People Vs Corporations

A Case study of a Tourism Project – Him Niti Abhiyan, Jan Jagran Evam Vikas Samiti (JJVM) and EQUATIONS

Alfred Brush Ford’s business company ABF International came to India in 2005 with a spate of investments in mega tourism projects. The largest one with an investment of $300 million was a Ski Village to be built in Kullu District of Himachal Pradesh. The Himalayan Ski Village Limited (HSV), was a company floated for it, in which Alfred Ford maintained the largest share. The Memorandum of Understanding (MoU) for the proposed Himalayan Ski-Village Resort in Kullu District was inked on 9th December 2005 with State Cabinet approval. Local campaigns against the project began in 2006 when Jan Jagran Evam Vikas Samiti (JJVS), a local NGO based in Kullu District, managed to get a copy of the MoU which revealed that the government had heavily short changed public and the state’s interest for a property development plan for private profits. Irrevocable rights to use water, power and land is what shocked the residents of the proposed project area. It is also a project that had been approved without due public consultation. A fact-finding was conducted early 2008, which served as an important campaign document.

Introduction

Alfred Brush Ford’s business company ABF International came to India in 2005 with a spate of investments in mega tourism projects. 3 of these, worth $159 million were in West Bengal (Mayapur). The fourth one with an investment of $300 million was a Ski Village to be built in Kullu district. ABF International floated separate companies for each of these projects. The Himalayan Ski Village Limited (HSV), in which Alfred Ford maintained the largest share, was floated for the Himachal
A mega-tourism project. The Memorandum of Understanding (MoU) for the proposed Himalayan Ski-Village Resort in Kullu District was inked on 9th December 2005, after State Cabinet approval.

Initial news reports indicated that the project would involve construction of 700-plus hotel rooms of four, five and seven star classes, villas and condominiums, shopping complexes, restaurants, luxurious spa facilities apart from skiing and winter sports facilities. “The sheer magnitude of the project was the cause for the initial skepticism”, said Pushpaal Thakur, a resident of the Kullu Valley and a member of Jan Jagran Evam Vikas Samiti (JJVS), a local NGO based in Kullu District. The first alarm bells, however, rang in the State Assembly when the Bharatiya Janata Party (then in the opposition) raised a hue and cry on some of the terms of the MoU. JJVS, through their contacts in Shimla, managed to get hold of the copy of the MoU which revealed that the government had granted various rights to the company for the project which would have serious implications for the local environment and livelihoods.

A glance through some of the clauses of the MoU is enough to reveal that the government had heavily short changed public and the state’s interest for a project that was a property development plan for huge private profits.

Violation of state laws and governance processes

Several clauses in the Project were objectionable and were against the strain of existing land and forest laws as well as governance processes. Some of the clauses which drew the irk of the people were:

a. Assistance to the company for acquiring land

The MoU has outlined various obligations for the government which include ‘assisting’ the project in obtaining subsidies and incentives, obtaining 99 year lease over 5 hectares of government land, acquiring up to 60 hectares of private land at fair market prices and acquiring such other private lands or leased out government lands as may be needed for the project.
b. Exemption from Section 118 of the HP Land Reforms Act (HPLRA)

The HPLRA was passed in 1972 with the prime objective of transferring land to the tillers as well as ensuring distribution of land to tenants and the landless. As a protective mechanism, Section 118 of the Act provided for restriction of buying and selling of land by non-Himachalis in Himachal Pradesh.

However, the MoU stated that the government will “Allow the company to sell or sublease to any person the commercial residential buildings or sites within the project area for the purpose of the project – The government shall grant exemption from the provision of Section 118 of the HPLRA for sale of up to 300 defined units to Non-Himachalis”

c. Granting of rights over common property resources

The MoU, provided for the granting of “irrevocable license to the company for use of ski trails and the making of snow/ice on such trails for the duration of the lease; and for construction of trail markers, retention ponds, underground waterlines and water pumps along the trails and grooming of the trails for skiing”. The government had committed to provide to “the Company and its invitees water rights in the project area, including tapping of unused nallas/ground water and for building retention ponds for snow making and supply to resort village.”

