SUPREME COURT OF INDIA

Sterlite Industries (India) Ltd.

Vs.

Union of India

C.A.Nos.2776-2783 of 2013

(A.K.Patnaikand H.L.Gokhale JJ.)

02.04.2013

JUDGMENT

A. K. PATNAIK, J.

1. Leave granted.

FACTS:

2. The relevant facts very briefly are that the appellant- company applied and obtained 'No Objection Certificate' on 01.08.1994 from the Tamil Nadu Pollution Control Board (for short 'the TNPCB') for setting up a copper smelter plant (for short 'the plant') in Melavittan village, Tuticorin. On 16.01.1995, the Ministry of Environment and Forests, Government of India, granted environmental clearance to the setting up of the plant of the appellants at Tuticorin subject to certain conditions including those laid down by the TNPCB and the Government of Tamil Nadu. On 17.05.1995, the Government of Tamil Nadu granted clearance subject to certain conditions and requested the TNPCB to issue consent to the proposed plant of the appellants. Accordingly, on 22.05.1995, the TNPCB granted its consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act') and under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (for short 'the Water Act') to the appellants to establish the plant in the SIPCOT Industrial Complex, Melavittan village, Tuticorin Taluk.

3. The environmental clearance granted by the Ministry of Environment and Forests, Government of India, and the consent orders under the Air Act and the

Water Act granted by the TNPCB were challenged before the Madras High Court in W.P. Nos.15501, 15502 and 15503 of 1996 by the National Trust for Clean Environment. While these writ petitions were pending, the appellants set up the plant and commenced production on 01.01.1997. Writ Petition No.5769 of 1997 was then filed by V. Gopalsamy, General Secretary, MDMK Political Party, Thayagam, praying for inter alia a direction to the appellants to stop forthwith the operation of the plant. Writ Petition No. 16861 of 1991 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, TNPCB and the Union of India to take suitable action against the appellant- company for its failure to take safety measures due to which there were pollution and industrial accidents in the plant. A Division Bench of the High Court heard Writ Petition Nos. 15501 to 15503 of 1996, Writ Petition No.5769 of 1997 and Writ Petition No.16861 of 1998 and by the common judgment dated 28.09.2010, allowed and disposed of the writ petitions with the direction to the appellant-company to close down its plant at Tuticorin. By the common judgment, the High Court also declared that the employees of the appellant-company would be entitled to compensation under Section 25FFF of the Industrial Disputes Act, 1947 and directed the District Collector, Tuticorin, to take all necessary and immediate steps for the re-employment of the workforce of the appellant-company in some other companies/factories/organizations so as to protect their livelihood and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field. Aggrieved, the appellant has filed these appeals against the common judgment dated 28.09.2010 of the Division Bench of Madras High Court and on 01.10.2010, this Court passed an interim order staying the impugned judgment of the High Court.

CONTENTIONS ON BEHALF OF THE APPELLANTS:

4. Mr. C.A. Sundaram, learned senior counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the Consent Order dated 22.05.1995 that the appellant-company has to ensure that the location of the unit should be 25 kms. away from the ecologically sensitive area and as per the report of NEERI (National Environmental Engineering and Research Institute) of 1998 submitted to the High Court, the plant is situated within 25 kms. from four of the twenty one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 k.m., 7 k.m. and 15 k.m. respectively from Tuticorin where the plant

is located. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Act, 1986 prohibiting or restricting the location of an industry in Tuticorin area. He submitted that the Government of Tamil Nadu, however, had issued a notification dated 10.09.1986 notifying its intention under Section 35(1) of the Wildlife (Protection) Act, 1972 to declare the twenty one islands of the Gulf of Munnar as a Marine National Park, but no notification has yet been issued by the Government of Tamil Nadu under Section 35(4) of the aforesaid Act declaring the twenty one islands of the Gulf of Munnar as a National Park. He explained that prior to the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986, some environmental guidelines had been issued by the Ministry of Environment and Forests, Department of Environment, Government of India, in August, 1985 and one of the guidelines therein was that industries must be located at least 25 kms. away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its Consent Order dated 22.05.1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 kms. away from ecologically sensitive areas. He submitted that this stipulation was made in the Consent Order under the Water Act because the plant was likely to discharge effluent which could directly or indirectly affect the ecological sensitive areas within 25 kms. of the industry, but in the Consent Order issued on 14.10.1996 to operate the industry, this stipulation was removed and instead it was stipulated in clause (20) that the unit shall re-use the entire quantity of treated effluent in the process and ensure that no treated effluent is discharged into inland surface water or on land or sewer or sea as proposed by the unit. He submitted that in any case the consent for establishment issued under the Water Act by the TNPCB would show that the appellant-company was given the consent to establish its copper smelter project in SIPCOT Industrial Complex irrespective of the distance at which the SIPCOT Industrial Complex was located from any ecological sensitive area and in the SIPCOT Industrial Complex, many other chemical industries are located and the High Court appears to have lost sight of this aspect of the consent given by the TNPCB to establish the plant.

5. Mr. Sundaram submitted that the second ground given by the High Court for directing closure of the plant of the appellants was that this being a project exceeding Rs.50/- crores, environmental clearance was required to be obtained from the Ministry of Environment and Forests, Government of India, after a public hearing which was a mandatory requirement but no materials were produced before the High Court to show that there was any such public hearing conducted before the commencement of the plant of the appellant-company. He submitted

that when the environmental clearance was granted to the appellant-company the Environmental Impact Assessment (for short 'EIA') notification dated 27.01.1994 was in force and this notification did not make public hearing mandatory and only stated that comments of the public may be solicited if so recommended by the Impact Assessment Agency within 30 days of the receipt of the proposal. He submitted that the High Court, therefore, was not correct in taking a view that a public hearing was mandatory during EIA before environmental clearance was given by the Ministry of Environment and Forests, Government of India. He clarified that by a subsequent notification dated 10.04.1997, a public hearing was made compulsory but by the time this notification came into force environmental clearance had already been granted to the plant of the appellants on 16.01.1995.

6. Mr. Sundaram submitted that the High Court also took the view in the impugned judgment on the basis of the report of the NEERI of 1998 that there was undue haste on the part of the governmental authorities in granting permissions and consents to the appellant-company. He submitted that in an Explanatory Note to the EIA notification dated 27.01.1994 the Central Government has clarified that Rapid EIA could also be conducted for obtaining environment clearance for any new project/activity and therefore the State Government while granting No Objection Certificate by its letter dated 01.08.1994 asked the appellants to conduct Rapid EIA based on one season data and the appellants carried out Rapid EIA study based on the data collected by the M/s. Tata Consultancy Service (TCS). He relied on the affidavit dated 01.12.1998 filed on behalf of the Ministry of Environment and Forests, Government of India to submit that Rapid EIA before granting clearance to the plant of the appellant was conducted in accordance with the guidelines.

