BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 48/2020

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT

VERSUS

UNION OF INDIA THROUGH
SECRETARY-MoEF & CC & ORS. ... RESPONDENTS

FILE-A

(VOLUME-_____)

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Date: 16.04.2023

Bgambhire

(TANAJI B. GAMBHIRE)
ORIGINAL APPLICANT

ANNEXURE-A-1

मुमादामु १३९९ (५०×३ पानी २०० पॅडस्) १०-१३ बांधकाम नियंत्रण

पुणे महानगरपालिका

शिवाजीनगर, पुणे ४११००५.

4808

बांधकाम नियंत्रण कार्यालय

क्रमांक : /occ/१४९१/१६

दिनांक : ३/११/२०१६

[मुंबई प्रांतिक महानगरपालिका अधिनियम, १९४९ कलम २६३ (१) अन्वये]

बिल्डींग नं. २ **भोगवटा पत्र** पार्ट- ६

श्री. / श्रीमती मे. येरवडा इन्व्हेसमेंट लि. तर्फे आर्कि. प्री. समीर वाळींबे

राहणार १० जानवी अपार्टमेंट, भोंडे कॉलनी, औंधगाव, पुणे-

यांस -

आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलमे २५३ / २५४ व एम्. आर. टी. पी. ॲक्ट कलमे ४५/६९ प्रमाणे पुणे, पेठ येरवडा घरांक ~~फायनल~~ रिव्हाईज्ड प्लॉट क्र. / ४

सर्वे क्र. ७९० व ७८२ (पा) टी. पी. स्कीम नंबर यांत

इकडील संमती पत्र / कमेन्समेंट सर्टिफिकेट क्रमांक ११४८/१४, दिनांक १४।०५।२०१४

अन्वये बांधकाम करण्यास परवानगी देण्यात आली आहे. सदरील संमती पत्र / कमेन्समेंट सर्टिफिकेटप्रमाणे सर्व / काही भागाचे काम पुरे झाल्याबद्दल व सदर नवीन बांधलेल्या इमारतीची जागा उपयोगात आणावयास संमती मिळण्याबाबत दिनांक ०४।०६।२०१६ रोजी अर्ज केल्यावरून आपणांस मुंबई प्रांतिक महानगरपालिका अधिनियम १९४९, कलम २६३ (१) प्रमाणे कळविण्यात येते की, खालील नमूद केलेल्या अटींवर पुढील वर्णनाचा इमारतीचा भाग उपयोगात आणण्यास संमती देण्यात येत आहे.

उपयोगात आणावयाच्या बांधकामाचे वर्णन

मान्य नकाशाप्रमाणे बिल्डींग नं. २

तिसरा मजला - २ रूम्स, इलेक्ट्रीक रूम, २ ओ.पी.यू.,

२ टी ०१ ते २ टी १३ मधे पुरुष १३ (तेरा)

शौचालय आणि लेडीज व जेन्स टॉयलेट,

लिफ्ट, लॉबी, पॅसेज सह संपूर्ण तिसरा मजला

(१) मधे पार्किंगसह तिसरा मजला संपूर्ण.

(२)

(३)

अट-भविष्यात मान्य नकाशाखेरीज कोणतीही बांधकामे (उदा. मार्जिनल अंतरात व टेरेसवर शेड, पार्टीशन वॉल, कंपाऊंड वॉल ग्रील लावून पार्किंग बंदिस्त करणे इत्यादी) केल्यास कोणतीही पूर्वसूचना न देता सदरची संपूर्ण अनधिकृत बांधकामे पाडण्यात येतील व त्यासाठी येणारा खर्च प्लॉट धारक/मालक यांजकडून वसूल करण्यात येईल.

सहायक अभियंता
बांधकाम नियंत्रण विभाग ४
पुणे महानगरपालिका.

TRUE COPY

Bombhise

PUNE MUNICIPAL CORPORATION

Shivaji Nagar, Pune 411005

4808

Construction Control Department,
No. OCC/1491/16,
Date: 3/11/2016

[As per Section 263 (1) of Bombay Provincial Municipal Act, 1949]

OCCUPANCY LETTER, Par-6

(Building No. 2)

To, Shri./Smt. M/s. **Yerrowda Investment Ltd. through Archi. Shri. Samir Valimbe** Residing at 10, Janvi Apartment, Bhonde Colony, Erandwana, Pune.

You have been granted with consent/Commencement certificate of this office vide **1148/14** dated **14/07/2014,** for carrying out construction on House No.___/Sub-Plot No.____/Survey No.**190 & 192(P)/**T.P. Scheme No.____/of Peth **Yerrowda** of Pune as per Section 253/254 of Bombay Provincial Municipal Act, 1949 and Section 45/69 of M.R.T.P. Act.

As per said consent/commencement certificate you have completed Entire/part thereof and to obtained consent to occupy newly constructed building, you have applied on **04/06/2016** and under section 263(1) of Bombay Municipal Act, 1949 you are hereby informed accordingly that the consent is granted to put under use the below described part of building on below conditions:

Details of Construction to put under occupation
_____As Per Sanctioned Plan, Building No. 2_____
___Third Floor-1 Electric Room, 2 A.H. U._____
_____ 2T 01 To 2T 13 Said total-13 (Thirteen)
_____ Showroom and Ladies & Gents Toilet___
___Including Lift, Lobby, Passage, entire Third Floor___
___Including Parking, Third Floor Complete_____

Sd/-
Assistant Engineer,
Construction Control Department 4,
Pune Municipal Corporation

Condition: In future, except with approval map if any construction (e.g. Including all within marginal distance and shed on terrace and partition wall or closed grill parking) is done, without any prior notice the entire unauthorised/illegal construction shall be demolished and entire expenses incurred thereof shall be recovered from the flat holder/owner.

//TRUE TRANSLATION//

Bombhise

its expiry. The startling facts which we have narrated above clearly show that the executive in Bihar has almost taken over the role of the legislature in making laws, not for a limited period, but for years together in disregard of the constitutional limitations. This is clearly contrary to the constitutional scheme and it must be held to be improper and invalid. We hope and trust that such practice shall not be continued in the future and that whenever an ordinance is made and the government wishes to continue the provisions of the ordinance in force after the assembling of the legislature, a Bill will be brought before the legislature for enacting those provisions into an Act. There must not be Ordinance-Raj in the country.

9. We must accordingly strike down the Bihar Intermediate Education Council Ordinance, 1985 which is still in operation as unconstitutional and void. Petitioner 1 has done enormous research and brought this reprehensible practice of the Government of Bihar to the notice of the court and we would therefore direct that the State of Bihar shall pay to petitioner 1 a sum of Rs 10,000 (rupees ten thousand only) as and by way of cost of the writ petitions.

— —

(1987) 1 Supreme Court Cases 395

(BEFORE P.N. BHAGWATI, C.J. AND RANGANATH MISRA, G.L. OZA, M.M. DUTT AND K.N. SINGH, JJ.)

M.C. MEHTA AND ANOTHER .. Petitioners ;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (Civil) No. 12739 of 1985†,
decided on December 20, 1986

Tort Law — Rule of strict liability — Liability of industries engaged in hazardous or dangerous activities when deaths or injuries occur on account of accident in operation of such activities — Held, liability to pay compensation to affected persons strict and absolute — Amount of compensation payable — Rule laid down in Rylands v. Fletcher not applicable in India — Constitution of India, Articles 32 and 21

Jurisprudence — Law — Should keep pace with changing socio-economic norms — Where a law of the past does not fit in the present context, Court should evolve new law — Judicial activism

Interpretation of Statutes — External aids — Foreign case-law — Supreme Court of India not bound by foreign court's decisions

Held :

The rule in **Rylands** v. **Fletcher** laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he

†Under Article 32 of the Constitution of India

is liable to compensate for the damage caused. This rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is a statutory authority. This rule evolved in the 19th century at a time when all the developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. In a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to be carried on as part of the developmental programme, Court should not feel inhibited by this rule merely because the new law does not recognise the rule of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. (Para 31)

Rylands v. Fletcher, (1868) LR 3 HL 330, distinguished

Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. The Court cannot allow judicial thinking to be constricted by reference to the law as it prevails in England or in any other foreign country. Though the Court should be prepared to receive light from whatever source it comes but it has to build up its own jurisprudence. It has to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. If it is found that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, the Court should not hesitate to evolve such principle of liability merely because it has not been so done in England. (Para 31)

An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. 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 to anyone on account of an accident in the operation of such activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident as a part of the social cost for carrying on such activity, regardless of whether it is carried on carefully or not. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in **Rylands** v. **Fletcher**. If the enterprise is permitted to carry on a hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate items of its overheads. The enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. (Para 31)

The measure of compensation in these kinds of cases must be corelated

to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. (Para 32)

[Since the Court did not decide the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to Article 21, setting up of a special machinery for investigation of the claims for compensation made by those who alleged that they had been the victims of oleum gas escape was not called for. But the Delhi Legal Aid and Advice Board was directed to take up the cases of all those who claimed to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram, within two months. The Delhi Administration was directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more Judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of.] (Para 33)

Constitution of India — Article 32 — Scope of Court's power under, to devise appropriate procedures and to issue directions, orders or writs — Court competent to grant remedial assistance by way of compensation in exceptional cases — Court has incidental and ancillary power in exercise of which it can innovate new methods and strategies for securing enforcement of fundamental rights especially in PIL/SAL cases

Held :

Supreme Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case. Article 32 lays a constitutional obligation on Supreme Court to protect the fundamental rights of the people and for that purpose Supreme Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning. (Paras 3 and 6)

The power of the Court is not only injunctive in ambit, that is preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed. (Para 6)

Under Article 32 the Court has the power to grant remedial relief which includes the power to award compensation **in appropriate cases**; it is not that in every case of breach of fundamental rights that compensation can be awarded. But a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of breach of a fundamental right that compensation may be awarded under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale of affecting the fundamental rights of a large number of persons or it should appear

unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. (Para 6)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : 1984 SCC (L&S) 389 : (1984) 2 SCR 67, (views of Bhagwati, J., as he then was), and Rudul Shah v. State of Bihar, (1983) 4 SCC 141 : AIR 1983 SC 1086 and Bhim Singh v. State of J & K, (1985) 4 SCC 677, affirmed

S.P. Gupta v. Union of India, 1981 Supp SCC 87, relied on

Constitution of India — Articles 32 and 21 — Public interest litigation — Natnre of — Earlier rulings affirmed

Constitution of India — Articles 32 and 21 — Public interest litigation — Pleadings — Hyper-technical approach should be avoided by Court — Application on behalf of oleum gas victims — Court would consider claim for compensation on their behalf even where the claim is sought for them by a PIL petitioner and not by themselves

Held :

Where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public-spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the Court. (Para 1)

While dealing with such applications, Court should not adopt a hyper-technical approach which would defeat the ends of justice. The applications for compensation had been made in this case for enforcement of right under Article 21 of persons affected by the oleum gas leak. Merely because the petitioner could not apply for amendment of the writ petition so as to include the claim for compensation the applications for compensation cannot be thrown out. The Court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. (Para 1)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67 ; S.P. Gupta v. Union of India, 1981 Supp SCC 87 and P.U.D.R. v. Union of India, (1982) 3 SCC 235 : (1983) 1 SCR 456, affirmed

Constitution of India — Article 32 — Public interest litigation — Maintainability — Letters addressed even to an individual Judge entertainable — No preferred form of address applicable — Also letters need not necessarily be supported by affidavits

Held :

Even if a letter is addressed to an individual Judge of the Court, it should be entertained, provided it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. There is no difficulty in entertaining such letters as the Court now has a PIL Cell and it is only after scrutiny by the staff members attached to this Cell that the letters are placed before the Chief Justice and under his direction, they are listed before the Court. (Para 5)

The Court also should not insist on an affidavit as a condition for entertaining the letters as in case of such insistence the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.

