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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.9.2010

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR

V /

Writ Pétitions No. 15501 to 15503 of 1996. 5 769 of 199 7.
16861 of 1998

and

W.M.P.Nos.21272. 21274. 21275. 21276. 21278/1996: 9593/1997: 8044 to
8046/1999 and 102 74/1999

IV.P.No. 15501 of 1996:

National Trust for Clean Environment
(Reg.No.762/94),
rep.by its Secretary,
No. 149, Thambu Chetty Street,
IV Floor,

Madras-1. ... Petitioner

Vs.

- 1 .Union of India,
rep.by its Secretary,
Ministry of Environment and forest,
New Delhi.
- 2.The State of Tamilnadu,
rep.by its Secretary,
Department of Environment,
Fort St.George,
Madras-9.
- 3.Tamilnadu State Pollution Control Board,
rep.by its Chairman,
No. 100, Anna Salai,
Madras.
- 4.Melavattan Panchayat Union,
rep.by its President.
V.O.Chidambaram District.

5.M/s.Steriite Industries (India) Limited,
rep.by its Chairman and Managing Director,
No. 12, Maker Chamber III,
Nariman Point,
Mumbai-400021.

6.J.Sasikumar ... Respondents
(R.6 impleaded as per the order of the Court
dated 18.12.1998 made in WMP.No.29116/1998)

W. P. Nos. 15502 & 15503 of 1996:

National Trust for Clean Environment
(Reg.No. 762/94),
rep.by its Secretary,
No.149, Thambu Chetty Street,
IV Floor,
Madras-1. ... Petitioner

Vs.

- 1.Union of India,
rep.by its Secretary.
Ministry of Environment and Forest,
New Delhi.
- 2.The State of Tamilnadu,
rep.by its Secretary,
Department of Environment,
Fort St.George,
Madras-9.
- 3.Tamilnadu State Pollution Control Board,
rep.by its Chairman,
No. 100, Anna Salai,
Madras.
- 4.Melavattan Panchayat Union,
rep.by its President,
V.O.Chidambaram District.
- 5.M/s.Sterlite Industries (India) Limited,
rep.by its Chairman and Managing Director,
No. 12, Maker Chamber III,
Nariman Point,

Mumbai-400021.

... Respondents

W.P.No.5769 of 1997:

V.Gopaiswamy,

General Secretary,

M.D.M.K.Political Party,

'Thayagam', Chennai-600008.

... Petitioner

Vs.

1.Union of India,

rep.by its Secretary,

Ministry of Environment and Forests,

New Delhi-3.

2.The State of Tamil Nadu,

represented by its Secretary,

Department of Environment and Forests,

Fort St.George, Chennai-600009.

3.The Central Pollution Control Board,

represented by its Chairman,

Central Pollution Control Board,

New Delhi.

4.Tamilnadu State Pollution Control Board,

represented by its Chairman,

100, Anna Salai,

Chennai-600002.

5.The District Collector,

V.O.C.Chidambaranar District,

Tuticorin.

6.M/s.Sterlite Industries India Limited,

represented by its Chairman and Managing Director,

12, Maker Chamber Iii, Nariman Point,

Mumbai-400021.

7.M/s.Sterlite Industries India Limited,

represented by its Chairman and

Managing Director,

SIPCOT Complex,

Tuticorin.

SJ.Sasikumar

... Respondents

(R.8 impleaded as per the order dated 18.12.1998

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in WMP.No.29117/1998)

W.P.No.16861 of1998:

K.Kanagaraj,
Secretary, CITU District Committee,
16, MasilamShipuram Third Street,
Thoothukudi-628008. ... Petitioner

Vs.

1 .State of Tamil Nadu,
represented by Secretary to Government,
Industries Department,
Fort St.George,
Chennai-600009,

2.Tamil Nadu Pollution Control Board,
rep.by Member Secretary,
No. 100, Anna Salai, Guindy,
Chennai.

3.Union of India,
represented by Secretary to Government,
Department of Environment,
South Block.
New Delhi.