7. Mr. Sundaram submitted that the third ground on which the High Court directed closure of the plant of the appellants was that the TNPCB stipulated a condition in clause No.20 of the No Objection Certificate that the appellants will develop a green belt of 250 meters width around the battery limit of the industry as contemplated under the Environmental Management Plan but subsequently the appellant-company submitted a representation to TNPCB requesting TNPCB to reduce the requirement of green belt from 250 meters to the width of 10-15 meters as development of the green belt of 250 meters width requires a land of around 150 acres and TNPCB in its meeting held on 18.08.1994 relaxed this condition and stipulated that the appellant-company will develop a green belt of minimum width of 25 meters. He submitted that the land allocated by SIPCOT to the appellants was not sufficient to provide a green belt of 250 meters width around the plant and

hence this was an impossible condition laid down in the No Objection Certificate and for this reason the appellants approached the TNPCB to modify this condition and the TNPCB reduced the width of the green belt to 25 meters. He further submitted that generally, the TNPCB and the Ministry of Environment and Forests, Government of India, have been insisting on a green belt of 25% of the plant area and the appellants could not be asked to provide a green belt of more than 25% of the plant area.

8. Mr. Sundaram submitted that the last ground, on which the High Court directed closure of the plant of the appellants is that the plant of the appellants has caused severe pollution in the area as has been recorded by NEERI in its report of 2005 submitted to the High Court and the groundwater samples taken from the area indicate that the copper, chrome, lead cadmium and arsenic and the chloride and fluoride content is too high when compared to Indian drinking water standards. He referred to the reports of NEERI of 1998, 1999, 2003 and 2005 submitted to the High Court and the report of NEERI of 2011 and also the joint inspection report of TNPCB and CPCB of September 2012 submitted to this Court, to show that the finding of the High Court that the plant of the appellants had caused severe pollution in the area was not correct. He vehemently submitted that though there were no deficiencies in the plant of the appellants, the TNPCB in its affidavit has referred to its recommendations as if there were deficiencies. He submitted that the recommendations made by the TNPCB were only to provide the best of checks in the plant against environmental pollution with a view to ensure that the plant of the appellants becomes a model plant from the point of view of the environment, but that does not mean that the plant of the appellants had deficiencies which need to be corrected. He submitted that the reports of NEERI of 2005 and 2011 referred to accumulation of gypsum and phospho gypsum, which come out from the plant of the appellants as part of the slag but the opinion of CPCB in its letter dated 17.11.2003 to the TNPCB is that such slag is non-hazardous and can be used in cement industries, for filling up lower level area and as building/road construction material, etc. and has no adverse environmental effects.

9. Mr. Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment for directing closure of the plant of the appellants are well-founded, it is a fit case in which this Court should set aside the impugned judgment of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tones of copper which constitute 39% of the total of 5,14,000 metric tones of copper produced in India and that 50% of the copper produced by the plant of the appellants is consumed in the domestic

market and the balance 50% is exported abroad. He also submitted that the plant provides direct and indirect employment to about 3000 people and yields a huge revenue to both the Central and State Governments. He submitted that closure of the plant of the appellants, therefore, would also not be in the public interest.

CONTENTIONS ON BEHALF OF THE WRIT PETITIONERS-RESPONDENTS:

10. Mr. V. Gopalsamy, who was the writ petitioner in Writ Petition No.5769 of 1997 before the High Court, appeared in-person and supported the impugned judgment of the High Court. He submitted that the TNPCB in its No Objection Certificate dated 01.08.1994 as well as in its Consent Order dated 22.05.1995 under the Water Act clearly stipulated that the appellant- company shall ensure that the location of its unit should be 25 kms. away from ecological sensitive area and the Government of Tamil Nadu in their affidavit dated 27.10.2012 have stated that all the 21 islands including the four near Tuticorin in the Gulf of Munnar Marine National Park are ecologically sensitive areas. He submitted that NEERI in its report of 1998 has observed that four out of twenty one islands, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, are at distances of 6 kms., 7 kms. and 15 kms. respectively from Tuticorin. He further submitted that merely because a condition has been subsequently imposed on the appellant-company by TNPCB not to discharge any effluent to the sea, the restriction of minimum 25 kms. distance from ecological sensitive area from location of the unit of the appellants cannot be lifted particularly when the Government of Tamil Nadu as well as the Central Government are treating the Gulf of Munnar as a Marine National Park and extending financial assistance for the development of its ecology. He submitted that the proposal for issuance of a declaration under Section 35(4) of the Wildlife (Protection) Act, 1972 is pending for concurrence of the Central Government and, therefore, the ecological balance in the area of Gulf of Munnar would be disturbed if the plant of the appellants continues at Tuticorin and the High Court was right in directing closure of the plant of the appellants located at Tuticorin.

11. Mr. V. Gopalsamy submitted that the High Court was similarly right in directing closure of the plant of the appellants on the ground that the appellants did not develop a green belt of 250 metres width around their plant as stipulated in the No Objection Certificate dated 01.08.1994 of the TNPCB and instead represented to the TNPCB and got the green belt reduced to only 25 metres width. He submitted that considering the grave adverse impact on the environment by the plant of the appellants, a 250 metres width of green belt was absolutely a must but

the TNPCB very casually reduced the green belt from 250 metres width to 25 metres. He submitted that it will be seen from the joint report of TNPCB and CPCB filed pursuant to the order dated 27.08.2012 of this Court that as a condition of the renewal of the consent order, the appellant-company has been asked to develop a green belt to an extent of 25% of the total area of 172.17 hectares which works out to 43.04 hectares and yet the TNPCB has found development of green belt of 26 hectares as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 hectares more for compliance of the condition for renewal of consent stipulated by the TNPCB.

