not justified but if there was such a thing then the person who did this should be punished.

In her opinion the people had been given adequate notice and the police had acted well within control. She felt, moreover, that NMDC had made available compensatory land for those who were to loose more than 2.5 acres. 20 Lakhs of Rupees had been put aside for community development.

She claimed that majority of the villagers was in favour of the plant but due to certain elements in the villages they were afraid to speak openly in favour of the plant. According to her those who had come out in favour of the plant had faced a social boycott. In order to overcome the difficulty the people were having in collecting the cheques it was decided to give the compensation cheques in the village itself, for those who could not come to the Collectors office in Jagdalpur to collect the cheques. This was done on that fateful day in March in the Patwari's office. As most of the people were illiterate the Bank had also opened their counter in the office so the people could immediately open an account and deposit the cheque in the account. Later when there was a '*law and order problem*' from March 10, 2002 they shifted the giving of cheques into the Nagarnar Police Station for safety. In her estimation prior to March few people had taken the cheques but now most of the affected people had collected their cheques.

The compensation amount was given according to the quality of the land. Land was valued in three categories. Land surveys were conducted well in advance and the rates given, the Collector claimed, were well above the market rate.

The Collector and the authorities present felt that the people against the plant were just trouble-makers who were against the development of the nation. In fact she said that under the influence of Dr. B.D. Sharma they had constructed a Mandir right in the middle of the land to be acquired in order to stall the process. The Mandir was constructed, according to her, on October 24, 2001.

With regard to the people arrested the S.P. stated that 63 were arrested for blocking the highway under section 151 of the IPC. Later 169 were arrested for cases committed earlier but where no arrests were made

When questioned why a large number of women and children continued to be in jail for over a month, the authorities said that all attempts were being made to grant bail and that the state was providing legal aid too for these people.

MEETING WITH BANMALI NAG AND SUPPORTERS OF THE PROJECT

The panel met with Banmali Nag and other supporters of the project in the village of Nagarnar. Banmali Nag and a few of the others who had gathered to meet the Tribunal said that they were for the project as they felt the project would bring jobs to the area, jobs not only to those who gained employment in the plant but also to those who started small business and shops to service the plant. Banmali also stated that for those in the village who were educated there was no future. The landlessness forced people to migrate during the seasons when there was no agricultural work. The plant, he hoped, would give these people some income.

He seemed completely unaware of any details of the plant - what kind of product would be produced, whether the pollution from the plant would affect their fields and lives and what had been the experience of other communities living around steel plants in the nearby area of Durg.

MEETING WITH ADVOCATE. GORELAL JHA - EMINENT CITIZEN AND LAWYER FOR THE VILLAGERS IN CUSTODY, DR. B.D. SHARMA AND OTHERS

Mr. Gorelal Jha a redoubtable gentleman of approximately 80 years met with the Tribunal to give us a background into the issue. He is an old resident of the area and has been in the forefront of many democratic, struggles especially concerning the rights of minority and vulnerable groups. He had been aware that the tension between the local administration and the people in the area was on the increase but when the March 9, 2002 event happened he was horrified and decided to write a letter to the C.M. asking him to intervene. In spite of his rheumatic arthritis, which prevents him from walking, and travelling he personally went to Raipur (an 8-hour journey) to meet the C.M. The C.M., however, paid little or no attention to what Advocate Jha had to say and the people continued to remain in jail.

The villagers who had been arrested had all kinds of charges levelled against them. Charges of murder, conspiracy, charges under the Arms Act -charges which anyone after seeing the people who were arrested - old infirm women, pregnant women would find it hard to believe. In spite of that bail was denied and all attempts were being made by the judiciary to make the process even more difficult by delaying the process over minor technicalities and administrative matters.

He expressed his distress and shock that in all his life he had never come across such an incident where women protestors were kept in jail for over a month. Moreover the kinds of methods being used to bring about consensus for the plant were completely unconstitutional and illegal.

Dr. B.D. Sharma who had been associated with the struggle since the beginning, Dr. Binayak Sen and Illina Sen provided the context of the struggle as well as outlined how the NMDC plant had been rejected by the village of Hiranar. Now in desperation the State was trying to break the resistance through repression and terror. Dr. Binayak Sen was beaten when he tried to go to the area to investigate what was going on. Dr. B.D. Sharma who at one time was the Collector of this region was also stopped and prevented from entering the area.

PART II

FINDINGS OF THE PANEL

After meeting with the various groups, the administration and concerned citizens the IPT panel made the following observations:

1. Conspiracy And Dereliction Of Duty By The Local Administration With Complicit Approval From The Higher Authorities

As per the Fifth Schedule of the Constitution the authorities in tribal areas have a special duty to protect the tribals from being cheated or misguided. Chhattisgarh being a state that was set up to be a tribal state the administration is more duty bound to protect the interests of the tribals. In truth, however, the opposite seems to be the case.

The Collector claims to have served notice to the tribals regarding the land acquisition well in advance. In reality the notice was only served on June 7, 2001. The notice was given in two local newspapers and in the gazette when the Collector was well aware that most of the people of the area are semi-illiterate. Rule 2 (ii) about consultation with the Gram Sabha issued vide No. F12-46/97/Shat 9 dated 31-1-2001 clearly states that in areas where the public is largely illiterate the notice regarding land acquisition must be made public through popular means like the beating of the drum in the village, by posting notices in the panchayat office etc.

The people had less than three days to contemplate on the issue that stands to change their entire way of life and culture before the Gram Sabha meeting was called on June 10 & 13, 2001. At this meeting the Gram Sabha unanimously rejected the proposal. Instead of reporting this rejection to the NMDC authorities, the local administration had the minutes books removed from the panchayat office and rewrote the entire minutes. The IPT panel was shown a copy of the minutes and it was clear the new minutes were all written by the same hand in the same style inspite of the fact that in the earlier Gram Sabha meeting different people had been nominated to take down the minutes. Moreover it is highly suspicious that all the minutes books disappear at the same time after the people have rejected the proposal of the Steel plant in the Gram Sabha meeting. The act of fabrication, to effect cheating by a public servant is a serious offence and is punishable under Section 166, 167, 192, 218, 415 and 418 of the Indian Penal Code

Thirdly, even as the news of the land acquisition was made known to the people for the first time an announcement was made publicly by the Collector confirming the acquisition of land. The C.M and the Governor too are responsible as inspite of numerous petitions being brought before them they refuse to take action to ensure that the tribals are not unjustly evicted from their land. Under the Vth Schedule of the Constitution the Governor has a special duty to play in protecting the transfer of land to non-tribals to prevent land alienation.

The NCSS Report has gone into this aspect in detail. For further information please refer to Annexure II.

2. Violations Of Schedule V Of The Constitution And The Panchayati Raj (Extension To Schedule Areas) Act, 1996

Under the PESA Act the ultimate authority has been vested with the Gram Sabha to frame rules that are suitable for local customs and conditions. According to clause 4d of PESA:

PESA makes the Gram Sabha 'competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution

The Act also provides that 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; the actual planning and implementation of the projects in the Scheduled Areas shall be co-ordinated at the State Level (Clause 4I)

In this regard the Collector erred in not giving the process its due importance, also her opinion that the act merely means 'Consultation' and not implementation is wrong and a clear misrepresentation of the Act. The *Samata Vs Union of India* judgement further reinforces the rights of the tribals under Schedule V of the Constitution.

The district administration erred in not even informing the Complainant and the respective Gram Sabhas about the decision of the State Government regarding the recommendations of the NCSS and attempted to take possession of the land on the strength of impugned award. The Panel feels that had this been done the gravity of the situation could have minimised.

The administration even ignored the invitation of the joint assembly of the Gram Sabhas specially convened on March 2 and 3, 2002 for a dialogue to resolve the issue amicably. The Joint Assembly passed a ten-point resolution making it clear that they were not against the establishment of the steel plant but would like the government to abide by the policy and the provisions of law both of the State and the Centre. In a meeting at Raipur on March 1, 2002 between the Chief Minister and Dr. B.D. Sharma these points were broadly agreed to this, however, remained only an oral promise.

In fact the panel is of the view that the meetings of the four Gram Sabhas were manipulated to the advantage of the administration and the police machinery was employed to silence the dissent of people. The undue haste in bulldozing the project without taking the people into confidence and ignoring the specific mandatory provisions about consultation before starting the process of land acquisition establishes that all democratic norms were thrown to the wind by the administration.

On the other hand, the panel is impressed by the fact that on all occasions, the people, who have sensed the significance of new provisions about governance of the village level in terms of the Extension Act, were telling the officials to abide by the law and asserted their claims peacefully. The way the recommendation of the NCSS has been side tracked is rather inexplicable, particularly because it is the highest constitutional authority for protecting tribal interests.

3. Violation Of The Land Acquisition Procedure And Of The Sc/St Atrocities Act 1989

The provisions of Land Acquisition (L.A.) Act, 1894 have been blatantly violated and wrong facts used to take over the land

(vi) The notification under Sec 4(1) of the Land Acquisition Act (Ex 11 p. 121) states that the land sought to be acquired is 'totally fallow' where as the mention in the

application is as 'larger part is fallow' (Ex 8 p.114). But it is claimed by the people as the best agricultural land. The people's claim is conceded by the Collector in her comments sent to the Commission as there was no comment about this claim in reply to para 3.3 (Ex 5 p 102).

- (vii) The gist of the notification under Section 4 was not displayed at prominent places as envisaged in Section 4(1). This is clear from the fact that hundreds of people were still asking for information about Section 4 notification on July 27 in their application presented to the Collector. By that date, even Section 6 notification had been issued. No formal or informal reply was given to the people.
- (viii) Section 4 of the L.A. Act envisages that the date on which last of the publications mentioned sub-section (1) has to be taken as the date of publication. Even if (ii) above is ignored, the notification appeared in two local papers on July 6 and 7, 2001. (Ex 11 p 121) Thus, July 7 2001 is the deemed date of notification under Section 4. Yet Section 6 notification was signed (Ex 12 p. 123) by the Collector on July 23 which reduced the people's mandatory opportunity to file objections from 30 days to just 16 days. In this way the Collector fraudulently denied the people the mandatory 30-day period for making objections taking advantage of their ignorance about law.
- (v) The process of land acquisition continued even after violation of mandatory provision became public and was questioned in many forums.
- (vi) All this was done for ulterior reasons for gains to themselves and others.

(Except from the NCSS Order - Annexure II)

Furthermore under the SC/ ST (Prevention of Atrocities) Act 1989 it is a criminal offence to wrongfully occupy or cultivate the land owned by or allotted to a member of a schedule caste or scheduled tribe. To wrongfully dispossess a member of a Schedule Caste or Schedule Tribe from his/ her land or to interfere with the enjoyment of his rights over any premises or water is punishable by the law to no less than six months and could extend to five years.

Under these laws the district officials as well as the NMDC officials are liable for prosecution.

4. Excessive Use Of Force By The Police To Silence Dissent

The police are supposed to be in charge of law and order and to protect the weak from the strong, the vulnerable from their oppressors. In Nagarnar we see quite the contrary has occurred. Soon after the villagers made a complaint to the NCSS their leaders were arbitrarily arrested. Women sitting on a peaceful dharna were tear gassed and beaten. The Police vans in the area soon became symbolic of the fight they had with the State to recognise their democratic rights.

Police vehicles constantly patrol the area, people were arrested under false pretences. The panel noticed that most often the arrests were timed to prevent the community from mobilising or to remove their leaders from their midst at a crucial time.

The March 10, 2002 arrests are certainly a case in point. The community was in a dialogue with the authorities and had requested the officials to put their promises down in writing when the police started making announcements that they should collect their cheques. It is not the duty of the police to give or be involved with the giving of compensation cheques. The issue of compensation had not been discussed and the subsequent arrests, beating and looting was used to scare people into accepting the compensation cheques.

The panel is of opinion that apart from instilling fear the police were told to arrest the people so that the construction of the wall could begin. Had the women not been arrested the administration would not have been able to start construction of the wall.

Here too police were used to start construction - one wonders if the police are aware of their duties at all or is it just a tool of the local administration and the nexus surrounding the administration.

