POLLUTION BY TANNERIES IN TAMIL NADU CASE ON PRECAUTIONARY PRINCIPLE AND POLLUTER PAYS PRINCIPLE

Vellore Citizen Welfare Forum Vs Union of India & Ors., W.P.(C) No. 914/1991

The Vellore Citizen Welfare Forum filed this Writ Petition as public interest litigation. In this petition, the Welfare Forum alleged that the tanneries and other industries were discharging untreated effluent into the agriculture fields, roadsides, waterways and open lands in the State of Tamil Nadu. The untreated effluent of these tanneries and industries were finally discharged in the river Palar which was the main source of water supply to the residents of the area. The Welfare Forum further alleged that the entire surface and sub-soil water of river Palar was polluted resulting in non-availability of potable water to the residents of the area. Due to the operation of these tanneries in the state of Tamil Nadu environmental degradation was caused. According to the survey conducted by the Tamil Nadu Agricultural University Research Centre, Vellore, nearly 35,000 hectares of agricultural land in the tanneries belt had turned out partially or totally unfit for cultivation. These tanneries used about 170 types of chemicals in the Chrome tanning processes. These chemicals include common salt, lime, sodium sulphuric, chromium sulphate, fat liquor, ammonia and sulphuric acid besides dyes which are used in large quantities. Approximately 35 cubic metre of water is used for processing 1 kg finished leather resulting in dangerously enormous quantity of toxic effluents which were let out in the open by the tanning industries. The effluents have spoiled physico chemical properties of the soil and have contaminated groundwater by percolation.

An independent survey was conducted by Peace Members, Non-Governmental Organization and Peddiar Chatram Anchayat Unions found that 350 wells out of total 467 used for drinking and irrigation purposes were polluted. Women, children were forced to walk miles to get drinking water. On the request of the Legal and Aid Advise Board of Tamil Nadu, two lawyers visited the area and submitted their report indicating the pollution caused by the tanneries. It was reported that the entire Ambur town and the villages situated nearby did not have good drinking water. During rainy days and floods, the chemicals deposited into the river bed were spreading out quickly. The State Government also informed the Court about the 59 villages that were affected by the tanneries. In those villages, there was acute shortage of drinking water. The Tamil Nadu Pollution Control Board also submitted that their Board perusuated for the last 10 years to control the pollution generated by these tanneries. These tanneries were given option by the Board that either to construct common effluent treatment plants (CETPs) for a cluster of industries or to setup individual pollution control devices. The Central Government were earlier agreed to give substantial subsidies for the construction of CEPTs. The Hon'ble Court observed that it was pity that till date most of the tanneries operating in the State of Tamil Nadu did not take any step to control the pollution caused by the discharge of effluent. On the direction of the Hon'ble Court, the National Environmental Engineering Research Institute also submitted the feasibility report for setting up

of CETPs for clusters of tanneries situated at different places in the State. The NEERI, the Tamil Nadu Board and Central Board visited the tanning units and other industries in the Tamil Nadu and submitted their reports.

The Hon'ble Court observed that the leather industry was of vital importance to the country as it generated foreign exchange and provided employment avenues. But, it had no right to destroy the ecology, degrade the environment and cause a health hazard. It could not be permitted to expend or even to continue with the present production unless appropriate action taken by the industry itself. The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" would be the answer. The "Sustainable Development" has been accepted as a viable concept to eradicate poverty and improve the quality of human life. While living within the carrying capacity of the supporting eco-systems. "Sustainable development" means development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. The "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco-system. The *"Precautionary Principle"* and

the *"The Polluter Pays Principle"* were the essential features of "*Sustainable Development* ".

The Hon'ble Court on 28.8.1996 directed the Central Government to constitute an Authority under section 3(3) of the Environment (Protection) Act, 1986 and to confer on the Authority all the powers necessary to deal with the tanneries and other polluting industries in the State of Tamil Nadu. The authority so constituted would invoke the *precautionary principle* and the *polluter pays principle*. The Authority should determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The Authority should direct the closure of the industry owned/managed by a polluter in case he evades or refuses to pay the compensation awarded against him. A fine of Rs.10,000/- each on all the tanneries in the districts of North Arcot, Ambedkar, Erode Periyar, Dindigul Anna, Trichi and Chengai M.G.R. was imposed. The said fine was directed to be paid before 31.10.1996. The Chief Justice of the Madras High Court was requested to constitute a special bench "Green Bench" to further monitor this case.

