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Vedanta Resources Lawsuit (RE Deforestation & Mining in India)

Abstract

In 2003, Vedanta Aluminum Limited (VAL) was granted clearance to begin a mining project in India's Niyamgiri hills, home to the Dongria Kondh tribe. The tribe, aided by activists and NGOs, was able to successfully revoke the clearance because of Vedanta's failure to account for environmental and human rights impacts which would arise from their project.

Table of Key Facts

Case Name	Vedanta Resources Lawsuit (re Dongria Kondh in Orissa)
Date	Began 2003
Jurisdiction	India (Supreme Court)
Plaintiffs: Dongria Kondh Tribe/ Survival International	Defendants: Vedanta Resources/Vedanta Aluminum Limited
Decision	Mining project stayed
Prior Procedures	N/A
Subsequent Procedures	Ongoing/Appeals

Background

VAL is a subsidiary of Vedanta Resources, a UK-registered mining company, that operates largely via subsidiaries in India, Zambia and Australia. Vedanta and one of its subsidiaries, Sterlite Industries India Limited (SIIL), jointly own Vedanta Aluminum Limited (VAL), which is based in the eastern Indian state of Orissa.

The Dongria, part of the larger Kondh tribe group, live in the Niyamgiri hills in Odisha, India. The Dongria worship the hill range as its provider. The hills are the tribe's source of livelihood, allowing them to grow mangoes, berries, medicinal herbs, etc.¹

On March 19, 2003, SIIL applied for environmental clearance under the Environment (Protection) Act from the Indian Ministry of Environment and Forests (MoEF) to build a mine and refinery in Orissa. In the environmental impact assessment submitted in support of its application, SIIL omitted any reference to the Dongria Kondh tribe or how the refinery would impact its way of life. The project, however, involved mining that would destroy the forest of the Niyamgiri hills. MoEF granted the clearance in September of 2004 for the refinery. In March of 2005, MoEF also granted a clearance under the Forest (Conservation) Act, which allowed SIIL to clear about 145 acres of forest in the Niyamgiri hills.

In response, the Wildlife Society of Orissa, the Academy of Mountain Environics, and an individual activist filed petitions opposing the construction of refinery and the mining.² The petitioners argued that the project work would destroy the Dongria Kondh tribe's way of life because of the tribe's spiritual and cultural attachment to the Niyamgiri hills. The petitioners further argued that many people had been forced to leave their homes and that the mining had caused significant environmental damage and would cause further damage.

In November 2007, the Supreme Court ordered a stay, barring SIIL from moving forward with the project. The Court, however, allowed Vedanta to re-submit a proposal compliant with certain requirements, such as the submission of a report noting the effects of the project and the number of people likely to be employed by the project.

The tribe's fight against Vedanta began to gain more international recognition from the lobbying efforts of NGOs like Amnesty International and Survival International. As a result, in November 2007, the Norwegian government announced that its global pension fund – one of the world's largest sovereign wealth funds – had sold its \$13 million stake in Vedanta. The government noted “the unacceptable risk of contributing to severe environmental damage and serious or systematic violations of human rights by continuing to invest in the company.”³ Other investors – such as Martin Currie Investment Management, BP's pension fund, the Church of England, the Joseph Rowntree Charitable Trust, the Marlborough Ethical Fund, and Millfield House Foundation – have since followed suit.⁴

¹ Ali, Faisal Mohammed. “How Vedanta's Mine Hope Rests on 12 Tribal Villages,” August 13, 2013, sec. India. <https://www.bbc.com/news/world-asia-india-23585760>.

² Vedanta Resources Plc (UK): Complaint to the UK National Contact Point Under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises.” Survival International, December 19, 2008. http://assets.survivalinternational.org/documents/96/Survival_complaint_VEDANTA.pdf, paragraph 39.

³ Ghosh, Padmaparna. “Norway Govt Fund Sells Its Vedanta Stake.” <https://www.livemint.com>, November 7, 2007. <https://www.livemint.com/Companies/yWydTZLyMGae23QVfSTvcJ/Norway-govt-fund-sells-its-Vedanta-stake.html>.

⁴ Hopkins, Kathryn. “Rowntree Trust Sells Shares in Vedanta over Human Rights Fears.” *The Guardian*, February 18, 2010, sec. Business. <https://www.theguardian.com/business/2010/feb/18/rowntree-trust-pulls-out-from-vedanta-resources>.

On June 30, 2010, the MoEF convened a panel to investigate the mining's impact on local tribes and wildlife, which issued a report that argued that the company should not be given permission to mine in Niyamgiri. On August 23, 2010, pursuant to the panel's recommendations, the Minister for Environment & Forests announced that the government would take action against Vedanta for alleged violations of forest conservation and environmental protection regulations related to the Niyamgiri project.

Vedanta appealed the government's decision and, in April 2013, the Supreme Court upheld the ban on mining in the Niyamgiri hills and ruled that the rights of the Dongria Kondh tribe must be taken into account in deciding whether the mining project may go ahead. The tribe, in essence, had the power to veto the project. This was considered a landmark ruling, as it was the first time that the tribal people were able to dictate their own future.⁵ Unsurprisingly, in August 2013, all 12 tribal villages voted against Vedanta's project in the Niyamgiri Hills.

In April 2016, the Supreme Court denied a renewed attempt to begin mining in the Niyamgiri hills.