Women and children were kept in jail on account of the charges filed against them. Charges of attempt to murder, conspiracy, Arms Act etc. have been put against a large number of women who till that time had hardly even ventured out of the village. In the statement of the police in the FIR they claim that they were attacked by the people with sharp weapons, were grievously injured and struggled to save their lives. The medical record of the same men attached to the FIR states mild contusion on the ankle will recover in a day or two. Any judge reading this would be horrified at the fabrication of evidence, none of the charges will hold. The problem, however, is that the case will take years before it comes up for hearing, till then all the property confiscated, the property furnished for bail will be held by the court. The people too will be put through terrible hardship of having to appear before the court regularly whenever their case comes up for hearing.

The police erred to the extent that even passers-bys have been arrested. It seems to be apparent that because they were poor no effort was made to see that only people involved in the protests were detained. At the time when the panel met with the arrested persons no one had even contacted their families especially those from the neighbouring state of Orissa to let them know that they were arrested.

It is evident that while the local people follow democratic means of redressal and protest the administration and the police act in a completely undemocratic and unlawful manner.

5. Violations of the Environmental Impact Assessment

A notification passed in January, 27, 1994, by the Union Ministry of Environment and Forests (MoEF), mandates that all new projects, or the expansion or modernisation of any existing project (if pollution load is to exceed the existing one), which are included in the list under Schedule I of the Environmental Impact Assessment (EIA) notification need environmental clearance. And subsequently an amendment to the EIA notification made Public Hearing mandatory for projects listed in Schedule I of the notification, barring some exceptions.

Environmental Impact Assessment (EIA) is the term applied to the systematic examination of the likely impact of development proposals on the environment. It assists decision-makers in considering the proposed project's benefits and its environmental costs.

The Union Ministry of Environment and Forest grants the environmental clearance. For this purpose the project proponent is required to prepare an Environmental Impact Assessment Report and submit it to the Ministry.

Once the EIA Report has been completed, the project proponent first needs to submit 20 copies of the following to the State Pollution Control Board (SPCB) of the respective states and Pollution Control Communities of the Union Territories.

Executive summary of the project proposal containing the salient features of the project, in English as well as local languages.
Form XIII prescribed under Water Act
Form I prescribed under Air Act
Other information or documents that the SPCB may require to be submitted.

After the SPCB receives the required documents, it is the responsibility of the SPCB to conduct the Public Hearing. After completion of the Public Hearing, the project proponent has to submit to the Secretary, MoEF the following documents, *viz.*

Application in the prescribed performa
Project report that shall include
(i) Environmental Impact Assessment Report
(ii) Environmental Management Plan
(iii) Details of Public Hearing.

On the basis of this information, the Impact Assessment Agency, which is the MoEF, grants clearance or seeks more information.

Environmental Clearance and Nagarnar:

The National Mineral Development Corporation proposed to set up an Iron and Steel plant which falls under category 13 (a) of Schedule I of the EIA notification which requires environmental clearance based on the EIA report and the public hearing. The NMDC selected various sites for setting up of the steel plant. However, as they were not able to satisfy the people's aspirations these sites had to be dropped and the NMDC finally settled for the present site at Nagarnar in Bastar district of Chhattisgarh.

As per the requirements under the EIA notification, a Public Hearing was conducted at Jagdalpur on November 20, 2001. Chhattisgarh being a new State does not have a Pollution Control Board as yet. The responsibility of conducting the Public Hearing was taken up by the Chhattisgarh Environment Protection Board. As per the notice issued, "*any one who may like to present any suggestion, idea, criticism and objection about the said steel plant may do so orally or in writing during office hours within 30 days of the issue of this notice to the Regional Officer at the Regional Office, Chhattisgarh Environment Protection Board.*"

There are four affected villages whose residents' land has been acquired for the steel plant. The public hearing was conducted at Jagdalpur, which is 17 km from the proposed site. Considering the economic status where the monthly income of tribals is around Rs. 100/-, and the comparatively high cost of travel, this made it difficult for the affected as well as likely to be affected villagers, especially tribals to travel the long distance to attend the public hearing. The very purpose of the public hearing was defeated by the fact that people who are affected could not attend it.

Some of the submissions made at the Public Hearing which highlight the concerns of the people are:

The setting up of the plant and other related activities would further deteriorate the already *stressed Sal forest*. Sal forest produce provides livelihood to large numbers of the population. Forest resources provide the tribals with food, medicine, fodder and grass, fuel wood and water for irrigation. Between March and May of every year (the slow season in agriculture), the tribal households depend almost entirely on forest products for their livelihood. Among the non-timber forest produce that they collect are Sal seeds.

The *adequate availability of water* for the running of the plant is in doubt. The local people have raised the point of non-availability of water. The project proponents have

said that no dam would be constructed, but that an impounding structure would be constructed on the Indravati River. Now there is a big dispute between Orissa and Chhattisgarh on the use of water for the plant from Jora nala, a tributary of Indravati.

Amaguda which is proposed to be the main railway station for bringing in the waste iron-ore tailings, coal etc would require an extensive network of railway lines, and such proposed lines would be in the forest area and no prior clearance under the Forest Conservation Act has been obtained.

Under Section 2 (ii) of the Forest Conservation Act, notwithstanding anything in any other law in force in a State, the State Government or any other authority cannot permit forest land or any portion of it to be used for any non-forest purpose without the prior approval of the Central Government. As of date no such forest clearance has been sought for.

Violations under the Environmental Protection Act, 1986

According to clause (c) of sub-section III of section 2 of the Environmental Impact Assessment (EIA) Notification dated the 27th January 1994:

“No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.”

It was found that at the proposed site where the project is to be located and for which land has already been acquired, the construction of a boundary wall is in progress. This is an absolute violation of the provisions under the above-mentioned clause of the EIA notification. This point of not permitting construction before clearance has also been emphasised in a MoEF circular, reference No. J-21011/8/98-IA. II (I), dated May 14th, 2002 which states:

It is therefore, necessary that all the SPCBs / PCCs issue fresh notices forthwith to all such defaulting units asking them to apply for environmental clearance without any delay and, in any case, not later than March 31, 2003 with complete information. In future, while issuing No Objection Certificate/Consent to Establish, it shall be clearly stipulated that no construction activity preliminary or otherwise shall commence without first obtaining environmental clearance wherever required. Suitable directions shall be issued by all States / UTs under the Environment (Protection) Act to units to stop construction activities / operations of all such units that fail to apply for environmental clearance by March 31, 2003. Units which fail to comply with these directions shall be proceeded against forthwith under the relevant provisions of the Environment (P) Act, 1986 without making any reference to this Ministry.

According to the S.O. 470 (E) dated June 21, 1999, which are the Environment (Siting for Industrial Projects) Draft Rules, section (2) of the said rules prohibits setting up of any industry listed in Annexure-I in a 25 km belt around the periphery of the National Parks, Sanctuaries, and core zones of Biosphere Reserves.

It has been observed that the Kanger Ghati National Park in Bastar district of Chhattisgarh, is located within the stipulated area of 25 km periphery distance, where the said NMDC Steel plant is proposed to come up. As per the draft rules, primary metallurgical industries, which includes production of Iron and Steel (entry no. 5 of Annex. I), such an industry is prohibited from being set up within 25 km periphery of the National Park. It may also be mentioned that the topography sheet of the area where the plant is proposed to be set up clearly mentions that there is a reserved forest with good Sal growth in the vicinity (Annexure V). Yet this fact has not been placed on record, knowing full well that

there are stringent conditions of Government of India as well as Court verdicts in this regard.

The Technology

Environmental groups have been concerned about the waste generated from mining activities which, they say, is harmful, both to the environment and the people living in the vicinity. In the classic technological process of washing calibrated iron ore lumps obtained from the mines some of the iron gets carried away at the time of washing with the water. This water is impounded in a tailing dam and the material dredged and stacked in mounds.

The Romelt technology to be used by NMDC for processing the iron waste to ameliorate the problems arising out of traces of residue in the environment leaves one with apprehension as this is an untried technology, one cannot be sure that the euphoria generated about this technology being able to deal with the mine waste would actually prove successful. This technology could very well pose new pollution problems, which could prove worse than the existing situation.

To market plants based on Romelt iron making technology in various developing countries viz. India, China, South East Asian & Middle East countries and Africa, Steel Authority of India Limited (SAIL) along with three Russian companies have got into a joint venture called Romelt SAIL India Ltd. (RSIL). This newly formed company has been incorporated under the Indian Companies Act with authorised equity capital of Rs 1 crore. SAIL holds 40 per cent of the equity, and the rest is held by three Russian companies.

Some of the problems envisaged by this new technology being experimented in India are: The proposed plant in India will be the first full-scale commercial use of the technology. This means that there is no commercial track record of its pollution performance.

"Sources said Thailand is negotiating with RSIL to set up a plant there. If Romelt technology is viable in India, it will make a breakthrough in iron ore mines by using waste generated at the Romelt plant." (1999 Indian Express Newspapers - Bombay)

This extract from the newspaper proves that the technology has not yet been in operation on a large scale. The Russians have developed the technology, but they have not put it to use on a commercial scale in their own country. Neither has the technology been used by any other western nation. It appears that India being a developing country, with less stringent environmental norms and a citizenry that is not aware of the consequences of environmental degradation makes it a very good testing ground for experimenting with this new technology. Moreover the proposed plant is coming up in an indigenous area where the socio-economic status and the literacy levels are very low, which makes it far easier for the authorities to use their power to force such a developmental activity. Going ahead with such an industry in a developed nation would prove very difficult.

Even though the technology has not been proven successful on a commercial scale and no benefit as such has been reported, the Technology Development Board (TDB) and the Union Ministry of Environment and Forests (MoEF) have agreed to extend a soft loan of Rs 10 crore each which amounts to twenty crores.

6. Criminal Liability Of Nmdc And Its Collaborators

As per the 1974 Guidelines for setting up industries in Schedule Areas the company is liable for developing the area and providing facilities for the tribals with regard to education, development and employment. The industry is supposed to do a preview of

likely displacement of individuals by the establishment of new industries and draw up schemes for interim relief of the displaced persons.

In reality no scheme exists for the landless labourers who will lose their source of livelihood once the plant comes up.

Banmali Nag and others have been promised employment but on paper how many people will be employed and in what manner, what education qualifications these people will require has not been made clear.

Apart from violating the 1974 Guidelines NMDC officials are also liable for criminal prosecution under the SC/ ST (Prevention of) Atrocities Act (Refer to point 1 of the panel's finding).

CONCLUSIONS

It is indeed a sorry state of affairs when the government of a country blatantly and violently ignores its own laws and uses its might to deny poor and vulnerable people of their most basic rights - the right to land, right to livelihood and the right to live without fear.

It is also clear that the attitude of the authorities towards environmental regulations seems to be very casual. Environmental clearance has been treated as a mere formality by the authorities as is evident from the fact that they have begun construction of a wall even before they applied for environmental clearance, something which is clearly against the law. The construction of the wall began in March 2002, whereas the application for environmental clearance was submitted only in May 2002, as has been reliably learnt from the website of the MoEF (June 2002). Compounded with this casual attitude of the project authorities is the lacuna in Indian environmental law, which allows an untested technology, developed in a foreign nation, to be experimented with, in India. One also needs to note that the Russians who that have developed this technology have not implemented it in their own country on a commercial scale.

It seems obvious that visible and apparent methods of safeguarding the environment, manifested in environmental law and policy are meant merely as a façade to the world that protection of the environment is a priority. In actual fact, the lack of awareness among the citizenry of developing nations makes it an ideal situation for developed nations in cohort with the leaders of developing nations to use these nations as experimental grounds. The monetary gain that comes with development is far too strong an enticement for environmental concerns to be carefully heeded.

