Panorama

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Having defied the SC on Kudremukh, will the State act on illegal mining?

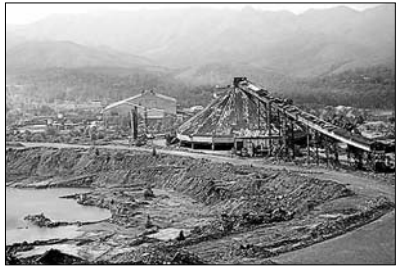
By Praveen Bhargav

The investigations by the Central Empowered Committee (CEC) into allegations of illegal mining in Bellary on the orders of the supreme court have already kicked up a lot of dust. While many are hoping that this will ultimately exorcise the ghost of the mining scam that's haunting Karnataka, it may need an extraordinary effort by the supreme court to make it happen. For, much before the CEC presented its report on illegal mining in Bellary, it had dealt with another high profile case of ecologically disastrous mining in Karnataka. This did not involve any powerful politicians but a large public sector mining company — Kudremukh Iron Ore Company Limited — now KIOCL.

In response to a petition filed by Wildlife First, an NGO, the supreme court directed the CEC to file its recommendations and carry out a site inspection in August 2002. The report not only recommended the stoppage of mining but also concluded that the mining lease does not confer any right over the land and that no new rights can accrue to KIOCL within the Kudremukh National Park (KNP).

On October 30, 2002, the apex court in a landmark judgment accepted the recommendations of the CEC and ordered that all mining activities must stop by December 31, 2005. The court also directed that "... the modalities to be adopted to effectuate the order passed by this court and the recommendations of the committee shall be worked out by the ministry of environment and forests, the state government and the company under the supervision and guidance and monitoring of the committee".

However, eight years after the judgment and five years after the time period to wind up mining elapsed, the state is still dragging its feet. Even now, though the mining activity has come to a halt, KIOCL is fully in control of the lapsed lease area and is obdurately refusing to remove its plant and machinery from the limits of KNP. It is no secret that two senior ministers who hail from that area, ostensibly on the advice of a former judge, who unsuccessfully



represented KIOCL's labour union in the supreme court, are constantly intervening and attempting to support the efforts of KIOCL to stonewall the judgment.

Consequently, KIOCL continues to lord over several thousand acres of public lands within the limits of KNP without even a lease or payment of rent. Even more bizarre is the fact that in 2007, a senior IAS officer, ignoring the CEC recommendations and court's directions, wrote to KIOCL conveying the in-principle approval of the government to change the land use from mining to eco-tourism. Glossing over the legal position that the rights over land in the mining area were already vested in the government, he even went on to 'request' KIOCL to release 200 acres of land for a police commando training school.

Not just the CEC but even the report of the Public Accounts Committee of the state legislature has been ignored. The PAC had made serious observations on KIOCL. In its report tabled in the Assembly in July 2009, it had recommended disciplinary action against senior officials for their failure to recover the fine of Rs 139 crore imposed on KIOCL for destroying forests.

Playing tricks

On its part, KIOCL tried every trick in the book to reverse the judgment. After two review petitions were dismissed, the last legal option — a curative petition was filed. This was also dismissed by the court. And yet KIOCL continues to hang on thanks to the state government's benevolence.

Another interesting case is of the persistent attempts of the stone quarry owners association and the government, to seek a review of a path breaking high court judgment of 1998 directing the relocation of all stone crushing units to safe zones. After the appeal was dismissed by the supreme court in April 2009, the state once again moved the high court seeking extension of time period which was rejected. Another interlocutory application in the supreme court was filed by the state government in concert with the quarry owners association.

Expressing deep dissatisfaction at the attempts of the state to 'wriggle out of its obligation', the supreme court in March 2011 not only dismissed the applications but also imposed a fine of Rs 1 lakh on the government. While extending the cut-off date to implement the original order by six months (till Sept 2011), the court has now made it clear that "...in case of failure to do so, they will have to face proceedings under the Contempt of Courts Act, 1971".

These two cases clearly establish that the track record of the state government in implementing such landmark judgments against mining is wholly uninspiring. When the state has failed to evict just one intransigent mining company from the KNP and recover a fine of Rs 139 crore till date, it would be hard to imagine how the government will ever stop illegal mining in Bellary and recover the huge losses caused to the exchequer.

In this scenario, it is very imminent that a similar story is bound to play out in the likely event of the apex court accepting the report of the CEC on illegal mining. A whole season of appeals, review petitions and curative petitions are sure to follow. Top legal eagles defending mining companies will possibly be aided by ambiguous affidavits and supportive applications by the state.

One can only hope that the supreme court, which is by now conscious of the state's track record in obfuscating on initiating action either due to insincerity or for political expediency, establishes a robust mechanism for directly monitoring implementation of the directions in a time bound manner.

(The writer has served on the National Board for Wildlife)