(Para 5)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67, referred to

Constitution of India — Article 32 — Public interest litigation — Court's power to collect relevant material and to appoint commissions

Held :

So far as the power of the Court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which may be called Social Action Litigation for the sake of convenience, and to appoint commissions for this purpose, are concerned the views expressed by Bhagwati, J., as he then was, in **Bandhua Mukti Morcha**, are endorsed and fully approved.

(Para 6)

Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (1984) 2 SCR 67 (views of Bhagwati, J., as he then was), affirmed

Constitution of India — Article 12 — "Other authorities" — Private corporations — Whether and when can fall within the ambit of Article 12 — Applicability of American doctrine of State action — Industries covered by Industrial Policy Resolutions — Scope of Article 12 needs expansion to advance human rights jurisprudence

Constitution of India — Article 21 — Human rights jurisprudence — Cannot be permitted to be thwarted by status quoists on the basis of unfounded apprehensions

Interpretation of the Constitution — Creative and innovative interpretation in consonance with human rights jurisprudence commended

The question was whether Article 21 was available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares, and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. It was contended that Article 21 was available, as Shriram was carrying on an industry which, according to the government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the Government. Since the government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid on the regulatory mechanisms provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest, as also under the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and the Environment Protection Act, 1986. It was also pointed out that sizeable aid in the form of loans, land and other facilities were granted by the government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued that private activity,

if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

Held :

From the decided cases it appears that Supreme Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Prima facie, when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, such as the fertiliser and chemical factory of Shriram, should not be subject to the same limitations. But it is not necessary to decide this question and to make any definite pronouncement upon it. (Paras 18 and 28)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014 : AIR 1979 SC 1628 ; Eurasian Equipment and Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70 : (1975) 2 SCR 674 : AIR 1975 SC 266 ; Rashbihari Panda v. State of Orissa, (1969) 1 SCC 414 : (1969) 3 SCR 374 and Kasturi Lal Reddy v. State of J & K, (1980) 4 SCC 1 : (1980) 3 SCR 1338 : AIR 1980 SC 1992, relied on

The historical context in which the American doctrine of State action evolved in the United States is irrelevant for our purpose. (Para 29)

The Supreme Court of India is not bound by the American exposition of constitutional law. The provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution. Whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured because the social conditions in our country are different. (Para 29)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014 : AIR 1979 SC 1628 ; Jackson v. Metropolitan Edison Company, 42 L Ed (2d) 477 ; Air India v. Nergesh Meerza, (1981) 4 SCC 335 : (1982) 1 SCR 438 : AIR 1981 SC 1829 and General Electric Company v. Martha V. Gilbert, 50 L Ed (2d) 343, relied on

However, the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action can be applied to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. (Para 29)

Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the raison d'etre of creating corporations but to advance the human rights jurisprudence. Prima facie it is not possible to accept as well-founded the apprehension that inclusion within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial

activity. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. (Para 30)

Ramana Dayaram Shetty v. International Airports Authority of India, (1979) 3 SCC 489 : (1979) 3 SCR 1014, referred to

[In view of paucity of time between the conclusion of the hearing and date for delivery of the judgment, the Court left the above question open for a proper and detailed consideration in future.]

R-M/7673/CL

Advocates who appeared in this case :

Petitioner in-person ;

B. Datta, Additional Solicitor-General, A.B. Divan, F.S. Nariman, B.R.L. Iyengar and Hardev Singh, Senior Advocates (Hemant Sharma, C.V.S. Rao, R.D. Aggarwal, Ms S. Relan, R.S. Sodhi, S. Sukumaran, Ravinder Narain, D.N. Mishra, Aditya Narayan, Ms Lira Goswami, S. Kochwaha, Mohan, Ravinder Bana, K.C. Dua, Mrs K. Kumaramangalam, O.C. Jain, K.R.R. Pillai, Advocates, with them), for the Respondents ;

Raju Ramachandran, Advocate, for the Delhi Legal Aid and Advice Board ;

Soli J. Sorabji, Senior Advocate, for Citizens Action Committee.

[**Ed.** : The above judgment of a Constitution Bench touches upon several important issues :

(1) Having laid down that in the matter of Public Interest Litigation/ SAL even a letter addressed to any individual Justice can be entertained, the Court has mentioned that all such letters will be processed through the Public Interest Litigation Cell in the Supreme Court and after scrutiny placed before the Chief Justice. The future of PIL/SAL then would considerably depend on the functioning of this cell. Attention must therefore be paid to the administrative structure and working of a model PIL Cell with proper setting and inputs so that similar cells could be opened in each High Court and there be uniform working amongst them. Legal aid cells can be encouraged to function as catalytic agents for PIL.

(2) The Bench has ruled for award of compensation under Article 32 in specified appropriate cases and extended it beyond the cases involving wrongful arrest and detention like *Bhim Singh*, (1985) 4 SCC 677 ; *Sebastian M. Hongray*, (1984) 3 SCC 82 and *Rudal Shah*, (1983) 4 SCC 141. It shows the continuing concern of the Court for the socially and economically disadvantaged persons. As a further step the Court has considered, without finally deciding the question, whether a private corporation is covered by Article 32. If the stand point is that as far as the hapless helpless poor and disadvantaged are concerned it matters little if the defendant corporation is private or public, what justification remains for retaining the rule of sovereign immunity where the defendant is the State. The effect of the injury is the same regardless of the status of the person or authority by whose negligence (or their servant's) it was caused. In any case the doctrine of sovereign immunity born of an imperialistic era is little suited for democratic socialist India.

(3) It is interesting to note that when the case was first heard by three judges and judgment given on the question of restarting the caustic

chlorine plant, (1986) 2 SCC 176, no discussion was entered into regarding finding the jurisdictional basis for the Court under Article 32. Violation of Article 21 was apparently assumed or not contested and directions affecting the substantive rights of Shriram Industry were passed. The subsequent petition in (1986) 2 SCC 325 was not a review petition questioning the jurisdictional basis of the earlier order but merely one seeking clarification. Hence as such Article 32 was in fact exercised against a private corporation. It is a moot question whether by ruling that this question is being left open the present five judge bench has overruled the exercise of Article 32 against a private corporation by the three judge bench in (1986) 2 SCC 176.

(4) The Court has stated that the purport to include private corporations in Article 12 and have the matter decided within the original jurisdiction of Article 32 is to subject the activity of such private corporations "to the limitations of fundamental rights" and "to inject respect for human rights and social conscience in our corporate structure" thereby to "advance human rights jurisprudence". Can one read from this and the rest of the judgment that in "appropriate cases" the entire matter involving complex questions of fact, liability, damages and compensation would be decided by the Supreme Court in its original jurisdiction as a trial Court? While damage to life and liberty would be covered by Article 21 what about connected cases involving damage to property alone for which the right to property is no longer fundamental? Since the number of victims would be large the question of award of compensation to each in relation to the pecularities of the injury suffered by him will have to be decided. The Supreme Court may set up a special machinery for such claims but eventually it will have to oversee and decide the claims. While for a tribunal there is a mass of case-law Indian and foreign on liability/damages/compensation, there are hardly any precedents of itself for the Supreme Court of India to follow and so detailed principles would have to be innovated and applied in the first major case itself. Despite the well known backlog of cases at the Supreme Court all such cases will have to be given priority and decided immediately.

But the Court must seriously consider the question of logistics. The place of mishap may not be near the seat of the Supreme Court or any of the High Courts. From far flung areas how will the victims effectively reach the superior Courts and consult counsel at such Courts. Already the move is to decentralise justice and take it to the door steps of the victims through Lok Adalats etc. And if as against constitutional remedies, the normal statutory remedies and common law remedies available at district Court level are really found inadequate to deal with such cases, as a long term policy should not the further development of such remedies be informed and inspired by the provisions of the Constitution so that human rights jurisprudence may operate and flourish at grass root level.

In the preceding judgment in this case, (1986) 2 SCC 176, Bhagwati, C.J. had himself appointed the Chief Metropolitan Magistrate before whom claims for compensation may be filed (SCC p. 118); and in future cases the District Judge, Delhi to determine the compensation (SCC p. 200) and he even suggested the setting up of Environment Courts on regional basis with professional judge and experts and the matter to come to the Supreme Court only *by way of appeal* (SCC p. 202).

(5) The Court has taken a bold step in laying down the principle of liability for industries engaged in hazardous or inherently dangerous activities. Two aspects that seem to logically follow this onerous responsibility are:

the freedom to choose the workers to run such an industry and the expectation of an equally responsible functioning of regulatory government agencies.

Necessarily the working of even the most sophisticated and carefully designed industrial plant eventually depends on the vigilance and care of the workers operating it. Therefore a free hand will have to be afforded to the management of such industries in the matters of selection and in exercise of discretion to dispense with services of employees it does not find responsible enough or looses confidence in. What this means is a special labour law jurisprudence in respect of hazardous and inherently dangerous industries.

Moreover all government agencies and inspectorates that carry out routine inspections and certify worthiness and fitness of an industrial plant must necessarily be held liable for criminal negligence for their acts of commission and omission if a mishap occurs. The expenditure of public money on their expert inspections is meaningless and their reports suicidal for the public if they are not reliable enough and lull any management to think all is well. The exception would be where the inherent and possible dangers of the process are kept secret by the management or are not fully disclosed to the licensing or regulatory agencies.

What has been enunciated in this case is truly a rule of accountability and so must extend to its logical conclusion to include others on whom any management would necessarily rely upon to run the industry.

(6) Can the considered opinion of the Court on the above matter of liability be regarded as obiter and therefore not binding.

Going by the past practice and the precedents, the considered opinions of the Supreme Court have been regarded as binding both by the Supreme Court itself and by the High Courts. The above question of liability in this case was "seriously debated" and hence the rule laid down must be considered as binding law within Article 141.

It is interesting to re-read *Marbury* v. *Madison*, the celebrated case on judicial review, as to what was the question for decision and what the judgment laid down and is considered an authority for. Commenting on it, Jefferson insisted that most of the opinion was "merely an *obiter* dissertation of the Chief Justice" (Dowling and Gunther: *Cases and Materials on Constitutional Law*, 7th Edn., p. 44).]

The Judgment of the Court was delivered by

BHAGWATI, C.J.—This writ petition under Article 32 of the Constitution has come before us on a reference made by a Bench of three Judges. The reference was made because certain questions of seminal importance and high constitutional significance were raised in the course of arguments when the writ petition was originally heard. The facts giving rise to the writ petition and the subsequent events have been set out in some detail in the judgment given by the Bench of three Judges on February 17, 1986[1], and it is therefore not necessary to reiterate the same. Suffice it to state that the Bench of three Judges permitted Shriram Foods and Fertiliser Industries (hereinafter

1. (1986) 2 SCC 176, as amended by order dated March 10, 1986 reported in (1986) 2 SCC 325

referred to as Shriram) to restart its power plant as also plants for manufacture of caustic soda chlorine including its by-products and recovery plants like soap, glycerine and technical hard oil, subject to the conditions set out in the judgment. That would have ordinarily put an end to the main controversy raised in the writ petition which was filed in order to obtain a direction for closure of the various units of Shriram on the ground that they were hazardous to the community and the only point in dispute which would have survived would have been whether the units of Shriram should be directed to be removed from the place where they are presently situate and relocated in another place where there would not be much human habitation so that there would not be any real danger to the health and safety of the people. But while the writ petition was pending there was escape of oleum gas from one of the units of Shriram on December 4 and 6, 1985 and applications were filed by the Delhi Legal Aid and Advice Board and the Delhi Bar Association for award of compensation to the persons who had suffered harm on account of escape of oleum gas. These applications for compensation raised a number of issues of great constitutional importance and the Bench of three Judges therefore formulated these issues and asked the petitioner and those supporting him as also Shriram to file their respective written submissions so that the court could take up the hearing of these applications for compensation. When these applications for compensation came up for hearing it was felt that since the issues raised involved substantial questions of law relating to the interpretation of Articles 21 and 32 of the Constitution, the case should be referred to a larger Bench of five Judges and this is how the case has now come before us.