12. Mr. V. Gopalsamy submitted that for their plant, the appellants have been importing copper concentrate from Australian mines which are highly radioactive and contaminated and contain high levels of arsenic, uranium, bismuth, fluorine and experts of environment like Mark Chernaik have given a report on the adverse impacts of the plant of the appellants at Tuticorin on the environment. In this context, he also submitted that an American company, namely, the Asarco producing copper had to be closed down on account of such adverse environmental effects. He submitted that the claim of the appellants that their plant has no deficiencies and that it does not have any impact on the environment is not correct and different reports of the NEERI would show that the plant of the appellants is continuing to pollute the air and has also affected the ground water of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant. He submitted that the appellants had initially proposed to establish the plant in Gujarat but this was opposed vehemently and the appellants decided to shift the establishment of the plant to Goa but because of opposition the plant could not be established in Goa. He submitted that the appellants thereafter intended to set up the plant at Ratnagiri in Maharashtra and invested Rs.200 crores in construction activities after obtaining environmental clearance but because of the opposition of the farmers of Ratnagiri, the Maharashtra Government had to revoke the licence granted to the appellants. He submitted that the appellants have been able to set up the plant at Tuticorin in Tamil Nadu by somehow obtaining environmental clearance from the Ministry of Environment and Forests, Government of India, without a public hearing and the consents under the Water Act and the Air Act from the TNPCB and the High Court rightly allowed the writ petitions and directed closure of the plant of the appellants.

13. Mr. V. Prakash, learned senior counsel appearing for the writ petitioner, National Trust For Clean Environment, in Writ Petition Nos. 15501 to 15503 of 1996 before the High Court, submitted that the appellants had made a false

statement in the synopsis at page (B) of the Special Leave Petition that it has been consistently operating for more than a decade with all necessary consents and approvals from all the statutory authorities without any complaint. He submitted that similarly in ground no. IV at page 45 of the Special Leave Petitions the appellants have falsely stated that the High Court has erred in not appreciating that the appellants had got all the statutory approvals/consent orders from the authorities concerned as also the Central Government and the State Government. He submitted that the report of NEERI of 2011 would show that the appellants did not have valid consent during various periods including the period when it filed the Special Leave Petitions. He submitted that the appellants did not also inform this Court that when they moved this Court on 01.10.2010 to stay the operation of the impugned order of the High Court, the plant of the appellants had already stopped operation. He vehemently argued that due to misrepresentation of the material facts by the appellants in the Special Leave Petitions as well as suppression of the material facts, this Court was persuaded to pass the stay order dated 01.10.2010. He argued that on this ground alone this Court should refuse to grant relief to the appellants in exercise of its discretion under Article 136 of the Constitution. He relied on the decisions of this Court in Hari Narain v. Badri Das [AIR 1963 SC 1558], G. Narayanaswamy Reddy (dead) by LRs. Anr. v. Government of Karnataka Anr. [(1991) 3 SCC 261] and Dalip Singh v. State of Uttar Pradesh Ors. [(2010) 2 SCC 114] and Abhyudya Sanstha v. Union of India [(2011) 6 SCC 145] for the proposition that this Court can refuse relief under Article 136 of the Constitution where the appellants have not approached this Court with clean hands and have made patently false statements in the special leave petition.

14. Mr. Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by National Trust For Clean Environment was that the Ministry of Environment and Forests, Government of India, and the TNPCB had not applied their mind to the nature of the industry as well as the pollution fall out of the industry of the appellants and the capacity of the unit of the appellants to handle the waste without causing adverse impact on the environment as well as on the people living in the vicinity of the plant. He submitted that this Court has already held that a right to clean environment is part of the right to life guaranteed under Article 21 of the Constitution and has explained the precautionary principle and the principle of sustainable development inVellore Citizens Welfare Forum v. Union of India Ors. [(1996) 5 SCC 647], Tirupur Dyeing Factory Owners' Association v. Noyyal River Ayacutdars Protection Association [(2009) 9 SCC 737] and M.C. Mehta v. Union of India Ors. [(2009) 6 SCC 142]. He submitted that these principles, therefore, have to be borne in mind by the authorities while

granting environmental clearance and consent under the Water Act or the Air Act, but unfortunately both the Ministry of Environment and Forests, Government of India, and the TNPCB have ignored these principles and have gone ahead and hastily granted environmental clearance and the consent under the two Acts. He submitted that, in the present case, the appellants have relied on the Rapid EIA done by Tata Consultancy Service, but this Rapid EIA was based on the data which is less than the month's particulars and is inadequate for making a proper EIA which must address the issue of the nature of the manufacturing process, the capacity of the manufacturing facility and the quantum of production, the quantum and nature of pollutants, air, liquid and solid and handling of the waste.

15. Mr. Prakash referred to the report of NEERI of 1998 submitted to the High Court to show that the inspection team of NEERI collected waste water samples from the plant of the appellants and an analysis of the waste water samples indicate that the treatment plant of the appellants was operating inefficiently as the levels of arsenic, selenium and lead in the treated effluent as also the effluent stored in the surge ponds were higher than the standards stipulated by the TNPCB. He also referred to the report of NEERI of February 1999 in which NEERI has stated that the treated effluent quality did not conform to the standards stipulated by the TNPCB.

16. Mr. Prakash further submitted that the counter affidavit of the Union of India filed on 01.12.1998 before the High Court also does not disclose whether, apart from the Rapid EIA of Tata Consultancy Services, there was any independent evaluation of the Rapid EIA by the environmental impact assessment authority, namely, the Ministry of Environment and Forests. He submitted that the TNPCB in its No Objection Certificate dated 01.08.1994 has stipulated in Clause 18 that the appellants have to carry out Rapid EIA (for one season other than monsoon) as per the EIA notification dated 27.01.1994 issued by the Ministry of Environment and Forests, Government of India, and furnish a copy to the TNPCB and this clause itself would show that TNPCB had not applied its mind as to whether there was a sufficient rational analysis of the nature of the industry, nature of pollutants, quantum of fall out and the plan or method for handling the waste. He submitted that since there was no application of mind by either the Ministry of Environment and Forests, Government of India, before granting the environmental clearance or by the TNPCB before granting the consents under the Water Act and the Air Act, the environmental clearance and the consent orders are liable to be quashed.

17. In support of his submissions, Mr. Prakash cited East Coast Railway Anr. v. Mahadev Appa Rao Ors. [(2010) 7 SCC 678], for the proposition that for a valid order there has to be application of mind by the authority, and in the absence of such application of mind by the authority, the order is arbitrary and is liable to be quashed. He cited the decision of the Lords of the Judicial Committee of Privy Council in Belize Alliance of Conservation Non-governmental Organizations v. The Department of the Environment and Belize Electric Company Limited [(2004) 64 WIR 68 para 69] in which it has been observed that EIA is expected to be comprehensive in treatment of the subject, objective in its approach and must meet the requirement that it alerts the decision maker to the effect of the activity on the environment and the consequences to the community. He also relied on the judgment of the Supreme Court of Judicature of Jamaica in The Northern Jamaica Conservation Association v. The Natural Resources Conservation Authority [Claim No. HCV 3022 of 2005] to argue that a public hearing was a must for grant of environmental clearance and submitted that as there was no public hearing in this case and there was inadequate EIA before the grant of the environmental clearance for the plant of the appellants, the High Court has rightly directed closure of the plant of the appellants.