The Ministry of Environment & Forests, Government of India constituted the Loss of Ecology (Prevention and Payments of Compensation) Authority in the year 1996 and appointed Mr. Justice P.Bhaskaran, as its Chairman. The Authority after detailed studies and deliberations delivered its award on March 12, 2002. Accordingly, 546 tanneries in the District of Vellore to pay a compensation amounting to Rs.26.82 crores to 29,193 families as pollution damages.

The Central Board has also analysed the soil, sludge and water samples concerning this matter. The indepth investigations were taken up and reports were submitted to the Hon'ble Supreme Court for consideration.

Vedanta denied permission for Orissa mine, but court offers escape route

The British mining group Vedanta has been denied permission to mine bauxite for a controversial aluminium project in the ecologically sensitive hills of Kalahandi and Rayagada districts of Orissa, unless it comes up with specific proposals to safeguard the rights of the local people and the ecology

The Supreme Court of India has denied permission to Vedanta Alumina Ltd -- the local unit of the British mining group Vedanta Resources Plc -- and its associate Sterlite Industries India Ltd to mine bauxite for a controversial aluminium refinery in Orissa?s ecologically sensitive Niyamgiri hills. However, it left the door open for Sterlite to operate the mines in collaboration with state agencies, if it comes up with specific proposals to safeguard the interests of the tribals who inhabit the region, and the environment.

The court provided an escape clause for the mining giants by setting up a special purpose vehicle (SPV) in the scheduled areas to ensure that environmental regulations are complied with in the development of the Rs 4,000 crore, 3 million tonne per annum bauxite mine project. Once the requirements of employment of displaced people and tribals and protection of wildlife are taken care of, the companies can re-approach the court for approval of the project.

The bench also gave Sterlite the liberty to move the court within eight weeks if it was ready to go ahead with the project, subject to compliance with certain modalities.

On November 23, a special three-judge bench (popularly known as the forests bench) comprising Chief Justice K G Balakrishnan and Justices Arijit Pasayat and S H Kapadia, delivered its much-awaited judgment denying approval to the proposed bauxite mine near Lanjigarh in Kalahandi district and the Khambasi hills in the adjoining Rayagada district, on the principle of sustainable development.

Adherence to sustainable development is a constitutional requirement. the bench said in its order, which only seeks safeguards by which we are able to protect nature and subserve development. While the country needed to focus on its present development needs, it had to be done without compromising the needs of future generations, the court added.

However it left room for the project by asking Vedanta's Indian unit, Sterlite Industries, to come back with a fresh proposal on safeguarding the rights of local tribal people through a new investment firm.

The court enjoined upon Sterlite to comply with the environmental regulations, citing newspaper reports on a government of Norway decision to sell off all its investments in Vedanta because the company had been responsible for causing environmental damage, violating human rights, and forcibly evicting tribal people.

The court stated that it did not entirely give credence to news reports, but since Vedanta could always walk out of the project and its assets and shareholding status were not clear, it could not be handed over the responsibility. ”We are not against the project in principle” the court said. “Mining is an important revenue-generating industry. However, we cannot allow our national assets to be placed in the hands of companies without a proper mechanism in place and without ascertaining the credibility of the user agency”.

The court said that from the various legal documents it had received from the two firms, Sterlite seemed to be an associate company of Vedanta and not a subsidiary. It also said the new firm Sterlite needed to float would have to make fresh financial commitments to ensure the development of tribal people, and submit an account of its expenses to the court, among other terms.

The court has suggested a rehabilitation package to be followed before the controversial project starts in Kalahandi, one of the poorest districts in the country. The project is to be jointly implemented by Sterlite Industries (India) Limited (SSIL), the Orissa Mining Corporation, and the Orissa state government.