Timeline of Key Events

Date	Key Event
March 2003	VAL applies for environmental clearance from the MoEF to build a refinery in Orissa.
September 2004	The MoEF grants clearance to VAL.
November 2007	The Supreme Court bars Vedanta and its subsidiary SIIL from moving forward with the project, but allows Vedanta to re-submit a proposal compliant with certain safeguards.
August 2008	SIIL having re-submitted its proposal under such conditions, the Supreme Court allows the project to move forward.
August 2010	Pursuant to recommendations from an investigatory panel convened by the MoEF, the Minister for Environment & Forests announces that the government would take action against Vedanta for alleged violations of forest conservation and environmental protection regulations related to the Niyamgiri project.
April 2012	The Supreme Court hears Vedanta's appeal.
April 2013	The Supreme Court upholds the ban on mining in the Niyamgiri hills and ruled that the rights of the Dongria Kondh tribe must be taken into account in deciding

⁵ "Indian Villagers Defeat British Billionaire over Plans to Mine Sacred Mountain - Telegraph." Accessed April 15, 2019. <https://www.telegraph.co.uk/news/worldnews/asia/india/10234314/Indian-villagers-defeat-British-billionaire-over-plans-to-mine-sacred-mountain.html>.

	whether the mining project may go ahead; all 12 tribal villages vote against Vedanta's project in the Niyamgiri Hills.
January 2014	The Ministry for Environment and Forests declines to permit the mining to move forward.

Impact

The success in delaying and preventing the project from moving forward is rooted in the tribe's widespread community engagement which garnered support and involvement from international NGOs like Amnesty International and Survival International. The involvement of NGOs provided the tribe with desperately needed resources, legal expertise, and media coverage. In essence, the NGOs' support behind the tribe helped level the playing field shared between an indigenous tribe with little access to the outside world and a large, wealthy corporate structure.

The NGOs not only helped build a global anti-mining effort and sentiment, but also their lobbying in large part was the impetus behind the divestments of various entities in Vedanta and its subsidiaries.⁶ Survival International, for example, fought the mining project in various ways, such as by lobbying the Indian government, submitting reports to the UN and Organisation for Economic Co-operation and Development, providing legal advice to the tribe, and producing a short film about the mining project and the tribe. Such methods helped publicize the plight of the tribe before an international audience. Similarly, the support of prominent individuals like Joanna Lumle, Michael Palin, human rights campaigner Bianca Jagger, Booker Prize winner Arundhati Roy, and anthropologist Dr. Felix Padel (Charles Darwin's great great grandson) further helped the tribe's fight become one of international concern, putting further pressure on Vedanta.⁷ These NGOs and individuals helped paint a picture of the tribe that was one of teamwork, dedication, and community, rather than one of a primitive, backwards community (a view often held by the court).

Other positive results from the case include Vedanta adopting a human rights policy, although it has been criticized that it fails to actually put into practice its policy. At the very least, however, Vedanta has started to reconsider how it approaches future communities and projects, and it is also trying to manage the damage done to its reputation.

Additionally, the battle against Vedanta's mining project helped lead to the passing of key legislation, such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013 (LARR).⁸ The land and human rights of the tribe, and other indigenous peoples in India, have been increasingly recognized by the government and court system.

The tribe's efforts have inspired other tribes and indigenous peoples to also contest seemingly infallible corporations. One member of the Dongria Kondha, Prafulla Samantara, was

⁶ "Dongria Kondh - Survival International." Accessed April 15, 2019. <https://www.survivalinternational.org/tribes/dongria>.

⁷ Id.

⁸ "Niyamgiri: The Story of One of the Biggest Land Conflicts: No Mine Now, but Is It All Fine in Niyamgiri? - The Economic Times." Accessed April 15, 2019. <https://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/theres-no-mine-but-is-it-all-fine-on-niyam-hills/articleshow/63763978.cms?from=mdr>.

awarded the Goldman Environmental Prize. Such official recognition has helped publicize to other indigenous people the benefits and potential successes of grassroots efforts.

Finally, in an important development for the advancement of strategic litigation, on April 10, 2019 the Zambian Supreme Court ruled that Vedanta Resources can “be held to account by English judges, despite the companies’ arguments that they should defend themselves in Zambia.”⁹ Though this specific decision goes beyond the scope of the case at hand, we hold that this is a significant development for the role that litigation can play in bringing large conglomerates based in the developed world to account for their environmental and human rights abuses in the developing world. The decision opens the doors to a range of other cases to be brought against parent companies based in the UK for the actions of their subsidiaries overseas.¹⁰

Further Information

- Business & Human Rights Resources Centre’s Case Profile (<https://www.business-humanrights.org/fr/node/9349>)
- Profile of the Dongria Tribe (<https://www.survivalinternational.org/tribes/dongria>.)
- Report of the Four Member Committee for Investigation into the Proposal Submitted by the Orissa Mining Company for Bauxite Mining in Niyamgiri (http://envfor.nic.in/sites/default/files/Saxena_Vedanta-1.pdf) by Dr. N.C. Saxena, Dr. S. Parasuraman, Dr. Promode Kant, Dr. Amita Baviskar
- Zambians can pursue mining pollution claim in English courts (https://www.theguardian.com/law/2019/apr/10/zambians-can-pursue-mining-pollution-claim-in-english-courts?CMP=Share_AndroidApp_Copy_to_clipboard)

⁹ Gayle, Damien. “Zambians Can Pursue Mining Pollution Claim in English Courts.” *The Guardian*, April 10, 2019, sec. Law. <https://www.theguardian.com/law/2019/apr/10/zambians-can-pursue-mining-pollution-claim-in-english-courts>.

¹⁰ Id.