18. Finally, Mr. Prakash submitted that the finding of the High Court that the plant of the appellants continues to pollute the environment has been substantiated by the inspection report which has been filed in this Court by the NEERI as well as the TNPCB from time to time. In particular, he referred to the joint inspection report of the TNPCB and CPCB to show that the directions issued by the TNPCB to improve solid waste disposal has not been complied with. He submitted that one of the conditions of the consent order of the TNPCB was that no slag was to be stored in the premises of the plant but huge quantity of slag has been stored in the premises of the plant and the direction to dispose at least 50% more than the monthly generation quantities of both slag and gypsum has not been complied with. He vehemently argued that unless the plant is shut down, the appellants will not be able to clear the huge quantity of slag and gypsum lying in the plant premises. He submitted that it is not correct as has been submitted on behalf of the appellants that the slag is not a hazardous waste containing arsenic and will certainly jeopardize the environment. He argued that there was therefore no other option for the High Court but to direct closure of the plant of the appellants to ensure clean environment in the area.

CONTENTIONS ON BEHALF OF THE AUTHORITIES:

19. Mr. S. Guru Krishna Kumar, learned counsel appearing for the TNPCB as well as the State of Tamil Nadu, relying on the affidavit filed on behalf of the State of Tamil Nadu on 29.10.2012 submitted that the Gulf of Munnar consisting of 21 islands in 4 groups was notified under Section 35(1) of the Wildlife (Protection) Act, 1972 on 10th September 1986 as this group of islands consisted of territorial waters between them and the proposal to declare Gulf of Munnar as a Marine National Park under Section 35(4) of the said Act was sent by the Chief Wild Life Warden to the State Government for approval on 30.04.2003 but the declaration under Section 35(4) of the said Act has not been finally made. He further submitted that all the 21 islands including the 4 islands in the Gulf of Munnar are therefore ecological sensitive areas. He submitted that notwithstanding the fact that four of the islands were near Tuticorin, the TNPCB gave the consent under the Water Act to the appellants to set up the plant at Tuticorin because the plant has a zero effluent discharge. He also referred to the compliance affidavit of the TNPCB filed on 08.10.2012 to show that the TNPCB is monitoring the emissions from the plant of the appellants to ensure that the National Ambient Air Quality Standards are maintained.

20. Mr. Vijay Panjwani, learned counsel appearing for CPCB, made a reference to Sections 3, 16 and 18 of the Water Act which relate to the CPCB and submitted that it was not for the CPCB but for the TNPCB to issue No Objection Certificate and consent in respect of the plant set up in the State of Tamil Nadu. He submitted that under Rule 19 of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, however, improvement notices can be issued by the CPCB to any person to remedy the contravention of the Rules.

CONTENTIONS ON BEHALF OF THE INTERVENER:

21. Mr. Raj Panjwani, learned counsel for the intervener, submitted that a marine biosphere is an ecological sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 kms. from ecological sensitive area, this condition has to be complied with. He further submitted that in any case the appellants are liable to compensate for having damaged the environment.

FINDINGS OF THE COURT:

22. Writ Petition No.15501 of 1996, Writ Petition No.15503 of 1996 and Writ Petition No.5769 of 1997 had been filed for quashing the environmental clearances

dated 16.01.1995 and 17.05.1995 granted by the Ministry of Environment and Forests, Government of India, to the appellants for setting up the plant at Tuticorin and by the impugned judgment, the High Court has not quashed the environmental clearance but has allowed the three writ petitions. Hence, the first question which we will have to decide is whether the High Court could have interfered with the environmental clearances granted by the Ministry of Environment and Forests, Government of India, and the Government of Tamil Nadu, Department of Environment.

23. The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986. Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that subject to the provisions of the Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Sub-section (2) of Section 3 further provides that in particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the matters specified therein. One such matter specified in clause (v) of sub-section (2) is restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Rule 5(3) of the Environment (Protection) Rules, 1986 accordingly empowers the Central Government to impose prohibitions or restrictions on the location of an industry or the carrying on processes and operations in an area, by notification in the Official Gazette. In exercise of these powers under Section 3(2)(v) of the Environment (Protection) Act, 1986 and Rule 5(3) of the Environment (Protection) Rules, 1986, the Central Government has issued a notification dated 27.01.1994 imposing restrictions and prohibitions on the expansion and modernization of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the said notification.

24. Para 2 of the notification dated 27.01.1994 lays down the requirements and procedure for seeking environmental clearance of projects, and clause (c) of Para 2 provides that the Impact Assessment Agency could solicit comments of the public within thirty days of receipt of proposal, in public hearings, arranged for the purpose, after giving thirty days notice of such hearings in at least two newspapers, and after completion of public hearing, where required, convey its decision. The

language of this notification did not lay down that the public hearing was a must. The Impact Assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the Environmental Clearance on 16.01.1995. The notification dated 27.01.1994, however, was amended by notification dated 10.04.1997 and it was provided in clause (c) of Para 2 of the notification that the Impact Assessment Agency shall conduct a public hearing and the procedure for public hearing was detailed in Schedule IV to the notification by the amendment notification dated 10.04.1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16.01.1995 in accordance with the procedure laid down by notification dated 27.01.1994 well before the notification dated 10.04.1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. As there was no mandatory requirement in the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the notifications dated 27.01.1994 as amended by notification dated 04.05.1994 that a public hearing has to be conducted before grant of environmental clearance, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before grant of the environmental clearances.

25. An Explanatory Note regarding the EIA notification dated 27.01.1994 was also issued by the Central Government and Para 5 of the Explanatory Note clarified that project proponents could furnish Rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and Comprehensive EIA report may be submitted later, if so asked for by the Impact Assessment Agency and this was permitted where Comprehensive EIA report would take at least one year for its preparation. In Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petition Nos.15501 to 15503 of 1996, the allegation of the writ petitioner that the Ministry of Environment and Forests have accorded environmental clearance without applying its mind and without making any analysis of the adverse impacts on the marine ecological system has been denied and it has been further stated that after detailed examination of Rapid EIA/EMP, filled in Questionnaire for industrial projects, NOC from State Pollution Control Board and Risk Analysis, the project was examined as per the procedure laid down in the EIA notification dated 27.01.1994 (as amended on 04.05.1994) and the project was accorded approval on 16.01.1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the notifications dated 27.01.1994 as amended by notification dated 04.05.1994 and as

explained by the Explanatory Note issued by the Government of India permitted Rapid EIA in certain circumstances, the High Court could not have allowed the writ petitions on the ground that environmental clearance was issued to the appellant-company on the basis of inadequate Rapid EIA, particularly when the Union of India in its affidavit had clearly averred that the environmental clearance was granted after detailed examination of Rapid EIA/EMP, filled in Questionnaire for industrial projects, NOC from State Pollution Control Board and Risk Analysis in accordance with the procedure laid down in EIA notification dated 27.01.1994 (as amended on 04.05.1994).