Additionally, the government would be obliged to “Facilitate and secure free use of the common law right of the legally admitted skiers by the company to pass and repass on the ski trails without impediment and also allow the company and its invitees full access to Public and Private roads and accord permission to build roads, ropeways or gondolas wherever required”.

d. Unequal access to and denial of right to information

While on one hand the MoU states that it will be the responsibility of the government to “Provide to the Company within a reasonable time normally not exceeding 15 days, copies of all available documents, data, information relevant to the project”, on the other it has a clause that makes any information about the project to be let
out in the public domain virtually impossible. The clause that “The parties shall not divulge any trade, technical and commercial secrets or confidential matters of one and another to a third party” can be (and is being) used to deny any information about the project to the local community who are rightfully entitled to receive information regarding the project, especially as its impacts their life and livelihoods.

e. Minimal Obligations for the company

As per the MoU the Company has to invest a minimum of $135 million within a period of five years from the execution of the Implementation Agreement (IA) and that phase I of the project which shall include skiing and hospitality operations shall be completed within three years from the date of starting the project. The only obligation that attempts to ensure benefits to the local community is one which states that the company should ensure that a minimum of 70% of the total employees shall be residents of Himachal Pradesh. However, the MoU goes on to add a disclaiming clause which states that “Subject to availability and suitability, the unskilled and skilled staff and other non-executive shall be recruited on priority through local employment exchanges and displaced families if any.” The MoU also mentions that 50% of the royalty from all revenue generated by the Ski Village shall go to a trust of the affected Gram Panchayats.

The clearance for diversion of forest land for the project would have to be granted by the Ministry of Environment and Forests (MoEF) at the Centre under the Forest Conservation Act, 1980. In March 2008, the Conservator of Forests at Kullu stated that the matter had not yet reached his office. In addition, as per the provisions of the Environmental Impact Assessment (EIA) Notification, 2006, state governments are authorized to grant environmental clearance for all construction projects through an Expert Committee constituted specifically for this purpose. In the case of Himachal Pradesh, since such a Committee was yet to be constituted, the clearance was pending before the Expert Committee for construction projects at the central government level.
Potential impacts of the Project

a. Environmental Implications

According to the Detailed Project Report (DPR) the developments in the Ski Village would be located at heights between 7,500 and 14,000 ft above sea level on the left bank of the Beas River starting from Palchhaan village beyond Manali town. While the built up area would be spread over 133 acres, the project would require access to 6000 acres of the mountain range for skiing activities.

The abstract of the DPR suggests that approximately 36.75 acres of the land required to be diverted to the project is forest land under the jurisdiction of the Forest Department. Apart from this the rest of the land which will not be diverted but accessed for skiing and other winter sports is all mostly under temperate forests of Cedar, Birch, Fir and Alpine Grassland meadows. Construction activity in these lands, alpine areas and high forested slopes would require large scale deforestation. The deforestation would have a direct impact on the local flora and fauna. This, coupled with accentuated soil erosion would mean less water retention in the hills, increased risk of floods and siltation in agricultural fields and dams downstream. Also, the alpine meadows and temperate forests are home to many a medicinal plant. Wildlife like the Monal pheasant and the Musk deer are still found here. The peak tourist season is also the breeding/nesting season for most of the birds and pheasants. Besides the pollution of air and water that will be caused by the construction, the pollution of water resources in the high altitude areas due to the use of chemicals for stabilizing snow is feared to make water in local sources undrinkable and unusable for agriculture. The added flow of tourist vehicles will also be an additional impact due to pollution and local warming.
b. Livelihood Concerns

The river Beas runs through the Kullu Valley which is inhabited mostly by farming communities (Thakurs) tending apple orchards along the terraced slopes. Some of the chief livelihood concerns faced by the people living in these 60 villages would be:

- **Deforestation, Slope destabilization and landslides** - Construction activity in the alpine areas and high forested slopes would require large scale deforestation. This area would be more than the area that the Company actually acquires as it is allowed through the MoU to construct trail markers, retention ponds, underground waterlines and water pumps etc. The larger and the long term impact of commercial activity on the slopes would be on the entire ecosystem affecting the flow of natural resource like fodder, fuelwood, grass and medicinal herbs to the villages which are located lower down along the slopes. Soil erosion is the first fallout of any construction on a mountain side. This further leads to problems like flooding, landslides, loss of flora and siltation in agricultural fields which will directly affect the villages.