4.The District Collector,
Thoothukudi District,
Thoothukudi.

5.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

6. Sterlitç. Limited.
SIPCOT Industrial Complex,
Thoothukudi-628008. ... Respondents

WMP.Nos.8044 to 8046 of 1999

in WP.Nos. 15501 to 15503 of 1996 resoectively:

Communist Party of India,
Chidambarannar District.
rep.by District Secretary ... Petitioner

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Vs.

- 1.National Trust for Clean Environment,
rep.by its Secretary,
No.149, Thambu Chetty Street,
IV Floor, Chennai-600001.
- 2.Union of India,
rep.by its Secretary,
Ministry of Environment & Forest,
New Delhi.
- 3.State of Tamil Nadu by its Secretary,
Department of Environment,
Fort St.George,
Chennai-600009.
- 4.Tamil Nadu State Pollution Control Board,
rep.by its Chairman,
100, Annasalai,
Chennai-5.
- 5.Meelavittan Panchayat,
rep.by its President,
V.O.Chidambaram District.
- 6.M/s.Steriite Industries (India) Ltd.,
rep.by its Chairman & Managing Director
- 7.J.Sasikumar ... Respondents

All the Writ Petitions are filed under Article 226 of the Constitution of India.

W.P.No. 15501 of 1996 has been filed praying to issue a Writ of Certiorari, to call for the records of the first respondent relating to order bearing No.J-11012/111/94-1A? 11(1) dated 16.1.1995, granting environmental clearance to the fifth respondent company to set up its copper smelting plant at Tuticorin and quash the same.

W.P.No. 15502 of 1996 has been filed praying to issue a Writ of Certiorari, calling for the records of the third respondent Board relating to consent orders dated 25.5.1995 granting consent to the fifth respondent company to establish its copper smelting plant at Tuticorin under the Water (Prevention and Control of Pollution) Act and the Air (Prevention and Control of Pollution) Act and quash the same.

W.P.No. 15503 of 1996 has been filed praying to issue a Writ of Certiorari, to call for the records of the second respondent, relating to order bearing Letter

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Ms.No. 159/TC, dated 17.5.1995 granting environmental clearance to the fifth respondent Company to set up its copper smelting plant at Tuticorin and quash the same.

W.P.No.5769 of 1997 has been filed praying to issue a Writ of Certiorari and Mandamus to call for the records of the first respondent relating to the order bearing No.J. 11 OI2/111/94.1 AP. 11(1) dated 16.1.1995 and of the second respondent in Ms.No. 159/TC dated 17.5.1995 granting environmental clearance to the Copper Smelter Plant of M/s.Sterlite Industries (India) Limited in/near Tuticorin in V. O. Chidambaranar District and quash the same and direct the respondents to stop forthwith the operation of the Copper Smelter Plant of M/s.Sterlite Industries (India) Limited in/near Tuticorin and close it down.

W.P.No. 16861 of 1998 has been filed praying to issue a Writ of Mandamus, directing the respondents 1 to 3 to take suitable action against the sixth respondent for its failure to take suitable safety measures resulting in pollution and industrial accidents and to ensure that the sixth respondent takes suitable safety and pollution control measures in their Copper smelting plant at Thoothukudi.

WMP.Nos.8044 to 8046 of 1999 in W.P.Nos.15501 to 15503 of 1996 respectively praying to implead them as party respondent to the respective writ Petition.

* * *

For petitioners in
W.Ps.15501 to 15503/96 : Mr.V.Prakash, Sr.Counsel for
M/s.G.Rama Priya
For petitioner in : Prof.S.Krishnasamy
W.P.No.5769/1997

For petitioner in : Mr.P.V.S.Giridar
W.P.16861/1998

For R.5 in W.Ps. : Mr.C.A.Sundaram, Sr.Counsel
15501 to 15503/1996, for M/s.V.Nataraj
R.6 & R.7 in
WP.5769/97 & for
R.6 in WP.16861/1998

For R.3 in W.Ps. : Mr.Ramanlal
15501 to 15503/1996,
R.4 in WP.5769/1997 &
for R.2 in WP. 16861/1998

For R.6 in WP.15501/96,; M/s.R.Yashodvardhan
who is R.8 in WP.5769/97

For petitioner in ; Mr.V.Krishnamurthi
WMP.Nos.8044 to 8046/99

COMMON ORDER

ELIPE DHARMARAO. J.

