

The Dhamra Port Company Limited

(A joint venture of L & T and Tata Steel)

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Santosh K. Mohapatra

CEO

CEO/Greenpeace/2008

8th March, 2008

Dear Mr. Ananthapadmanabhan,

Please recall our discussion at the office of Tata Steel, Mumbai on 28th January, 2008. The concerns expressed by you had been summarized into seven observations as annexed to this letter.

The following are our comments on the concerns / observations made by you:

1. The Environment clearance for Dhamra Port was obtained under a clause in the act which treated the Port as an expansion within Port limits of an existing minor Port. The question is that is this a fair description of the port that is coming up there.

The second point with respect to the environmental clearance is that there was subsequently an appeal that was filed by the local NGO to the National Environmental Appellate Authority (NEAA) that the NEAA investigated and dismissed and confirmed the clearance. We have reason to believe that the process was collusive between the local NGO and the promoters at that time.

The question of fairness would arise if the Dhamra port project by describing itself as 'expansion of an existing minor port' had taken advantage of any law or requirement in an undue manner. The facts are as follows:

A 'major port' under the law (The Major Port Trust Act) is a port declared as 'major port' by Government of India. The laws relating to ports do not define a 'minor port'. However, in view of the definition of 'major port', all the ports which are not declared as major are generally referred to as minor ports. Moreover, major ports under the constitution of India fall within the jurisdiction of Government of India while the other ports are under the control of the respective state governments. This has also led to the practice of describing the ports falling under the control of state governments as minor ports, sometimes even in government records and notifications. In that sense the Dhamra port can be called a minor port.

The Environmental Impact Notification (EIA notification) 1994 exempted 'minor ports' from its application. This has led to the impression that the Dhamra port has taken advantage of this provision by describing itself as a minor port. This is



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not true as the EIA Notification 1994 even otherwise would not have applied to Dhamra as it excluded from its purview any activity falling within Coastal Regulatory Zone to which the CRZ notification would apply. Thus, the construction of a port, if it fell in CRZ, was covered by CRZ Notification irrespective of whether it is a major or minor port. The CRZ notification does not distinguish between major ports and minor ports. The location of the proposed port site being in CRZ, the state government had to apply for environment clearance under the CRZ Notification 1991.

The CRZ notification did distinguish between construction of new port and expansion of existing port. While an application for a new port was required to be made to the Environment Ministry, the same for an expansion had to be made to the Surface Transport Ministry. The procedure for environment clearance in the Surface Transport Ministry was no less elaborate as the application had to be examined by the Empowered Committee for Environmental Clearance consisting of representatives of both Surface Transport and Environment Ministries. In case of Dhamra Port, the area where the port was required to be built was within the notified limits of Dhamra Port dating back to 1931. It may be mentioned here that Dhamra-Chandbali was not only an ancient port of Orissa, but is one of the few old ports which continued to be recognized and used as a port during the British period and the first official notification defining the limits of the port date back to 1881 which were subsequently revised by the 1931 notification. The site of the present development being within the notified limits of an existing port, it would have been factually incorrect to describe it as a new port and "Expansion of Dhamra-Chandbali Port" was the only correct way to describe the proposed development. Here again, as already stated, no undue advantage was taken of as the application, made by the state government was subjected to scrutiny in a number of meetings of the Empowered Committee (extending from April, 1998 to November 1999) where a series of supplementary issues were raised and replied to by the state government with supplementary EIA and other reports.

Moreover, the environment clearance was further reviewed by the National Environment Appellate Authority (NEAA) which is the same body that would have reviewed the clearance had it been issued by the Environment Ministry. Thus, it can be said that the description of the proposed development as "Expansion of Dhamra-Chandbali Port" (which is how it has been described in government documents) has not yielded any undue benefit to the project.

