The Saga of Sompeta: Public Deception, Private Gains

E A S Sarma

On 14 July, two persons were shot dead by the police in Sompeta village in Srikakulam district of Andhra Pradesh when hundreds were protesting against an attempt to forcibly take possession of land for a private 1,980 megawatt coal power plant that was planned in the area. On 15 July, the National Environment Appellate Authority quashed the environmental clearance that had been given to the project. The saga of Sompeta is one of many arms of the central and state governments colluding with the promoters to turn fact into fiction and give clearance to a polluting project in a fragile ecological area, disrupting thousands of livelihoods.

The quiet town of Sompeta is located in the northern part of Srikakulam district of Andhra Pradesh (AP). It is 5-6 kilometres from the sea. The seaward terrain on the east of Sompeta constitutes a unique system of a coastal wetland or swamp known locally as the beela and the tampara. It supports a rich heritage of biodiversity. Rare migratory birds nest and feed in this area every year. The local fishing communities have enjoyed customary fishing rights here for generations. There are hundreds of marginal farmers, agricultural workers and shepherds who eke out their livelihoods from the swamp. This terrain personifies nature’s tranquility.

14 July 2010

On this fateful day, the swamp suddenly exploded with the fury of the local people, especially the fishing community, against the forcible entry by scores of security personnel employed by a private firm, Nagarjuna Construction Company (NCC), backed by hundreds of armed policemen. The NCC was at the site to “level” the ground for its proposed thermal power project. For more than a year, the villagers had tried every means at their behest to voice opposition to the project. They resented the threat to their livelihoods and the pollution hazard posed by the project. They contended that NCC had not yet secured the mandatory Consent for Establishment (CPE) from the AP Pollution Control Board (APPCB). Their entreaties fell on the deaf ears of the officials. A minister, in fact, dared the people to stop the project, infuriating the villagers.

The local TV channels meticulously covered the events that followed. Against the lush green background of the swamp, hundreds of villagers, including panicking women and children, tried to ward off the blows and the bullets aimed at them. Hired employees of the company, in blue scarves and head bands were seen roughing up the villagers (Deccan Chronicle, Hyderabad, 15 July).

At the end of the day, two villagers lay shot dead, five persons sustained bullet injuries, scores of villagers, media persons and several policemen were injured. The central law, the Environment (Protection) Act, 1986 (EP Act) and the state law, the Water, Land and Trees Act, 2002 (WALTA) stood violated, apart from the large-scale violation of the human rights.

Industrial Policy and Merchant Power Plants

The industrial policy of AP has always revolved around the government giving tax sops and heavy subsidies for land, electricity and water to project developers who, in turn, made tall promises to provide jobs to the affected people. The government has rarely monitored the fulfilment of the promises. Nor has the government ever taken back the land given on the ground that such assurances had not been fulfilled. On the other hand, the state has always winked at the developers defying the laws meant to protect the environment and safeguard the people’s interests.

A large chunk of land forcibly acquired from the people and given cheaply to a private power company in Visakhapatnam district in 1994 is still with that company, without any sign of a power project coming up. The government is even a silent witness to the company leasing out that land to the original cultivators at escalating rentals. There cannot be anything more perverse than this in a democracy that we are proud of!

During the last six to seven years, the state government has recklessly been diverting public lands for private gains. Promoters are nominated at will without any competitive bidding, even though the AP Infrastructure Development Enabling Act, 2001 mandated total transparency. Thousands of acres of precious public land, including lands with water bodies, hills and valleys, wetlands and mangroves, ecologically fragile coastal stretches and tribal lands protected under the fifth schedule to the Constitution, are indiscriminately...
handed over to a few chosen promoters. In this unusual state largesse, the preferred promoters are a few, who can be counted on one’s fingers, but the number of sites allocated to them runs into hundreds. AP is one state that took maximum advantage of the ill-conceived SEZ policy of the central government and extended all the additional concessions envisaged under that policy to many favoured promoters. More than 20% of the country’s SEZs are located in AP.