All these writ petitions have been filed challenging and questioning the establishment of the Copper Smelting Plant at Thoothukudi by Sterlite Industries (India) Limited (hereinafter referred to as the 'Company') by various organisations or representatives of recognised political parties.

2. The core contention urged on behalf of the writ petitioners and also the petitioner in WMP.Nos.8044 to 8046 of 1999 in WP.Nos.15501 to 15503 of 1996 is that the Company in question proposed to set up a Copper Smelting Plant at Tuticorin for which, under the impugned Orders, necessary permissions were granted by the State and Central Government and also by the Pollution Control Board, without bothering about the pollution and health hazards posed by such a Plant. It is also their case that the said Plant though was originally proposed to be set up at Gujarat and Goa, owing to local opposition in both the States, was shifted to Ratnagiri in Maharashtra and though the Government of Maharashtra cleared the proposal and granted permission to the Company to set up its copper smelting plant, subsequently, owing to stiff opposition from the people of Ratnagiri on the ground that the pollution caused by the industry would have an adverse impact on the flora and fauna in the region and would also adversely affect the marine environment in the coastal area of Ratnagiri and that the information given by the Company to the Government with regard to the impact that the industry would have on the environment was erroneous and misleading, the Government of Maharashtra revoked the license despite the fact

that the industry had commenced construction activity in the proposed site in Ratnagiri and had also invested about Rs.200 crores in the project.

3. It is their case that Tuticorin is a coastal town in Tamilnadu in the Gulf of Mannar région, which abounds in bio-diversity and about 2000 species of marine forms and 200 species of plants are reported to have been found in the région and there are 21 islands near Tuticorin which has been declared and constituted as Marine National Parks, vide g.O.ms.No.962, Forest and Fisheries dated 10.9.1986 with a view to protect the unique and fragile flora and fauna in the région; that agriculture in Tuticorin has been affected of late on account of the increasing demands on the waters of the Tambararani river on which the agriculturists depend for cultivation and the ground water level in the area has also considerably depleted in the recent years causing hardship to the farmers and the atmosphere had been considerably polluted by Sulphur dioxide in the recent years due to emissions from some of the large-scale industrial plants in Tuticorin.

4. It is the further case of the petitioners that while Tuticorin was thus gradually being adversely affected by industrialisation, the then Central Government and the Government of Tamilnadu hastily accepted the proposal of the Company to set up a large scale copper smelting plant in Tuticorin, ignoring the fact that three
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states in the country had rejected the proposal and without considering the adverse impact that the industry would have on the environment and the local people; that on 16.1.1995, vide O.M.No.J-11012/111/94-1 A?II(1), the Ministry of Environment and Forests, Government of India granted environmental clearance to the project and this was followed by the environmental clearance by the Environment and Forest

Department of the Government of Tamilnadu on 17.5.1995 and in the said order dated 17.5.1995. the Government of Tamilnadu directed the Tamilnadu Pollution Control Board to grant its consent to establish/take steps to establish the industry and accordingly, the Tamilnadu Pollution Control Board on 22.5.1995 granted its consent to the Company under the Air (Prevention and Control of Pollution) Act and the Water (Prevention and Control of Pollution) Act to establish the industry at the SIPCOT Industrial complex, Melavattan village, Tuticorin Taluk, VOC District with the capacity to manufacture 234 tons of blister copper per day and 638 tons of Sulphuric Acid in the first phase.