2. Mr Divan, learned counsel appearing on behalf of Shriram raised a preliminary objection that the court should not proceed to decide these constitutional issues since there was no claim for compensation originally made in the writ petition and these issues could not be said to arise on the writ petition. Mr Divan conceded that the escape of oleum gas took place subsequent to the filing of the writ petition but his argument was that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation for the victims of oleum gas but no such application for amendment was made and hence on the writ petition as it stood, these constitutional issues did not arise for consideration. We do not think this preliminary objection raised by Mr Divan is sustainable. It is undoubtedly true that the petitioner could have applied for amendment of the writ petition so as to include a claim for compensation but merely because he did not do so, the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association cannot be thrown out. These applications

for compensation are for enforcement of the fundamental right to life enshrined in Article 21 of the Constitution and while dealing with such applications, we cannot adopt a hyper-technical approach which would defeat the ends of justice. This Court has on numerous occasions pointed out that where there is a violation of a fundamental or other legal right of a person or class of persons who by reason of poverty or disability or socially or economically disadvantaged position cannot approach a court of law for justice, it would be open to any public spirited individual or social action group to bring an action for vindication of the fundamental or other legal right of such individual or class of individuals and this can be done not only by filing a regular writ petition but also by addressing a letter to the court. If this Court is prepared to accept a letter complaining of violation of the fundamental right of an individual or a class of individuals who cannot approach the court for justice, there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Article 21 should not be entertained. The court while dealing with an application for enforcement of a fundamental right must look at the substance and not the form. We cannot therefore sustain the preliminary objection raised by Mr Divan.

3. The first question which requires to be considered is as to what is the scope and ambit of the jurisdiction of this Court under Article 32 since the applications for compensation made by the Delhi Legal Aid and Advice Board and the Delhi Bar Association are applications sought to be maintained under that article. We have already had occasion to consider the ambit and coverage of Article 32 in the *Bandhua Mukti Morcha* v. *Union of India*[2] and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

2. (1984) 2 SCR 67 : (1984) 3 SCC 161 : 1984 SCC (L&S) 389

4. Thus it was in *S.P. Gupta* v. *Union of India*[3] that this Court held that (SCC p. 210, para 17)

> where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability on socially or economically disadvantaged position, unable to approach the court for relief, any member of the public or social action group can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or class of persons, in this Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.

This Court also held in *S.P. Gupta case*[3] as also in the *PUDR* v. *Union of India*[4] and in *Bandhua Mukti Morcha case*[2] that procedure being merely a hand-maiden of justice it should not stand in the way of access to justice to the weaker sections of Indian humanity and therefore where the poor and the disadvantaged are concerned who are barely eking out a miserable existence with their sweat and toil and who are victims of an exploited society without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting *pro bono publico* would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of *locus standi* and what has come to be known as epistolary jurisdiction.

5. We may point out at this stage that in *Bandhua Mukti Morcha case*[2] some of us apprehending that letters addressed to individual justices may involve the court in frivolous cases and that possibly a view could be taken that such letters do not invoke the jurisdiction of the court as a whole, observed that such letters should not be addressed to individual justices of the court but to the court or to the Chief Justice and his companion judges. We do not think that it would be right to reject a letter addressed to an individual justice of the court merely on the ground that it is not addressed to the court or to the Chief Justice and his companion judges. We must not forget that letters would ordinarily be addressed by poor and

3. 1981 Supp SCC 87
4. (1983) 1 SCR 456 : (1982) 3 SCC 235 : 1982 SCC (L&S) 275

disadvantaged persons or by social action groups who may not know the proper form of address. They may know only a particular judge who comes from their State and they may therefore address the letters to him. If the court were to insist that the letters must be addressed to the court or to the Chief Justice and his companion judges, it would exclude from the judicial ken a large number of letters and in the result, deny access to justice to the deprived and vulnerable sections of the community. We are therefore of the view that even if a letter is addressed to an individual judge of the court, it should be entertained, provided of course it is by or on behalf of a person in custody or on behalf of a woman or a child or a class of deprived or disadvantaged persons. We may point out that now there is no difficulty in entertaining letters addressed to individual justices of the court, because this Court has a Public Interest Litigation Cell to which all letters addressed to the court or to the individual justices are forwarded and the staff attached to this cell examines the letters and it is only after scrutiny by the staff members attached to this cell that the letters are placed before the Chief Justice and under his direction, they are listed before the court. We must therefore hold that letters addressed to individual justices of the court should not be rejected merely because they fail to conform to the preferred form of address. Nor should the court adopt a rigid stance that no letters will be entertained unless they are supported by an affidavit. If the court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the court and even the social action groups will find it difficult to approach the court. We may point out that the court has so far been entertaining letters without an affidavit and it is only in a few rare cases that it has been found that the allegations made in the letters were false. But that might happen also in cases where the jurisdiction of the court is invoked in a regular way.

6. So far as the power of the court under Article 32 to gather relevant material bearing on the issues arising in this kind of litigation, which we may for the sake of convenience call social action litigation, and to appoint Commissions for this purpose is concerned, we endorse what one of us namely, Bhagwati, J. as he then was, has said in his judgment in *Bandhua Mukti Morcha case*[2]. We need not repeat what has been stated in that judgment. It has our full approval.

7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including

all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha case*[2]. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can injunct such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and *ex facie* glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons, or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the person or persons affected by such infringement to initiate and pursue action in the civil courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in *Rudul Shah* v. *State of Bihar*[5]. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir[6]. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such as

5. AIR 1983 SC 1086 : (1983) 4 SCC 141 : 1983 SCC (Cri) 798
6. Bhim Singh v. State of J & K, (1985) 4 SCC 677 : 1986 SCC (Cri) 47

to shock the conscience of the court and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil court for claiming compensation.

8. The next question which arises for consideration on these applications for compensation is whether Article 21 is available against Shriram which is owned by Delhi Cloth Mills Limited, a public company limited by shares and which is engaged in an industry vital to public interest and with potential to affect the life and health of the people. The issue of availability of Article 21 against a private corporation engaged in an activity which has potential to affect the life and health of the people was vehemently argued by counsel for the applicants and Shriram. It was emphatically contended by counsel for the applicants, with the analogical aid of the American doctrine of State Action and the functional and control test enunciated by this Court in its earlier decisions, that Article 21 was available, as Shriram was carrying on an industry which, according to the government's own declared industrial policies, was ultimately intended to be carried out by itself, but instead of the government immediately embarking on that industry, Shriram was permitted to carry it on under the active control and regulation of the government. Since the government intended to ultimately carry on this industry and the mode of carrying on the industry could vitally affect public interest, the control of the government was linked to regulating that aspect of the functioning of the industry which could vitally affect public interest. Special emphasis was laid by counsel for the applicants on the regulatory mechanism provided under the Industries Development and Regulation Act, 1951 where industries are included in the schedule if they vitally affect public interest. Regulatory measures are also to be found in the Bombay Municipal Corporation Act, the Air and Water Pollution Control Acts and now the recent Environment Protection Act, 1986. Counsel for the applicants also pointed to us the sizeable aid in loans, land and other facilities granted by the government to Shriram in carrying on the industry. Taking aid of the American State Action doctrine, it was also argued before us on behalf of the applicants that private activity, if supported, controlled or regulated by the State may get so entwined with governmental activity as to be termed State action and it would then be subject to the same constitutional restraints on the exercise of power as the State.

9. On the other hand, counsel for Shriram cautioned against expanding Article 12 so as to bring within its ambit private corporations. He contended that control or regulation of a private corporation's functions by the State under general statutory law such as the Industries Development and Regulation Act, 1951 is only in exercise of police power of regulation by the State. Such regulation

does not convert the activity of the private corporation into that of the State. The activity remains that of the private corporation ; the State in its police power only regulates the manner in which it is to be carried on. It was emphasised that control which deems a corporation, an agency of the State, must be of the type where the State controls the management policies of the Corporation, whether by sizeable representation on the board of management or by necessity of prior approval of the government before any new policy of management is adopted, or by any other mechanism. Counsel for Shriram also pointed out the inappositeness of the State action doctrine to the Indian situation. He said that in India the control and function test have been evolved in order to determine whether a particular authority is an instrumentality or agency of the State and hence 'other authority' within the meaning of Article 12. Once an authority is deemed to be 'other authority' under Article 12, it is State for the purpose of all its activities and functions and the American functional dichotomy by which some functions of an authority can be termed State action and others private action, cannot operate here. The learned counsel also pointed out that those rights which are specifically intended by the Constitution makers to be available against private parties are so provided in the Constitution specifically such as Articles 17, 23 and 24. Therefore, to so expand Article 12 as to bring within its ambit even private corporations would be against the scheme of the chapter on fundamental rights.

10. In order to deal with these rival contentions we think it is necessary that we should trace that part of the development of Article 12 where this Court embarked on the path of evolving criteria by which a corporation could be termed 'other authority' under Article 12.

11. In *Rajasthan State Electricity Board* v. *Mohan Lal*[7] this Court was called upon to consider whether the Rajasthan Electricity Board was an 'authority' within the meaning of the expression 'other authorities' in Article 12. Bhargava, J. who delivered the judgment of the majority pointed out that the expression 'other authorities' in Article 12 would include all constitutional and statutory authorities on whom powers are conferred by law. The learned Judge also said that if any body of persons has authority to issue directions, the disobedience of which would be punishable as a criminal offence, that would be an indication that the concerned authority is 'State'. Shah, J., who delivered a separate judgment agreeing with the conclusion reached by the majority, preferred to give a slightly different meaning to the expression 'other authorities'. He said that authorities, constitutional or statutory, would fall within the expression "other

7. (1967) 3 SCR 377 : AIR 1967 SC 1857 : (1968) 1 Lab LJ 257

authorities" only if they are invested with the sovereign power of the State, namely, the power to make rules and regulations which have the force of law. The ratio of this decision may thus be stated to be that a constitutional or statutory authority would be within the expression "other authorities" if it has been invested with statutory power to issue binding directions to third parties, the disobedience of which would entail penal consequences or it has the sovereign power to make rules and regulations having the force of law.

12. This test was followed by Ray, C.J., in *Sukhdev Singh* v. *Bhagatram*[8]. Mathew, J., however, in the same case propounded a broader test. The learned Judge emphasised that the concept of 'State' had undergone drastic changes in recent years and today 'State' could not be conceived of simply as a coercive machinery wielding the thunderbolt of authority ; rather it has to be viewed mainly as a service corporation. He expanded on this dictum by stating that the emerging principle appears to be that a public corporation being an instrumentality or agency of the 'State' is subject to the same constitutional limitations as the 'State' itself. The preconditions of this are two, namely, that the corporation is the creation of the 'State' and that there is existence of power in the corporation to invade the constitutional rights of the individual. This Court in *Ramana Dayaram Shetty* v. *International Airports Authority of India*[9] accepted and adopted the rationale of instrumentality or agency of State put forward by Mathew, J., and spelt out certain criteria with whose aid such an inference could be made. However, before we come to these criteria we think it necessary to refer to the concern operating behind the exposition of the broader test by Justice Mathew which is of equal relevance to us today, especially considering the fact that the definition under Article 12 is an inclusive and not an exhaustive definition. That concern is the need to curb arbitrary and unregulated power wherever and howsoever reposed.