Taking all these factors into consideration the IPT panel strongly feels that the following steps are essential in order to restore confidence and bring peace to the area:

RECOMMENDATIONS

1. The charges under which the people have been arrested appear to have been greatly exaggerated and in some cases cooked up. These charges need to be immediately reviewed and the false cases dropped.
2. All seized property must be restored to the lawful owners without delay. People testifying before the Tribunal spoke about their cycles, mangalsutras, weighing scales and other articles of value being taken into police custody. Considering that adivasi's possess very little a loss of even one cycle, is a severe blow to the family's economy.
3. The issues raised by the NCSS - the main ones being:
 - a) land acquisition was *ab-initio* null and void.
 - b) Criminal offences have been committed whose responsibility cannot be disowned by the Collector and chief executive of NMDC, need to be thoroughly considered and a final decision taken with due intimation to all concerned including the NCSS and the Gram Sabhas before proceeding with the project.
4. There has been an undue use of force and the democratic processes of the Gram Sabha have been subverted. This process must be started again.
5. The EIA clearance too has not been granted. A thorough review of the project needs to be done looking at the costs to the environment and the socio-economic costs. Also in the present condition whether the country needs another steel plant given that the existing steel plants are not running to full capacity and are making tremendous losses.
6. Until all these considerations are met, work on the plant, construction of the boundary wall must be halted with immediate effect.
7. It is unfortunate that in a hurry to establish the steel plant, the State Government has ignored the guidelines according to which a comprehensive plan for the zone of influence of the proposed steel plant be prepared as per the 1974 guidelines. It is time not only for the Government of Chhattisgarh, but also the Government of India to evaluate its *so-called development process*, which neither generates employment, nor meets any criteria of sustainability. This project yet again raises the question as to whose '*greater common good*' does this project seek to serve.

Justice S.N. Bhargava
(Retd. Chief Justice, Sikkim High Court)

Vijay Lapalikar

BIBLIOGRAPHY

Copies of the FIRs filed by the police of Jagdalpur in relation to the arrests of March 10, 2002 onwards.

Judgements

Samata Vs Union of India - Writ Petition No: 8476 of 2001

Acts, Laws And Conventions

- Indian Penal Code
- Criminal Procedure Code
- Panchayati Raj (Extension to Schedule Areas) Act - 1996
- Guidelines Issued by the Ministry for Home Affairs (A Note on the Preparation of Intergrated Tribal Development Projects) - 1974
- Schedule V of the Constitution of India
- International Labour Convention No. 169 - Convention Concerning Indigenous and Tribal Peoples in Independent Countries

Reports

- Chhattisgarh Lok Swatantra Sanghathan - Consent by Terror: A Report of Human Rights Situation in Nagarnar, Bastar, March 2002
- Dr. B.D. Sharma, The Besieged - Criminal Offences, Dereliction Duties and Subversion of Democracy in Bastar Region, January 2002
- Kisan Sangharsh Samiti - State Repression of Tribals in Bastar, March 2002
- Justice B.N. Srikrishna - Damning Verdict - Report of the Srikrishna Commission appointed for inquiry into the riots at Mumbai during December 1992 - January 1993 and March 12 1993 bomb blasts, Sabrang Communications and Publishing Pvt. Ltd, Mumbai, 1996.

ANNEXURES:

ANNEXURE I Ten Demands put forward by the people to the Government of Chattisgarh

Kisan Sangharsh Samiti
Nagarnar, District Bastar,
Chhatisgarh

Date 27-02-02

[Original In Hindi]

Demands

1. To discard the current land acquisition and to start a fresh process with the consent of the Gram Sabha as told to the SC/ST Commission.
2. To direct the Central Government to follow the 1974 industrial guidelines for scheduled areas:
 - (a) Rehabilitation of people affected both directly and indirectly.
 - (b) Agricultural land should be given in lieu of the land acquired.
 - (c) Arrangements should be made for proper resettlement and rehabilitation.
3. Proper arrangements should be made for grazing areas.
4. Instead of agricultural land, the government owned scrubland should be acquired for the project.
5. Information regarding the various stages of project implementation should be given to the affected farmers.
6. The National Mineral Development Corporation (NMDC) should take the responsibility for compensation of future impacts on humans and environment.
7. In future no land should be acquired from the affected villagers for any project.
8. The NMDC should be bound not to sell the company to any foreign company and for that an agreement should be signed with the affected people.
9. The affected farmers should be compensated as per the industrial guidelines.
10. Others
The police should take back all cases
The facilities provided to the project should also be given to affected areas
A proper format should be provided regarding the jobs given to affected farmers.
The affected people should get priority regarding jobs in the project.
A training centre should be established in the area.

Secretary
Sd/-

Affected Farmers
Sd/-

Chairman
Sd/-

ANNEXURE II

Order of the National Commission for Scheduled Castes and Schedule Tribes,
NO2/27/2002/ Chhattisgarh/ESDW-IV,
Dated December 12, 2001

June 10th, 2002

No 2/27/2002/Chhattisgarh/ESDW-IV

Dated 10.12.2001

To

1. Shri Arun Kumar
The Chief Secretary,
Govt. Of Chhattisgarh,
Raipur

2. Shri Prabhakar Ram Tripathi
Chairman-cum-Managing Director,
NMDC
Khanij Bhawan
10-3-311/A/Castle Hills, Masab Tank,
Hyderabad-500 028

3. Ms. Richa Sharma, Collector, Bastar, Chhattisgarh

Sub: Complaints about tampering with and fabrication of Gram Sabha records of Kasturi, Nagarnar, Amaguda and Maganpur in Bastar and Illegality in the proceedings of land acquisition.

Madam/Sir,

I am directed to refer to this Commission's letter of even number dated 6.9.2001 seeking comments from you and Collector, Bastar on the above mentioned subject and to state that the report submitted by Shri M.K. Raut, Secretary, Panchayat and Rural Development Department on 22nd November, 2001 has been considered in the Commission. The Commission had also the benefit of discussion with the Principal Secretary and Chairman NMDC in the meeting held on 22nd November, 2001.

After examining the complaint made by the petitioners and the report submitted to the Commission by Secretary, Panchayat in the meeting held on 22nd November, 2001 and discussions held thereon, Commission has reached the following conclusions-

1. The policy frame as also the guidelines for establishment of an Industry in the Scheduled Areas appear to have been totally missed in the case of the proposed Steel Plant in Bastar.
2. The mandatory provisions envisaged under the guidelines of the State Government read with Section 4 (i) of the Provision of Panchayats (Extension to the Scheduled Areas) Act, 1996 **before** consultation of the Gram Sabhas have not been followed. In particular, there was no information available to the people, which could form the basis of informed consultation. Moreover no rehabilitation plan was even attempted.
3. The proceedings of Gram Sabhas convened specially for consultation have not followed the procedures prescribed either for the General Meetings or for special meetings for consultation as in the Guidelines. It has been concluded by the Commissioner that no

resolution as envisaged in the guidelines was passed by any of the Gram Sabhas. Therefore the consultation in the eyes of law remains inconclusive.

4. The Notification under Section 4 of the Land Acquisition Act has been issued on the basis of the so called administrative reports of the nodal officers which has no place in law. It is only on the basis of the formal resolution of the Gram Sabhas, as envisaged in the Guidelines, that the Collector can take the decision about issuing the Notification. In the absence of the resolution of the Gram Sabhas, the Notification under Section 4 of the Land Acquisition Act, is ab initio null and void.
5. There is reasonable ground to believe that official records have been fabricated and false records have been created. These are penal offences. Moreover, since that was done with a view to deny the Tribal People the protection of law concerning their lands, they also attract the provision of Atrocities Act.
6. Since the Collector and the representative of NMDC have specific mandatory responsibility in the conduct of the special meetings of Gram Sabhas, they have to share the responsibility for the fabrication and falsification of records.

In the opinion of the Commission in this case scant regard has been shown to the principles of natural justice and the dignity of Gram Sabhas which have the central position in all affairs at the village level in the Scheduled Areas.

A copy of the detailed findings of the Commission in this matter is enclosed herewith for initiating necessary action. It is requested that Commission may kindly be apprised with the action taken on the findings of the Commission at the earliest.

Yours faithfully,

(Mridul Jain)
Director

BEFORE THE NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES
(A Constitutional body exercising powers of Civil Court under Article 338 of the
Constitution of India)

File No.: 9/27/2001/Chhatisgarh-E-IV

5th Floor, Loknaya Bhawan
New Delhi - 110 003.

PROCEEDINGS / FINDINGS / ORDER SHEET

Petitioner	Respondent
1. Sh. Manuram Baghel Village Nagarnar, (Chhattisgarh)	1. Chief Secretary, Chhattisgarh
2. Sh. Satyanarayan Sethia Village Kasturi, Dist. Bastar (Chhattisgarh)	2. CMD, NMDC Hyderabad & Others 3. Collector, Bastar (Chhattisgarh)

In the Matter of the complaints of the tribal peoples of Bastar in respect of the violation of Constitutional and statutory safeguards with regard to certain Development Schemes.

I. Preliminary

1. This is a complaint under Article 338(5) of the Constitution of India in respect of certain development schemes of the Bastar region. The first Complaint was received on 23.8.2001 on behalf of Pavan of Maganpur and 203 other affected people. It was followed by a complaint on the same issue by Prahlad Singh Baghel on 13.9.2001. These complaints were supplemented by detailed submissions on 1.10.2001
 1. These Complaints raised a number of composite issues in relation to certain development schemes in the Bastar region with particular reference to the acquisition of land and the setting up of a steel plant in Nagarnar. Normally, questions arising out of such schemes are a matter of government policy and do not call for interference or **oversight** by external bodies. However, this particular Complaint has raised matters of fundamental concerns, which call for consideration in the discharge of our Constitutional obligations under Article 338 and the interpretation of the Constitutional mandate to protect, ameliorate and advance the interest of the tribal people.
2. The Constitution read with the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 (in brief **Extension Act**) provides specific safeguards to empower the tribal peoples through the aegis of Gram Sabhas and the Panchayat system. In particular, Article 39 specifically mandates that the community resources shall be managed so as to serve the common good. This is further elaborated by Section 4(d) and 4(i) of the Extension Act, according to which Gram Sabha is competent to manage the resources in accordance with its customs and tradition and it has to be consulted before land is acquired for any purpose whatsoever.

Bearing this in mind and the affirmative social justice goals of the Constitution for tribal peoples, this Complaint concerns the manner and extent in which schemes are to be assessed

- (i) within the discipline of the Constitution , and
- (ii) in the attainment of the social justice goals of the Constitution

3. Prima facie, we believe that

- a. Important Constitutional safeguards relating to the working of the Gram Sabhas have been undermined.
- b. There has been a fabrication of public records.
- c. The land acquisition has proceeded without mandatory consultation, consideration and clearance by the Gram Sabha.
- d. The due process of public hearing relevant to Scheduled Areas were not adhered to.
- e. The development project has not been considered along the lines of development parameters laid down for Scheduled Areas.
- f. There appears to have been a considered attempt to bypass and distort statutory and Constitutional procedures.
- g. The case highlights high-handed and arbitrary conduct of officials and those in charge of the project.
- h. This kind of governmental action results in weakening of the democratic process, which is essential to the uplift of the Scheduled Areas and tribal peoples and leads to avoidable confrontation between the people and the State.
- i. The principles of social justice require that any development process must be sought to achieve benefit to the least advanced.
- j. Matters have been highlighted which require reconsideration of the project and to lay down and recommend guidelines for the future.

II Policy and Procedural Frame for Establishment of Industry in Scheduled Areas

- 4. The complaint primarily relates to the irregularities committed in respect of land acquisition for establishment of a steel plant. It will be necessary, therefore, first to have a clear view about the policy and procedural frame for establishment of industry in the Scheduled Area.
- 5. Industrialisation basically involves alternative use of natural resources. These resources are either under the direct control of the State, which can assign the same suitably to concerned persons. In case the resources are in private hands, the same can be obtained through personal negotiations as per the mutually agreed terms. In case, there is no agreement and the proposed enterprise is for a public purpose, the State can intervene and acquire land under the Land Acquisition Act, 1894. The Act envisages payment of compensation in cash, which may include other elements as well such as **solarium**.
- 6. In many cases the affected people have also been given additional benefits such as land for land, employment, resettlement grants and such like. These measures have been largely *ex gratia* and *ad hoc* in response to the people's demand, departmental policies or judicial intervention. There is no rehabilitation policy at the moment either at the national level or in the State.
- 7. In view of the special situation in the tribal areas with simple people and rich resources, special provisions have been made from time to time to ensure that the community and/or the person affected may claim a place of honour in the new economy built on the resources, which had been under their command and sustained

their economy. These measures have been in pursuance of the Constitutional mandate and special responsibility of the State.