5. It is also the case of the petitioners that on 5.7.1997, about 100 women workers of a nearby plant (Ramesh Flowers) fainted and were hospitalised at the Thoothukudi Government Headquarters Hospital and 42 women workers were admitted as in-patients and they were discharged only after five days of treatment; that on 20.8.1997, at about 10 a.m., all the employees of the TNEB working in 110/22 K.V, sub-station were badly affected due to continuous emission of concentrated sulphur dioxide; that on 30.8.1997 a blast occurred in the Company resulting in two deaths and damage to the adjacent building and equipment severely; that though the Company tried to spread rumours of sabotage, enquiry by Government authorities confirm that it was due to mal-operation of the plant; that a leak in the rotary furnace which was neglected led to the entry of water into the high temperature furnace jacket and the resultant pressure due to conversion of water into steam led to the blasting of the furnace causing deaths of two contract workers and this could have been avoided if the operation and maintenance was done by proper qualified and

skilled personnel; that the official respondents have failed to perform their statutory duties of a public character, resulting in grave threat to the life and safety of those who are living and working around the plant.

6. On the part of the Government of India and the State Government and also the Tamil Nadu Pollution Control Board, it has been contended that all the procedures contemplated under law have been duly followed while granting permission to the company and periodical checks are being conducted regarding the affairs and activities of the company.

7. While these writ petitions are pending, impleadment petitions have been filed by one J.Sasikumar, stating that he is representing the workers of the company, praying to implead him as a party respondent to these proceedings and the impleadment petitions having been allowed, he has been brought on record as party respondent to these writ petitions. It is the case of the impleaded party that the plant of the company provides direct employment to over 1050 employees and indirect employment to over 1500 persons; that the Ministry of Environment and Forests granted environmental clearance to the project after detailed examination of the Environment Impact Assessment/Environment Management Plan; that after the plant commenced operations, adequate safeguards had been taken to protect and preserve the environment; that effluent samples were regularly checked and analysed in the Pollution Control Board to check the performance of the effluent treatment plant, likewise borewell samples were analysed and ambient air quality surveys were regularly conducted; that in July, 1997 when some employees of M/s.Ramesh Flowers had taken ill due to sudden discharge of purge gas, it was alleged that the

discharge had been from the unit of Sterlite and this was thoroughly investigated by a four member Committee headed by Dr.M.P.Chockalingam and found that there was no leakage of sulphur dioxide gas from the plant and the plant which had been ordered to be closed, following the incident was thereafter reopened and as per the decision of the Expert Committee, certain additional safeguards were taken by the plant and in all nine ambient air quality monitoring stations have been installed and round the clock monitoring done; that in June 1998, a surprise inspection was done by a three member expert committee appointed by the State Pollution Control Board to know the status of the unit with regard to emissions and effluents; that if certain additional safeguards are required, the Unit should be advised to take appropriate measures and if the plant is closed down, not only the employees but the persons who are dependant indirectly will also suffer.

8. We have heard the arguments advanced on either side and perused the entire materials placed on record.

9. When these writ petitions are pending, in view of the seriousness of the matter, concerning the environment and in view of the fact that conflicting reports from time to time were produced before this Court and also taking note of the fact of accidents that took place in and around the premises of the Company, the First Bench of this Court, by the order dated 20.8.1998 has directed the National Environmental Engineering Research Institute (hereinafter referred to as NEERI) to submit a report with respect to working of the Unit, pollution caused during the operation and its control and other related matters concerning environment. In obedience to the same, the Director of NEERI constituted an inspection team, which has inspected the

premises of M/s.Sterlite Industries Limited between October 29 and November 1, 1998 and submitted their report dated 17.11.1998 before this Court. In the meantime, there was an accident in the Unit, injuring six workmen, since an acid tanker burst in the Unit. This report has clearly pointed out blatant violations committed not only by the respondent Company but also by the official respondents in granting clearances to the respondent Company. This report has also indicated that the clearances and consents were given by the Central and State Governments in contravention to the relevant statutory requirements by considering an inadequately prepared rapid EIA report based on one month's data, by allowing the **Company** to establish within twenty five kilometers of an ecologically fragile area and by relaxing green belt requirements without adequate and acceptable justifications. This report of the NEERI was objected to by the Company, Central Government and TNPCB by filing their objections, stating that the said report is based on wrong presumption of law and incorrect facts. Owing to the said report and considering all the facts and circumstances of the case, the First Bench of this Court, by the order dated 23.11.1998. has ordered closure of the Unit forthwith, until further orders. This order of the First Bench of this Court was unsuccessfully challenged by the respondent Company before the Honorable Apex Court.

