



### **HAVE THE COURTS ERRED?? While dealing with an Environmental case**

**THE HON'BLE SUPREME COURT OF INDIA RAISED SOME VERY VALID QUESTIONS** (22 Feb 2024, in the Vedanta Ltd vs State of Tamil Nadu and Ors.)

**This Environmental case would be a good "Food for Thought" for the young Environmentalists. Without Closure of the project suggest some Best remedial measures for this Copper smelter**

While making it clear that a company has to comply with the existing laws and environmental norms, a bench headed by the Chief Justice of the Supreme Court of India said authorities have to specify the violations for closing down an industry. Closure of an industry, without specifying the violation in "clearer terms", affects the investment made in the company, the Supreme Court said while hearing Vedanta group firm Sterlite Copper's plea against shutting down of its smelting plant in Tamil Nadu's Thoothukudi, on 22 Feb 2024, in the Vedanta Ltd vs State of Tamil Nadu and Ors.

The bench observed it was not a case of renewal of some mining lease but renewal of licence to operate an existing industry. "So, ordinarily, there is a legitimate expectation of renewal subject to compliance with law." The Sterlite Plant is closed since 2018. Now, we are pointing a finger at them. Why have you (Tamil Nadu government) not removed the copper slag dumpings? Does the state not have a responsibility to remove them," the bench asked.

The closure of the Sterlite copper plant in Tamil Nadu's Thoothukudi in 2018 is likely to have cost the Indian economy over Rs 14,000 crore according to a study, one of the major impacts of the plant shutdown was on the employment of the local population, the net loss of employment (both direct and indirect) being at almost 30,000 jobs.

By one estimate, India now imports \$2 billion (about Rs 16,575 crore) worth of copper every year and bears an export loss of over \$1.5 billion (about Rs 12,430 crore), resulting in overall losses of about Rs

20,000 crore to the economy. From a net exporter of 335,000 tonnes in 2017-18, India became a net importer of copper. Post closure, the country's copper exports plunged by 90 per cent within three years.

Restarting the plant will increase India's copper output and cut imports. Not only this, given the widespread application of copper and its byproducts in diverse industries, the plant's shutdown has crippled several small and large-scale enterprises, creating a massive demand-supply gap. Sterlite was the only domestic supplier of phosphoric acid in the country, the raw material required for fertilisers. Besides, the Thoothukudi plant was also the largest supplier in Tamil Nadu of Sulphuric acid, a chemical used in detergent and chemical industries.

### **MY TAKE:**

**MAY BE A CBI INVESTIGATION ON THE ALLEGATIONS AND COUNTER ALLEGATIONS BY THE COMPANY, TNSPCB, TAMIL NADU STATE GOVT. AND OTHERS AGAINST EACH OTHER AND THE ALLEGED CHINESE INVOLVEMENT WOULD REVEAL THE TRUTH BEHIND THIS CASE.**

The arguments in the matter remained inconclusive and would continue on 29 Feb., 2024.

Link to the case:

<https://indiankanoon.org/doc/15612426/>

**AS ENVIRONMENTALISTS, SHOULD WE NOT STRIKE A BALANCE BETWEEN THE MUCH NEEDED DEVELOPMENT OF A COUNTRY AND PROTECTING THE ENVIRONMENT BOTH? IF YOU HAVE SOLUTIONS PLEASE SHARE**

On 22<sup>nd</sup> Feb., 2024, the Supreme Court said that while making it clear that a company has to comply with the existing laws and environmental norms, it said that authorities have to specify the violations for closing down an industry. Closure of an industry, without specifying the violation in "clearer terms", affects the investment made in the company. The Sterlite Plant is closed since 2018.