13. In *R.D. Shetty* v. *International Airports Authority*[9] this Court deliberating on the criteria on the basis of which to determine whether a corporation is acting as instrumentality or agency of government said that it was not possible to formulate an all inclusive or exhaustive test which would adequately answer this question. There is no cut and dried formula which would provide the correct division of corporations into those which are instrumentalities or agencies of government and those which are not. The court said whilst formulating the criteria that analogical aid can be taken from the concept of State Action as developed in the United States wherein the US courts have

8. (1975) 1 SCC 421
9. (1979) 3 SCR 1014 : (1979) 3 SCC 489 : AIR 1979 SC 1628

suggested that a private agency if supported by extraordinary assistance given by the State may be subject to the same constitutional limitations as the State. It was pointed out that the State's general common law and statutory structure under which its people carry on their private affairs, own property and enter into contracts, each enjoying equality in terms of legal capacity, is not such assistance as would transform private conduct into State Action. "But if extensive and unusual financial assistance is given and the purpose of the government in giving such assistance coincides with the purpose for which the corporation is expected to use the assistance and such purpose is of public character, it may be a relevant circumstance supporting an inference that the corporation is an instrumentality or agency of the government." (SCC p. 508, para 15)

14. On the question of State control, the court in *R.D. Shetty case*[9] clarified that some control by the State would not be determinative of the question, since the State has considerable measure of control under its police power over all types of business organisations. But a finding of State financial support plus an unusual degree of control over the management and policies of the corporation might lead to the characterisation of the operation as State Action.

15. Whilst deliberating on the functional criteria namely, that the corporation is carrying out a governmental function, the court emphasised that classification of a function as governmental should not be done on earlier day perceptions but on what the State today views as an indispensable part of its activities, for the State may deem it as essential to its economy that it own and operate a railroad, a mill or an irrigation system as it does to own and operate bridges, street lights or a sewage disposal plant. The Court also reiterated in *R.D. Shetty case*[9] what was pointed out by Mathew, J. in *Sukhdev* v. *Bhagatram*[8] that "institutions engaged in matters of high public interest or performing public functions are by virtue of the nature of the functions performed government agencies. Activities which are too fundamental to the society are by definition too important not to be considered government functions". (1975) 1 SCC 421 at 454 (para 96) quoted in (1979) 3 SCC at 509, para 16

16. The above discussion was rounded off by the Court in *R.D. Shetty case*[9] by enumerating the following five factors namely, (1) financial assistance given by the State and magnitude of such assistance, (2) any other form of assistance whether of the usual kind or extraordinary, (3) control of management and policies of the corporation by the State — nature and extent of control, (4) State conferred or State protected monopoly status, and (5) functions carried out by the corporation, whether public functions closely related to

governmental functions, as relevant criteria for determining whether a corporation is an instrumentality or agency of the State or not, though the court took care to point out that the enumeration was not exhaustive and that it was the aggregate or cumulative effect of all the relevant factors that must be taken as controlling.

17. The criteria evolved by this Court in *R.D. Shetty case*[9] were applied by this Court in *Ajay Hasia* v. *Khalid Mujib*[10] where it was further emphasised that : (SCC pp. 731-32, para 7)

> Where constitutional fundamentals vital to the maintenance of human rights are at stake, functional realism and not facial cosmetics must be the diagnostic tool, for constitutional law must seek the substance and not the form. Now it is obvious that the government may act through the instrumentality or agency of natural persons or it may employ the instrumentality or agency of juridical persons to carry out its functions.... It is really the government which acts through the instrumentality or agency of the corporation and the juristic veil of corporate personality worn for the purpose of convenience of management and administration cannot be allowed to obliterate the true nature of the reality behind which is the government...(for), If the government acting through its officers is subject to certain constitutional limitations, it must follow *a fortiorari* that the government acting through the instrumentality or agency of a corporation should equally be subject to the same limitations.

On the canon of construction to be adopted for interpreting constitutional guarantees the Court pointed out : (SCC p. 733, para 7)

> ...constitutional guarantees...should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation. The courts should be anxious to enlarge the scope and width of the Fundamental Rights by bringing within their sweep every authority which is an instrumentality or agency of the government or through the corporate personality of which the government is acting, so as to subject the government in all its myriad activities, whether through natural persons or through corporate entities, to the basic obligation of the Fundamental Rights.

In this case the court also set at rest the controversy as to whether the manner in which a corporation is brought into existence had any relevance to the question whether it is a State instrumentality or agency. The Court said that it is immaterial for the purpose of determining whether a corporation is an instrumentality or agency of the State or

10. (1981) 2 SCR 79 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258

not whether it is created by a statute or under a statute : (SCC p. 737, para 11)

> The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government company or a company formed under the Companies Act, 1956 or it may be a society registered under the Societies Registration Act, 1860 or any other similar statute.

It would come within the ambit of Article 12, if it is found to an instrumentality or agency of the State on a proper assessment of the relevant factors.

18. It will thus be seen that this Court has not permitted the corporate device to be utilised as a barrier ousting the constitutional control of the fundamental rights. Rather the Court has held :[11] (SCC p. 480, para 55)

> It is dangerous to exonerate corporations from the need to have constitutional conscience ; and so, that interpretation, language permitting, which makes governmental agencies, whatever their mien amenable to constitutional limitations must be adopted by the court as against the alternative of permitting them to flourish as an *imperium in imperio*.

19. Taking the above exposition as our guideline, we must now proceed to examine whether a private corporation such as Shriram comes within the ambit of Article 12 so as to be amenable to the discipline of Article 21.

20. In order to assess the functional role allocated to private corporation engaged in the manufacture of chemicals and fertilisers, we need to examine the Industrial policy of the government and see the public interest importance given by the State to the activity carried on by such private corporation.

21. Under the Industrial Policy Resolution, 1956 industries were classified into three categories having regard to the part which the State would play in each of them. The first category was to be the exclusive responsibility of the State. The second category comprised those industries which would be progressively State owned and in which the State would therefore generally take the initiative in establishing new undertakings but in which private enterprise would also be expected to supplement the effort of the State by promoting and developing undertakings either on its own or with State participation.

11. Som Prakash Rekhi v. Union of India, (1981) 2 SCR 111 : (1981) 2 SCC 449 : 1981 SCC (L&S) 200

The third category would include all the remaining industries and their future development would generally be left to the initiative and enterprise of the private sector. Schedule B to the Resolution enumerated the industries.

22. Appendix I to the Industrial Policy Resolution, 1948 dealing with the problem of State participation in industry and the conditions in which private enterprise should be allowed to operate stated that there can be no doubt that the State must play a progressively active role in the development of industries. However under the present conditions, the mechanism and resources of the State may not permit it to function forthwith in industry as widely as may be desirable. The policy declared that for some time to come, the State could contribute more quickly to the increase of national wealth by expanding its present activities wherever it is already operating and by concentrating on new units of production in other fields.

23. On these considerations the government decided that the manufacture of arms and ammunition, the production and control of atomic energy and the ownership and management of railway transport would be the exclusive monopoly of the Central Government. The establishment of a new undertakings in coal, iron and steel, aircraft manufacture, ship-building, manufacture of telephone, telegraph and wireless apparatus and mineral oils were to be the exclusive responsibility of the State except where in national interest the State itself finds it necessary to secure the co-operation of private enterprise subject to control of the Central Government.

24. The policy resolution also made mention of certain basic industries of importance the planning and regulation of which by the Central Government was found necessary in national interest. Among the eighteen industries so mentioned as requiring such Central control, heavy chemicals and fertilisers stood included.

25. In order to carry out the objective of the Policy Resolution the Industries (Development and Regulation) Act of 1951 was enacted which, according to its objects and reasons, brought under Central control the development and regulation of a number of important industries the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import. Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. Chemicals and Fertilisers find a place in the First Schedule as items 19 and 18 respectively.

26. If an analysis of the declarations in the Policy Resolutions

and the Act is undertaken, we find that the activity of producing chemicals and fertilisers is deemed by the State to be an industry of vital public interest, whose public import necessitates that the activity should be ultimately carried out by the State itself, though in the interim period with State support and under State control, private corporations may also be permitted to supplement the State effort. The argument of the applicants on the basis of this premise was that in view of this declared industrial policy of the State, even private corporations manufacturing chemicals and fertilisers can be said to be engaged in activities which are so fundamental to the society as to be necessarily considered government functions. (*Sukhdev* v. *Bhagatram*[8], *R.D. Shetty*[9] and *Ajay Hasia*[10].)

27. It was pointed out on behalf of the applicants that as Shriram is registered under the Industries Development and Regulation Act, 1951, its activities are subject to extensive and detailed control and supervision by the government. Under the Act a licence is necessary for the establishment of a new industrial undertaking or expansion of capacity or manufacture of a new article by an existing industrial undertaking carrying on any of the scheduled industries included in the First Schedule of the Act. By refusing licence for a particular unit, the government can prevent over concentration in a particular region or over-investment in a particular industry. Moreover, by its power to specify the capacity in the licence it can also prevent over-development of a particular industry if it has already reached target capacity. Section 18-G of the Act empowers the Government to control the supply, distribution, price etc. of the articles manufactured by a scheduled industry and under Section 18-A government can assume management and control of an industrial undertaking engaged in a scheduled industry if after investigation it is found that the affairs of the undertaking are being managed in a manner detrimental to public interest and under Section 18-AA in certain emergent cases, takeover is allowed even without investigation. Since Shriram is carrying on a scheduled industry, it is subject to this stringent system of registration and licensing. It is also amenable to various directions that may be issued by the government from time to time and it is subject to the exercise of the powers of the government under Sections 18-A, 18-AA and 18-G.

28. Shriram is required to obtain a licence under the Factories Act and is subject to the directions and orders of the authorities under the Act. It is also required to obtain a licence for its manufacturing activities from the Municipal authorities under the Delhi Municipal Act, 1957. It is subject to extensive environment regulation under the Water (Prevention and Control of Pollution) Act, 1974 and as the factory is situated in an air pollution control area, it is also subject

to the regulation of the Air (Prevention and Control of Pollution) Act, 1981. It is true that control is not exercised by the government in relation to the internal management policies of the company. However, the control is exercised on all such activities of Shriram which can jeopardize public interest. This functional control is of special significance as it is the potentiality of the fertilizer industry to adversely affect the health and safety of the community and its being impregnated with public interest which perhaps dictated the policy decision of the government to ultimately operate this industry exclusively and invited functional control. Along with this extensive functional control, we find that Shriram also receives sizeable assistance in the shape of loans and overdrafts running into several crores of rupees from the government through various agencies. Moreover, Shriram is engaged in the manufacture of caustic soda, chlorine etc. Its various units are set up in a single complex surrounded by thickly populated colonies. Chlorine gas is admittedly dangerous to life and health. If the gas escapes either from the storage tank or from the filled cylinders or from any other point in the course of production, the health and well-being of the people living in the vicinity can be seriously affected. Thus Shriram is engaged in an activity which has the potential to invade the right to life of large sections of people. The question is whether these factors are cumulatively sufficient to bring Shriram within the ambit of Article 12. Prima facie it is arguable that when the State's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights. (Vide *Eurasian Equipment and Chemicals Ltd.* v. *State of W.B.*[12]; *Rashbihari Panda* v. *State of Orissa*[13]; *R.D. Shetty* v. *International Airports Authority*[9] and *Kasturi Lal Reddy* v. *State of J & K*[14]), why should a private corporation under the functional control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with public interest and which the State ultimately proposes to exclusively run under its industrial policy, not be subject to the same limitations. But we do not propose to decide this question and make any definite pronouncement upon it for reasons which we shall point out later in the course of this judgment.

29. We were, during the course of arguments, addressed at great length by counsel on both sides on the American doctrine of State action. The learned counsel elaborately traced the evolution of this doctrine in its parent country. We are aware that in America since the Fourteenth Amendment is available only against the State, the courts in order to thwart racial discrimination by private parties,

12. (1975) 2 SCR 674 : (1975) 1 SCC 70 : AIR 1975 SC 266
13. (1969) 3 SCR 374 : (1969) 1 SCC 414
14. (1980) 3 SCR 1338 : (1980) 4 SCC 1 : AIR 1980 SC 1992

devised the theory of State action under which it was held that wherever private activity was aided, facilitated or supported by the State in a significant measure, such activity took the colour of State action and was subject to the constitutional limitations of the Fourteenth Amendment. This historical context in which the doctrine of State action evolved in the United States is irrelevant for our purpose especially since we have Article 15(2) in our Constitution. But it is the principle behind the doctrine of State aid, control and regulation so impregnating a private activity as to give it the colour of State action that is of interest to us and that also to the limited extent to which it can be Indianized and harmoniously blended with our constitutional jurisprudence. That we in no way consider ourselves bound by American exposition of constitutional law is well demonstrated by the fact that in *R.D. Shetty*[9] this Court preferred the minority opinion of Douglas, J. in *Jackson* v. *Metropolitan Edison Company*[15] as against the majority opinion of Rehnquist, J. And again in *Air India* v. *Nergesh Meerza*[16] this Court whilst preferring the minority view in *General Electric Company* v. *Martha V. Gilbert*[17] said that the provisions of the American Constitution cannot always be applied to Indian conditions or to the provisions of our Constitution and whilst some of the principles adumbrated by the American decisions may provide a useful guide, close adherence to those principles while applying them to the provisions of our Constitution is not to be favoured, because the social conditions in our country are different.