8. Some of the important formulations concerning policy and procedures, which have been evolved over the years, are briefly as follows-

- a. **Permission before transfer of land** No tribal lands can be purchased without permission of the designated officer who has to satisfy that transfer is necessary and also fair.
- b. **1974 Guidelines:** The guidelines issued by Government of India for preparations of integrated tribal development projects in pursuance of the policy frame of tribal sub-plans have a section on industrial and mining complexes.
- c. They envisage:
 - (a) identification of zone of influence of the proposed industry,
 - (b) preparation of plans for providing a place of honour in the new economy to all those directly as well as indirectly affected, and
 - (c) implementation of the Plan for the Zone as a part of the Project.
- d. **Framing of regulations was also suggested for achieving social and economic goals:**
- e. **1994 Notification** of Government of India concerning Environmental Impact Assessment: The Notification prescribes a clear procedure before a new project listed therein can be undertaken in any part of India.
- f. **1995 Recommendations** of the Committee of Select MPs and Experts: Consent of concerned Gram Sabhas and shareholding of the community in all enterprises established in the Scheduled Area are two major recommendations of the Committee. The objective is to ensure that tribal people become partners in development on terms of equality. These recommendations have been partly implemented as in (v) below.
- g. **1996 Extension Act** Section 4(i) of this Act envisages consultation with Gram Sabha and preparation of rehabilitation plans before acquisition of land as also their co-ordination at the state level.

The directions issued by the Government of M.P. in pursuance of this provision in their circular of 2.12.1997 are categorical and envisages:

Whenever private land is acquired in the Scheduled Areas under part (1) of Article 244 of the Constitution, the Gram Sabha under whose jurisdiction the land is situated should be consulted before issuing notification under Section 4 of Land Acquisition Act, 1894 and the action for acquisition shall start only after such consultation.
- h. **1997 Directions** of Supreme Court: While dwelling on the scope of various Constitutional provisions, particularly the Fifth Schedule in Samata case, the Hon'ble Supreme Court gave directions to the Union and the State Governments to work out a policy frame for establishment of industries and mining enterprises on the basic premise that Constitution envisages that the land in the Scheduled Areas shall always remain with the tribal people.
- i. **'2000-Guidelines' for Consultation with Gram Sabha:** the Guidelines issued by the Government of undivided Madhya Pradesh on 31.01.2000 about consultation with Gram Sabha for the purposes of Land Acquisition Act read with Section 4 (i) of Extension Act, prescribe certain pre-requisites, preparatory exercises and precautions even **before** consulting the Gram Sabhas. They also prescribe a procedure about consultation with Gram Sabha before the process of land acquisition can be started.

8. The basic underlying premise of all these provisions can be reasonably summed up as 'Prior Informed Consent'

III

The Complaint

9. The Complaint mainly concerns the following elements:

- a. The decision to establish a steel plant at Nagarnar was taken arbitrarily without associating the people. The Gram Sabhas were not given before the mandatory consultation the necessary time to consider the proposals for establishment of the steel plant which would involve not only acquisition of rich agricultural land but also have long term social and economic implications for an extensive area.
- b. The proceedings of the Gram Sabha convened for consultation were held in a disorderly fashion where it was not possible for the people to present their views. Even specific requests for allowing sometime for considering the proposal were turned down.
- c. In all Gram Sabhas, most of the people did not agree with the proposal of the NMDC to establish a steel plant in their villages. Yet the process of land acquisition for the steel plant was started with a false statement that all Gram Sabhas had agreed with that proposal.
- d. There was fabrication and creation of false records concerning consultation with Gram Sabhas.
- e. The administration did not care to listen to the pleadings of the people.
- f. Adequate time and opportunity were not provided to the people in the land acquisition proceedings, which were continued notwithstanding the protest.
- g. Undue influence and coercion was used to make the people accept the cheques of compensation.
- h. The administration resorted to repression and use of force to silence dissent.

IV

The Report

10. The Complaint was forwarded to the Govt. of Chhattisgarh for a high level inquiry into the allegations and apprise the Commission with facts and relevant record. The Chief Minister was also requested to ensure that no one is victimised and relevant records are not destroyed, fabricated or manipulated in any way.
11. The Report on the Complaint was submitted by Shri M.K. Raut, Secretary, Panchayat and Rural Development, personally to the Commission in the meeting held at Delhi on 22.11.2001. The inquiry had been conducted by Shri P.C. Dalai, Commissioner Bastar. The Commission also received two letters and point-wise information prepared by the Collector, Bastar based on inquiry conducted by the Additional Collector.
12. While the comments of the Collector are para-wise and cover all points, the inquiry conducted by the Commissioner relates only to some specific points, basically regarding the conduct of the meetings of the Gram Sabhas and records of proceedings thereof. These Reports and other documents, therefore, have been taken together for ascertaining the facts and considering the issues raised in the Complaint.

V Facts and Issues

13. The important facts and issues which emerge from the Complaints, the Reports and other documents are as follows -
 - a. Whether due process implicit in the policy frame for Scheduled Areas before deciding the location of steel plant was followed

- b. Whether before starting the process of land acquisition, the mandatory consultant with Gram Sabhas was done?
- c. Whether the consultation with Gram Sabhas was based on necessary information, allowing sufficient time or internal deliberation amongst members of concerned Gram Sabhas?
- d. Whether the records of the meetings of Gram Sabhas were fabricated and /or falsified?
- e. Whether final resolutions about the issue posed before the Gram Sabhas for consultation were adopted?
- f. Whether environmental clearance has been obtained for the project?
- g. Whether the process of land acquisition was taken up in good faith and the principles of natural justice, which are vital particularly while dealing with the tribal people, have been followed?
- h. Whether undue influence has been used at the stage of disbursement of compensation cheques?
- i. Whether the State represented by its officials substantially discharged the Constitutional duty to provide protection to the tribal people and their advancement?
- j. Whether the policies as also the procedural frames, which have been evolved for establishment of industries in the Scheduled Areas, have been honoured?

Application for Acquisition of land

14. The cause of action relating to this Complaint arises with the presentation of an application by the NMDC for acquisition of land. We will examine the processes beginning with that application. Even though the way the NMDC has gone about selecting the site for the steel plant is important, we will not go into the details there of. We will confine selves to the matters relevant to the points raised in the Complaint.
15. The 2000 Guidelines specify six points on which the information has to be submitted along with the application for land acquisition. These are:
 - a. Full details including **khasra** numbers about the land proposed for acquisition.
 - b. Full details about those lands, which will not be acquired even though they are likely to be affected by the project.
 - c. Full details about the purpose of acquisition covering specific use of each block separately in respect of land proposed for acquisition.
 - d. The reasons for the need of the extent of proposed land with reference to the purpose of the project.
 - e. Details about non-availability of any other alternative land other than the proposed for acquisition.
 - f. Description about rehabilitation and employment in the context of National or State Rehabilitation Policy, full details with khasra numbers about land for land' and rehabilitation site.

(i) Choice of Site

16. Point 5 of the Guidelines requires a clear statement about alternative land being not available for the project. A letter written by Shri Iswar Chandra Jha of NMDC to Collector, Bastar on 17-5-2001 has been treated as the application for acquisition of land for the proposed steel plant. In this letter, a mention has been made about an earlier application of 1.5.2001 in which details about another possible site at Gurram and Katakanda had been given.
17. There are no details about the relative merits of these two sites. Nevertheless it has been mentioned in this letter that any one of them will do. **But in deference to the**

views of Hon'ble Industries Minister, expressed in his meeting with the Collector on 12.5.2001, Nagarnar would be a preferred site.

18. The relative merits of the two proposals do not appear to have been examined at any stage.

(ii) Quality of Land

19. The conclusion in (i) above is at variance with the facts mentioned in the application and also the notifications issued for land acquisition under the signature to the Collector. According to information given by the NMDC about this land in its application of 7.5.2001, a **larger portion** of the private land is barren. It means that not all land is barren and a substantial part is under cultivation. But in the Notification of all the four villages it is stated that the proposed land at the moment is fallow on which construction work has been completed. One fails to understand the meaning of this entry. Moreover, the fact that this area is the richest agricultural tract and heavily populated has been emphatically stated in para 3.3 of the Complaint. The Collector did **not comment** on this issue in her reply while dealing with 3.3, which means that the assertion was reasonable.

20. It is clear that the land is fertile and the area is heavily populated. Which should have been an important consideration in the choice of location of the plant.

(iii) Assessment of Requirement:

21. The NMDC application for land acquisition gives just the bare fact about the extent of land for different purposes. There are no other details whereas the Guidelines (items 3 and 4) envisage full details for specific use under each item and justification for the quantum of land which has been asked for.

22. There has been no scrutiny whatsoever by the administration even about the requirement of the land. The proposal of the NMDC has been accepted as it is, even though there is scope for examination on many points such as the extent of land needed for residential area, roads, etc. Atleast some people would be saved the trauma of displacement even if the requirement is moderately scaled down.

(iv) Zone of Influence

23. The Guidelines (No 2) require the applicant to identify those lands which may not be acquired but which are likely to be affected by the Project. It is stated in the application that 'no other land will be needed in future besides the proposed land. No land on any side of the project will be affected'

24. The above statement is at variance with the experience of industrial enterprises. It is common experience that the area actually affected by establishment of an industry is many times the area taken for the project proper in the beginning. That is why this is an important point which has been specifically dealt with in the 1974 Guidelines. These Guidelines envisage that the concerned authorities will specifically identify the 'Zones of Influence' of industrial enterprise and prepare a comprehensive plan for this Zone. **This rehabilitation plan has to be a part of the project and not an appendage thereto.**

25. The significance of this provision in the 1974 Guidelines has not been appreciated by the NMDC as also the State Govt. even though the experience of public sector enterprises in general has not been very commendable about protecting the tribal people against even predictable fall out of various projects. It is such omissions, which have jeopardised the welfare of tribal people in the Scheduled Areas.

(v) Rehabilitation Plan

26. This brings us to Point 6 of the Guidelines. It envisages that the application for land acquisition shall be accompanied by a comprehensive rehabilitation plan. The state authorities seem to have been more than satisfied with the statement in the application that 'the rules of the national or state rehabilitation policy will be followed for which the NMDC is committed.' Neither the NMDC nor the local administration has cared to note that there is no rehabilitation policy at present either at the state level or in the Centre. Therefore, the commitment is about something that is non-existent.
27. The absence of a national or state policy for rehabilitation does not absolve the State or the NMDC about its responsibility. It appears that this vital issue has been taken in a casual way. That is why, the specific point about 'land for land' covered under Point 6 has been totally ignored by both the sides. What we find in the name of Rehabilitation Plan is a mere circular about the possible benefits, which may accrue to the affected people after the plant, has been established. There is no formal or legal commitment even for those promises. Such provisions are illusory.
- 28. Thus the interest of the tribal people with regard to the quality of life after the project has been established, as envisaged in the Guidelines, has been compromised by these omissions.**

Process before Consultation with Gram Sabha

29. Para 3.2 to 3.5 of the Guidelines set the parameters for the preliminary groundwork, which has to be completed before actual consultation with the Gram Sabha is done by the concerned officers. There are three distinct stages even in the preliminary groundwork. They are as follows:
- a. Giving full information to the concerned Gram Sabhas and concerned people through publicity in papers beat of drums in the Gram Sabha area and display on Panchayat Notice Board.
 - b. Supply of additional information, if any, regarding objections etc. raised by the concerned people on the basis of information disseminated in 1 above, after **giving sufficient time.**
 - c. Organising the meeting of Gram Sabha thereafter on a fixed date, which should be published adequately in advance.
30. There is no doubt that people had come to know that the Gram Sabhas were being convened. What the Collector has mentioned in her comments about preparatory work before consultation, however, relates only to the bare fact that 'the lands are proposed to be acquired'. But nothing that was conveyed to the people either personally or in general about the proposal could have given them any idea about the nature of problems, which they could face and about which they could seek information or raise objections. According to the Collector, five copies of the 'Karya Yojna Pustika' were forwarded by the Dy. Collector to the Tahsildar **on 7th June** 'for supplying the same to the Gram Panchayats because special Gram Sabhas are scheduled to meet on 11, 12 & 13 of June'. This action itself, which was taken as a mere formality, is enough to show that the people did not know about the project. Some information about the Project was provided by the concerned officers only in the Gram Sabhas meeting. This instant information could not be the basis for informed discussion.
31. It has come even in the evidence before the Commissioner that many people did ask for 15 days time to consider the proposal. In the case of Kasturi Gram Sabha, a copy of

whose proceedings is available; this fact about seeking time has been specifically mentioned in the proceedings. This was the most reasonable demand supported by the Guidelines. Yet, the same was not conceded even though the meeting was disturbed by rain.