The apex court also listed a number of suggestions made by the state government on the issue. These include soil conservation measures, development of green cover, provision to make diverted forest land non-transferable (the project involves a proposal for the diversion of 58.943 hectares of forest land) among others.

Vedanta wants to dig open-cast mines in the Niyamgiri hills to feed an alumina refinery it has already built in the area, as part of a Rs 4,000 crore (US$ 800 million) project expected initially to produce 1 million tonnes of alumina per year. The refinery at Lanjigarh, which was completed late last year, was predicated on a proposal to mine 720 hectares of the adjacent Niyamgiri hills which is protected land under the Indian Constitution. The state and central

governments both back the mining plan as part of efforts to industrialise and exploit the mineral resources of underdeveloped eastern India.

The decision by India?s highest court to stay Vedanta's proposal is the latest setback in a three-year legal battle to obtain final clearance for the mining part of the project. In 2005, a fact-finding committee appointed by the Supreme Court accused Vedanta of constructing its refinery in blatant violation of Indian planning and environmental guidelines.

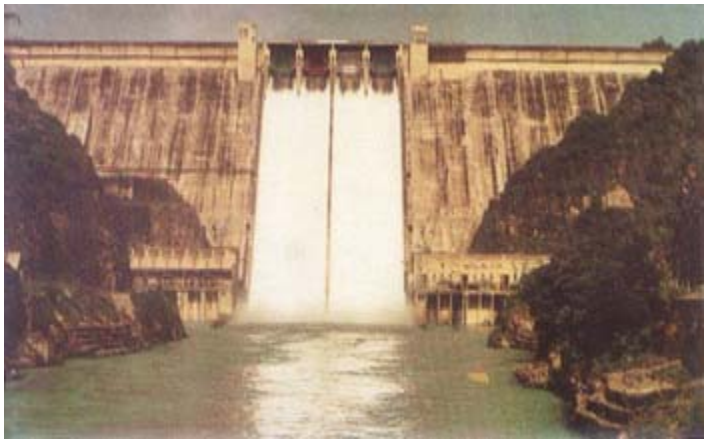
When the company sought permission to start mining in the forest area of 672.018 hectares in the backward Kalahandi district, it evoked high-level protests from environment groups and wildlife enthusiasts who challenged the plan, arguing that it would displace tribal people and destroy the region's flora and fauna.

Thousands of tribal people say the mine will destroy hills they consider sacred, force them from their homes and destroy their livelihoods which are based on farming millet, hunting and collecting fruits and spices from the forests.

The latest verdict has been greeted with cautious optimism by those opposing the project, among them anthropologists and environmentalists. Meanwhile, Vedanta has termed it a minor setback in its three-year battle to get the beleaguered project off the ground.

However, voluntary groups that supported the campaign remain cautious. "We are very apprehensive of this 'special purpose vehicle'," says Babu Mathew, country director of Action Aid India. "There have been too many such arrangements that have failed in the past".

Bhakra dam case



In the last two decades, a variety of petitions filed before the Supreme Court over illegalities concerning large dam and irrigation projects have all had a common result. Project proponents have gotten the judicial go-ahead. What is the point of overcrowding laws with more 'enabling' provisions then, asks

The India International Centre is the hub of Delhi's intelligentsia. On 18 April, I went there to listen to the findings of a study assessing the 'Temple of Resurgent India'- the Bhakra Dam. Through an extensively researched work, the principal author Shripad Dharmadhikary gave enough pointers to suggest that the legend of Bhakra has critical caveats and, as he said, the Bhakra's imagery of larger than life is exactly that - an image and one that is larger than life. For instance the study suggests that the Bhakra project's contribution to irrigation is severely limited – with unsustainable groundwater extraction being the real source of irrigation - and its contribution to food security has been overemphasized, perhaps to convert a story into a legend. The study concludes that the Bhakra dam and project is "a most ordinary project, an ordinary dam much like any other large dam – with all its flaws and blemishes".

The details in the report are meticulous, the arguments convincing and the sheer effort inspiring. But as I came out of the meeting the big question to me for the dedicated team was: Where do you go from here? And who's listening?

