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Exercising the „First Right“

How the Y. S. Rajasekhara Reddy (YSR) administration used state-owned institutions to cut private deals

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On February 23, 2011, Praveen Prakash, vice-chairman and managing director of Andhra Pradesh Mineral Development Corporation (APMDC), wrote to the principal secretary of the industry and commerce department in the Andhra Pradesh government, asking for permission to re-negotiate terms and conditions of certain joint ventures that the state-owned institution had entered. The letter pointed out that APMDC had signed agreements with certain companies on grounds that they were „highly competent and financially sound“ and, in some other cases, without calling for competitive bids. Even the consideration agreed upon in these joint ventures was not linked to the market price of the mineral. Prakash’s letter listed 13 specific agreements - with companies such as Jindal South West Aluminium, AnRak Aluminium, AP Galaxy Granite, Orient Cement Gimpex, Trimex and Bothli Trade AG - highlighting how rules were flouted and estimating that APMDC would earn an additional Rs 11,049 crore if the contracts were re-negotiated. No prizes for guessing what happened next. In a few short weeks, Prakash was moved out of APMDC and sent to the Dairy Development Corporation. The letter is probably gathering dust in some file somewhere - not one contract has yet been taken up for re-negotiation. The YSR administration, it seems, had found a perfectly legal channel of usurping mining rights - through APMDC.

Ground work

It started early. The first stage for acquiring mining rights is investigation of the land, based on which a company prepares a Geological Survey report and then bids for the land. APMDC applied for investigation of every inch of prospective land in Andhra Pradesh, making the land unavailable to anybody else for the next three - five years. Till 2004, APMDC had licences only for baryte - a mineral mixed with mud while oil drilling - but after that it started applying for licences for major minerals, including beach sand, bauxite and iron ore.

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Once the land was blocked, the corporation negotiated with prospective miners and contracted out specific parcels. The rule for mining licences is first-come-first-served, but reasons were found to circumvent this. Obulapuram Mining Corporation, for instance, was allotted two iron ore mines for an area totalling 108 hectares on the grounds that it was willing to construct a steel plant. In other instances, APMDC would bid and bag the mining contract since the law favours public sector undertakings over private entities. It would then form joint ventures with „interested“ companies and license it further. That's what happened with Rakshana Steel.

On February 25, 2009, a few weeks before the general elections and state assembly elections, APMDC signed a MoU with Rakshana Steels, owned by Anil Kumar, YSR's son-in-law. A day earlier, the Andhra government had allotted iron ore mines spread over 140,000 acres of tribal area in Khammam district to a consortium comprising Rakshana Steels, Amoda Iron & Steels and Ispat Industries to set up a Rs 500 crore integrated steel plant. Since private companies are not allowed to mine in tribal areas, it is alleged that APMDC was roped in as one of the shareholders. Subsequently, Kumar simply denied owning Rakshana Steel and in June this year the state government ordered APMDC to terminate the contract. If you go by the rules, state-owned corporations can't sign joint ventures at will, but who was going by the rules? APMDC and several state-owned institutions were used as front companies to corner lucrative projects and pass them on to interested parties. And their influence went beyond state boundaries.

No mountain too high

Some 2,000 km from Hyderabad in Gangtok, chief minister Pawan Chamling was doling out hydro power projects in Sikkim. On coming to power in May 2004, the CM kept the energy portfolio and the energy and power department was directed that within 100 days, it had to sign agreements for generating 3,000 MW. A high-powered committee in June 2004 announced that the government would enter into MoUs with independent power producers (IPP) and take a 26% equity stake in the projects. The IPP would arrange funding for the government’s share of equity as well, which would be repaid from the revenue that would accrue from its share of free power. In addition, royalty was set at 12% of net energy (minus the state’s share) for the first 15 years and then 15% for the next 20 years - the norm is 30%. This entire proposal of using discretion to hand over projects stank right from the start - the only exception to competitive bidding for state hydro projects are joint ventures where the state electricity board or public sector undertaking has over 51% equity.

A consortium led by a company called Cosmos Electric Supply, promoted by former ITC chairman KL Chugh was selected for Teesta III; another company, Athena Advisors, was rejected, according to a cabinet note dated October 15, 2004. Three days later, a director of Cosmos wrote a letter to DD Pradhan, secretary, power and energy department, asking the state government to extend the duration of contract or reduce the royalty rate. Four months later, in a cabinet note dated February 21, 2005, it was proposed to allot Teesta III to Athena Consortium (the new avatar of Athena Advisors); a day later, it was approved and four days later, the letter of intent was issued.

Behind Athena's transformation from laggard to winner is its changing persona. In its first letter to the government of Sikkim, it is Athena Advisors; in a September 2004 presentation, it had become Athena Consortium, a joint venture between state PSU Andhra Pradesh Genco and a group of companies led by Athena Projects (APPL). In a cabinet note dated February 21, 2005, the company was called APGenco-Athena Consortium. Athena Consortium had seven members, including APPL, L&T, ICICI Securities, PTC India, IL&FS, Karvy and Halcrow. APPL was formed only in August 2004 and in its short but exciting life, had not executed a single infrastructure project. Yet the letter of intent was sent exclusively to APPL, which formed a special purpose vehicle, Teesta Urja, for its joint venture with the Sikkim government. The shareholding of Teesta Urja is interesting, to say the least. The Sikkim government holds 26%, 11% is held by PTC, 13% by financial investors including Morgan Stanley and General Atlantic, and 50% by Asian Genco. The last is a Singapore-based company formed only in January 2007 and which was not part of the consortium selected by the Sikkim government. It is controlled by TV Vijaykumar, who was part of the inner coterie of YSR Reddy. Krishna V Tatineni, vice chairman of Asian Genco, though, denied any involvement with Jagan.

Does Jagan fit in here too? Tantra Thakur, who recently retired as chairman PTC, denies all such charges. „We asked the management of Asian Genco about Jagan's involvement but they said no", he asserts.

It's not just Teesta III; the other five Teesta projects are also mired in controversy. The CBI report points out that Jagan's Sandur Power has sold substantial shares to the Lanco group - which is executing Teesta IV. Teesta V was given to NHPC and later, infra company Navayuga invested Rs 60 crore for 100% stake in the project. „Jagan bought that for not more than Rs 1 crore", alleges a Congress MP. Meanwhile, Jagan's wife Bharathi has a controlling stake in Teesta II, which is being developed by Himurja Infra. Here is another coincidence. Jagan loyalist JJ Reddy sits on the board of Teesta II as well as Bharathi Cement and Jagati Publications. It is a small world after all.

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