10. Subsequently, considering the pros and cons of the matters, in an interim measure, this Court, by the order dated 23.12.1998, has revoked the order of closure, permitting the Company to reopen with effect from 26.12.1998 and to function till 28.2.1999 on an experimental basis. This order of this Court was also unsuccessfully challenged by the petitioner in W.P.Nos.15501 to 15503 of 1996 before the

Honourable Apex Court in SLP (Civil) Nos.1422 to 1424 of 1999. Thereupon, W.M.P.No.10274 of 1999 was filed by the company in W.P.No.15501 of 1996, praying to permit their plants to operate in their full capacity, subject to necessary permission from the TNPCB, wherein the First Bench of this Court, by the order dated 13.4.1999 has directed the TNPCB to consider the request of the company to run at its full capacity with necessary precautions and safety measures. According to the company, they have complied with all the conditions imposed and hence, all these writ petitions filed are liable only to be dismissed.

11. It is no doubt true that the plant of the company was set up amidst clamorous protests from people of different sections at Thoothukudi and there were wide spread agitations to stop erection of the plant and subsequently for its closure.

There is also no dispute regarding the fact that the Gulf of Mannar, which is in close proximity of the respondent Company, has been declared as a 'National Park' by G.O.Ms.No.962. dated 10.9.1986, considering its ecological, faunal, floral and zoological characteristics.

12. Under Rule 5 of the Environment (Protection) Rules, 1986, certain prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas were imposed. Under sub-Rule 1(vii) of this Rule 5, the Central Government has been required to take into consideration the fact of 'proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified, as such under the Wild Life (Protection) Act, 1972, or

places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body'.

13. The special conditions in the impugned Consent Order, dated 22.5.1995, under item No.20(2), stipulated that the respondent Company has to ensure that the location of the Unit should be 25 km. away from ecologically sensitive area. But, as per the report of the NEERI, the respondent Company is situated within 25 km. from four of the twenty one islands in the Gulf of Mannar viz. Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are 6 km, 7 km, 15 km, and 15 km away respectively from Tuticorin. The respondent Company has thus been erected absolutely within an ecologically sensitive and prohibited area. It cannot be anybody's case that the products of the respondent Company are environmental friendly and hence, there is no need to insist on maintaining this prohibited distance of 25 km. Thus, the respondent-company is situated within the prohibited area, flouting the norms of the Environment Protection Act and the Rules framed thereunder. Therefore, the Central Government should have taken this aspect into consideration before issuing the clearance under the Environment Protection Act to the respondent Company. It is also seen from the materials placed on record that the consents and clearances were issued to the respondent Company by the State and Central Governments on the basis of inadequately prepared EIA report since the data is less than one month's particulars, which is quite an inadequate one for assessing the issue of impact of pollution caused by the operation of the copper smelter. All these aspects would clearly establish the fact that there is clear non-application of mind on

the part of the competent authority/the Central Government in issuing consent to the respondent Company. This sole violation of erecting the plant within the prohibited area of ecologically sensitive area by the respondent Company is much more sufficient for the Central Government to reject the proposal of the respondent-company.

14. The TNPCB has granted permission to the respondent Company to run their unit under Section 25 of the Water (Prévention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prévention and Control of Pollution) Act, 1981 and also the consent for operation, of course, subject to certain conditions, to manufacture 391 MT of Blister copper and 1060 tonnes of sulphuric acid.