26. The High Court has noticed some decisions of this Court on Sustainable Development, Precautionary and Polluter Pays Principles and Public Trust Doctrine, but has failed to appreciate that the decision of the Central Government to grant environmental clearance to the plant of the appellants could only be tested on the anvil of well recognized principles of judicial review as has been held by a three Judge Bench of this Court in Lafarge Umiam Mining (P) Ltd. v. Union of India Others [(2011) 7 SCC 338 at 380]. To quote Environmental Law edited by David Woolley QC, John Pugh- Smith, Richard Langham and William Upton, Oxford University Press:

> "The specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely on the grounds of illegality, irrationality, and procedural impropriety."
>
> Thus, if the environmental clearance granted by the competent authority is clearly outside the powers given to it by the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 or the notifications issued thereunder, the High Court could quash the environmental clearance on the ground of illegality. If the environmental clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the environmental clearance would suffer from Wednesbury unreasonableness and the High Court could interfere on the ground of irrationality. And, if the environmental clearance is granted in breach of proper procedure, the High Court could review the decision of the authority on the ground of procedural impropriety.

27. Where, however, the challenge to the environmental clearance is on the ground of procedural impropriety, the High Court could quash the environmental clearance

only if it is satisfied that the breach was of a mandatory requirement in the procedure. As stated in Environmental Law edited by David Woolley QC, John Pugh-Smith, Richard Langham and William Upton, Oxford University Press:

> "It will often not be enough to show that there has been a procedural breach. Most of the procedural requirements are found in the regulations made under primary legislation. There has been much debate in the courts about whether a breach of regulations is mandatory or directory, but in the end the crucial point which has to be considered in any given case is what the particular provision was designed to achieve."

> As we have noticed, when the plant of the appellant-company was granted environmental clearance, the notification dated 27.01.1994 did not provide for mandatory public hearing. The Explanatory Note issued by the Central Government on the notification dated 27.01.1994 also made it clear that the project proponents may furnish rapid EIA report to the IAA based on one season data (other than monsoon), for examination of the project Comprehensive EIA report was not a must. In the absence of a mandatory requirement in the procedure laid down under the scheme under the Environment (Protection) Act, 1986 at the relevant time requiring a mandatory public hearing and a mandatory comprehensive EIA report, the High Court could not have interfered with the decision of the Central Government granting environmental clearance on the ground of procedural impropriety.

28. Coming now to the ground of irrationality argued so vehemently by Mr. V. Prakash, we find that no materials have been produced before us to take a view that the decision of the Central Government to grant the environmental clearance to the plant of the appellants was so unreasonable that no reasonable authority could ever have taken the decision. As we have already noticed, in Para 5 of the affidavit filed by the Union of India before the High Court in Writ Petition Nos.15501 to 15503 of 1996, it has been stated that the Ministry of Environment and Forests have accorded environmental clearance after detailed examination of rapid EIA/EMP, filled in Questionnaire for industrial projects, NOC from State Pollution Control Board and Risk Analysis, and that the project was examined as per the procedure laid down in the EIA notification dated 27.01.1994 (as amended on 04.05.1994) and only thereafter the project was accorded approval on 16.01.1995. No material has been placed before us to show that the decision of the Ministry of Environment

and Forests to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.

29. In Belize Alliance of Conservation Non-governmental Organizations v. The Department of the Environment and Belize Electric Company Limited (supra) cited by Mr. Prakash, the Lords of the Judicial Committee of the Privy Council have quoted with approval the following words of Linden JA with reference to the Canadian legislation in Bow Valley Naturalists Society v. Minister of Canadian Heritage [2001] 2 FC 461 at 494:

> "The Court must ensure that the steps in the Act are followed, but it must defer to the responsible authorities in their substantive determinations as to the scope of the project, the extent of the screening and the assessment of the cumulative effects in the light of the mitigating factors proposed. It is not for the judges to decide what projects are to be authorized but, as long as they follow the statutory process, it is for the responsible authorities."
>
> The aforesaid passage will make it clear that it is for the authorities under the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986 and the notifications issued thereunder to determine the scope of the project, the extent of the screening and the assessment of the cumulative effects and so long as the statutory process is followed and the EIA made by the authorities is not found to be irrational so as to frustrate the very purpose of EIA, the Court will not interfere with the decision of the authorities in exercise of its powers of judicial review.

30. The next question that we have to decide is whether the High Court was right in directing closure of the plant of the appellants on the ground that the plant of the appellants is located at Tuticorin within 25 kms. of four of the twenty one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli. The reason given by the High Court in coming to this conclusion is that the TNPCB had stipulated in the Consent Order dated 22.05.1995 that the appellant-company has to ensure that the location of the unit should be 25 kms. away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 kms. of Vanthivu, 7 kms. of Kasuwar and 15 kms. of Karaichalli and Villanguchalli and these four villages are part of the twenty one islands in the Gulf of Munnar. Hence, the High Court directed closure of the plant because the appellant-company has violated the condition of the Consent Order dated 22.05.1995 issued by the TNPCB under the Water Act.

31. The Consent Order dated 22.05.1995 issued by the TNPCB under Section 25 of the Water Act states as follows:

> "Consent to establish or take steps to establish is hereby granted under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 as amended in 1988) (hereinafter referred to as 'The Act') and the rules and orders made thereunder to
>
> The Chief Project Manager,
>
> M/s Sterlite Industries (India) Limited (Copper Smelter Project)
>
> SIPCOT Industrial Complex,
>
> Meelavittam Village, Tuticorin Taluk,
>
> V.O. Chidambaraner District
>
> (hereinafter referred to as 'The applicant') authorizing him/her/them to establish or take steps to establish the industry in the site mentioned below:
>
> SIPCOT Industrial Complex,
>
> Meelavittam Village, Tuticorin Taluk,
>
> V.O. Chidambaraner District."