In the name of containing the self-made power crisis, the state has allowed a few chosen promoters to set up a large number of “merchant” power plants all along the coast, sited in ecologically fragile public lands given at prices significantly lower than market prices. Coastal locations are chosen for providing access to imported coal through jetties. The state has not considered more viable alternatives to coal-based power generation. It would have been more prudent for the state to make investments on minimising the inefficiencies in the end-use of electricity, reducing the technical losses in its transmission and distribution systems, improving the thermal efficiency of the existing power projects and using alternate energy sources.

Coal-based power generation causes toxic pollution, contaminates the ground and surface water sources and exposes the people in the vicinity to radioactive isotopes depending on the source of coal. Contamination of the sea water affects the livelihoods of the fishing community. These projects appropriate vast stretches of land for storing coal and dumping ash, thereby displacing thousands of families and depriving the fishing community of their access to the sea. In return, only a few displaced families may secure employment, that too menial jobs, as they do not have the skills needed. The livelihoods lost due to the project will far outweigh the small number of petty jobs offered.

The electricity consumers in AP will not benefit much from these projects which will export most of the power outside the state. The concessions given to these projects will not accrue to the consumers in AP.

Partly due to the regulatory slackness on the part of the APPCB and partly due to the technological constraints that are inherent in the operation of such power projects, there will be all round pollution in the vicinity of such projects.

The misinformation campaigns that are usually launched by these affluent developers tend to exaggerate the benefits and mask the costs of these projects. NCC’s project near Sompeta is one among many such merchant power projects.

**NCC’s Project**

The capacity of the project was originally planned to be 2,640 megawatts (mw), later trimmed down to 1,980 mw. The land required is 1,905 acres, located in Rushikudda, Gollagunda, Baruwapeta and Benkili villages. In this, the extent of government land is 1,046 acres, for which NCC had approached the government for alienation in their favour. The company hoped that once the government land was in its hands, the adjacent private owners could be forced to part with their lands for a distress price.

The project would burn 34,245 tonnes of coal, spew out about 14,380 tonnes of ash and deposit 226 tonnes of sulphur daily. In addition, it will also generate significant quantities of other toxic pollutants such as mercury, lead, zinc, cadmium, arsenic and chromium. Some pollutants could be radioactive.

The plant will consume 250 million cubic metres of water drawn from the sea.

**Facts and Fiction**

In the face of corporate pressure, the facts usually twist themselves into fiction to suit the developer. This is what has happened in the case of Sompeta.

As soon as the company’s plans came to light, the local professionals, doctors, advocates, traders and others joined hands with the surrounding villagers to form a unique people’s body known as the Parya-varana Parirakshana Sangham (PPS) to resist this polluting project. The PPS’ approach has been democratic and peaceful. Its strength has been the people’s support. In the face of official reluctance to be transparent, the PPS had to invoke the Right to Information Act, 2005 (RTI Act) at every stage to extract details of the government lands being alienated and the correspondence that led to it. The villagers visited the Simhadri thermal power station near Vizag and interacted with the people in its vicinity to understand the impact of the project on their lives. They saw for themselves the havoc caused by the huge heaps of the ash at Simhadri that had seeped into every water body in the surroundings and caused skin irritation and bronchial problems. The district officials who ought to have taken the initiative were conspicuous by their absence. They still parroted the NCC’s version.

Beginning with the inception of the EIA report till the Ministry of Environment and Forests (MoEF) accorded Environment Clearance (EC) for the project, the authorities at almost every level misrepresented the facts to suit the interests of the NCC.

**EIA Report**

The consultants who prepare EIA reports on industrial projects are required to evaluate objectively the impact of a given project on the people and the surrounding environment. The EIA manual published by the MoEF provided the necessary guidelines for this. The EIA report on Sompeta failed to conform to the format.

The report certified the non-existence of “ecologically sensitive” areas within 15 km of the project site whereas, in the same breath, it also referred to the existence of seven protested forest blocks (Barua, Gollagundi, Mahendratanya, Erra Mukkum, Kalingapatnam, Jalantakota and Gad-dur) within that zone, implying that the forest blocks were not ecologically sensitive. The report described the land as “uncultivable waste land” whereas the government lands included within the site were classified as Tampara Porompoke (249 acres in Gollagundi), Beela Gayalu (277 acres in Baruwapeta), Beela Tampara.