- **Diversion of streams used for drinking water and irrigation** - As per the Project Report the Company will tap raw water at 1440 kilo liter per day from the Kothi Beas and Harnola Nalas. The creation of artificial snow (which extends the skiing season beyond natural snowfall periods) will require huge quantities of water and power. While the company has repeatedly stressed that artificial snow will not be made – the MoU states the contrary. These nallas or streams are the main source of drinking and irrigation water in the villages downstream. Villagers fear that the use of chemicals in artificial snow making will pollute the water sources rendering them un-potable. “If water that is used to irrigate the apple orchards and farms is diverted then the local economy would be directly hit”, says Irawati Devi of Katrain Mahila Mandal.

- **Access and availability of fuel wood, fodder and timber** - Apart from the water, these forests are used for fuel wood, timber, grazing animals, collection of medicinal herbs and fodder by the
local villagers since time immemorial. Their community rights are recorded in a document called the Wajib-ul-arj (a legally recognised instrument by the Forest Department made during the British Settlement time) which specifies the rights of each village to the forests. In order to facilitate the access of the staff and the guests of the company, the access of the local people to the hill slopes in order to exercise these rights will be restricted.

- Access to alpine meadows for grazing and medicinal plants - The alpine meadows are not just used for extraction of medicinal plants by communities, especially some of the Khampas of the Spiti Valley who have settled in the area. Nomadic communities, Gujjars and Gaddis, from 6 districts of the state actually bring their livestock (buffaloes, sheep and goats) to the area for about 6 months of the year for grazing in the high altitude pastures. Their livelihoods run on the sale of milk and meat in the local markets during this time (from April to November –around the onset of winter and snow). Their rights and livelihoods would be completely displaced if the project comes up. The rights of these communities are recognised in the Wajib-ul-arj as well and they are issued permits by the local forest department for the grazing rights in the area. Further, the local Panchayats are also paid royalty for granting grazing rights by the Gujjar communities.

c. Cultural and Spiritual Concerns
Central to the local life and environment are the local cultural traditions of the Kullu Valley, dictated by the local deities or devtas. The traditional temples, made out of local stone and cedar wood, carved beautifully by local artisans, are in forests (on the same slopes where the skiing activity is proposed) where, according to belief, the local deities and spirits reside. These areas are considered as sacred and are the foundations of local social, religious and cultural life.
The Campaign

Below is the timeline of events related to the project as they unfolded from 2005 to 2008:

- 9th December 2005 – The MoU for the ski village was signed.

- December 2005 – January 2006 – matter raised by the BJP in the State Assembly.

- 10th January 2006 – first meeting on the issue by Jan Jagran Evam Vikas Samiti – a small local group of residents of the area. Under the leadership of Lal Chand Katoch and Pushpaal Singh Thakur decided to take up the issue after the news of the MoU hit the papers. Jan Hit Sangarsh Samiti – local network of 24 NGOs of Kullu District under the leadership of S.R. Verma extended support to the campaign.

- 16th February 2006 - A Jagati Puch or Dev Sansad (literally meaning parliament of gods) was held at Naggar at a local temple and the local deities, through an oracle, rejected the project on the grounds that it will bring doom for the people. They also suggested that the battle should be fought at the judicial level.

- 5th June 2006 - the Implementation Agreement was finalized. As per newspaper reports the company was to submit a Detailed Project Report (DPR) within 6 months of the IA to the State Government.

- June 2006 - 2007 – Local mobilisation against the project. Resolutions by 10 out of 12 Panchayats were passed against the project.

- December 2006 – The project proponents signed a memorandum of understanding (MoU) with FINPRO, Naturpolis, the Kuusamo municipality (Finnish Organisations) to take the Manali resort forward.
March 2007 – The DPR was submitted to the State Government.

5th June 2007 – A year after the Implementation Agreement, the Council of Ministers approved the DPR. As per the Managing Director of the project an EIA report along with the DPR was submitted to the State Government. The EIA report was also submitted to the Central MoEF.

6th June 2007 – Public Interest Litigation (PIL) was filed in the High Court by JJVS and made 6 parties to the case (government departments, MoEF and the company). A hotelier called Sanjeev Sharma, from Vashishth Panchayat also filed a PIL in the matter in the same year. The second PIL made 10 parties as respondents to the case including the Ministry of Defence.