The aforesaid extract from the Consent Order dated 22.05.1995 of the TNPCB issued under the Water Act makes it clear that the appellant-company was given consent to establish its plant in the SIPCOT Industrial Complex, Melavittan Village, Tuticorin Taluk. Along with the Consent Order under the Water Act, special conditions were annexed and clause 20 of the special conditions reads as follows:

> "20. (i) 1 km away from the water resources specified in G.O.Ms. No.213 EP Dept Dt. 30.3.89
>
> i) 25 km away from ecological/sensitive areas.

ii) 500 metres away from high tide line."

32. On the one hand, therefore, the appellants were given consent to establish their plant in the SIPCOT Industrial Complex, which as per the NEERI report is within 25 kms. of four of the twenty one islands in the Gulf of Munnar. On the other hand, a condition was stipulated in the consent order that the appellants have to ensure that the location of the unit is 25 kms. away from ecological sensitive area. It thus appears that the TNPCB while granting the consent under the Water Act for establishment of the plant of the appellants in the SIPCOT Industrial Complex added the above requirement without noting that the SIPCOT Industrial Complex was within 25 kms. from ecological sensitive area. Since, however, the Consent Order was granted to the appellant-company to establish its plant in the SIPCOT Industrial Complex and the plant has in fact been established in the SIPCOT Industrial Complex, the High Court could not have come to the conclusion that the appellant-company had violated the Consent Order and directed closure of the plant on this ground.

33. This is not to say that in case it becomes necessary for preservation of ecology of the aforesaid four islands which form part of the Gulf of Munnar, the plant of the appellants cannot be directed to be shifted in future. We find from the affidavit filed on behalf of the State of Tamil Nadu on 29.10.2012 that the Gulf of Munnar consisting of 21 islands including the aforesaid four islands have been notified under Section 35(1) of the Wildlife (Protection) Act, 1972 on 10th September 1986 and a declaration may also be made under Section 35(4) of the said Act declaring the Gulf of Munnar as a Marine National Park. We have, therefore, no doubt that the Gulf of Munnar is an ecological sensitive area and the Central Government may in exercise of its powers under clause (v) of sub-section (1) of Rule 5 of the Environment (Protection) Rules, 1986 prohibit or restrict the location of industries and carrying on processes and operations to preserve the biological diversity of the Gulf of Munnar. As and when the Central Government issues an order under Rule 5 of the Environment (Protection) Rules, 1986 prohibiting or restricting the location of industries within and around the Gulf of Munnar Marine National Park, then appropriate steps may have to be taken by all concerned for shifting the industry of the appellants from the SIPCOT Industrial Complex depending upon the content of the order or notification issued by the Central Government under the aforesaid Rule 5 of the Environment (Protection) Rules, 1986, subject to the legal challenge by the industries.

34. The next question with which we have to deal is whether the High Court could have directed the closure of the plant of the appellants on the ground that though originally the TNPCB stipulated a condition in the 'No Objection Certificate' that the appellant-company has to develop a green belt of 250 meters width around the battery limit of the plant, the appellants made representation to the TNPCB for reducing the width of the green belt and the TNPCB in its meeting held on 18.08.1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 meters. We find on a reading of the No Objection Certificate issued by the TNPCB that various conditions have been imposed on the industry of the appellants to ensure that air pollution control measures are installed for the control of emission generated from the plant and that the emission from the plant satisfies the ambient area quality standards prescribed by the TNPCB and development of green belt contemplated under the environmental management plan around the battery limit of the industry of the appellants was an additional condition that was imposed by the TNPCB in the No Objection Certificate. If the TNPCB after considering the representation of the appellants has reduced the width of the green belt from a minimum of 250 meters to a minimum of 25 meters around the battery limit of the industry of the appellants and it is not shown that this power which has been exercised was vitiated by procedural breach or irrationality, the High Court in exercise of its powers of judicial review could not have interfered with the exercise of such power by the State Pollution Control Board. The High Court in the impugned judgment has not recorded any finding that there has been any breach of the mandatory provisions of the Air Act or the Rules thereunder by the TNPCB by reducing the green belt to 25 meters. Nor has the High Court recorded any finding that by reducing the width of the green belt around the battery limit of the industry of the appellants from 250 meters to 25 meters, it will not be possible to mitigate the effects of fugitive emissions from the plant. The High Court has merely held that the TNPCB should not have taken such a generous attitude and should not have in a casual way dealt with the issue permitting the appellant-company to reduce the green belt particularly when there have been ugly repercussions in the area on account of the incidents which took place on 05.07.1997 onwards. It was for the TNPCB to take the decision in that behalf and considering that the appellant's plant was within a pre-existing industrial estate, the appellant could not have been singled out to require such a huge green belt.

35. This takes us to the argument of Mr. Prakash that had the Ministry of Environment and Forests, Government of India, applied its mind fully before granting the environment clearance and had the TNPCB applied its mind fully to

the consents under the Air Act and the Water Act and considered all possible environmental repercussions that the plant proposed to be set up by the appellants would have, the environmental problems now created by the plant of the appellants would have been prevented. As we have already held, it is for the administrative and statutory authorities empowered under the law to consider and grant environmental clearance and the consents to the appellants for setting up the plant and where no ground for interference with the decisions of the authorities on well recognized principles of judicial review is made out, the High Court could not interfere with the decisions of the authorities to grant the environmental clearance or the consents on the ground that had the authorities made a proper environmental assessment of the plant, the adverse environmental effects of the industry could have been prevented. If, however, after the environmental clearance under the Environment (Protection) Act, 1986, and the Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry continues to pollute the environment so as to effect the fundamental right to life under Article 21 of the Constitution, the High Court could still direct the closure of the industry by virtue of its powers under Article 21 of the Constitution if it came to the conclusion that there were no other remedial measures to ensure that the industry maintains the standards of emission and effluent as laid down by law for safe environment (see M.C. Mehta v. Union of India and others [(1987) 4 SCC 463] in which this Court directed closure of tanneries polluting the waters of Ganga river).

36. We have, therefore, to examine whether there were materials before the High Court to show that the plant of the appellants did not maintain the standards of emission and effluent as laid down by the TNPCB and whether there were no remedial measures other than the closure of the industry of the appellants to protect the environment. We find on a reading of the impugned judgment of the High Court that it has relied on the report of NEERI of 2005 to hold that the plant site itself is severely polluted and the ground samples level of arsenic justified classifying the whole site of the plant of the appellant as hazardous waste. We extract hereinbelow the relevant observations of NEERI in its report of 2005 relating to air, water and soil environment in the Executive Summary: “Air Environment:

> ? The emission factors of SO2 from sulphuric acid plant – I (SAP- I) and sulphuric acid plant – II (SAP-II) were 0.55 kg/MT of H2SO4 manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H2SO4 manufactured.