The appeal to the NEAA was filed by the Beach Protection Council of Orissa which is a non-government organization. A perusal of the appeal and relevant records shows that it raised a number of issues and concerns, including the one in respect of turtles, which were examined in great detail by the NEAA whose



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members along with the Chairman visited the site, took evidence and heard witnesses before upholding the clearance. There is no reason to suspect that the process was a collusive one especially when the project proponents could have had no motive to seek such review of a clearance already obtained after a long drawn process. The proceedings of NEAA were in any case public proceedings conducted by an ex justice of Supreme Court in an open and transparent manner. There is absolutely no basis, nor any plausible reason to assume collusion in this case.

2. We would like to understand what is Tata Steel's position with respect to the Port on the application of the precautionary principle. We think that the proximity of such a major port to one of the largest turtle congregation zones in the world is a cause for major concern as the potential impacts are irreversible.

Relevant text regarding the precautionary principle of the Global Compact as it appears in the official website is as follows:

"In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

.....In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

The website further proceeds to enumerate its application to businesses as follows :

"The key element of a precautionary approach, from a business perspective, is the idea of prevention rather than cure. In other words, it is more cost-effective to take early action to ensure that irreversible environmental damage does not occur."

Thus the crux of the precautionary principle is that the business must anticipate any impact on environment and take sufficient precaution in advance so that no irreversible damage is caused to the environment. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason *"for postponing cost-effective measures to prevent environmental degradation."*

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You may recall the presentation made by us during the discussion regarding the environment clearance and regarding available studies and information showing that the location where the port is being built is neither in the nesting zone (in fact it is in the only sector of Orissa coast where nesting doesn't take place) nor is an area where turtles congregate for mating which is further south of Gahirmatha within the sanctuary limits. The project company has however not taken any chances and has associated itself with IUCN, the premier scientific body for conservation, to identify potential areas where damage can occur and to advise the company to take preventive measures. This is indeed what the precautionary principle is mainly about. The IUCN have already started assisting the company, identified potential areas and the company is going by their advice irrespective of its implication in terms of time and cost to the project.

3. We just heard that the Tata Chemicals project in Tanzania has been relocated by the Tatas. The Tatas have progressively agreed to relocate by 30 kms. We would like to understand why this is a fit case for application of precautionary principle while the Dhamra case is not.

In case of Dhamra, it doesn't appear necessary to shift the location, apart from the fact that the location has been selected by the state government and not by us, meaning thereby that a port would come up irrespective of who does it. The following points also merit attention:

1. The place where the port is being proposed is perhaps the northern most point on the coast where a deep port is technically viable. (The need of the hinterland being for a deep port capable of handling >180,000 DWT vessels)
2. The coast further south is adjoining to the national marine sanctuary and that further north recedes away from deep sea, apart from being, for the most part, designated as 'military practice area'.
3. As far as the IIT Madras report on "Identification Of Potential Sites For Development Of Ports Along The Orissa Coast", copy of which you have sent to us, is concerned, the report, which describes itself as "very basic and preliminary" also concludes as follows:
 "Consultancy team feels that Dhamra Integrated harbour will be the first choice and Inchuri major port will be the second choice." (From Para titled 'conclusion' of executive summary).
 Inchuri has been chosen by the team mainly for its proximity to the railway line. What is envisioned at Inchuri, as one goes through the report, is a port to accommodate two 30,000 DWT vessels, which is not exactly the type of deep port needed for the region and being

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- planned at Dhamra. A closer look at Inchuri in the Admiralty Chart suggests that it falls within what is notified as 'military practice area' apart from being more than 40 k.m.s away from the deep sea (of 18mt and above depth) making it unsuitable for a deep port.
4. Dhamra has been chosen for a number of factors making it the only suitable site in the area for a deep port and not merely because, as is sometimes thought, it does not need a breakwater. Building breakwater is not an insurmountable problem in building a deep all weather port. „

4. The IUCN has stated in the Marine Turtle Newsletter that in IUCN's opinion the best option would be not to have the port in its current location and that the promoters are not willing to stop development till the study is done and that they are in the process of preparing mitigation plans. Given that the Tatas are using the IUCN's involvement as the most visible example of their sincerity and their concern for the environment, we would like to understand what Tata Steel's position is on the stated position of the IUCN.