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(199 acres in Benkili) and Kaluva Porampoke (400 acres in Rushikudda) as per the official revenue records. This information was readily available in the government order in which land was given to NCC. As already explained, these are clearly swamps. Kaluva is a water course. Anyone with open eyes would have seen the site to be a lush green stretch of terrain, interspersed with patches of cultivation by small farmers and fishing activity going on. There are three lift irrigation (LI) projects set up by the Andhra Pradesh State Irrigation Development Corporation, located at Benkili, Rushikudda and Kuttuma villages,\(^5\) to pump the swamp waters and irrigate 750 acres. The EIA report was blissfully silent on this.

The report made no mention of the site being a part of the wetland system into which water accumulated continuously and drained into the sea. There was no mention of the Ramsar Convention on Wetlands\(^7\) that required India to identify and protect all wetlands, as degradation of wetlands would destroy the biodiversity and contribute significantly to greenhouse gas emissions. Year after year, India has reported compliance\(^8\) with the objectives of the convention. The union cabinet has approved the National Environment Policy\(^9\) that mandates the conservation of all wetlands. Had the EIA consultants cared to carry out a visual study of this wetland over different seasons of the year, they would not have missed the rare migratory birds nesting there. The report was also oblivious of the two other conventions, one on conservation of biodiversity and another on conservation of migratory birds, both relevant to Sompeta.

The socio-economic component of the report was sketchy. It failed to refer to the fact that a thousand families depended on the swamp for their livelihoods. It failed to evaluate the relative costs and benefits of continuing the wetlands in their present form, supporting the local community vis-à-vis diverting them for the power project.

**District Collector’s Reports**

The report of the district collector of Srikakulam (Sr No 272/2008/83 of 21 June 2008) addressed to the chief commissioner of land administration (CCLA) dealt with the details of the government lands to be alienated to the NCC. On that basis, the state government issued orders on 15 September 2008 alienating the government land to the extent of 972 acres to NCC. This included 110.25 acres under agriculture and the area within the coastal regulation zone (CRZ). This was justified on the ground that the small farmers in occupation of the land should not be disturbed.

The collector’s report described the government land to be a swamp and a water course. It took note of the fishing activity in the swamp. It failed to disclose the three LI projects in existence.

Five years earlier, the government instructed the district collectors throughout the state (Memo 24140/Assn I(1)/2003-3 dated 22 August 2003) to notify all lands with water bodies and include them in the village Prohibitory Order Books (POBs) so that such lands could be excluded from diversion and damage. The district collector’s report of 21 June 2008 conveniently suppressed this fact and described the land in question as “waste” and “uncultivable”, in order to pave the way for alienating it to NCC.

Even though the original report of 21 June 2008 excluded 110.25 acres of land under the cultivation of small farmers, later in another communication to the state government (Sr No 272/08-E3 dated 12 January 2009), the district collector proposed transferring even that land to NCC. Evidently, the small farmers were forced to part with their lands under the company’s pressure. The logic put forward earlier for excluding this agricultural land disappeared overnight under pressure from the company.

When some villagers filed a representation before the State Human Rights Commission (SHRC), the commission called for a report from the district collector. The latter submitted a report (Sr No 1926/2009 E3 dated 3 November 2009) to the SHRC repeating the misleading version contained in his earlier report of 21 June 2008 to the state government, stating that the land to the extent of 110.25 acres had been excluded even though, by then, even that stretch of land had already been committed to the company.

If the public hearing for the project had been conducted in a transparent and meaningful manner, many facts would have come out. Unfortunately, these public hearings have become a ritual conducted for the sake of fulfilling an unnecessary requirement.

Panchayats and gram sabhas are both constitutional entities. In the first instance, the district authorities and the APPCB should have explained the true costs, the

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**47th ANNUAL CONFERENCE OF THE INDIAN ECONOMETRIC SOCIETY (TIES)**

**ANNOUNCEMENT AND CALL FOR PAPERS**

The 47th Annual Conference of the Indian Econometric Society is scheduled to be held at Devi Ahilya University, Indore (MP) from 6th to 8th January, 2011. The Society welcomes research papers that fall in the broader area of quantitative economics. All those who are interested in submitting papers for the Conference should send the soft copy of the full paper and the abstract (300 words) to Dr K Shanmugan, Convener, Programme Committee (e-mail: maaties09@gmail.com) and one copy to Secretary of the society at nrbmuthy@gmail.com. More information can be obtained at www.tiesindia.net.