Even as I was coming out, the auditorium next door was abuzz with the sound of Arun Jaitly who was speaking on how the Judiciary in recent times might have crossed the invisible *lakshman rekha* and encroached on the powers of the other organs of the government. Getting in I could see the decisiveness in his tone as he said: the Supreme Court despite being fallible is final. His words immediately after what I had heard about Bhakra provoked me to think how the Apex Court has responded with the final word in a world dominated by conflicting perceptions, opinions and worldviews has responded to large dam projects.

The final words of the Court in such cases over the last two decades have a familiar ring to them. There have been petitions filed before the Apex court in different contexts and diverse grounds challenging aspects of violation of laws, but almost inevitably, they all have had a common result. Project proponents have gotten a judicial go-ahead. Even the reasons given by justices from their rulings have predictably following a pattern - that petitioners raise technical issues, those are typically policy matters and thus beyond judicial expertise and review. In fact, close examination of the cases will find this pattern in both in the apex court's operative decisions and in the reasons supporting the decisions, despite the petitions themselves being made on a variety of different grounds.

The high water mark in the line of cases was the 2000 judgment on Sardar Sarovar where despite the efficacy of dams per se being not a technical issue before the Court, the judgment put a number of strong words together extolling the virtues of large dams. That judgment was close on the heels of another verdict where the court has made it clear in the context of water pollution issues that they alone have the prerogative to draw the lakshman rekha as in its own words, 'These issues are too important to be left to the officers drawn from the

Executive'. The fact that judicial aggression on environment may be out of sync with judicial deference on large projects hardly seems to matter. Because in ringing words, Jaitly says that the Supreme Court despite being fallible, definitely has the final word.

Coming out of the two meetings further questions linger in my mind. If the study like the one on the Bhakra dam has to make sense at least for the future projects, could law and policy reform be thought of as a way ahead? If there have been concerns on lack of efforts for alternatives at the time of project conceptualisation, non involvement of the people in decision making, inadequate environmental assessments and rehabilitation efforts, could specific amendments be suggested in the legal framework to enforce these aspects?

Yes, that is one way ahead and indeed, generally speaking, over the last fifteen years there have been some addition/amendments in law in the right direction. However, some of my recent visits to the command areas of two of the biggest irrigation projects in independent India - the Indira Gandhi Nahar Pariyojana (IGNP) in Rajasthan and the Sharda Shayak Pariyojana in UP - has taught me one common lesson: there are institutional structures with definitive legal mandate that have acquired a promising look on paper, but they have delivered little on the ground.

For example, both the projects had created frameworks backed by law for institutionalizing farmers' participation in irrigation management and involvement of the gram sabha and gram panchayats at the village levels and above, but most for whom the law was meant are totally oblivious of it. The story of how India's environmental impact assessment process is managed by the project proponents has been so told so often and repeatedly that it is now obvious to many that the EIA notification in the gazette papers and the way it is carried out on the ground are two entirely different things.

That being the case I wonder again what is the point of overcrowding laws with more 'enabling' provisions that almost never seem to have an enabling effect? Should I not internalize the limits of law and ignore its potential reach? With questions galore, only fatigue envelops my mind and I conclude, almost in defeat that let those who are affected raise their own voices. They have to reach out to the law, perhaps the law will never reach them

Rights groups to fight court order on Blue Lady

More than a year after it docked at Alang, the fate of the liner *Blue Lady* still hangs in the balance despite a recent Supreme Court order allowing it to be scrapped. Activists are challenging the judgment that, they say, has shown “a disregard for international law and even India’s own laws” while defending the interests of the shipbreaking industry

A global coalition of environmental, labour and human rights organisations plans to file a review petition in the Supreme Court of India challenging the apex court's decision to allow the dismantling of the controversial Norwegian cruiseliner *Blue Lady* , alleged to be carrying tonnes of radioactive and other hazardous waste, at Gujarat's Alang shipyard. The coalition also plans to challenge the court's decision at global forums.