32. It is, thus, clear that sufficient time, as envisaged in the Guidelines, has not been given to enable the people to think about the Project. This opportunity was refused even after the people asked for the same as a natural reaction to a proposal which affected their very life and livelihood.

Consultation with Gram Sabhas

33. Before we proceed to assay the evidence, it will be useful if the procedure as envisaged under the law and rules is clearly stated. There are two sets of provisions, one for the Gram Sabhas in general and another for special Gram Sabhas convened for consultation. Some of the important features are as in the following.

(a) Statutory Rules for Gram Sabha Meetings

34. The statutory rules for conduct of the meetings of Gram Sabha were issued by the State Government under Panchayat Raj Adhiniyam on 23.12.1998. The following are important points-
- a. **Rules 13 and 14:** They envisage two registers, one for marking the attendance and another for recording of the proceedings.
 - b. **Rule 12:** It lays down the procedure for assessing the opinion in case there are sharp differences. The voting has to be done by raising of hands.
 - c. **Rule 9:** It prescribes a quorum of one-third of total members of Gram Sabha in which at least one-third shall be women.

(b) Guidelines for Deliberation in Special Gram Sabha

35. Paragraph 3.6, 4 and 5 of the Guidelines lay down the procedure for consultation in the Gram Sabha after the meeting has been duly convened. It is envisaged that -
- a. The Collector and a representative of the concerned company **shall be present** in the Gram Sabha.
 - b. The officers will ensure that objections are taken up one by one, that each one of them is resolved on the spot, and that the same shall also be recorded.
 - c. Finally, in case there is general agreement, the same shall be recorded in the form of a resolution of the Gram Sabha and shall be approved by the same. In case there is disagreement, a resolution will be passed with a clear statement about the arguments of both sides.
36. The final Resolution of the Gram Sabha about consultation, according to the Guidelines, shall be submitted to the Collector by the Gram Panchayat. The Collector, on receipt of this Resolution, after considering the same on merits, may, if he finds it proper, proceed to issue the notification under Section 4 of the Land Acquisition Act.

Deliberations in Gram Sabha Meetings

37. The deliberations in the meetings of Gram Sabhas convened for consultation have to be considered within the frame given in (a) and (b) above. Some of the important points and conclusion are as in the following:

(i) Mandatory Attendance by Officers

38. The Collector attended the meeting of two Gram Sabhas that is, Nagarnar and Bamni. In the remaining two, that is, Kasturi and Amaguda, she was represented by the SDO.

The representative of NMDC was present in all the four. Many other officers were also present in these meetings.

(ii) Deliberations

39. As stated earlier, the request for giving more time for consideration of the proposal placed before the Gram Sabhas was not conceded by the Collector. In all the four Gram Sabhas there was difference of opinion about the proposal. It is clear from the narration of the meetings that the procedure prescribed for taking up the issues raised, one by one, and coming to a conclusion on each, which is supposed to be recorded, was not followed.

(iii) Quorum and Resolution

40. The inquiry report gives the attendance at the meetings in general terms. There is no record of actual number of participants in any of the Gram Sabhas. Moreover, there is no mention about the number of women, which is crucial because a meeting would formally collapse in the absence of women's participation. A resolution therefore, could not have been passed by the Gram Sabha without firming up the quorum. **However, since even the administration has not claimed that a resolution as envisaged under the rules was passed by the Gram Sabha, it will not be necessary to dwell further on the issue of quorum.**

(iii) Record of Proceedings

41. There are different versions about the recording of the proceedings of the special meetings of Gram Sabhas. The Collector in her reply to the Commission dated 25.9.2001 stated that 'objections' were recorded in the 'Karyavahi vivaran' (that is proceedings) of Gram Sabhas by the nodal officers'. Similarly in the pointwise report forwarded to Secretary, Panchayats on 12.10.2001, the Collector has stated in response to para 3.8 of the Complaint that Nodal Officers after recording 'Karyavahi vivaran' submitted photo copies of the same to the SDO Land Acquisition Officer Jagdalpur. The above statements show that the Nodal Officer did record the proceedings.

42. In the Report of the Commissioner, however, it has come on record for the first time that the Nodal Officers had prepared 'Karyavahi vivaran' and not the 'Karyavahi vivaran' of the concerned Gram Sabhas. However the evidence even before the Commissioner is at variance with this statement as will be discussed in the following.

(a) Kasturi Gram Sabha

43. The case of Kasturi is unique. A photocopy of the proceedings, which was taken soon after the Gram Sabha, is available even though the register of proceedings is alleged to have been tempered thereafter. This copy shows that the proceedings were written by Lakhan Singh, the Secretary and signed by Shri Jalandhar the Chairperson of the Gram Sabha for the day.

44. The concluding part of the Register of Proceedings is alleged to have been tempered thereafter. The proceedings, according to this copy, clearly state that the Gram Sabha did not agree with the proposal. Lakhan Singh, in his evidence before the Commissioner on 13.11.2001, has admitted that he had recorded the proceedings. But the Commissioner did not ascertain from him as to whether the Gram Sabha was in favour of proposal or against it.

45. It is thus clear that most of the members present in Kasturi Gram Sabha were against the proposal.

(b) Nagarnar, Amaguda and Maganpur Gram Sabhas

46. In the cases of Nagarnar, Amaguda and Maganpur Gram Sabhas, there are no documents to show that the proceedings were recorded in the registers of Gram Sabhas. In all three cases, a number of pages in the registers which according to the Complaint had the proceedings of special Gram Sabha, are missing.
47. Raghuraj Devangan, Secretary Amaguda Gram Sabha (G.P. Bamhani) in his evidence affirmed that the 'Karyavahi vivaran' (proceedings) was recorded by Shri G. S. Manmohan, the Nodal Officer. According to him, Shri Manmohan also took away the register with him. That was why Raghuraj could not supply the copy of the proceedings when a copy was asked for as right to information.
48. Narsingh Goyal, Secretary Nagarnar Gram Sabha affirmed in his evidence that Shri Ajay Parmar, the Nodal Officer, had recorded the proceedings. This fact has been corroborated by Prahalad Baghel, the Chairperson of Nagarnar Gram Sabha. He, however, stated that he did not sign those proceedings. Shri Goyal has stated that the Nodal Officer had taken away the Register. The proceedings were recorded in a new register because the other being old had got torn.
49. While dealing with the question of certain pages being torn off from the proceeding registers, the Collector in her reply of 12.10.2001 regarding para 3.7 of the complaint emphatically stated that registers are kept in the custody of Gram Panchayat. New registers are also opened by the Panchayats. According to her, copies of 'Karyavahi vivaran' were submitted by Nodal Officers to the SDO. The possibility that the pages may have been torn off by those against the project cannot be ruled out.
50. The fact about the registers being taken away by the Nodal Officers has been specifically mentioned in the Complaint. This allegation was supported by the receipts issued for payment of fees to Mukundram of Maganpur and Padam Singh of Bamhni for obtaining copies of proceedings of concerned Gram Sabhas in terms of people's right to information. The formal replies given by the Gram Panchayat to the two applicants were signed by the concerned secretaries and the Sarpanch. These replies simply stated that '**the copy will be made available when the registers are received back**'. There is no mention that the proceedings were not recorded.
51. On this vital point about recording of proceedings, the Nodal Officers have not been asked to give their version at any stage by the Inquiry Officer. It is these officers who were given the duty of conducting the Gram Sabhas and against whom allegations about fabricating the record have been made.
52. **It is, therefore, reasonable to presume that the proceedings of the Gram Sabhas were recorded in the registers maintained for that purpose by the Gram Sabhas.** But this was done by the Nodal Officers who, under the rules, were not authorised to record the proceedings of the Gram Sabha. Therefore what was recorded cannot be *legally* deemed to be the proceedings of Gram Sabhas even though it was intended to be the proceedings.
53. The only record of the Gram Sabha proceedings, which is available, relates to Kasturi. It has been authenticated by the Chairperson as well on the same day. The concluding portion bearing his signatures, however, has been torn off and is missing.
54. **The record of Kasturi Gram Sabha, therefore, can be reasonably presumed to reflect the views of the people assembled in response to the call by the Collector. The Gram Sabha in this case did not agree with the proposal.**

The Status of Written Record of Deliberations in Gram Sabhas

55. The issue about proceedings of Gram Sabhas has been complicated by the fact that the Nodal Officers prepared parallel records in all the four Gram Sabhas in altogether new registers. This fact is not controverted by any one. It is also admitted that these new registers were later sent to the concerned Gram Sabhas. The people raised objection about these new registers in their Complaint to the Commission. The same registers were subsequently used by the concerned Gram Sabhas for recording the proceedings of the Gram Sabhas held thereafter.
56. The Commissioner in his Report has given a different version about these registers. According to him, what was recorded by each Nodal Officers was in the nature of 'Karyavahi vivaran' or an administrative report recorded by him after the deliberations of the Gram Sabha were over. These reports were prepared for the information of the Collector. He has argued that according to the rules, only Secretary of Gram Sabha can record 'Karyavahi vivaran' Therefore, what was written by Nodal Officers cannot be construed as 'Karyavahi vivaran'- **The people in the villages, according to the Commissioner, have misconstrued the administrative reports prepared by the Nodal Officers as proceedings of Gram Sabha.**
57. This proposition of Commissioner, however, raises many questions and makes the situation worse. For example, there is no explanation as to why the administrative reports were prepared in the format of the register used for recording the proceedings of Gram Sabha. Similarly there is no explanation as to why the administrative reports, even when prepared in that format, were forwarded to the Gram Sabhas. Moreover, the Collector makes no mention in any of her reports about the 'administrative reports', which according to the Commissioner were submitted to her. She has stated that the Nodal Officers had submitted 'Karyavahi vivaran' which were sent to the SDO and Land Acquisition Officer.
58. The Commissioner has also stated in his Report that the proceedings under the Land Acquisition Act were started on the basis of the information given in the administrative reports of the nodal officers. All the four Nodal Officers have recorded in these reports that the majority in each Gram Sabha was in favour of giving land for the steel plant. This version of the Nodal Officers is not substantiated at least in the case of Kasturi, for which a copy of the proceedings is available.

Tampering with Records

59. The Inquiry Officer as also the Collector have ascribed the tearing off of papers from the registers to some elements opposing steel plant. If this is so, there is no reason why such people should have removed the concluding part of the proceedings of Kasturi Gram Sabha, which was in their favour. Moreover, it is these people who wanted copies of the proceedings of other Gram Sabhas as well under 'right to information'. The tempering has obviously been done by those who wanted to remove the evidence about the Gram Sabha not agreeing with the proposal.
60. The allegation that the Nodal Officers took away the register after the meetings had been challenged by the Collector in her reply. This fact, however, has been conceded in the Commissioner's inquiry by the witnesses whose version has remained unquestioned.
61. There is no explanation about the fact Aston how the concerned officials in the Panchayat did not discover the fact about papers containing the proceedings of special Gram Sabha torn off. These papers were not routine papers. They were crucial for the

establishment of steel plant. If the story about the missing pages being removed while the registers were in the custody of Panchayat is correct, there has to be a satisfactory explanation as to why the fact of missing pages was not brought to the notice of the concerned authorities by the persons discovering the same immediately after the discovery.

62. It is, thus, clear that the version of the deliberations as given by the Nodal Officer in the new registers is not beyond suspicion. It is confirmed at least by the secretaries of Bamhni and Nagarnar that the Nodal Officers had recorded the proceedings which could have been done in the current registers and not in the new ones.

63. It is, therefore, reasonable to believe that just after the conclusion of the special meetings the respective Nodal Officers had recorded the proceedings in three Gram Sabha. The proceedings so recorded contained the views actually expressed in the Gram Sabha which were against the steel plant.

Motive of Tempering

64. The issues about the purpose and the real nature of the so-called administrative reports, however, still remains to be resolved. Two facts are admitted. Firstly, two secretaries have affirmed that the Nodal Officers took away the registers. Secondly the so-called administrative reports prepared later by all the Nodal Officers show that the members of Gram Sabhas in each case were in favour of the steel plant. The language used in all the four so-called administrative reports is the same. In fact, the veracity of these reports has been questioned in the Complaint in para 3.8 on the ground that **four reports, prepared by four Nodal officers, in respect of four Gram Sabhas, held on different days are identical in many parts.** This point has not been commented upon either by the Collector while dealing with para 3.8 in her comment or by the Commissioner in his Report.