30. Before we part with this topic, we may point out that this Court has throughout the last few years expanded the horizon of Article 12 primarily to inject respect for human rights and social conscience in our corporate structure. The purpose of expansion has not been to destroy the *raison d'etre* of creating corporations but to advance the human rights jurisprudence. Prima facie we are not inclined to accept the apprehensions of learned counsel for Shriram as well founded when he says that our including within the ambit of Article 12 and thus subjecting to the discipline of Article 21, those private corporations whose activities have the potential of affecting the life and health of the people, would deal a death blow to the policy of encouraging and permitting private entrepreneurial activity. Whenever a new advance is made in the field of human rights, apprehension is always expressed by the status quoists that it will create enormous difficulties in the way of smooth functioning of the system and affect its stability. Similar apprehension was voiced when this Court in *R.D. Shetty case*[9] brought public sector corporations within the scope

15. 42 L Ed (2d) 477
16. (1982) 1 SCR 438 : (1981) 4 SCC 335 : 1981 SCC (L&S) 599
17. 50 L Ed (2d) 343

and ambit of Article 12 and subjected them to the discipline of fundamental rights. ' Such apprehension expressed by those who may be affected by any new and innovative expansion of human rights need not deter the court from widening the scope of human rights and expanding their reach and ambit, if otherwise it is possible to do so without doing violence to the language of the constitutional provision. It is through creative interpretation and bold innovation that the human rights jurisprudence has been developed in our country to a remarkable extent and this forward march of the human rights movement cannot be allowed to be halted by unfounded apprehensions expressed by status quoists. But we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth. The hearing of this case before us concluded only on December 15, 1986 and we are called upon to deliver our judgment within a period of four days, on December 19, 1986. We are therefore, of the view that this is not a question on which we must make any definite pronouncement at this stage. But we would leave it for a proper and detailed consideration at a later stage if it becomes necessary to do so.

31. We must also deal with one other question which was seriously debated before us and that question is as to what is the measure of liability of an enterprise which is engaged in an hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. Does the rule in *Rylands* v. *Fletcher*[18] apply or is there any other principle on which the liability can be determined. The rule in *Rylands* v. *Fletcher*[18] was evolved in the year 1866 and it provides that a person who for his own purposes brings on to his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict and it is no defence that the thing escaped without that person's wilful act, default or neglect or even that he had no knowledge of its existence. This rule laid down a principle of liability that if a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. Of course, this rule applies only to non-natural user of the land and it does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the thing which escapes is present by the consent of the person injured or in certain cases where there is statutory authority.

18. (1868) LR 3 HL 330 : 19 LT 220 : (1861-73) All ER Rep 1

Vide *Halsbury's Laws of England*, vol. 45, para 1305. Considerable case law has developed in England as to what is natural and what is non-natural use of land and what are precisely the circumstances in which this rule may be displaced. But it is not necessary for us to consider these decisions laying down the parameters of this rule because in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry as part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in *Rylands* v. *Fletcher*[18] as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concommitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. 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. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in *Rylands* v. *Fletcher*[18].

32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be corelated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.

33. Since we are not deciding the question as to whether Shriram is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21, we do

not think it would be justified in setting up a special machinery for investigation of the claims for compensation made by those who allege that they have been the victims of oleum gas escape. But we would direct the Delhi Legal Aid and Advice Board to take up the cases of all those who claim to have suffered on account of oleum gas and to file actions on their behalf in the appropriate court for claiming compensation against Shriram. Such actions claiming compensation may be filed by the Delhi Legal Aid and Advice Board within two months from today and the Delhi Administration is directed to provide the necessary funds to the Delhi Legal Aid and Advice Board for the purpose of filing and prosecuting such actions. The High Court will nominate one or more judges as may be necessary for the purpose of trying such actions so that they may be expeditiously disposed of. So far as the issue of relocation and other issues are concerned the writ petition will come up for hearing on February 3, 1987.

(1987) 1 Supreme Court Cases 422

(BEFORE A.P. SEN AND B.C. RAY, JJ.)

J.B. CHOPRA AND OTHERS .. Petitioners;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Special Leave Petition No. 7991 of 1986†, decided on December 19, 1986

Administrative Tribunals Act, 1985 — Sections 14(1), 28 and 29(2) — Central Administrative Tribunal have jurisdiction to decide constitutionality of statutes, statutory rules, regulations or notifications

Held:

The Administrative Tribunal being a substitute of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1). Therefore, the Tribunal had authority or jurisdiction to strike down the impugned notification dated March 15, 1980 purporting to amend Rule 4 of the Central Hindi Directorate (Class III and Class IV) Posts Recruitment Rules, 1961 as being wholly mala fide, arbitrary and irrational and thus offending Articles 14 and 16(1) (Para 2)

S.P. Sampath Kumar v. *Union of India*, (1987) 1 SCC 124: (1987) 2 ATC 82, *applied*

SLP dismissed R-M/7663/CA

Advocates who appeared in this case:

V.C. Mahajan, Senior Advocate, (*Mrs. Urmila Kapoor*, Advocate, with him), for the Petitioners;

N.S. Rao, Senior Advocate, (*M/s. Ashok K. Srivastava* and *Ms. S. Relan*, Advocates, with him), for the Respondents.

The Order of the Court was delivered by

A.P. SEN, J.—In this special leave petition a question was raised regarding the authority and jurisdiction of the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 to strike down as consti-

†From the Judgment and Order dated May 29, 1986 of the Central Administrative Tribunal, Principal Bench, Delhi in C.W.P. No. 277/80 in T.A. No. 599/85.

(2013) 4 Supreme Court Cases 575

(BEFORE A.K. PATNAIK AND H.L. GOKHALE, JJ.)

STERLITE INDUSTRIES (INDIA) LIMITED
AND OTHERS .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals Nos. 2776-83 of 2013†, decided on April 2, 2013

A. **Environment Protection and Pollution Control — Polluter pays principle — Closure of polluting plant or direction to pay compensation for loss suffered by citizenry due to harm caused to environment — Factors to be considered and balanced — Sustainable development — Considerations of — Remedial action to restore environmental damage caused by polluting plant concerned/improve environment — Possibility of, without closure of plant**

— Environmental impact assessment (EIA) for setting up copper smelter plant by appellant Company and environmental clearance by authorities being valid, rational and as per procedure — But plant while operating failing to maintain emission and effluent standards and operating without renewal permission and thereby causing air and water pollution which could have been averted — High Court therefore quashing environmental clearance and directing closure of plant — But when matter coming to Supreme Court, appellant removing 29 out of 30 pollution-causing deficiencies at plant pointed out by NEERI (National Environmental Engineering and Research Institute)

— Considering: (a) economic importance of plant and need of sustainable development in public interest, (b) that authorities could exercise their discretion under R. 5(1)(v), 1986 Rules at any later stage to shift the plant if they felt the need therefor without closing down plant, (c) well-settled principles and grounds for judicial review and intervention, (d) that pollution could be checked/remedied without the plant being closed down, and (e) paying capacity of plant to pay compensation — Held, the plant should not be closed down but instead appellant Company should pay compensation of Rs 100 crores to remedy environmental damage caused/ improve environment as directed — Therefore, High Court order directing closure of plant, set aside — Clarified that State Pollution Control Board (i.e. TNPCB) can issue directions to appellant Company including a direction for closure of the plant, for the protection of environment in accordance with law, if found necessary at any stage — Also clarified that award of Rs 100 crores as compensation would not bar any other claim by any person that may be available under law — Constitution of India — Arts. 21, 32, 47, 48-A, 226 and 136 — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3,

† Arising out of SLPs (C) Nos. 28116-23 of 2010. From the Judgment and Order dated 28-9-2010 of the High Court of Judicature of Madras in WPs Nos. 15501-502 of 1996, 5769 of 1997, 16861 of 1998, WMPs Nos. 8044-46 of 1999 and WP No. 15503 of 2006

16 and 18 — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environment (Protection) Rules, 1986 — Rr. 5(1)(v) & (3) — Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989, R. 19

B. **Environment Protection and Pollution Control — Pollutants/ Polluting industry — Compensation on basis of polluter pays principle — Manner of determination of amount — Paying capacity of polluter — Reckoning of — Closure of plant, when not desirable**

C. **Environment Protection and Pollution Control — Polluter pays principle — Compensation awarded under, for causing harm to environment for a particular period, held, not to affect any claim for damages for the aforesaid period or any other period that may lie in a civil court or any other forum in accordance with law**

D. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Judicial review/Quashment of — Grounds and scope for judicial intervention — Principles summarised**

— Held, Environmental Impact Assessment (EIA) done and environmental clearance granted by expert authorities can only be quashed on well-recognised principles of judicial review i.e. only if there is any illegality, irrationality or procedural impropriety in granting such permission (which is not the case here) — However, if after setting up of plant, the plant begins/continues to pollute environment, fundamental right under Art. 21 of Constitution can always be invoked — But as remedies were available to remedy damage caused/improve environment without closing the plant, High Court should not have directed closure of plant (and as per latest record, plant had already removed 29 out of 30 pollution-causing deficiencies pointed out by NEERI) — Environment (Protection) Act, 1986 — Ss. 3(1) & (2) — Environmental clearance granted under — Grounds and scope of judicial intervention — Evidence Act, 1872 — S. 45 — Expert opinion — EIA (Environment Impact Assessment) — Grounds for judicial review

E. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Ground of procedural impropriety — When can be resorted to, to quash environmental clearance — Held, ground of procedural impropriety can be resorted to, to quash environmental clearance only when a mandatory requirement is violated — As requirements of comprehensive EIA and public hearing prior to grant of environmental clearance were not mandatory (as per prevalent notification), High Court could not have quashed environmental clearance on said grounds — Environment (Protection) Act, 1986, Ss. 3(1) & (2)**

F. **Environment Protection and Pollution Control — Environmental clearance/NOC/Environmental Impact Assessment — Grant of environmental clearance/NOC for setting up of plant/industry — If valid and proper in present case**

— (a) There being no public hearing on issue of environmental effects of setting up of plant at location where it was set up (which was opposed at

three other places in India), (b) EIA being conducted speedily by taking only data of one season, (c) authorities reducing requirement of green belt around plant from 250 m to 25 m, and (d) plant being located within 25 km of ecologically sensitive area (i.e. islands of Gulf of Munnar) as notified under S. 35(1), 1972 Act — Against this Supreme Court found that requirement of public hearing and comprehensive EIA were not mandatory as per prevalent notification (EIA Noti. dt. 27-1-1994), though later notification (i.e. EIA Noti. dt. 10-4-1997) requiring mandatory public hearing and comprehensive EIA — Rapid EIA being permissible under prevalent notification, whereunder EIA could be done by taking data of only one season — All procedures regarding rapid EIA were complied with as per prevalent notification — It could not be shown as to how by reducing green belt from 250 m to 25 m around the plant area any procedure was violated or there was any irrationality — Rather plant had installed air control utilities such that it satisfied ambient air quality standards prescribed by State Pollution Control Board (i.e. TNPCB) — Therefore, held, there was no illegality, irrationality, or procedural impropriety in granting environmental clearance to the project of appellant — Regarding location, no notification prohibiting setting up of industry in said area had been issued under R. 5(1)(v), 1986 Rules — Thus as and when Central Government issues a notification under R. 5(1)(v), 1986 Rules, prohibiting or restricting location of plant, steps may be taken by all concerned for shifting of the industry subject to content of notification and subject to legal challenge by industry concerned — Air (Prevention and Control of Pollution) Act, 1981 — S. 21 — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 25, 3, 16 and 18 — Wild Life (Protection) Act, 1972 — Ss. 35(1) & (4) — Notification under S. 35(4) not having been issued — Effect — Environment (Protection) Rules, 1986, Rr. 5(1)(v) & (3)