The IUCN have been contacted on the matter. They have denied having made any such observation on the line of what is quoted above. The copy of Newsletter sent by you also does not corroborate the interpretation given by you in your observation reproduced above. To say that "no port would be a great option" is to state the obvious, that purely from an environmental point of view, no development is the best option. They (Dr. Pilcher and others) have said so, if one reads the context, to explain to the critics the rationale of their involvement, and to drive home the point that if we cannot prevent development we might as well get involved to help the developers do the right things. They have not said so with reference to any specific location.

The IUCN's official position has been articulated in their scoping mission report which can be seen at the website of both DPCL and IUCN.

5. What is Tata Steel's response to the fact that one out of four satellite tagged turtles in the WII study went in the Dhamra region, off the port site.

The study of four turtles which were fitted with satellite telemetry devices was a stand alone experiment of WII done in collaboration with the Government of Orissa with UNDP funding, and was not part of their more detailed and

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comprehensive studies published in 1994 and of 2000. This was the first of its kind in the Orissa coast which opened up interesting possibilities of monitoring the turtle and its movement by signals transmitted through satellites although as a study per se, it has very limited significance. For one thing, four is too small, in fact negligibly so, a sample size for a species which visits the area in hundreds of thousands. And as the report itself admits, the transmitters, for reasons yet not known, stopped transmitting signals after about two to four months leaving no clue as to where the turtles ultimately went. As may be seen, one was also traced near Paradeep, where a port already exists and has not proven to be a hindrance to the turtles.

6. The Central Empowered Committee of the Supreme Court made a clear recommendation that this port be relocated from its current location. This was after the NEAA's clearance. We would like to understand how Tata Steel views this recommendation.

The CEC have made a passing observation on the port. The fact that they have made this observation after the NEAA finding without making any reference to NEAA finding only shows that they were not aware of the NEAA finding at the time of making the remark. The reference in their observation to ships having to pass through turtle congregation also shows that all the facts regarding the location of the port and alignment of the channel were not brought to their notice. The remark is by way of an observation made to the state government and it is for the state government to reply to it with all the facts including the fact that the NEAA has already examined it.

7. The Dhamra Port area was originally part of Government of Orissa's proposed notification for the Bhattarkanika National Park and Gahirmatha Marine Sanctuary and this was subsequently taken out of the ambit of the sanctuary before the official notification. To us this is a further illustration of the fact that this is an area that is considered ecologically sensitive. How does this square with Tata Steel's "moral" position.

What is perhaps referred to is the preliminary notification of the Government which is a statement of intention by Government to invite claims, rights and objections. The very objective of this notification is to invite objections and conduct enquiry before a final notification is made. It is the final notification which takes effect for purposes of regulation. The statutory limits of Dhamra port pre-existed the proposed forest notification. Moreover, had the limits extended to

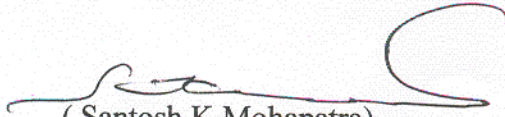


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include the site of Dhamra port, it would have included, before it touches the port site, the existing busy fishing jetty of Dhamra and all the establishments of DRDO apart from a number of thickly populated villages. All of them (DRDO, fishermen, villages and the port) are understood have registered their objections. As we understand, all these factors were taken into consideration, apart from the actual spread of wildlife habitat before the limits were finalized.

Thanking you.

With Regards,



(Santosh K.Mohapatra)

To
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28/1/08

This is a fair ~~and~~ summary of the concerns we raised at the meeting.

G. Anantharaman

OBSERVATIONS MADE BY GREENPEACE

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