? The acid mist concentration of SAP-I was 85 mg/Nm3, which exceeds the TNPCB limit of 50 mg/Nm3. The acid mist concentration from SAP-II was 42 mg/Nm3, which is well within the TNPCB limit. In view of the exceedance of TNPCB limit for acid mist, it is recommended that the performance of acid mist eliminators may be intermittently checked. It is further recommended to install a tail gas treatment plant to take care of occasional upsets.

? Out of the seven D.G. sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm3 (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm3 for thermal power plants of 200 MW and higher capacity (165 mg/Nm3) but higher than that stipulated for diesel engines / Gen sets up to 800 KW capacity (0.3 gm/kWh). Therefore TNPCB may decide whether the present PM emissions from the DG sets of 6.3 MW capacity is within the limit or otherwise.

? The fugitive emissions were monitored at four sites to assess the status of air quality with respect of SO2, NO2 and SPM. The results of analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO2 and NO2, were below the respective NIOSH/OSHA standards for work place environment. The levels of SPM were also within the stipulated TNPCB standards for industrial areas.

? Impact of stack and fugitive emissions on surrounding air quality was also assessed by monitoring SO2, NO2 and SPM levels at five monitoring locations. The levels of SPM, SO2 and NO2 at all the five sites were far below the TNPCB standards of 120 µg/Nm3 for SO2 as well as NO2 and 500 µg/Nm3 for SPM for industrial zone.

Water Environment

? Surface water samples were collected and analyzed for physico- chemical, nutrient demand parameters. The physico-chemical characteristics and nutrient demand parameters, i.e. with special reference to pH (7.9-8.0), TDS (120-160 mg/L), COD (11- 18 mg/L) and levels of heavy metals viz. Cd, Cr, Cu, Pb, Fe, Mn, Zn and As in surface water, were found within the prescribed limits of drinking water standards (IS: 10500-1995).

? Total eight groundwater samples were collected (seven from hand pumps and one from dug well) to assess the groundwater quality in the study area. The analysis on physico-chemical characteristics of groundwater samples collected from various locations showed high mineral contents in terms of dissolved solids (395-3020mg/L), alkalinity (63-210 mg/L), total hardness (225-2434 mg/L), chloride (109-950 mg/L), sulphate (29-1124 mg/L) and sodium (57-677 mg/L) as compared to the drinking water standards (IS:10500-1995). Thus, it could be concluded that water in some of the wells investigated is unfit for drinking. The concentrations of nutrient demand parameters revealed that phosphate was in the range 0.1-0.3 mg/L while nitrate was in the range 1-7.5 mg/L at all sampling locations which is within the limits stipulated under drinking water standards (IS:10500- 1995). Levels of Chromium, Copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995), other heady metal concentrations, viz. iron, manganese, zinc and arsenic were found in the range 0.01-0.05 mg/L, ND-0.01 mg/L and ND-0.08 mg/L respectively which are within the drinking water standards (IS:10500-1995).

? To assess the impact on groundwater quality due to secured and fill sites and other waste disposal facilities, five samples were collected from monitoring wells (shallow bore wells located around the waste disposal sites). The Physico-Chemical characteristics of well water around secured land fill site and gypsum pond showed mineral contents higher then the levels stipulated in IS: 10500-1995 in terms of dissolved solids (400- 3245 mg/L), alkalinity (57-137 mg/L), hardness (290-1280 mg/L), chloride (46-1390 mg/L), sulphate (177-649 mg/L) and sodium (9- 271 mg/L). The results of nutrient demand parameters showed phosphate in the range 0.1-0.5 mg/L while nitrate was in the range 0.8-11.7 mg/L at all sampling locations, which are within the levels stipulated in IS:10500-1995, whereas level of arsenic was found in the range of ND-0.08 mg/L as against the stipulated limit of 0.05 mg/L under drinking water standards (IS:10500- 1995). Levels of cadmium, chromium, copper and lead were also found to exceed the drinking water standards in some of the wells.

? The hourly composite wastewater samples were collected at six locations. During the sample collection, flow monitoring was also carried out at the inlet and final outlet of the effluent treatment plant (ETP). The concentrations of total dissolved solid (TDS) and sulphate exceed the limit

stipulated by the TNPCB for treated effluent. All the other parameters are within the consent conditions prescribed by TNPCB. The treated effluent is being recycled back in the process to achieve zero discharge.

Soil Environment

? Soil samples were also analyzed for level of heavy metals. The soil samples at the plant site showed presence of As (132.5 to 163.0 mg/kg), Cu (8.6 to 163.5 mg/kg), Mn (283 to 521.0 mg/kg) and Fe (929.6 to 1764.6 mg/kg). Though there is no prescribed limit for heavy metal contents in soil, the occurrence of these heavy metals in the soil may be attributed to fugitive emission, solid waste dumps, etc."

It will be clear from the extracts from the Executive Summary of NEERI in its report of 2005, that while some of the emissions from the plant of the appellants were within the limits stipulated by the TNPCB, some of the emissions did not conform to the standards stipulated by TNPCB. It will also be clear from the extracts from the Executive Summary relating to water environment that the surface water samples were found to be within the prescribed limits of drinking water (IS:10500-1995) whereas ground water samples showed high mineral contents in terms of dissolved solids as compared to the drinking water standards, but concentrations of nutrient demand parameters revealed that the phosphate and nitrate contents were within the limits stipulated under drinking water standards and levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards, whereas the heavy metal concentrations, namely, iron, manganese, zinc and arsenic were within the drinking water standards. Soil samples also revealed heavy metals. Regarding the solid waste out of slag in the plant site, the CPCB has taken a view in its communication dated 17.11.2003 to TNPCB that the slag is non-hazardous. Thus, the NEERI report of 2005 did show that the emission and effluent discharge affected the environment but the report read as whole does not warrant a conclusion that the plant of the appellants could not possibly take remedial steps to improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants.

37. In fact, this Court passed orders on 25.02.2011 directing a joint inspection by NEERI (National Engineering and Research Institute) with the officials of the

Central Pollution Control Board (for short 'the CPCB') as well as the TNPCB. Accordingly, an inspection was carried out during 6th April to 8th April, 2011 and 19th April to 22nd April, 2011 and a report was submitted by NEERI to this Court. On 18.07.2011, this Court directed the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25.08.2011, this Court directed TNPCB to file a synopsis specifying the deficiencies with reference to the NEERI report and suggest control measures that should be taken by the appellants so that this Court can consider the direction to be issued for remedial measures which can be monitored by the TNPCB. Accordingly, the TNPCB filed an affidavit dated 30.08.2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11.10.2011, this Court directed the TNPCB to issue directions, in exercise of its powers under the Air Act and the Water Act to the appellants to carry out the measures and remove the deficiencies indicated in the chart. Pursuant to the order dated 11.10.2011, the TNPCB issued directions to the appellants and on 17.01.2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27.08.2012, this Court directed that a joint inspection be carried out by TNPCB and CPCB and completed by 14th September, 2012 and a joint report be submitted to this Court.