The last date for submission of papers is 15th November 2010. Communication about the acceptance of papers will be conveyed to the authors by the end of November 2010.

Life Members are requested to communicate change of address, if any, to the Secretary, TIES, at the earliest.

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possible risks and the realistic benefits of the project to the people in easily understood terms and allowed the local bodies to come up with constructive suggestions. In AP, these local bodies are not allowed to have a voice of their own. The information obtained under the RTI Act showed that all the four panchayats, namely, Rushi Kudda, Gollagandi, Baruvapeta and Benkili passed resolutions similarly worded to say that they had no objection whatsoever to government lands in their respective areas being handed over to the company for the power project. All these resolutions bore the same date, i.e., 23 May 2009. All of them were messages received by the authorities through the fax machine of the company. It does not require any further elaboration as to how these resolutions were obtained!

While more than 1,000 acres of government land was alienated to the company, it is reported to be buying another 600 to 700 acres of private land from the farmers. Both the PPS and the author have filed applications under the RTI Act to ascertain the extent of land bought by NCC in violation of the AP Assigned Lands (Prohibition of Transfer) Act, 1977. The district collector who is responsible for the custody of such land has evidently failed to report the fact to the state government.

Department of Environment and Forests (State)

The role played by the environment and forests department of the state government was equally dubious.

At the instance of its counterpart in Delhi, this department has constituted a State Level Steering Committee on Conservation and Management of Coastal Wetlands and Mangroves. This committee has done precious little in identifying and conserving the wetlands in the state. The department has literally abandoned its statutory role of conserving the environment of the state and, instead, joined hands with those who are canvassing projects to the detriment of the environment.

At the meetings of the central government Expert Appraisal Committee (EAC), the department, instead of raising serious environmental issues, contributed its own might to get the Sompeta project cleared in record time.

Expert Appraisal Committee

According to the replies received by the author in response to an application filed under RTI Act, the MOEF had no system in place to satisfy itself that those appointed as the members of the EAC had no conflict of interest while appraising projects. Consequently, many industrial projects not strictly in conformity with the norms of environmental protection have found ready endorsement from the EACs dealing with the different sectors. Sompeta belonged to this category.

At its 42nd meeting held during 12-13 March 2009,10 the EAC constituted a subgroup of its own members to visit the site and report whether (i) there were any mudflats in the land, (ii) it was a marshy land, (iii) it was subject to any tidal action, and (iv) it had the crz characteristics. The subgroup visited the site on 4 April 2009 and submitted its report to the EAC. The report observed very clearly11 that the land, being marshy, was a wetland. However, they felt that it had no CRZ characteristics. Since it was their own observation that the site was marshy, the subgroup should have straightforwardly recommended rejecting it for the proposed project in view of the committed position of MOEF to conserve all wetlands in view of their ecological significance. Instead of making a recommendation on this, the subgroup conveniently skirted the issue and recommended exactly the opposite, saying that the power project should be permitted since the site was away from CRZ. It is doubtful whether the members of the subgroup had the expertise to pass a final judgment even on the CRZ issue. As a result, without awaiting any other professional input and without looking into the objections raised by some of us, the EAC went ahead and recommended the project for EC for the first phase of 1,320 MW. On that basis, MOEF routinely issued the EC for the project, vide their letter no. J13012/119/2008-IA II(T) dated 9 December 2009.

On 13 December 2009, some of us filed objections before the APPCB against the issue of CFE for the project and requested the board not to dispose of the objections till a reasonable opportunity was given to us to explain our case. It goes to the credit of the board that it has displayed no haste in issuing the CFE till date.

Role of MOEF

Under Article 48A of the Constitution, the MOEF is obligated to protect the environment. Wetlands are a part of the ecology of the country. As already stated, there is an unambiguous national commitment to conserve the wetlands.