65. It is, therefore, reasonable to assume that the inspiration of the so-called administrative reports prepared by the Nodal Officers must have been the same. Moreover, the Nodal Officers deliberately recorded the proceedings of the special meetings in the new registers. They also sent them to the concerned Gram Sabhas on the presumption that they may be accepted as registers of Gram Sabha in routine. But when the people pressed for the old register, the concerned office were left with no option but to send the same with relevant pages removed.

Fabrication of Record?

66. Here we come to the question whether some official records have been fabricated as alleged by the Complainants. The register of proceedings of Kasturi Gram Sabha has been mutilated. The so-called administrative report prepared by Shri M.P. Dube the Nodal officer, in respect of the proceedings of Kasturi Gram Sabha is at variance with the proceedings recorded by the Secretary. Even if it is accepted that the Nodal Officer did prepare an administrative report and that record is not 'Karyavahi vivaran'a of the Gram Sabha, this administrative report has been used as an official document by the Collector for a statutory purpose, that is, ascertaining the opinion of the Gram Sabha on the basis of which the decision was taken to go ahead with acquisition.

67. Therefore, it is reasonable to say that the so-called administrative report is an official document. This document does not contain true facts about the deliberations in Gram Sabha that were within the knowledge of the Nodal Officer. Therefore, there is reasonable ground to believe that a **false record has been created in this case.** The same conclusion is incontrovertible in respect of the so-called administrative reports in respect of other three Gram Sabhas prepared by other Nodal Officers.

68. The fact that the relevant pages containing the proceedings of four Gram Sabhas have been torn off while they were in the custody of officers and not of Panchayats is thus beyond reasonable doubt. It is a matter of detailed inquiry as to who actually tore off the pages and at what stage. Since the Gram Sabha records are official records, the tampering of official records is incontrovertible.

Status of Consultation?

69. The question before us now is whether the proceedings of the Gram Sabhas discussed above can be construed as fulfilment of mandatory obligation to consult the Gram Sabha for the purposes of L. A. Act, read with the Extension Act.

70. The Commissioner in his Report seems to have been satisfied with the consultation through the meetings of Gram Sabhas described above. He has stated that the decision about going ahead with land acquisition was taken by the Collector on the basis of the administrative reports of the nodal officers. The replies of the Collector sent to the Commission are at variance with this statement of the Commissioner. According to her, the copies of proceedings were sent to the Land Acquisition Officer cum SDO. Therefore, it is those alleged proceedings of the Gram Sabhas and not the administrative reports, which must have formed the basis of the decision to go ahead with land acquisition.

Key Role of Collector

71. The Guidelines about consultation with the Gram Sabha envisage a key role for the Collector. The Collector has to be present in those proceedings convened for that purpose. Therefore, even though the formal basis of the decision to proceed with acquisition of land has to be the resolution of Gram Sabha sent by the Gram Panchayat, yet in the assessment of the situation, the personal knowledge of the Collector is indispensable.

72. In Nagarnar and Bamhni Gram Sabhas, the Collector herself was present. However, the SDO represented her in Kasturi and Maganpur. The SDO would have apprised the Collector about the proceedings in the normal course. In case the SDO had defaulted, the Collector would have ascertained the facts from him. In either case, the Collector was duty bound to ascertain the conclusions of all the four Gram Sabhas, even though the final resolution as envisaged in the Guidelines had not been passed by them.

73. It is, therefore, reasonable to believe that the Collector was aware about the difference between the opinions as expressed by the Gram Sabha in the meeting convened for consultation and the versions presented to her in the so-called administrative reports by the concerned Nodal Officers.

74. It is also reasonable to presume that the representative of the NMDC, who was also present in all the four Gram Sabhas, must have been aware about the events, particularly the difference between the real opinion of the people expressed in the Gram Sabhas and the version presented by the Nodal Officers which became the basis for issuing the notice under Section 4 of the Land Acquisition Act.

Validity of Collector's Decision to Issue Notification

75. Even if the issue of fabrication of record is kept aside for the time being, the procedure for consultation with the Gram Sabha in the Guidelines issued in pursuance of the provisions of Section 4(i) of the Extension Act, is categorical about the way decision has to be taken by the Collector. According to the Guidelines,

''Collector, on receipt of such resolution after considering the merits of the case, finds it proper, he can proceed with the issue of notification according to law under Section 4 of the Act''.

76. Thus decision of Collector based **on the resolution of the Gram Sabha with due consideration**, in which the personal assessment based on participation in Gram Sabha can play a part, is a mandatory requirement. In the present case, there is no resolution of any Gram Sabha except perhaps of Kasturi in which the spirit of the rules can be said to have been followed, although the rules have not been followed, Once the resolution of the Gram Sabha, which is vital mandatory link between the consultation with the Gram Sabha and the proceedings of land acquisition including Section 4 notice, is missed, the entire edifice of land acquisition collapses. The proceedings of land acquisition started thereafter cannot be considered to have been in accordance with law. **It is therefore, reasonable to conclude that the entire process of land acquisition is vitiated. It is null and void.**

Environmental Clearance

77. Before we proceed to examine the process of land acquisition, it will be necessary to deal with the statutory provision concerning environmental clearance. Environmental Impact Assessment Notification issued by the Ministry of Environment and Forests on 27th January, 1994 clearly states that ' **a new project listed in Schedule 1 of the notification shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government...**' The proposed steel plant comes under the ambit of this provision.

78. The Commission received a formal complaint from the people of Nagarnar just before the meeting on 22nd November 2001 that the public hearing in respect of environmental clearance of the steel plant at Nagarnar was held at Jagdalpur on 20th 11. 2001. It is significant to note that according to the Commissioner's letter of 16.11.2001, the final notification under Section 11 of the Land Acquisition Act had already been issued and names in the Record of Rights mutated accordingly.

79. Para 2 of the said Notification clearly envisages that the application for environmental clearance to the Government of India has to be accompanied 'by a project report which shall, inter-alia, include an Environmental Impact Assessment Report and details of public hearing...' There was no satisfactory explanation in the meeting by the representative of NMDC when he was asked about this omission about environmental clearance before the NMDC made an application for land acquisition. Moreover, it was also admitted by him that tenders have been issued for construction of boundary wall, as alleged in the Complaints. According to him, the land can be deemed to be under the possession of the NMDC once payment has been made.

80. It is, therefore, reasonable to presume that the construction of the statutory provisions about environmental clearance have been violated. The project has been started even before making an application for environmental clearance to the Government of India.

Status of Land Acquisition Proceedings

81. Even though land acquisition is void as discussed, it will be necessary to consider the events after the so-called consultation with the Gram Sabhas in respect of the process of land acquisition because serious allegations have been made in the Complaint about disregard of the spirit of the law and a reign of terror let loose in the area.

82. The Complainants allege that necessary information was not given to the people about the notification under Section 4 etc. as envisaged under the Land Acquisition Act. The documents concerning the entire process about notifications under L. A. Act have been

given by the Commissioner in the Inquiry Report. **The same can be summarised as follows:**

a) Section 4 Notification

- (i) Notice under Section 4 of L.A. Act issued by Collector: 21.6.2001.
- (ii) Notification appeared in Government Gazette: 22.6.2001.
- (iii) Notice in two local newspapers, that is,
Highway Channel and Dendakaranya 6.7.2001
& Samachar appeared on: 7.7.2001
respectively.

83. According to the Collector, no objections were received during the stipulated period of 30 days. Hence a notification under **Section 6** was issued as pre details below:

(b) Section 6 Notification

- Notification Issued by Collector: 23.7.2001
- Notification Appears in two newspapers: 28.7.2001
- Notification Appears in Gazette 17.8.2001

(c) Section 9 Notification

84. The Notification under Sec 9 was issued on: 25.8.2001

85. Thus, the paper record about the process of land acquisition as stated above is clear. However, it will be necessary to examine and appreciate how the people in the area were perceiving this process.

People's Side about L. A. Proceedings

86. The people after the commotion in the Gram Sabhas concerning consultation about establishment of steel plant generally did not know what was happening on the other side. According to the Complaint, the shock came when a news item appeared in the Highway Channel on 27th June that Section 4 notification had been issued and that all the Gram Sabhas had given their consent.

87. The people made frantic queries about the facts of Section 4 notification and also the questionable ground about their consent. They made representations to the Collector presenting their position about consultation, challenging the veracity of the official version They also tried to place the facts before the SDO and Land Acquisition officer collectively but to no avail.

88. In the absence of authentic information even about Section 4 notification, those who had some inkling of law, were afraid about the statutory time limit lapsing and the opportunity for presenting their side being lost. So they made a collective representation of 204 people to the Collector on 26.07.2001. According to the Collector, the 30 days statutory limit time was over on 22.7.2001. A notification under Section 6 had been signed by her on 23.7.2001. Therefore, the Collector refused to entertain their pleadings. Moreover they were told that there was no scope under the law for such collective representations. They must appear before the L. A. officer personally.

89. On being faced with such a stone wall, the people started convening meetings of Gram Sabhas. Resolutions were passed reaffirming their version about the rejection of proposal in a series of meeting.

90. The Collector in her reply has categorically stated that **no note was taken of the resolutions of these Gam Sabhas because their meeting was not in accordance with the rules.** Even the meeting of the Gram Sabha specially convened by the people in what they

considered as emergent situation were adjudged by her as 'no-meeting' on the same ground.

91. The people finally decided to seek the intervention of the National Commission and sent their Complaint on 23.8.2001

92. Even this complaint made no difference to the local administration. The L. A. O. issued the notification under Section 9 on 25.8.2001. This led a to flurry of Gram Sabha meetings again as also public demonstrations. There is no evidence to show that at any point the administration may have attempted to consider the grievances of the peoples were genuine even if the questions about notices being issued under various Sections of L.A. Act in violation of statutory provisions is ignored.

Is Award Just and Legal?

93. According to the Report of the Commissioner, the L. A. proceedings had been concluded on 29.9.2001. But the question remains whether the award is in accordance with law and also whether the entire process satisfies the principles of natural justice, particularly in the setting of the Scheduled Area

(a) Legal Perspective

94. The irony is that the learned LAO did not care to read even the law of land acquisition. Sec 4 of the L. A. Act 1894 is as follows:

4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality, of which at least one shall be in the regional language and **the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality** the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

95. There is no evidence to show that as mandated the '**substance of notification**' was ever displayed at '**convenient places in the locality**'.

96. The last publication in one of the two local papers, which is another mandatory requirement, was on 7.7.2001. Section 6 on 23.7.2001 obviously was issued on the basis of the of Gazette notification 22.6.2001 it is clear that only 17days had lapsed after the '**date of Publication**' as formally defined under Sec 4.

97. Since the people have been denied the opportunity to be heard as mandated, the notification of 23.7.2001 is illegal. All actions taken thereafter cannot reasonably be construed as authorised by law.

Post Award Action

98. The administration has been admittedly continuing with the post award action either under the mistaken notion that every thing is in order on paper, or has been treating the lapses about mandatory provisions as rectifiable formalities. We have seen that the authorities have adopted the later view in the case of environmental clearance. The Complaint alleges that the administration has been hurrying through the process to somehow make the acquisition to the people in a form and paper record a *fait accompli*, so that they can be presented about which nothing can be done.

99. There are serious allegations in this regard on two counts, that is, payment of compensation cheques and use of force and coercion to silence the dissent. While we deal with compensation issue right away, use of force will be taken up later.

Compensation Cheques

100. There is allegation in the Complaint that all sorts of subterfuges are being used to force the cheques in the hand of the people.

The Complainants have furnished two affidavits, one from Sonu of Maganpur and the other from Budhu of Kasturi who have stated therein that they have been obliged to take the cheques even though they did not agree to acquisition of their land.

The above affidavits and other circumstances lead us to believe that there is some substance in the Complaint and undue advantage is being taken of the ignorance of the people and authority of administration.

Natural Justice

101. Before considering the allegation about state repression and dwelling upon the role and responsibility of the State, a bird's eye view about the acquisition episode in Nagarnar from the people's perspective will be necessary.