**The Supreme Court on 29-2-2024, citing 'repeated breaches' and 'serious violations' of air and water pollution laws on the part of Vedanta, refused to grant permission to reopen the Sterlite copper smelting plant. The bench said that it is conscious of the fact that the unit has been contributing to the productive assets of the nation and providing employment and revenue in the area. "Equally, while these aspects have undoubted relevance, the court has to be mindful of other well settled principles, including the principles of sustainable development, the polluter pays principles and public trust doctrine," the bench said.**

Link to the case dealt in the Hon'ble Madras High Court:

<https://indiankanoon.org/doc/15612426/>

## **NOW AS ENVIRONMENTALISTS IN A DEVELOPING COUNTRY LIKE INDIA, WHAT SHOULD BE OUR STAND IN A CASE LIKE THIS? LET'S PONDER ON THE FOLLOWING QUESTIONS?**

- Should we completely shut down a violating company? Is there no other solution.
- Should we accept the verdicts of the courts as the final dictums, even where a larger expertise of environment experts is required?
- Should we yield to the incomplete expertise of the regulatory bodies?
- Should we allow the vested/political interests of few to override the balancing act between development and environment protection?
- Should we not strike a balance between the much needed development of our country and protecting the environment both?
- Industry closure as punishment reflects the regulatory and judicial bodies' incomplete understanding of the environmental mitigation domain. Closure is not Sustainable development.
- With my long standing experience as an environmentalist, I believe that closure of an industry is not the solution. We as environmentalists need to explore prudent solutions and mitigation measures, even where serious violations have occurred.

### **HAVE THE COURTS ERRED??**

In continuation to my earlier opinion on the ratification of the closure of the Vedanta's Sterlite Copper smelting plant in Tamil Nadu's Thoothukudi, by the Hon'ble Supreme Court of India, Me as a practicing environmentalist believe that closure of an industry is not the solution.

While dismissing the SLP of the Vedanta, the Hon'ble Supreme Court in its Judgement dt.29-2-2024 expressed that the matters of serious concern are:

- a. Failure of the petitioner to remove the copper slag which was dumped indiscriminately at almost eleven sites in the vicinity including private land adjoining the river;
- b. Failure to abide by the conditions in the 'consent to operate' governing the disposal of gypsum;
- c. Failure to obtain authorisation for the disposal of hazardous waste; and
- d. Failure of the petitioner to continue remediating the pollution caused by it despite findings and directions by multiple judicial fora at different points in time.

The Court also noted in its verdict that it has to be mindful of other well-settled principles including the "Principles of sustainable development, The polluter pays principle, The public trust doctrine and The concept of intergenerational equity".

### **Judgement Hon'ble Supreme Court**

[https://main.sci.gov.in/supremecourt/2020/18030/18030\\_2020\\_1\\_1\\_50971\\_Judgement\\_29-Feb-2024.pdf](https://main.sci.gov.in/supremecourt/2020/18030/18030_2020_1_1_50971_Judgement_29-Feb-2024.pdf)

### **Opinion to the above judgement of the Hon'ble Supreme Court could have been:**

Yes, the court might have erred in striking a balance between the development of our country and protecting the environment both. There are scientific methods to establish the concerns raised by the court, like conducting Cost-Benefit analyses and Environmental impact analyses including rapid socio-economic surveys to every point raised by the Court and the four environmental doctrines mentioned above. There are methods to quantify the concerns of the

court. Unless such quantitative assessment is done, how can a verdict amounting to closure of a plant of national importance be given.

Industry closure as punishment reflects the regulatory and judicial bodies' incomplete understanding of the environmental mitigation domain. "Closure is not Sustainable development". Why was a larger investigative team not constituted to establish the current socio-environmental implications? Should we consider the incomplete expertise of the regulatory bodies final and conclusive? Why the regulatory bodies are not made responsible for the Industry's non-compliances. Was the environmental compensation amount levied from the industry used for mitigation measures? More environmental compensation could have been levied from the industry for remedial measures. Should we allow the vested/political interests of few to override the balancing act between development and environment protection? The Hon'ble Court could have constituted investigations with respect to the criminal intent as well as the socio-environmental aspects.