G. **Environment Protection and Pollution Control — Sustainable development — Polluting plant — Relief of setting aside order of closure — Said relief, when can be given even if there was suppression and misrepresentation of material facts by polluting plant (appellant) — EIA Noti. dt. 27-1-1994 — Para 2(c) and Expln. Note, Para 5 — EIA Noti. dt. 10-4-1997 — Constitution of India, Arts. 226, 32 and 136**

H. **Environment Protection and Pollution Control — Non-Governmental Organisations (NGOs) and Third Sector — Appreciation expressed by Supreme Court for work done by writ petitioners and intervenor for prosecuting these proceedings in genuine public interest**

Allowing the appeal in the terms below, the Supreme Court

Held :

The environmental clearance for setting up the plant of the appellant Company was granted to the appellants under Section 3(1) of the Environment (Protection) Act, 1986 (1986 Act). The prevalent Environmental Impact Assessment (EIA) notification issued under Section 3(2)(*v*), 1986 Act, and Rule 5(3) of the Environment (Protection) Rules, 1986, by the Central Government was EIA Notification dated 27-1-1994. The language of Para 2(*c*), EIA Notification dated 27-1-1994 did not lay down that a public hearing was a must for giving environmental clearance when the appellants' case was under

consideration. In the present case the environmental clearance was thus granted by MoEF on 16-1-1995 in accordance with the procedure laid down by the EIA Notification dated 27-1-1994 well before the issuance of the EIA Notification dated 10-4-1997 providing for mandatory public hearing in accordance with the procedure laid down in Schedule IV. Therefore, the High Court could not have allowed the writ petitions challenging the environmental clearances on the ground that no public hearing was conducted before the grant of the environmental clearances. (Paras 28 to 29, 2, 7 and 22)

Para 5 of the Explanatory Note, EIA Notification dated 27-1-1994 clarified that project proponents could furnish a rapid EIA report to the Impact Assessment Agency based on one season data, for examination of the project and a comprehensive EIA report could be submitted later, if so asked for by the Impact Assessment Agency. Therefore, 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 the State Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994). The High Court has noticed some decisions of the Supreme 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-recognised principles of judicial review: for e.g. the High Court could interfere on the ground of illegality, irrationality, *Wednesbury* unreasonableness, or on the ground of procedural impropriety. However, on the ground of procedural impropriety, the High Court can quash the environmental clearance only if it is satisfied that the breach was of a mandatory requirement in the procedure. In the absence of a mandatory requirement of 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. No materials have been produced 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 or that the decision of MoEF to accord environmental clearance to the plant of the appellants at Tuticorin was wholly irrational and frustrated the very purpose of EIA.
(Paras 30 to 33, 8 and 18 to 21)

Lafarge Umiam Mining (P) Ltd. v. *Union of India*, (2011) 7 SCC 338, *followed*

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647; *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*, (2009) 9 SCC 737; *M.C. Mehta* v. *Union of India*, (2009) 6 SCC 142; *East Coast Railway* v. *Mahadev Appa Rao*, (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483; *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC); *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*, Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC); *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *cited*

It is for the authorities under the 1986 Act and Rules 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. (Para 34)

Belize Alliance of Conservation Non-Governmental Organisations v. *Deptt. of the Environment*, (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *relied on*

Bow Valley Naturalists Society v. *Canada (Minister of Canadian Heritage)*, (2001) 2 FC 461 (Can), *approved*

The TNPCB (State Pollution Control Board) while granting the consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 added the requirement that the location of the unit should be 25 km away from ecologically sensitive area without noting that the area for plant concerned was within 25 km from ecologically sensitive area. Since, however, the consent order was granted to the appellant Company to establish its plant in the said area, and the plant has in fact been established there, the High Court could not have come to the conclusion that the appellant Company had violated the consent order and based thereon directed closure of the plant. The Gulf of Munnar is an ecologically sensitive area [having been so notified under Section 35(1) of the Wild Life (Protection) Act, 1972 on 10-9-1986] and the Central Government may in exercise of its powers under Rule 5(1)(*v*), 1986 Rules, 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, 1986 Rules, then appropriate steps may have to be taken by all concerned for shifting the industry depending upon the content of the order or notification and subject to the legal challenge by the industries. (Paras 37, 38, 6 to 6.3, 12 and 14 to 26)

NEERI (National Environmental Engineering and Research Institute) Report of 1998, *referred to*

Various conditions have been imposed on the plant/industry of the appellants to ensure that air pollution control measures are installed for the control of emissions generated from the plant and that the emissions from the plant satisfies the ambient air 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 dated 1-8-1994. If the TNPCB after considering the representation of the appellants has reduced the requirement of width of the green belt from a minimum of 250 metres to a minimum of 25 metres 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 TNPCB. (Paras 39.1, 9 and 13)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

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-recognised 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 grant of environmental clearance under the 1986 Act and Rules and the notifications issued thereunder and after the consents granted under the Air Act and the Water Act, the industry begins to/continues to pollute the environment so as to affect 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. (Paras 40 and 18)

M.C. Mehta v. *Union of India*, (1987) 4 SCC 463, *relied on*

The High Court relied on the report of NEERI (National Environmental Engineering and Research Institute) 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. The NEERI Report of 2005 did show that the emission and effluent discharged from the appellants' plant 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 remedy/improve the environment and that the only remedy to protect the environment was to direct closure of the plant of the appellants. As per the joint inspection carried out by TNPCB and CPCB as per Supreme Court, directions, 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 remains 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. (Paras 41 to 44, 10, 14 and 23)

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 769; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773, *relied on*

Sterlite Industries (I) Ltd. v. *Union of India*, (2011) 13 SCC 772; *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254; *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), *referred to*

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

NEERI (National Environmental Engineering and Research Institute) Reports of 2005, 1998, 1999, 2003 and 2011; Joint Inspection Report of TNPCB and CPCB, September 2012, *referred to*

There is no doubt that there has been misrepresentation and suppression of material facts made in the SLP by the appellants, 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 and construction industries and infrastructure, etc. The plant of the appellants has about 1300 employees and it also provides employment to a large number of people through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates huge revenue to the 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, it will not be a proper exercise of the discretion under Article 136 of the Constitution to refuse relief on the grounds of

misrepresentation and suppression of material facts in the SLP. (Paras 48, 11 and 15 to 17)

Sterlite Industries (I) Ltd. v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC); *Hari Narain* v. *Badri Das*, AIR 1963 SC 1558; *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*, (1991) 3 SCC 261; *Dalip Singh* v. *State of U.P.*, (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324; *Abhyudya Sanstha* v. *Union of India*, (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241, *referred to*

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. 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. 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. (Para 45)

Considering the magnitude, capacity and prosperity of the appellant Company, the appellant Company is directed to pay compensation of Rs 100 crores. The aforesaid amount will be deposited with the Collector of Thoothukudi District who will invest it in a fixed deposit. 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. (Paras 47 and 50)

M.C. Mehta v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *followed*

NEERI (National Environmental Engineering and Research Institute) reports of 1998, 1999, 2003 and 2005; Annual Report 2011 of the Sterlite Industries, at pp. 20 and 21, *referred to*

The efforts of writ petitioners before the High Court and the intervenor before the Supreme Court are appreciated for having taken up the cause of the environment both before the High Court and the Supreme Court and for having assisted the Supreme Court on all dates of hearing with utmost sincerity and hard work. 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 the environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervenor before the Supreme Court not only ventured but also put in their best for the cause of the general public. (Para 49)

Indian Council for Enviro-Legal Action v. *Union of India*, (1996) 3 SCC 212, *relied on*

The impugned common judgment of the High Court is, therefore, set aside and it is made clear that the present 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. It is also made clear that the direction for payment of compensation of Rs 100 crores by the present 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. (Paras 50 and 51)

National Trust for Clean Environment v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *reversed*

SS-D/51576/C

Advocates who appeared in this case :

P.P. Malhotra, Additional Solicitor General, S. Guru Krishna Kumar, Additional Advocate General, C.A. Sundaram, C.U. Singh, Raj Panjwani and V. Prakash, Senior Advocates (Ms Rohini Musa, Zafar Inayat, Yogesh V. Kotemath, S. Raghunathan, Mahesh Agarwal, Rishi Agarwal, E.C. Agarwala, Ms Radhika Gautam, Abhinav Agrawal, Ms Rashmi Nandakumar, Rahul Chowdhury, Ms Anitha Shenoy, Ms Vimla Sinha, Yasser Rauf, B. Krishna Prasad, Subramonium Prasad, Ms Manju Jana, Shivaji M. Jadhav, Vijay Panjwani, G. Devedoss, M.S.M. Asaithambi, G. Ananthaselvam, M. Yogesh Kanna, R. Veeramani, A. Prasanna Venkat, S. Beno Bencigar, P. Somasundaram, Abhay Kumar, V.N. Subramaniam, V. Senthila Kumar, K. Krishna Kumar and M.A. Chinnasamy, Advocates) for the appearing parties and Vaiko alias V. Gopalsamy, Respondent-in-Person.

Chronological list of cases cited ***on page(s)***

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2. (2011) 13 SCC 773, *Sterlite Industries (I) Ltd.* v. *Union of India* 603*a-b*
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8. (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483, *East Coast Railway* v. *Mahadev Appa Rao* 591*c*
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11. WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad), *National Trust for Clean Environment* v. *Union of India* **(reversed)** 583*f-g*, 584*a-b*, 584*b-c*, 585*f-g*, 587*a-b*, 587*b*, 587*d*, 589*f*, 593*a*, 599*c*, 600*c*, 603*f*, 606*d*, 606*f-g*
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13. (2009) 6 SCC 142, *M.C. Mehta* v. *Union of India* 590*c-d*
14. Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC), *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority* 591*e*
15. (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC), *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment* 591*d*, 596*e*
16. (2001) 2 FC 461 (Can), *Bow Valley Naturalists Society* v. *Canada (Minister of Canadian Heritage)* 596*e-f*
17. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 590*c*
18. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action* v. *Union of India* 606*c*
19. (1991) 3 SCC 261, *G. Narayanaswamy Reddy* v. *Govt. of Karnataka* 589*g-h*
20. (1987) 4 SCC 463, *M.C. Mehta* v. *Union of India* 600*b*
21. (1987) 1 SCC 395 : 1987 SCC (L&S) 37, *M.C. Mehta* v. *Union of India* 604*g-h*
22. AIR 1963 SC 1558, *Hari Narain* v. *Badri Das* 589*g*
23. (1948) 1 KB 223 : (1947) 2 All ER 680 (CA), *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.* 595*d-e*

The Judgment of the Court was delivered by

A.K. PATNAIK, J.— Leave granted.

Facts

2. The relevant facts very briefly are that the appellant Company applied and obtained "no-objection certificate" on 1-8-1994 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 16-1-1995, 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 17-5-1995, 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 22-5-1995, 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 WPs Nos. 15501-503 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 1-1-1997. 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 1998 was also filed by Shri K. Kanagaraj, Secretary, CITU District Committee, District Thoothukudi, for directions to the State of Tamil Nadu, the 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.

4. A Division Bench of the High Court heard Writ Petitions Nos. 15501-503 of 1996, Writ Petition No. 5769 of 1997 and Writ Petition No. 16861 of 1998 and by the common judgment dated 28-9-2010[1], 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 25-FFF 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/organisations so as to protect their livelihood

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

and to the extent possible take into consideration their educational and technical qualifications and also the experience in the field.