18th June 2007 – A massive protest rally against the project attended by Sunderlal Bahuguna and other activists.

29th December 2007 – The Union Ministry of Environment and Forests Expert Advisory Committee (EAC) on ‘New Construction Projects’ listed the project for consideration/discussion but the matter was deferred since the required documents were not presented before the committee.

11th February 2008 – Newspapers report that Chief Minister Dhumal visited Kullu and stated that the BJP government would ‘review the project’ since it ‘lacked transparency’.

23rd February 2008 – JJVS, Him Niti Abhiyan (a state level coalition of people’s groups and activists) and EQUATIONS submitted a memorandum to the EAC, MoEF outlining concerns related to the project and demand public consultation and serious assessment.

25th February 2008 – The matter was listed for consideration again at the EAC. The project proponents were asked for clarifications as well as court orders related to the project.

envfor.nic.in) indicate that the Project Proponents will have to carry out an Environment Clearance Public hearing for the project as the project is being treated as a B1 project under 8(b) Township and Area Development projects. The proponents have also been asked to give a point by point clarification of all the issues raised in the representations sent to the Committee by JJVS, Him Niti Abhiyan and EQUATIONS.

– In April 2008, the High Court disposed off the Civil Writ Petition (CWPs) saying that they were satisfied with the state government’s action of constituting a High Powered Committee under the Chairmanship of Secretary (Tourism) to look into various aspects relating to setting up of Himalayan Ski Village. According to a media report in December 2008, the high powered government committee was slated to do spot inspection and record resident views early January 2009. However, local groups boycotted this as they were not provided basic documents related to the project – a demand they have been making for years now. A public consultation was then held in June 2009 on the Ski Village project by a State level review committee. During the consultation representatives of people, Mahila Mandals and Panchayats rejected the project in one voice.

The Victory

The Committee in its report noted the non-acceptability of the project by the local community, who are the main stakeholders and that even until October 2009 HSV had not carried out an environmental impact assessment. It was further noted by the Committee, “that tourism is an economic activity, so it becomes necessary to spread its benefits to the community when we plan or develop... Development has to be in a manner that keeps in mind the well being of local people as well as the environment... Community participation is a must to develop and decentralise the development sector effectively... Such projects on the basis of single proposal received by the Government of Himachal Pradesh because of the non-acceptability and non-participation remains a non-starter”.
Lessons learned from the campaign process

- **Timing of the Campaign** – What facilitated the campaign’s success the most was that the campaign started almost as HSV had started acquiring land in the region. Therefore at no point was the tourism development ahead of the campaign.

- **Strong People’ Struggle** – The group which initiated the struggle was a strong one. Further, the community which would be affected by the project was reached out to and mobilised. This mass mobilisation resulted in 10 out of 12 Panchayats passing resolutions against the project. The campaign also received support from other organisations and movements in Himachal Pradesh like the Jan Hit Sangharsh Samiti Jan Jagran Evam Vikas Samiti, Him Niti Abhiyan and Lok Vigyan Kendra and national level organisations like EQUATIONS, which along with wider support also helped with the fact finding process.

- **The Fact Finding Process** – As mentioned above, what facilitated the process was the immediate response of the community and other organisations in addressing this issue. However, there was also a shortage of time to respond to the project development since the Company was proceeding at a very fast pace. The Right To Information route was not used for acquiring relevant documents from the government as that would take 30 days at a minimum, which could go up to 60 days. As there was not enough time to go through this process, documents were acquired through informal channels therefore limiting the use of them. For example, while the campaign knew about gaps in the project clearance, they could not be quoted in the fact finding report.

Secondary work, which is important to define the length and breadth of a fact finding process was not done due to the time constraint. This also influenced the composition of the fact finding team.

Therefore, the entire fact finding process from the selection of members, to data collection and report writing was done in a short span of time of one month. The translation of the fact finding report
into Hindi facilitated the mobilisation of people and publicising of the project itself.

- Pressure on the government – The campaign maintained a constant oversight over the government leading to consistent pressure on them. The government was pressurised by the campaign to conduct a public hearing. Thus all opportunities to put pressure on the government including the use of elected representatives were used.

2. As per the Detailed Project Report