15. This being a project exceeding Rs.50 crores necessary environmental clearance has to be obtained from the Ministry of Environment and Forests, Government of India and before such consent is granted/obtained, a full environmental impact assessment has to be done, During that exercise, public hearing should be conducted as a matter of rule and all the concerns expressed by the public will have to be taken due note of by the authorities concerned. There is no manner of doubt that the Government has every power to stop the project if it violates environmental safeguards.

16. But, in the case on hand, when on the part of the writ petitioners, a strong argument has been advanced that at no point of time, the officials have complied with the mandatory requirement of conducting public hearing before commencing plant of the respondent Company, neither the official respondents nor the respondent Company

are able to produce any scrap of paper before us to negative the said contention urged on the part of the writ petitioners. Even our endeavour to find out any material on record from out of the voluminous material placed on record by either side also ended vain. From the NEERI report, dated 17.11.1998 also it is seen that there was complete undue haste on the part of the Governmental authorities in granting permissions and consents to the respondent Company. When there is no dispute regarding the fact that the establishment of respondent Company was opposed tooth and nail by the residents of various States and the Maharashtra Government went upto the extent of cancelling the permission, despite the fact that the industry had commenced construction activity in the proposed site in Ratnagiri and had also invested about Rs.200 crores in the project, the State and Central Governments should have been more cautious and vigilant in protecting the interest of the Citizens. But, unfortunately, in the cases on hand, as has already been pointed out supra, no public hearing of any sort has been conducted by the officials. From this, a legal presumption would arise that only to avoid any opposition from the general public about the establishment of the unit by the respondent-company, the official respondents have resorted to giving a simple go-by to this mandatory provision of law, which we are unable to appreciate.

1-7. One more aspect we want to point out is about the reduction of area of green belt from 250 mts. to 25 mts. by the TNPCB in respect of the respondent-company. It is to be pointed out that the No Objection Certificate was issued by the TNPCB to the respondent Company stipulating a condition, as condition No.20. to develop a green belt of 250 mts. width around the battery limits of the industry. But,

subsequently, the respondent company has submitted a representation to the TNPCB, requesting to reduce the requirement of green belt from 250 m. to the width of 10-15 mts. around the plant, since the development of the green belt of 250 m. width requires a land of around 150 acres and accepting the said request of the respondent Company, the TNPCB, in its meeting held on 18.8.1994, relaxed this condition and required the respondent company to develop the green belt in a minimum width of 25 m. What weighed in favour of the respondent Company, for the TNPCB to take such a generous attitude could not be ascertained by us from the materials placed on record. The plant being the one falling within 'red' category, requiring high level check, the casual way of dealing with the issue and permitting the company to reduce the green belt have shown ugly repercussions in the area since there was an incident on 5.7.1997 wherein about 100 women workers of a nearby plant (Ramesh Flowers) fainted and were hospitalised at the Thoothukudi Government Headquarters Hospital and 42 women workers were admitted as in-patients who were discharged only after five days of treatment; on 20.8.1997, at about 10 a.m., all the employees of the TNEB working in 110/22 K.V. sub-station were badly affected due to continuous emission of concentrated sulphur dioxide and on 30.8.1997 a blast occurred in the company resulting in two deaths and damage to the adjacent building and equipment severely, All these could have been avoided, had the official respondents acted strictly in accordance with the provisions of law.

18, The material on record would show that there is so much of correspondence between the TNPCB and the respondent company, wherein the

TNPCB repeatedly requested the respondent company to perform environmental impact assessments and carry out health surveys of the pollution.