India had committed to the Ramsar secretariat in October-November 200812 that MOEF had prepared a draft wetland regulation for public consultation and it would finalise it soon for enforcement. The ministry displayed the draft for sometime during 2008 but, for some strange reason, withdrew the same abruptly, without any further action. Perhaps, the proposed regulation came in the way of some power projects against which the civil society organisations had filed cases. After a lapse of two years, the MOEF once again displayed the draft in the public domain during the first half of 2010. During the interregnum period, the ministry allowed several project developers to occupy the wetlands and start construction work to make the projects a fait accompli.

The Standing Committee of the National Wild Life Board (NWLB) which is an adjunct body of MOEF recently deputed Asad R. Rahmani (Bombay Natural History Society) and Asha Rajvanshi (Wild Life Institute of India) to visit the wetland project sites in AP. The team visited Sompeta and came to the logical conclusion that the proposed power plant should not be located there, as the site was a part of the local wetland system.13 The MOEF could have woken up to this reality and suspended the EC for Sompeta to save the swamp.

Even after the National Environment Appellate Authority (NEAA) delivered its verdict on 15 July 2010, quashing the EC, the MOEF’s press release on that day was ambivalent and caused apprehensions in the minds of the villagers that the ministry was trying to obfuscate the issues on which the NEAA had already adjudicated. The ministry deputed a team to visit the site to “re-examine” some of these issues so that the EAC on thermal power projects...
could “review” the issues dealt with in the verdict. The language of the press release went counter to the spirit of the verdict. Fortunately, as a result of the persistent representations made by the civil society bodies, the team recently reported that NEAA should not have been permitted to set up its power project at Sompeta.

Union Minister of State for Environment and Forests, Jairam Ramesh, is actively campaigning for his pet scheme, the National Green Mission. While this is indeed a laudable mission, the officials of his ministry have cleared many an industrial project that would destroy the last remnants of the wetlands in the country.

National Environment Appellate Authority

The representatives of PPS and some of us had, time and again, brought to the notice of the MoEF and the EC the differences between the ground reality at Sompeta and the reports submitted by the state authorities. The EC was evidently in a great hurry to facilitate the issuance of the EC.

Failing to secure relief from either the EC or the MoEF, we filed appeals before the NEAA seeking cancellation of the EC for the project. Some members of the PPS approached the AP High Court seeking the cancellation of the EC and the stopping of the project.

On our appeals and the representations made in that connection, the lone member of the NEAA visited the site on 29 June 2010 and posted the case for arguments on 13 July. By 11 July itself, the company had somehow mustered enough support from the district authorities at Srikakulam to permit the construction activity on 14 July. In the absence of the CFE, any such step would be patently illegal but the district authorities chose to support the illegality rather than awaiting NEAA’s direction. The fact that the member of the NEAA had come down to Sompeta to see the ground conditions for himself and the fact that a writ petition was pending disposal before the high court did not inhibit the authorities from going ahead with their preplanned scheme of allowing the company to start the work. Apparently, they bowed to pressures from Hyderabad.

While the local police were conducting “flag marches” in the narrow streets of Sompeta and distributing pamphlets printed at public cost to scare away the people from resisting NEAA’s entry into the site, the company had pleaded before NEAA at Delhi that the proceedings should be deferred for a while. It was perhaps the intention of the company to take up land leveling at the site as a prelude to taking up larger construction activity and make it a fait accompli that could vitiate the quasi-judicial proceedings before the NEAA. The authority however posted the case for arguments on 14 July, the same day on which the innocent people of the villages around Sompeta had to face the onslaught of the combined muscle power of the state and the private company.

On 15 July, when the villagers were yet to recover fully from the shock and trauma of the previous day, the NEAA quashed the EC, saying it was based on
“misrepresentation of facts”. The NEAA ruled that the land given for the project was part of a wetland system of “great ecological significance”, it had the characteristics of crz, it provided water for the neighbouring villages and the allotment of the site to NCC had resulted in many families losing their livelihoods. With specific reference to the need to protect the Sompeta wetlands, NEAA observed that, despite the fact there was no law to protect the wetlands on that date, it was imperative that the swamp should be prevented from diversion to a power project. NEAA also ordered a detailed survey and assessment of the wetlands of Srikakulam district, a measure that the state government should have taken on its own, much earlier.