102. Within a span of just 66 days (12.5 to 23.7) the world changes for hundreds of tribals in four villages. **Life with indignity** of a casual wage earner stares at the proud farmers and children of nature. However a rumour that the Gram Sabha had to be consulted before their land could be taken. The Collector herself assured that their consent was a pre-requisite for land acquisition. In that presentation by the officers only two things were certain-steel plant and loss of land. The words like 'money' and 'jobs' had no meaning to the ordinary people particularly women the proposal for land acquisition was rejected by the Gram Sabhas. But they were dazed and shocked as the local paper carries the story that acquisition had begun in the court on the basis of consent of all Gram Sabhas. They start making rounds in a frenzy to unravel the mystery of transmutation of dissent into consent. All their attempts to know about that process miserably failed. They are finally told that the award has been passed, they can receive the cheques. They are also told that game is over. Not a single objection had **been received within the stipulated period in accordance with the procedure set out in the law and rules made the under. The simple tribal is dazed: No one is there to unravel for him the mystique of the episode.**

103. The question before the Commission is whether in this simple case the norms of natural justice have been honoured. It is just a chance that the concerned officers in this case, have violated due to some omissions, the formal laws of the land. The concerned officers could have achieved the same result by going about carefully without offending the letter of the law yet totally disregarding the spirit behind it. **This question about satisfying the norms of natural justice in the Scheduled Areas is a real one and needs a categorical answer**

104. The dissonance between formal justice and natural justice that is writ large in the present case, is not an exception. It appears ubiquitously in the tribal areas and can be taken as a rule. It is in appreciation of this reality that paragraph 5 of the Fifth Schedule of the Constitution concerning laws for the Scheduled Areas begin with the non-obstinate clause 'notwithstanding any thing in this Constitution'. The intention of the Constitution is that the principles of natural justice in the tribal situation are not compromised for any thing merely formal.

105. The Extension Act is a serious attempt to adapt the legal frame with reference to the reality of the tribal situation. As observed by the Hon'ble Supreme Court in Samata case 'land is their (tribal people) most important natural and valuable asset and imperishable endowment from which the tribals derive their sustenance, social status, economic and social equity... The land on which they live and till...is a potent weapon of economic empowerment in social democracy'. Section (i) of the Extension Act provides the formal frame for this implicit objective of the Constitution. Accordingly, **consultation with Gram Sabha at the time of acquisition has not to be a mere formality. The consultation under this provision has also to cover the vital issue of an alternative means of livelihood as an integral part of the project. Moreover, consultation has to be in a climate of mutual trust and confidence.**

106. That there was no dialogue at an informal level particularly when the people learnt about acquisition like a bolt from the blue; that all submissions of the people are rejected on technical grounds; that the notifications are issued on the dot as soon as the legal requirement has been fulfilled so that considerations of natural justice were of no concern.

Repression and Use of Force

107. Confrontation between the people and the State is inevitable in tribal areas in a situation where the principles of natural justice are sacrificed at the altar of mere form. The people are not aware about law, so they feel hurt. In the instant case even the form was not kept. The administration was in an inexplicable hurry to go ahead with acquisition in total disregard of their Constitutional duty to provide effective protection to the tribal people and work for their advancement. The complainants sought protection of the Commission as they apprehended trouble even while they were just seeking the protection of the law and Constitution.

108. It is rather shocking to note that even as the inquiry about the serious allegations was being conducted, some of the Complainants were detained by the police. A reign of terror is alleged to have been let loose on the people including tribals and women. The detention of activists was a challenge to the people's struggle in defence of their right to life with dignity. It is alleged that there was lathi charge and even firing. About 45 people were injured. Many women sustained head injuries.

109. We have been urging on all State governments not to use force in cases where people are arrayed against the State on the issues concerning command over resources which for the poor means right to life with dignity guaranteed by the Constitution. The State must proceed with concern and empathy which appears to have been singularly absent in this case. Since this matter has been taken up by the National Human Rights Commission, we will refrain from further comments on this aspect

Honouring the Policy Frame in Future

110. The proceedings relating to the acquisition of land in this case are clearly in violation of the law and the procedure laid down. There is serious violation of the principles of natural justice. The award under the Land Acquisition Act should be reasonably treated as **non-est**.

111. The only course now open to the State government is that the entire process of the establishment of the steel plant has to be restarted in accordance with the provisions of law and rules made thereunder. Moreover, it is also clear the Government has not taken necessary measures as envisaged in the policy frame and procedures set out for the Scheduled Areas given in detail in Section II above. It is high time that a beginning is made in Bastar with its great potential with due regard to all aspects of policy and procedures.

It may be reiterated that prior informed consent of the concerned people is the quintessence of above policy guidelines. Not only a comprehensive plan of rehabilitation has to be made but also the concerned people have to be convinced about the claims made therein. No project should proceed without the consent of the people.

Dignity of Gram Sabha-A vital Issue

112. While the State has to attend to the Constitutional duty of securing justice for the tribal people, their right for self governance including command over resources hold the key to life with dignity and a real democratic polity. The Extension Act brings to the centre of the stage the community at the village level in the form of Gram Sabha. It is a matter of regret that there is scant regard or even realisation about this change in the position of Gram Sabha. The fabrication of the proceedings of Gram Sabha is a direct result of thin attitude.

113. It is high time that the State Government attend to the issues relating to the dignity and honour of the Gram Sabha which is the highest democratic body and which is expected to play a vital role to ensure that there is no confrontation between the people and the State in the Scheduled Areas

Conclusions & Recommendations

114. The following conclusion flow from the facts presented to the Commission:

- a. The policy and also the procedures, which have been laid down from time to time for the establishment of industries in the Scheduled Areas, have not been followed in the case of proposed steel plant in Bastar.
- b. The choice of site has been made without going into merits of alternatives available. In the instant case, there appears to be misrepresentation of facts about quality of land. Nor has the need for the extent of land examined. The decision has been taken arbitrarily.
- c. The statutory Guidelines formulated by the State Government themselves have not been followed. In respect of the mandatory consultation with the Gram Sabha before Land acquisition Act, there was no informed consultation. No formal resolutions were passed in the Gram Sabhas expressing their opinion as envisaged in the Guidelines which is mandatory as also the statutory rules about G.S. meetings.
- d. The decision to issue notification under Section 4 of the Land Acquisition Act has been taken on the basis of the so-called administrative reports in clear violation of the Guidelines. The administrative reports have no place in the law and the rules. Thus, both the Guidelines and statutory rules for consultation and issue of notification under Section 4 have been violated. The proceedings of Land Acquisition, therefore, have to be construed as null and void *ab initio*.
- e. There is convincing evidence to show that the record of the Gram Sabhas concerning the mandatory consultation have been fabricated. Moreover, false records have been prepared in the form of so called administrative reports.
- f. The Guidelines of the State Government envisage special responsibility for the Collector and the representative of the Project. Their participation in the consultation meetings is obligatory. These officers, therefore, have to share the responsibility and deemed to be answerable for the fabrication and falsification. The responsibility may be fixed and suitable action be taken against all concerned.
- g. Even the impugned process of land acquisition has violated mandatory provisions. There are reasonable grounds to believe the substance of notification under Section 4 was not displayed at convenient places in the concerned villages. Moreover, notification under Section 6 was issued 13 days ahead of the mandatory period of 30 days after the Section 4 notification. The notification under Section 6 cannot be deemed to be in accordance with law. All proceedings after Sec 4

- including final award, payment of compensation, mutation in land records should reasonably deemed to be illegal.
- h. The provisions concerning environmental clearance as envisaged in the Ministry of Environment and Forest Notification of 27 January 1994 have been violated. Even some work relating to the project has been started which is totally prohibited under the said notification. The proposed erection of boundary wall etc will be illegal.
 - i. The administration has not cared to appreciate the principles of natural justice, which are central to peace and good governance in Scheduled Areas as envisaged under the Fifth Schedule of the Constitution. The people's genuine concerns have been sacrificed in the name of rules and procedures.
 - j. The local administration has not appreciated the responsibility of State, whom it represents, toward the protection and advancement of tribal people in the Scheduled Areas.
 - k. The local officers have failed to appreciate the spirit of the extension Act and the central position of the Gram Sabha in the democratic polity. The trivialisation of the process of consultation with Gram Sabha is regrettable. The State Government should ensure that the message of the new law and even their own Guidelines is imbibed by the officers and conveyed to the people. . Informed consent of the Gram Sabha based on relevant plans has to be accepted as an inviolable precondition for the process of land acquisition to start.
 - l. The State Government should have a comprehensive resume of the policy and procedures concerning establishment of industries in the Scheduled Areas and prepare a frame for future in the crucial area of industrialisation. In any case no force should be used in disputes relating to land acquisition.
 - m. The process of establishing steel plant in Bastar should be restarted. The guidelines issued by the GOI in 1974 read with provision of the Extension Act should reasonably be accepted as the minimal base to build on. In other words, a comprehensive plan for the Zone of Influence of the proposed industry should be prepared, which ensures a place of honour in the new setting for all those affected, directly or indirectly.
 - n. The State Government may also prepare a policy frame for industrialisation in the Scheduled Areas in light of the recommendations of the Committee of Selected MPs and Experts and the direction of the Hon'ble Supreme Court in Samata case. These basically envisage that command over resources remains with the community, which has already been incorporated in the Extension Act read with Article 263M of the Constitution and that the local people are partner on terms of equality in the industrial enterprises.

Sd/
7.12.2001
(Dileep Singh Bhuria)
Chairman

National Commission for Scheduled Castes and Scheduled Tribes

ANNEXURE III

THE FIFTH SCHEDULE

The Fifth Schedule of the Constitution of India deals with administration and control of scheduled areas and scheduled tribes in these areas.

FIFTH SCHEDULE AREAS

The Fifth Schedule covers Tribal areas in 9 states of India namely Andhra Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa and Rajasthan.

The North Eastern states such as Assam, Meghalaya, Tripura and Mizoram are covered by the Sixth Schedule and not included in the Fifth schedule.

State	Areas
Andhra Pradesh	Visakhapatnam, East Godavari, West Godavari, Adilabad, Srikakulam, Vizianagaram, Mahboobnagar, Prakasam (only some mandals are scheduled mandals)
Jharkhand	Dumka, Godda, Deogarh, Sahabgunj, Pakur, Ranchi, Singhbhum (East&West), Gumla, Simdega, Lohardaga, Palamu, Garwa, (some districts are only partly tribal blocks)
Chhattisgarh	Sarbhuja, Bastar, Raigad, Raipur, Rajnandgaon, Durg, Bilaspur, Sehdol, Chindwada, Kanker
Himachal Pradesh	Lahaul and Spiti districts, Kinnaur, Pangi tehsil and Bharmour sub-tehsil in Chamba district
Madhya Pradesh	Jhabua, Mandla, Dhar, Khargone, East Nimar (khandwa), Sailana tehsil in Ratlam district, Betul, Seoni, Balaghat, Morena
Gujarat	Surat, Bharuch, Dangs, Valsad, Panchmahl, Sadodara, Sabarkanta (parts of these districts only)
Maharashtra	Thane, Nasik, Dhule, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli, Chandrapur (parts of these districts only)
Orissa	Mayurbhanj, Sundargarh, Koraput (fully scheduled area in these three districts), Raigada, Keonjhar, Sambalpur, Boudhkondmals, Ganjam, Kalahandi, Bolangir, Balasor (parts of these districts only)
Rajasthan	Banswara, Dungarpur (fully tribal districts), Udaipur, Chittaurgarh, Siroi (partly tribal areas)

Essentially The Fifth Schedule is a Historic Guarantee to Indigenous people on the right over the land they live in.

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A-GENERAL

1. Interpretation: In this Schedule, unless the context otherwise requires, the expression "State" does not include the States of Assam, Meghalaya, Tripura and Mizoram
2. Executive power of a State in Scheduled Areas - Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.
3. Report by the Governor to the President regarding the administration of Scheduled Areas
4. The Governor of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.
Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes.

PART B-ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. Tribes Advisory Council

(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State: Provided that if the number of representatives of the Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor.

(3) The Governor may make rules prescribing or regulating, as the case may be,

(a) The number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof,

(b) The conduct of its meetings and its procedure in general; and

(c) All other incidental matters.

5. Law applicable to Scheduled Areas

(1) Notwithstanding anything in this Constitution the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State, which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may-

(a) Prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) Regulate the allotment of land to members of the Scheduled Tribes in such area; (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in subparagraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law, which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C- SCHEDULED AREAS

VI. Scheduled Areas:

In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas.