19. To substantiate their plea that they have complied with all the requirements and hence the earlier report of the NEERI of the year 1998 has no relevance to decide the issue on hand, the respondent-company has submitted before us a report of the NEERI

on the 'comprehensive Environmental Impact and Risk Assessment for the Existing (Full Capacity operation) and Proposed Expansion of Sterlite Industries (India) Ltd., Thoothukkudi', dated July 2003. This has been sponsored by the respondent-company itself, as could be seen from the said report. At many places of this report of the year 2003, favourable conclusions have been noted in favour of the respondent-company, on which much reliance has been placed on the part of the respondent-company. But, the fact which we want to point out is that the petitioners have submitted before us the various extracts of the report of the NEERI, dated March, 2005, which supercedes the report of the year 2003. In this report of March 2005, NEERI, has tabulated various metal contents in different types of waste from the respondent company, which shows high concentrations of heavy metals, arsenic, and fluorides, which are hazardous substances. Fluoride is susceptible to lead to fluorosis, a condition that affects bone structure and teeth. The pathetic condition that has been recorded by the NEERI in its report of March, 2005, is that the plant site itself is severely polluted and the ground samples present levels of arsenic which indicate that the whole site may be classified as hazardous waste according to the Indian standards. It further goes to show that the groundwater samples taken under and in the vicinity of the deposit sites show elevated values of copper, chrome, lead.

cadmium and arsenic and the chloride and flouride content is also too high when compared to Indian drinking water standards. Therefore, the said report of July, 2003 does not, in any manner, help or augment the case of the respondent-company and hence, no reliance could be placed on the same.

20, We are quite aware that in environmental matters, the principle of reversal of burden of proof will apply, fixing the onus of proof on the person who wants to change the status-quo, as has been held by the Honourable Apex Court in **A.P.POLLUTION CONTROL BOARD vs. PROF.M.V. NAYUDU AND OTHERS [AIR 1999 SC 812]**.

21, But, in the case on hand, though there is voluminous material showing that the establishment of the Unit of the respondent company, violating all the norms of law, is creating consistent and severe damage to the ecology in the area, the respondent-company has not produced any valuable material to countenance the same.

22, The principle of sustainable development has been well explained by the Honourable Apex Court in **KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD vs. C.KENCHAPPA [(2006) 6 SCC 371= AIR 2006 SC 2038]**, which reads as under:

"The priority of developing nations is urgent industrialisation and development. We have reached at a point where it is necessary to strike a golden balance between development and ecology. The development should be such as it can be sustained by ecology, and this has given rise to the concept of sustainable development. The concept of sustainable

development whose importance was the resolution of environmental problems is profound and undisputed. The right to sustainable development has been declared by the UN General Assembly to be an inalienable right. Peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity, are essential for achieving sustainable development and ensuring that sustainable development benefits all.

The concept of sustainable development was propounded by the "World Commission on Environment and Development", which very aptly and comprehensively defined it as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Survival of mankind depends on following the said definition in letter and spirit.

Thus "sustainable development" means "a development which can be sustained by nature with or without mitigation." In other words, it is to maintain delicate balance between industrialisation and ecology. While development of industry is essential for the growth of economy, at the same time, the environment and the ecosystem are required to be protected. The pollution created as a consequence of development must not exceed the carrying capacity of the ecosystem. The courts in various judgments have developed the basic and essential features of sustainable development. In order to protect sustainable development, it is necessary to implement and enforce some of its main components and

ingrédients such as precautionary principle, polluter-pays and public trust doctrine. Sustainable use of natural resources should essentially be based on maintaining a balance between development and the ecosystem. Coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environment degradation cannot be solved."

23. In this judgment, what has been insisted by the Honourable Apex Court is the sustainable use of the natural resources.

24. Right to have a living atmosphere congenial to human existence is a part of the right to life. The State has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge its policy to maintain ecological balance and a hygienic environment.

25. It is imperative that the healthy and hygienic atmosphere be maintained keeping in view the provisions of both directive principles of State policy read with Article 21 of the Constitution. Every citizen has a fundamental right to have the enjoyment of quality of life and living, as contemplated by Article 21. Anything which endangers or impairs the quality of life of the Citizens by conduct of anybody either in violation or in derogation of laws must be viewed seriously, so as to protect the rights of the Citizens enshrined and guaranteed under the Constitution. Articles 39, 47 and 48-A of the Constitution by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment. Every Government/Authority must always favour the true,

the good and above all the public interest and public good alone and nothing else. It is incumbent for each occupant of every high office to be constantly aware that the power invested in the high office he holds is meant to be exercised in public interest and only for public good.