NEAA’s order was timely. It was a landmark judgment on the environmental issues associated with Sompeta. It provided immense relief to the project-affected families, though the lives that were lost could never be compensated for.

Aftermath
The PPS, as already stated, has single-handedly spearheaded the people’s movement against NCC’s power project. It has remained apolitical and peaceful all through. It was only after the incident on 14 July that many political leaders hitherto not involved had tried to associate themselves with the movement. Even some radical groups started making statements only after the incident.

The chief minister regretted the incident on 14 July; he, in fact, expressed surprise on the magnitude of the police force deployed on the occasion. The home minister denied police excesses and the revenue minister voiced to ground the project at any cost! The police continue to blame the villagers. The NCC is conspicuous by its silence.

Some Issues on ‘Development’
Sompeta symbolises the ongoing debate on the efficacy, the relevance and the propriety of the present paradigm of “development”.

• Considering the trauma of displacement of people and the damage to the ecology, the marginal social cost of a kilowatt-hour of electricity or a kilowatt of generation capacity in the state is not going to be small any longer. Before taking a decision on Sompeta-like projects, should not the state have looked at the other possible alternatives of power development, as already referred earlier?

Unsustainable approaches cannot contribute to long-term “development”.
• The “public trust doctrine”, accepted internationally and by the Indian courts, lays down the principle that the public lands, especially those of ecological importance and those that provide livelihoods for the local community, are held by the government in trust on behalf of the people. The government should not transfer such lands to private ownership.

Projects based on such public lands are detrimental to “development” in its true sense.
• In the jurisprudence that has evolved over the years on conservation of the environment, the “precautionary principle” is widely accepted by the courts.

According to this, the burden of proving that a given industry does not pose any pollution hazard or any other kind of threat to the environment squarely rests on the government that permits it, not on the local community that is at its receiving end. It is for the government to prove beyond all reasonable doubt that an industry proposed to be located in an area does not pollute the surroundings and does not endanger the public health.

A polluting industry is in itself a serious detriment to development.
• Under Article 48A of the Constitution, the state is obliged to protect the environment. Under Article 21, the state has the obligation to protect the citizen’s right to live.

Any activity that contravenes these statutory obligations will defeat the central meaning of development.
• “Development” should be defined as an activity that is perceived as such by the local community. Anything that is imposed on them from above cannot be construed as a development activity. This implies the importance of public discussion and debate in the design of any development activity. The end product of such a participatory decision-making process should, in itself, create more democratic space than restrict it. In Amartya Sen’s words, “development can be seen...as a process of expanding the real freedoms that people enjoy”.

This is perhaps the true test of whether a given project or an activity qualifies to be called a “development” activity. Sompeta has evidently failed this test, as the people affected by the project were never consulted; worse, their entreaties spurned throughout.

Sompeta has indeed triggered a wider public debate on these issues that concern the true meaning of “development”. Projects similar to Sompeta have come under the public scanner. The government may have to introspect on its own role about pushing through such projects in the future.

NOTES
3 See http://commerce.nic.in.trade/national_sez.asp?id=1&trade=n.
6 This information was obtained by the PPS from the Andhra Pradesh State Irrigation Corporation under the provisions of the Right to Information Act, 2005.
10 Minutes of EAC meetings available at http://www.envfor.nic.in.
11 Copy obtained by PPS under the Right to Information Act, 2005.
13 “Report based on the visit to Naupada Swamp and the project site of the Bhavanapadu thermal power project of M/S East Coast Energy Pvt Ltd” by Asad R Rahmani of Bombay Natural History Society and Asha Rajvanshi of Wildlife Institute of India submitted to the Standing Committee of National Board for Wildlife in December 2009.
14 See http://www.envfor.nic.in.
15 Appeals 1-6/2010 before NEAA; The appellants included the PPS, the Inland Fishermen Association, the Ayacutdars Association of the Yettipothala Pathakam, a local elected representative, a local advocate, the Forum for Sustainable Development at Visakhapatnam and the author of this article. The final order was pronounced by the NEAA on the 15 July 2010.
17 M C Mehta vs Prof M V Nayudu and Others: (1997)1 SCC 388.
18 APPCB vs Prof M V Nayudu, AIR 1999 SC 812.