5. Aggrieved, the appellant has filed these appeals against the common judgment dated 28-9-2010[1] of the Division Bench of Madras High Court and on 1-10-2010, this Court passed an interim order[2] staying the impugned judgment of the High Court.

Contentions on behalf of the appellants

6. Mr C.A. Sundaram, learned Senior Counsel appearing for the appellants, submitted that one of the grounds stated in the impugned judgment[1] of the High Court for directing closure of the plant of the appellants was that the TNPCB had stipulated in the consent order dated 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km 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 km from four of the twenty-one islands in the Gulf of Munnar, namely, Vanthivu, Kasuwar, Karaichalli and Villanguchalli, which are at distances of 6 km, 7 km and 15 km respectively from Tuticorin where the plant is located:

6.1. He submitted that there is no notification issued by the Central Government under Rule 5(1) of the Environment (Protection) Rules, 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 10-9-1986 notifying its intention under Section 35(1) of the Wild Life (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.

6.2. 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 km away from the ecologically sensitive areas and it is on account of these guidelines that the TNPCB in its consent order dated 22-5-1995 under the Water Act had stipulated that the plant of the appellants should be situated 25 km 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 ecologically sensitive areas within 25 km of the industry, but in the consent

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC), wherein it was directed:

"List on 18-10-2010. Interim stay of the impugned judgment of the High Court till then."

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.

6.3. 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 ecologically 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.

7. 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 27-1-1994 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 10-4-1997, 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 16-1-1995.

8. Mr Sundaram submitted that the High Court also took the view in the impugned judgment[1] 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 27-1-1994 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 1-8-1994 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

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

affidavit dated 1-12-1998 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.

9. 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 20 of the no-objection certificate that the appellants will develop a green belt of 250 metres 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 metres to the width of 10-15 metres as development of the green belt of 250 metres width requires a land of around 150 acres and TNPCB in its meeting held on 18-8-1994 relaxed this condition and stipulated that the appellant Company will develop a green belt of minimum width of 25 metres. He submitted that the land allocated by SIPCOT to the appellants was not sufficient to provide a green belt of 250 metres 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 metres. 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.

10. 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 the 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 phosphogypsum, 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.

11. Mr Sundaram finally submitted that since none of the grounds given by the High Court in the impugned judgment[1] 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[1] of the High Court and allow the appeals. He submitted that the plant of the appellants produces 2,02,000 metric tonnes of copper which constitute 39% of the total of 5,14,000 metric tonnes 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 respondent-writ petitioner

12. 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[1] of the High Court. He submitted that the TNPCB in its no-objection certificate dated 1-8-1994 as well as in its consent order dated 22-5-1995 under the Water Act clearly stipulated that the appellant Company shall ensure that the location of its unit should be 25 km away from the ecologically 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 km, 7 km and 15 km 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 km distance from the ecologically 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 Wild Life (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.

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

13. 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 1-8-1994 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 the TNPCB and CPCB filed pursuant to the order dated 27-8-2012[3] 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 ha which works out to 43.04 ha and yet the TNPCB has found development of green belt of 26 ha as sufficient compliance. He submitted that the appellants would, therefore, be required to develop a green belt of 17.04 ha more for compliance with the condition for renewal of consent stipulated by the TNPCB.

14. 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 contains 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

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC), wherein it was directed:

"1. Mr C.A. Sundaram, learned Senior Counsel states that pursuant to the order passed by this Court on 9-5-2012, the petitioner is taking effective steps to ensure strict compliance with the various conditions attached to the consent given by the Tamil Nadu Pollution Control Board. He further submits that the entire procedure for compliance with the conditions for consent will be completed by 31-8-2012.

2. The learned counsel appearing for the Tamil Nadu Pollution Control Board submits that, in fact, the Board was ready with an affidavit to be filed in Court today. However, in case the petitioner is able to achieve satisfactorily the required standards in the conditions imposed by the Tamil Nadu Pollution Control Board by 31-8-2012, the Board shall submit a detailed status report thereafter. The learned counsel appearing for the Central Pollution Control Board, in our opinion, has rightly made a submission that the Central Pollution Control Board shall also participate in the inspection to be carried out jointly by the Tamil Nadu Pollution Control Board and Central Pollution Control Board.

3. Let the inspection be completed by 14-9-2012. The joint report be submitted to the Court in a sealed cover. The Tamil Nadu Pollution Control Board is permitted to file any additional affidavit if deemed necessary by the said Board. However, advance copy of the same shall be given to the petitioner, the learned counsel for the Central Pollution Control Board as well as to the other respondents.

4. List the matter on 1-10-2012."

air and has also affected the groundwater of the area by discharging effluent and the High Court, therefore, rightly directed the closure of the plant.

15. Mr Gopalsamy 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.

16. Mr V. Prakash, learned Senior Counsel appearing for the writ petitioner, National Trust for Clean Environment, in Writ Petitions Nos. 15501-503 of 1996 before the High Court, submitted that the appellants had made a false statement in the synopsis at p. (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 IV at p. 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 1-10-2010 to stay the operation of the impugned order[1] 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 1-10-2010[2]. 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.

17. Mr V. Prakash relied on the decisions of this Court in *Hari Narain* v. *Badri Das*[4], *G. Narayanaswamy Reddy* v. *Govt. of Karnataka*[5] and

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

4 AIR 1963 SC 1558

5 (1991) 3 SCC 261

Dalip Singh v. *State of U.P.*[6] and *Abhyudya Sanstha* v. *Union of India*[7] 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.

18. Mr Prakash next submitted that the main ground that was taken in the writ petitions before the High Court by the 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 fallout 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 in *Vellore Citizens' Welfare Forum* v. *Union of India*[8], *Tirupur Dyeing Factory Owners Assn.* v. *Noyyal River Ayacutdars Protection Assn.*[9] and *M.C. Mehta* v. *Union of India*[10]. 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.

19. 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.

20. Mr Prakash further submitted that the counter-affidavit of the Union of India filed on 1-12-1998 before the High Court also does not disclose whether, apart from the rapid EIA of Tata Consultancy Services, there was

6 (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324
7 (2011) 6 SCC 145 : (2011) 3 SCC (Civ) 241
8 (1996) 5 SCC 647
9 (2009) 9 SCC 737
10 (2009) 6 SCC 142

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 1-8-1994 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 27-1-1994 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 fallout 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.

21. In support of his submissions, Mr Prakash cited *East Coast Railway* v. *Mahadev Appa Rao*[11], 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 the Privy Council in *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12], WIR at 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.

22. Mr Prakash also relied on the judgment of the Supreme Court of Judicature of Jamaica in *Northern Jamaica Conservation Assn.* v. *Natural Resources Conservation Authority*[13] 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.

23. 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 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

11 (2010) 7 SCC 678 : (2010) 2 SCC (L&S) 483
12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
13 Claim No. HCV 3022 of 2005, order dated 16-5-2006 (Jamaica SC)

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 jeopardise 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

24. 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 Wild Life (Protection) Act, 1972 on 10-9-1986 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 30-4-2003 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 ecologically 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 8-10-2012 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.

25. 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 Chemicals 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 intervenor

26. Mr Raj Panjwani, learned counsel for the intervenor, submitted that a marine biosphere is an ecologically sensitive area and if in the consent order a condition was stipulated that the plant of the appellants has to be situated beyond 25 km from ecologically 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

27. 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 16-1-1995 and 17-5-1995 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[1], 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?

28. The environmental clearance for setting up the plant was granted to the appellants under the Environment (Protection) Act, 1986:

28.1. Sub-section (1) of Section 3 of the Environment (Protection) Act, 1986 provides that:

> "**3.** ***Power of Central Government to take measures to protect and improve environment***.—(1) Subject to the provisions of this 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."

28.2. 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:

> "**3. (2)(*v*)** 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."

28.3. 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 27-1-1994 imposing restrictions and prohibitions on the expansion and modernisation 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.

29. Para 2 of the Notification dated 27-1-1994 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

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

assessment was done by Tata Consultancy Services as per the requirements then existing and the Government of India has granted the environmental clearance on 16-1-1995. The Notification dated 27-1-1994, however, was amended by Notification dated 10-4-1997 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 10-4-1997. Admittedly, in this case, the environmental clearance was granted by the Ministry of Environment, Government of India, on 16-1-1995 in accordance with the procedure laid down by the Notification dated 27-1-1994 well before the Notification dated 10-4-1997 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 Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 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.

30. An explanatory note regarding the EIA Notification dated 27-1-1994 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 Petitions Nos. 15501-503 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 the State Pollution Control Board and risk analysis, the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and the project was accorded approval on 16-1-1995 subject to specific conditions. As the procedure laid down under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986 and the Notification dated 27-1-1994 as amended by the Notification dated 4-5-1994 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 the State

Pollution Control Board and risk analysis in accordance with the procedure laid down in EIA Notification dated 27-1-1994 (as amended on 4-5-1994).

31. 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-recognised 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*[14], SCC at p. 380. To quote *Environmental Law* edited by David Woolley, Q.C., 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.

32. 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, Q.C., 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 27-1-1994 did not provide for mandatory public hearing. The explanatory note issued by the Central Government on the Notification dated 27-1-1994 also made it clear that the

14 (2011) 7 SCC 338

† *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)

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.

33. 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 Petitions Nos. 15501-503 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 the State Pollution Control Board and risk analysis, and that the project was examined as per the procedure laid down in the EIA Notification dated 27-1-1994 (as amended on 4-5-1994) and only thereafter the project was accorded approval on 16-1-1995. 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.

34. In *Belize Alliance of Conservation Non-Governmental Organisations* v. *Deptt. of the Environment*[12] 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. *Canada (Minister of Canadian Heritage)*[15], FC at p. 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 authorised 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

12 (2003) 1 WLR 2839 : (2004) 64 WIR 68 (PC)
15 (2001) 2 FC 461 (Can)

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.

35. 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 km 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 22-5-1995 that the appellant Company has to ensure that the location of the unit should be 25 km away from ecologically sensitive area and as per the report of NEERI, the plant of the appellants was situated at a distance of 6 km of Vanthivu, 7 km of Kasuwar and 15 km 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 22-5-1995 issued by the TNPCB under the Water Act.

36. The consent order dated 22-5-1995 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') authorising 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 22-5-1995 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, Meelavittam 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 GOMs No. 213 E&P Deptt., dt. 30-3-1989.
>
> (*ii*) 25 km away from ecological/sensitive areas.
>
> (*iii*) 500 metres away from high tide line."

37. 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 km 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 km away from ecologically 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 km from ecologically 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.

38. 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 Wild Life (Protection) Act, 1972 on 10-9-1986 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 ecologically sensitive area and the Central Government may in exercise of its powers under clause (*v*) of sub-rule (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.

39. 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 metres 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 18-8-1994 relaxed this condition and required the appellants to develop the green belt with a minimum width of 25 metres:

39.1. 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 emissions generated from the plant and that the emissions from the plant satisfy the ambient air 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 metres to a minimum of 25 metres 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.

39.2. The High Court in the impugned judgment[1] 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 metres. 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 metres to 25 metres, 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 5-7-1997 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.

40. 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-recognised 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 is granted under the Environment (Protection) Act, 1986, and the Rules and the notifications

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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 affect 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*[16] in which this Court directed closure of tanneries polluting the waters of River Ganga).

41. 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[1] 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.

42. 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 SO_2 from sulphuric acid plant — I (SAP-I) and sulphuric acid plant — II (SAP-II) were 0.55 kg/MT of H_2SO_4 manufactured which is well within the TNPCB stipulated limit of 2kg/MT of H_2SO_4 manufactured.