26. Courts cannot afford to deal lightly with cases involving pollution of air and water. Those who discharge noxious polluting effluents into streams, river or any other water bodies and to the atmosphere which inflicts harm on the public health at large, should be dealt with strictly.

27. The materials on record show that the continuing air pollution being caused by the noxious effluents discharged into the air by the respondent Company is having a more devastating effect on the people living in the surroundings. It is also seen that there has been unabated pollution by the respondent Company, which should be stopped at least now, by allowing these writ petitions, so as to protect the mother nature from being tarred.

28. In any society there is a natural tension between the interests of individuals and the interest of the group as a whole. There is a conflict between what individuals want and what serves their interests and what is needed for the welfare, safety and security of the entire group. Depending on the type of view that is operative concerning the nature of the dispute, the conflict will have to be resolved in total analysis of the pros and cons of the issue. In these circumstances, for the question that was hovering in our mind that which shall outweigh/prevail over the other - whether the interest of an individual/small section of the society or the interest of the society at large, with no hesitation or second thought, we arrived at the irresistible

conclusion that the larger interest of the society should outweigh the interest/benefit of a smaller section of the society for the common good of one and all.

29. In the case on hand, with the ongoing of the activities of the Company, not only the area gets polluted, but would have direct impact on the safety, security and the health of the workers. No doubt, with the order of revoking the licence granted to the Company in question, the work force in the Company would lose their livelihood. But, we are constrained to take this decision, owing to the voluminous material available on record about the negative impact of the running of the industry at the place and in the manner it is being run.

30. Though there is a prayer on the part of the work force also that if certain additional safeguards are required, the Unit should be advised to take appropriate measures and if the plant is closed down, not only the employees but the persons who are dependant indirectly will also suffer, we are unable to accept the same, in view of the above observed fact that there is so much of correspondence between the TNPCB and the respondent Company, wherein the TNPCB repeatedly requested the respondent Company to perform environmental impact assessments and carry out health surveys of the pollution and there is unabated pollution in air, water and atmosphere because of the respondent Company, besides the plant itself is located in an ecologically sensitive area. At the same time, we do not want to leave the employees in lurch.

Thus, considering all the facts and circumstances of the case, we order as follows:

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1. W.P.Nos.15501 to 15503 of 1996 and W.P.No.5769 of 1997 are allowed and W.P.No. 16861 of 1998 stands disposed of.
2. Since the issues on hand have been discussed at length, we do not feel any necessity to bring in the petitioner in WMP.Nos.8044 to 8046 of 1999 as party to WP.Nos.15501 to 15503 of 1996. Accordingly, they are dismissed as not necessary.
3. The respondent Company is directed to be closed down immediately.
4. The employees of the respondent-company are entitled for compensation from the respondent Company as provided for under Section 25-FFF of the Industrial Disputes Act.
5. The District Collector, Tuticorin. is directed to take all necessary and immediate steps for the re-employment of the workforce of the respondent Company in some other companies/factories/organisations, so as to protect their livelihood, to the extent possible, keeping in view their educational and technical qualifications and also the experience in the field.
6. All the connected Miscellaneous Petitions are closed. No costs.

Index: Yes/No

Internet: Yes/No

Rao ...

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28.9.2010

To

1. Union of India,
rep. by its Secretary,
Ministry of Environment and Forests,
New Delhi-3.
2. The State of Tamil Nadu,
represented by its Secretary,
Department of Environment and Forests,
Fort St. George, Chennai-600009.
3. The Central Pollution Control Board,
represented by its Chairman,
Central Pollution Control Board,
New Delhi.
4. Tamilnadu State Pollution Control Board,
represented by its Chairman,
100, Anna Salai,
Chennai-600002.
5. The District Collector,
V.O.C. Chidambaranar District,
Tuticorin.
6. The Superintendent of Police,
Thoothukudi District,
Thoothukudi.