38. The conclusion in the joint inspection report of CPCB and TNPCB is extracted hereinbelow:

> "Out of the 30 Directions issued by the Tamil Nadu Pollution Control Board, the industry has complied with 29 Directions. The remaining Direction No.1(3) under the Air Act on installation of bag filter to converter is at the final stage of erection, which will require further 15 working days to fully comply as per the industry's revised schedule."
>
> From the aforesaid conclusion of the joint inspection report, it is clear that out of the 30 directions issued by the TNPCB, the appellant-company has complied with 29 directions and only one more direction under the Air Act was to be complied with. As the deficiencies in the plant of the appellants which affected the environment as pointed out by NEERI have now been removed, the impugned order of the High Court directing closure of the plant of the appellants is liable to be set aside.

39. We may now consider the contention on behalf of the interveners that the appellants were liable to pay compensation for the damage caused by the plant to

the environment. The NEERI reports of 1998, 1999, 2003 and 2005 show that the plant of the appellant did pollute the environment through emissions which did not conform to the standards laid down by the TNPCB under the Air Act and through discharge of effluent which did not conform to the standards laid down by the TNPCB under the Water Act. As pointed out by Mr. V. Gopalsamy and Mr. Prakash, on account of some of these deficiencies, TNPCB also did not renew the consent to operate for some periods and yet the appellants continued to operate its plant without such renewal. This is evident from the following extracts from the NEERI report of 2011:

> "Further, renewal of the Consent to Operate was issued vide the following Proceedings Nos. and validity period:
>
> |TNPCB Proceeding |Validity Upto |
> |No.T7/TNPCB/F.22276/RL/TTN/W/2007 dated | | |07.05.2007 |30-09-2007 | | | | |No.T7/TNPCB/F.22276/RL/TTN/A/2006 dated | | |07.05.2007 | | |No.T7/TNPCB/F.22276/URL/TTN/W/2008 dated | | |19.01.2009 |31-03-2009 | | | |No.T7/TNPCB/F.22276/URL/TTN/A/2008 dated | | |19.01.2009 | | |No.T7/TNPCB/F.22276/URL/TTN/W/2009 dated | | |14.08.2009 |31-12-2009 | | | |No.T7/TNPCB/F.22276/URL/TTN/A/2009 dated | | |14.08.2009 | |
>
> Thereafter, the TNPCB did not renew the Consents due to non-compliance of the following conditions:
>
> Under Water Act, 1974
>
> i. The unit shall take expedite action to achieve the time bound target for disposal of slag, submitted to the Board, including BIS clearance before arriving at disposal to cement industries, marine impact study before arriving at disposal for landfill in abandoned quarries.
>
> ii. The unit shall take expedite action to dispose the entire stock of the solid waste of gypsum.
>
> Under Air Act, 1981

i. The unit shall improve the fugitive control measure to ensure that no secondary fugitive emission is discharged at any stage, including at the points of material handing and vehicle movement area."

For such damages caused to the environment from 1997 to 2012 and for operating the plant without a valid renewal for a fairly long period, the appellant-company obviously is liable to compensate by paying damages. In M.C. Mehta and Another vs. Union of India and Others [(1987) 1 SCC 395], a Constitution Bench of this Court held:

"The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it. In the Annual Report 2011 of the appellant-company, at pages 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled Financial Performance:

"PBDIT for the financial year 2010-11 was Rs.1,043 Crore, 40% higher than the PBDIT of Rs.744 Crore for the financial year 2009-10. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realization."

Considering the magnitude, capacity and prosperity of the appellant-company, we are of the view that the appellant-company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, any less amount, would not have the desired deterrent effect on the appellant-company. The aforesaid amount will be deposited with the

Collector of Thoothukudi District, who will invest it in a Fixed Deposit with a Nationalized Bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.

40. We now come to the submission of Mr. Prakash that we should not grant relief to the appellants because of misrepresentation and suppression of material facts made in the special leave petition that the appellants have always been running their plant with statutory consents and approvals and misrepresentation and suppression of material facts made in the special leave petition that the plant was closed at the time the special leave petition was moved and a stay order was obtained from this Court on 01.10.2010. There is no doubt that there has been misrepresentation and suppression of material facts made in the special leave petition but to decline relief to the appellants in this case would mean closure of the plant of the appellants. The plant of the appellants contributes substantially to the copper production in India and copper is used in defence, electricity, automobile, construction and infrastructure etc. The plant of the appellants has about 1300 employees and it also provides employment to large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to Central and State Governments in terms of excise, custom duties, income tax and VAT. It also contributes to 10% of the total cargo volume of Tuticorin port. For these considerations of public interest, we do not think it will be a proper exercise of our discretion under Article 136 of the Constitution to refuse relief on the grounds of misrepresentation and suppression of material facts in the special leave petition.

41. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervener before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In Indian Council for Enviro-Legal Action and Others vs. Union of India and Others [(1996) 3 SCC 211], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervener before this Court not only ventured but also put in their best for the cause of the general public.

42. In the result, the appeals are allowed and the impugned common judgment of the High Court is set aside. The appellants, however, are directed to deposit within three months from today a compensation of Rs.100 crores with the Collector of Thoothukudi District, which will be kept in a fixed deposit in a Nationalized Bank for a minimum of five years, renewable as and when it expires, and the interest therefrom will be spent on suitable measures for improvement of the environment, including water and soil, of the vicinity of the plant of the appellants after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu. In case the Collector of Thoothukudi District, after consultation with TNPCB, finds the interest amount inadequate, he may also utilize the principal amount or part thereof for the aforesaid purpose after approval from the Secretary, Environment, Government of Tamil Nadu. By this judgment, we have only set aside the directions of the High Court in the impugned common judgment and we make it clear that this judgment will not stand in the way of the TNPCB issuing directions to the appellant-company, including a direction for closure of the plant, for the protection of environment in accordance with law.

43. We also make it clear that the award of damages of Rs. 100 Crores by this judgment against the appellant-Company for the period from 1997 to 2012 will not stand in the way of any claim for damages for the aforesaid period or any other period in a civil court or any other forum in accordance with law.