The acid mist concentration of SAP-I was 85 mg/Nm_3, which exceeds the TNPCB limit of 50 mg/Nm_3. The acid mist concentration from SAP-II was 42 mg/Nm_3, which is well within the TNPCB limit. In view of the exceeding 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 DG sets, one (6.3 MW) was monitored for particulate matter (PM) emissions. The level of PM was 115 mg/Nm_3 (0.84 gm/kWh) which is within the TNPCB stipulated limit of 150 mg/Nm_3 for thermal power plants of 200 MW and higher capacity (165 mg/Nm_3) 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 SO_2, NO_2 and SPM. The results of

16 (1987) 4 SCC 463

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

analysis at all fugitive emission monitoring sites indicate that the levels of gaseous pollutants SO_2 and NO_2, were below the respective
a 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 SO_2, NO_2 and SPM levels at five monitoring locations. The levels of SPM, SO_2 and NO_2 at all the five sites were far below the TNPCB standards of 120 $\mu g/Nm_3$ for SO_2 as well
b as NO_2 and 500 $\mu g/Nm_3$ for SPM for industrial zone.

Water environment

Surface water samples were collected and analysed 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
c 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
d 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
e 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). The levels of chromium, copper and lead were found to be higher in comparison to the parameters stipulated under drinking water standards (IS:10500-1995),
f other heavy 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
g sites). The physico-chemical characteristics of well water around secured landfill site and gypsum pond showed mineral contents higher than 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
h 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). The 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 analysed 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 groundwater 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 discharged 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.

43. In fact, this Court passed orders on 25-2-2011[17] directing a joint inspection by NEERI (National Environmental Engineering Research Institute) with the officials of the Central Pollution Control Board (for short

17 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 769

"the CPCB") as well as the TNPCB. Accordingly, an inspection was carried out during 6-4-2011 to 8-4-2011 and 19-4-2011 to 22-4-2011 and a report was submitted by NEERI to this Court. On 18-7-2011, this Court directed[18] the Tamil Nadu Government and the TNPCB to submit their comments with reference to the NEERI report. On 25-8-2011, this Court directed[19] 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 30-8-2011 along with the chart of deficiencies and measures to be implemented by the appellants and on 11-10-2011, this Court directed[20] 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[20], the TNPCB issued directions to the appellants and on 17-1-2012, the appellants claimed before the Court that they have removed the deficiencies pointed out by the TNPCB and on 27-8-2012, this Court directed[3] that a joint inspection be carried out by TNPCB and CPCB and completed by 14-9-2012 and a joint report be submitted to this Court.

44. 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 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[1] of the High Court directing closure of the plant of the appellants is liable to be set aside.

45. We may now consider the contention on behalf of the intervenors 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

18 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 772

19 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 13 SCC 773

20 *Sterlite Industries (I) Ltd.* v. *Union of India*, (2011) 10 SCC 254

3 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 27-8-2012 (SC)

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

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 numbers and validity period:

TNPCB proceeding	*Validity up to*
No. T7/TNPCB/F.22276/RL/TTN/W/2007 dated 7-5-2007 No. T7/TNPCB/F.22276/RL/TTN/A/2006 dated 7-5-2007	30-9-2007
No. T7/TNPCB/F.22276/URL/TTN/W/2008 dated 19-1-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2008 dated 19-1-2009	31-3-2009
No. T7/TNPCB/F.22276/URL/TTN/W/2009 dated 14-8-2009 No. T7/TNPCB/F.22276/URL/TTN/A/2009 dated 14-8-2009	31-12-2009

Thereafter, the TNPCB did not renew the consents due to non-compliance with the following conditions:

Under the 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 the 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 handling 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.

46. In *M.C. Mehta* v. *Union of India*[21], a Constitution Bench of this Court held: (SCC pp. 420-21, para 31)

"*31.* … The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is

21 (1987) 1 SCC 395 : 1987 SCC (L&S) 37

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.

47. In the Annual Report 2011 of the appellant Company, at pp. 20 and 21, the performance of its copper project is given. We extract hereinbelow the paragraph titled "Financial Performance":

> "PBDIT for the financial year 2010-2011 was Rs 1043 crores, 40% higher than PBDIT of Rs 744 crores for the financial year 2009-2010. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realisation."

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 nationalised 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.

48. We now come to the submission of Mr Prakash that we should not grant relief to the appellants because of the 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 1-10-2010[2]. 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 a large number of people

2 *Sterlite Industries (I) Ltd.* v. *Union of India*, SLPs (C) Nos. 28116-23 of 2010, order dated 1-10-2010 (SC)

through contractors. A number of ancillary industries are also dependent on the plant. Through its various transactions, the plant generates a huge revenue to the 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.

49. 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 intervenor 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* v. *Union of India*[22], 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 intervenor before this Court not only ventured but also put in their best for the cause of the general public.

50. In the result, the appeals are allowed and the impugned common judgment[1] 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 nationalised 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 utilise 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[1] 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.

51. 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.

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22 (1996) 3 SCC 212

1 *National Trust for Clean Environment* v. *Union of India*, WPs Nos. 15501-503 of 1996, decided on 28-9-2010 (Mad)

(2019) 9 Supreme Court Cases 288

(BEFORE DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.)

GOEL GANGA DEVELOPERS INDIA PRIVATE LIMITED .. Appellant;

Versus

UNION OF INDIA THROUGH SECRETARY, MINISTRY OF ENVIRONMENT AND FORESTS AND OTHERS .. Respondents.

IA No. 64665 of 2019† in Civil Appeal No. 10854 of 2016, decided on September 11, 2019

Environment Law — Development vis-à-vis Ecology: National, Urban and Rural Development — Constructed area which is to be treated as "built-up area" for reckoning environmental impact — Ruling in *Goel Ganga Developers*, (2018) 18 SCC 257, that municipal building laws regarding FSI and FAR are irrelevant for reckoning "built-up area" for environmental impact, held, not only does not in any way violate judgment of three-Judge Bench in *Okhla Bird Sanctuary case*, (2011) 1 SCC 744, but rather furthers the spirit of the law laid down therein — Concern of three-Judge Bench in *Okhla Bird Sanctuary case*, was not to reduce the ambit of "built-up area", but rather to enhance it

— Concern of Bench in *Okhla Bird Sanctuary case* was that not only constructed area which is not open to the sky be treated as "built-up area", but *additionally* that constructed area which *is* open to the sky should in appropriate circumstances be treated as "built-up area" due to its environmental impact, and not as "activity area" — Environment Impact Assessment (EIA) Noti. dt. 14-9-2006 — Item 8(a) Columns (4) & (5) — Interpretation — Thus, held, ruling in *Goel Ganga Developers.*, (2018) 18 SCC 257 that all constructed area, which is covered and not open to sky has to be treated as built-up area and that there is no exception for non-FSI area, and that municipal laws regarding FSI and FAR have no relevance, affirmed — Words and Phrases — "Built-up area" (Paras 2 to 7)

NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re, (2011) 1 SCC 744, *explained* and *followed*

Goel Ganga Developers (India) (P) Ltd. v. *Union of India*, (2018) 18 SCC 257, *affirmed*

IA dismissed SS-D/63084/C

Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Mukul Rohatgi, Ranjit Kumar and Ms Sonia Mathur, Senior Advocates (Venkita Subramoniam T.R., Rahat Bansal, Mehul Gupta, V. Mudgal, Rohit Raj, Shankey Agrawal, Mukesh Verma, Pawan Kr. Shukla, Yash Pal Dhingra, Makarand D. Adkar, Vijay Kumar, Ms Aparna Jha, Nitin Lonkar, Ms Sonali Suryawanshi, Shankey Agrawal, D.L. Chidananda, Ms Suhasini Sen, G.S. Makker, Dr Nishesh Sharma, Ranjan Kr. Chaurasia, Nishant Sharma, Nishant Ramakantrao Katneshwarkar and Aman Verma, Advocates) for the appearing parties.

† Arising from the Judgment and Order in *Tanaji Balasaheb Gambhire* v. *Union of India*, 2016 SCC OnLine NGT 4213 [National Green Tribunal, Application No. 184 of 2015 (WZ), dt. 27-9-2016]

Chronological list of cases cited ***on page(s)***

1. (2018) 18 SCC 257, *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India* 289*e-f*, 290*e*, 291*d-e*
2. (2011) 1 SCC 744, *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re* 289*b*, 290*d*, 290*e*, 290*f*, 291*a-b*, 291*c*, 291*d*, 291*e*

ORDER

1. The only issue involved in this application is whether non-consideration of a judgment delivered by a three-Judge Bench in *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*[1], hereinafter referred to as "*NOIDA Park case*", has led to wrong conclusions by this Court with regard to the interpretation of built-up area in terms of Item 8 of the Schedule of the Environment Impact Assessment (EIA) Notification dated 14-9-2006. The relevant portion of the notification reads as follows:

"(1)	(2)	(3)	(4)	(5)
8		*Building/Construction projects/Area development projects and Townships*		
(*a*)	Building and construction projects		≥20,000 sq m and <1,50,000 sq m of built-up area#	#(built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
(*b*)	Townships and area development projects		Covering an area ≥50 ha and or built-up area ≥1,50,000 sq m ++	++All projects under Item 8(*b*) shall be appraised as Category B-1."

2. While interpreting this clause, one of us (Deepak Gupta, J.) held as follows: (*Goel Ganga Developers case*[2], SCC pp. 270-71, paras 16-17)

"*16*. From a bare perusal of the two hashtags (#) in Columns 4 and 5 of Item 8(*a*), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines "built-up area" to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as "built-up area". There is no exception for non-FSI area.

17. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority

1 (2011) 1 SCC 744
2 *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257

which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble, etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built-up area in terms of the EIA Notification dated 14-9-2006."

3. The contention raised on behalf of the applicant is that since the three-Judge Bench had in para 84 of the judgment in *NOIDA Park case*[1] observed that the EIA Notification dated 14-9-2006 calls for a close second look by the authorities concerned especially in respect of the projects/activities falling within the ambit of Items 8(*a*) and 8(*b*) of the Schedule to the Notification which need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness, the two-Judge Bench which delivered the judgment[2] was bound by this judgment[1] of the three-Judge Bench and could not have held that the Notification dated 14-9-2006 clearly shows that all constructed area which is covered and not open to the sky, has to be treated as built-up area.

4. Though the observations in para 84, at first blush, support the contention of the applicant, one has to appreciate the factual background in which these observations were made. In *NOIDA Park case*[1], this Court was asked to intervene and halt a project in which a huge park was being constructed. As far as Item 8(*a*) of the Schedule to the EIA Notification, 2006 is concerned, the contentions in this regard start from para 38. MoEF took the stand that no environmental clearance was required because the project area was 33.43 ha, which was less than 50 ha and the built-up area was 9542 sq m, which was less than 20,000 sq m.

5. It was contended on behalf of the petitioners and the Amicus Curiae that the project would fall under Section 8(*a*) because though the covered construction of the project was only 6999.50 sq m, the project by its very nature provided facilities open to the sky and the whole of this open area, which

1 *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744
2 *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257

was activity area, should be treated as the built-up area. The park consisted of certain constructed structures like pathways, walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the Amicus Curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built-up area.

6. The main dispute in *NOIDA Park case*[1] was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to the sky i.e. the activity area should also be included in the built-up area and it was this confusion which the Court wanted the Central Government to settle. No party had raised any contention in *NOIDA Park case*[1] about the covered area being built-up area. All the parties were ad idem that covered construction was built-up area and the Court also held so.

7. This Court in this judgment has only held that all covered construction shall be deemed to be built-up area and that the municipal laws regarding floor space index (FSI) or floor area ratio (FAR) have no relevance. This issue did not arise in *NOIDA Park case*[1]. Therefore, in our opinion, the earlier judgment will have no impact on the present case.

8. Reference was also made to the Notification dated 4-4-2011 and the Clarification dated 7-7-2017. These have already been dealt with in the judgment dated 10-8-2018[2] and those were not points of issue in *NOIDA Park case*[1]. Therefore, we find no merit in the application and the same is dismissed accordingly.

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1 *NOIDA Memorial Complex Near Okhla Bird Sanctuary, In re*, (2011) 1 SCC 744
2 *Goel Ganga Developers (India) (P) Ltd.* v. *Union of India*, (2018) 18 SCC 257