The President may at any time by order.

1. **direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area; (a)increase the area of any Scheduled Area in a State after consultation with the Governor of that State**
2. alter, but only by way of rectification of boundaries, any Scheduled Area;
3. on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area;
4. Rescind, in relation to any State or States, any order or orders made under this paragraph, and in consultation with the Governor of the State concerned, make fresh orders redefining the areas which are to be Scheduled Areas;] and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D-AMENDMENT OF THE SCHEDULE

VII. Amendment of the Schedule:

1. Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

2. No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

ANNEXURE IV

Guide-Lines issued by the Ministry of Home Affairs (1974)

(A Note on the Preparation of Intergrated Tribal Development Projects)

Heavy Industries and Mines

85. Many of the tribal areas have rich industrial and mineral resources and big industries are being established. The I. T. D. Project, by its very nature, will not be in a position to counter the influences of the big industries established in these areas. It will, however, be necessary to identify the zones of influences of the existing industries as also the areas of likely establishment of the major industries. Distinct approaches will be necessary for these two situations. A comprehensive programme for the areas of influence of existing industries will have to be separately prepared in which the role of the Tribal Development project may be defined. Here the industrial unit will also have to assume the responsibility for the areas of its influence and evolve a total perspective for the development of that region.

86. In the case of new undertakings there are four distinct stages which have to be taken care of:

- (i) A preview of likely displacement of individuals by the establishment of new industries;
- (ii) Drawing up schemes for interim relief of displaced persons and adequate programming to synchronise with the actual displacement;
- (iii) An alternative means of livelihood on permanent basis for individuals directly displaced and indirectly affected in the zone of influence; and
- (iv) Planning for integration of these groups and others living in the zone of influence with the industrial economy and its subsidiary activities.

87. The policy in respect of employment in the secondary activities in and around the industrial complex should be specially reviewed.

88. The mineral potential of the area should be identified. The present benefits accruing to the various individuals and private and corporate organisations should also be noted. The future policy has to be so evolved that the local community becomes co-sharer in the benefits of the mining and industrial activity in the region. Suitable programmes for this purpose should be evolved. Suitable regulations, if necessary, may be suggested in the approach.

Excerpts from the Second Report of the Committee of Selected MPs and Experts on Urban Bodies in Scheduled Areas

Some Important Features and Issues

3.1 An important feature of the contemporary tribal situation is that as the tribal areas get opened up and urban settlements are established the simple tribal people either voluntarily move out, or are pushed back from the growth centres and main arteries of communication. *This results in permanent loss to the community of the benefits that accrue to the resource-rich tribal areas as a result of development.* Moreover, the hinterlands of the new Centres face backwash effect and also backlash of development. Consequently, there is growing polarisation between the urban centres and the surrounding tribal areas...

3.2 This pattern of development has not only economic consequences, but also has far-reaching political and social implications. The urban centres, which wield political, administrative and economic authority, are totally outside the purview of the traditional authority of the tribal community. They tend to function as authoritarian systems with no concern or consideration for the community around. This is the biggest cause of resentment amongst the tribal people. The feeling may not be overt but has a deep imprint in the mass psyche. *It is an irony that the places, which should function as growth centres, tend to become centres of exploitation. They may even wield a stranglehold on this economy leading to pauperisation of the people.* And, what is more important, they are so perceived acutely by the people around who are witnesses to the negative facets of urbanisation-induced growth...

3.3 Such a pattern of growth in the Scheduled Areas cannot be expected to lead to harmonious development imbued with ideals of justice, equality and fraternity. It is bound to result in antagonistic relationships. It is not in the interest of either the tribal people and urban centres or of an orderly regional and national development.

3.7 The Only asset of the tribal people is their land which is also their source of livelihood. No person should be deprived of his primary source of livelihood without providing an alternative which is acceptable to him and which ensures an honourable position to him in the new setting. If this objective were to be achieved, no sale of tribal land can be permitted, without making him a partner in the economic activity which may be taken up in the area using his land...

4.8 While urbanisation and industrialisation depend on a number of factors, it is generally noted that the impact of these activities on the tribal economy is not an important consideration in that process. The result is that even where extensive lands may be available for setting up of industries, tribal lands may be acquired simply because they happen to be located at a more convenient place or those locations may yield windfall gains to some people and vested interests.

4.9 Since the Scheduled Areas have rich natural resources and are the focus of attention in the new development thrust, it is high time their utilisation is planned in such a way that it does not adversely affect the tribal economy and the tribals are able to take advantage of the new activity. The essence of self-governance in the tribal context is command over all local affairs of the community which demands that the community should have full command over the industry based on local resources.

- (i) Setting up of industries in Scheduled Areas at random and without assessing their impact on the tribal economy must stop forthwith;
- (ii) The Government should identify potential industrial areas in advance, after due process in which the people and the institutions should be able to participate meaningfully ensuring that community's decision prevails and is final;
- (iii) No agricultural land or land used for common purposes should be allowed to be transferred or purchased in any way for setting up of an industry; and
- (iv) In all industrial enterprises set up in the Scheduled Areas, other than small ventures referred to earlier, the community should be deemed to be the owner with 50% share in its favour by virtue of its allowing the industry to use the local resources and getting established. The share-holding of the company/persons making financial investment should be limited to not more 26%**

ANNEXURE V

Copy of the letter to the Chief Minister of Chattisgarh from Justice Bhargava

Camp Delhi
19 April, 2002

Dear Chief Minister,

Kindly refer to the Indian People's Tribunal fax dated 11 April, 2002.

I had come to Raipur in the morning of 15 April 2002 and wanted to meet you before commencing the hearing of the Tribunal. But since you were not available I could not meet you and proceeded to Jagdalpur along with other members. There we met with the Collector, SP, SDM, SHO Nagarnar and also the residents of four affected villages, and the prisoners in jail as well. We returned to Raipur on 18 April 2002, by noon and wanted to meet you as had been requested for earlier in our fax to you. I was informed however that you were still unavailable. I waited till late night to meet you, but as we did not hear from you I had to leave Raipur without meeting you personally, hence this letter.

As the result of our hearings we earnestly feel that the Government should take immediate steps to build confidence in the people of these four affected villages and restore normalcy in the area. In that connection we have the following suggestions.

1. Since a large number of people including women have been implicated in the criminal cases, all the cases should be reviewed and withdrawn / dropped against innocent persons.
2. Articles confiscated or recovered or forcibly taken from various persons should be restored to them without delay.
3. The recommendations of the National Commission for Scheduled Castes and Scheduled Tribes should be considered seriously and all those objections should be met including reconvening of the Gram Sabha meetings to consider various proposals as envisaged in the guidelines.

I hope you will appreciate the gravity of the situation and to develop good relations between the public and the local Administration and also for building confidence with the public at large and to restore normalcy, it will be in the fitness of things that further construction of the boundary wall be stopped immediately. This is particularly important because the mandatory provisions have been violated in the process of land acquisition and force has been used without any provocation from the people's side.

With best wishes and regards. Hoping to hear from you soon.

Sincerely,

Sd/-
Justice Surendra Nath Bhargava

Shri Ajit Jogi,
Chief Minister
Chhattisgarh, Raipur

ANNEXURE VI

Copy of the letter to the secretary of the Ministry of Environment and Forests from the Delhi Support group of Nagarnar

Shri P. V. Jaikrishna,
Secretary to the Government of India
Ministry of Environment and Forest

Dear Sir,

This letter is in reference to the Iron and steel plant that is proposed to be set up by the NMDC at Nagarnar in Bastar District of Chhattisgarh. We have reliably learned from the website of the Ministry of Environment and Forest (June 8, 2002), that the final environmental clearance for the said project has not been given.

According to clause (c) of sub-section III of section 2 of the Environmental Impact Assessment (EIA) Notification dated the 27th January 1994:

“ No construction work, preliminary or otherwise, relating to the setting up of the project may be undertaken till the environmental and site clearance is obtained.”

Further, consequent to complaints of violation of rights of the tribals whose land was being acquired the National Commission of Scheduled Castes and Scheduled Tribes (SCST) conducted an inquiry in the area. One of the findings of the commission was as follows:

“The provisions concerning environmental clearance as envisaged in the Ministry of Environment and Forest Notification of 27th January 1994 have been violated. Even some work relating to the project has been started which is totally prohibited under the said notification. The proposed erection of the boundary wall etc. will be illegal.”

We would like to bring to your notice that at the proposed site where the project is to be located and for which land has already been acquired, the construction of a boundary wall is in progress. This is an absolute violation of the provisions under the above-mentioned clause of the EIA notification. This point of not permitting construction before clearance has also been emphasized in your circular, reference no. J-21011/8/98-IA. II (I), dated May 14th, 2002 which states:

It is therefore, necessary that all the SPCBs / PCCs issue fresh notices forthwith to all such defaulting units asking them to apply for environmental clearance without any delay and, in any case, not later than 31 March 2003 with complete information. In future, while issuing No Objection Certificate/Consent to Establish, it shall be clearly stipulated that no construction activity preliminary or otherwise shall commence without first obtaining environmental clearance wherever required. Suitable directions shall be issued by all States / UTs under the Environment (Protection) Act to units to stop construction activities / operations of all such units that fail to apply for environmental clearance by 31 March 2003. Units which fail to comply with these directions shall be proceeded against forthwith under the relevant provisions of the Environment (P) Act, 1986 without making any reference to this Ministry.

We would also like to point out that in the S.O. 470 (E) dated 21st June, 1999, which are the Environment (Siting for Industrial Projects) Draft Rules, section (2) of the said rules prohibits setting up of any industry listed in Annexure-I in a 25 km belt around the periphery of the National Parks, Sanctuaries, and core zones of Biosphere Reserves.

We would like to draw your attention to the fact that the Kanger Ghati National Park in Bastar district of Chhattisgarh, is located within the stipulated area of 25 km, where the said NMDC Steel plant is proposed to come up. As per the draft rules, Primary metallurgical industries, which includes production of Iron and Steel (entry no. 5 of Annex. I), such an industry is prohibited from being set up within 25-km periphery of the National Park. It may also be mentioned that the topography sheet of the area where the plant is proposed to be set up clearly mentions that there is a reserved forest with good sal growth in the vicinity. Yet this fact has not been placed on record, knowing full well that there are stringent conditions of Government of India as well as Court verdicts in this regard.

The adequate availability of water for the running of the plant is in doubt. The local people have raised the point of non-availability of water. The project proponents have said that no dam would be constructed, but that an impounding structure would be constructed on the Indravati River. Now there is a big dispute between Orissa and Chhattisgarh on the use of water from Jora nala a tributary of Indravati. In this context the unwillingness of the project authorities to give the EIA report even when asked is ominous.

Hence it is clear that the project proponents have paid no heed to the recommendation and finding of the National Commission of Scheduled Castes and Scheduled Tribes. The report of the Scheduled Caste and Scheduled Tribe Commission also brings out how they have disregarded other laws such as Section 4 notification under the Land Acquisition Act. As we have pointed there are also violations of provisions under the Environment Protection Act 1986 and related notifications.

What emerges very clearly is that there is a total disregard for the law by the project proponents. The authorities have been giving the impression that environmental clearance is a mere formality and it has already been given to them informally. What we would like to press is that the applicants have not come with clean hands.

Hence we strongly urge that necessary action be taken so that;

The construction of the boundary wall should be stopped immediately.

The project should be reviewed in lieu of close proximity to the National Park and Reserved Forests as also the non-availability of water.

It is ensured that no construction of any kind is undertaken in the area until all the provisions in the Environment Protection Act 1986, are met prior to grant of any environmental clearance.

We would also like you to make available to us the full EIA report, which is a public document, for our perusal.

The undersigned people are part of a group concerned with the impact the industry will have on the environment of the area and on the welfare of the tribals in schedule V area which have separate Constitutional provisions.

Sincerely,

For
Delhi Support Group for Nagarnar
Cc.
Shri Arun Kumar
Chief Secretary to the Government of Chhattisgarh.

Shri Anil Sharma, Chhattisgarh Pollution Control Board

ANNEXURE VII

Addresses of the Government Officials who were invited to meet the Members of the Tribunal

The Chief Minister
Chhattisgarh
Raipur

The Governor
Chhattisgarh

The Collector
District Bastar
Jagdalpur

The Superintendent of Police
Bastar
Chhattisgarh