The Platform on Shipbreaking condemned the Supreme Court's September 12 decision, saying it had been taken to safeguard the interests of India's dying shipbreaking industry. "After the EU's correct legal judgment to have the Clemenceau returned in compliance with the international Basel Convention, the industry and their cronies in government were desperate to show that India's gasping and internationally condemned shipbreaking industry is still alive and kicking. The *Blue Lady* was illegally beached and will now be illegally broken to achieve this objective," said Gopal Krishna, Indian representative of the coalition, reacting to the judgment.

The coalition termed the judgment illegal as it flouts national and international laws and conventions. It said the decision went against the court's own strict order on shipbreaking -- passed just days earlier, on September 6 -- banning all ships carrying hazardous waste material from entering Indian shores to be scrapped. In fact, according to a directive by a Supreme Court-appointed committee, shipping of radioactive material is a clear case of dumping hazardous waste in India.

"The *Blue Lady* ruling yesterday makes a mockery of the Indian judicial system and shows it has no respect for its own rulings and international law, but likewise has officially condemned the shipbreaking workers to death by accident or from occupational disease such as asbestosis and cancer," said Ingvild Jenssen, Platform coordinator.

The Platform on Shipbreaking says that since June 2006, even before the *Blue Lady* was beached, it had provided indisputable evidence to the Supreme Court that the ship contained large amounts of hazardous material that could not be dealt with in a safe and environmentally sound manner, at Alang.

Platform says it has made the court fully aware that India lacked the capacity to properly destroy the waste in accordance with the UN's Stockholm Convention. But, the "court has consistently chosen to ignore Platform's submissions in the SS *Blue Lady* case; they have also paid no attention to the concerns of 30,000 villagers living in the surrounding areas of the Alang yards," Jenssen said.

The coalition notified the court that allowing the dismantling of the ship was in breach of India's own laws and commitments to international labour rights and environmental conventions.

Despite this, the vessel was allowed to dock at Alang on August 15, 2006, and will now be dismantled there at the inevitable cost of workers' lives and environmental contamination, says Platform. "This ruling sends an unmistakable signal that India does not care about the welfare of its poorest, most desperate workers," Jenssen added.

In its controversial order, a two-judge Supreme Court bench allowed the dismantling of the controversial vessel, observing that the process had become "irreversible" after its "illegal" beaching at Alang in August 2006. The court, however, asked the government and other concerned authorities to take appropriate precautionary measures before going ahead with the dismantling of the vessel.

The court said it considered the dearth of employment opportunities and scarcity of steel in India as factors in allowing the *Blue Lady* to be dismantled in Alang, Asia's largest ship recycling yard that has been ailing in recent years. "Nearly 700 workers will be employed in the project. Further, 41,000 MT (metric tonnes) of steel will be made available. This will lower the pressure on mining activity elsewhere," said Justices Arijit Pasayat and S H Kapadia while disposing of a public interest litigation filed by the Research Foundation for Science Technology and Natural Resource Policy.

The judges stressed proportionality in development and said: "When we apply the principle of sustainable development we need to keep in mind the concept of development on the one hand and concepts like generation of revenue, employment and public interest on the other." The fact that sustainable development is overwhelmingly in the public interest and that the two are not mutually exclusive appears to have escaped the judges.

SC denies more compensation for Bhopal gas tragedy survivors

A bench comprising Justices C K Thakker and H S Bedi dismissed an application filed by the Bhopal Gas Peedit Mahila Udyog Sangathan that victims of the Bhopal gas tragedy be given greater compensation

“It would have been better if we too had died that day,” declared a survivor of the Bhopal gas tragedy after the Supreme Court, on May 4, 2007, dismissed a petition by survivors demanding greater compensation. Twenty-two years on, Bhopal’s survivors are still battling the effects of the toxic gas that spewed out of the Union Carbide plant in the city on the nights of December 2 and 3, 1984.

A bench comprising Justices C K Thakker and H S Bedi dismissed the application filed by the Bhopal Gas Peedit Mahila Udyog Sangathan (BGPMUS) holding that the 1989 settlement between the US-based Union Carbide Corporation (UCC) and the central government had been arrived at with the intervention of a five-judge constitutional bench headed by then Chief Justice of India (CJI) R S Pathak, and that a two-judge bench could not re-open and review the judgment of a larger bench.

Justice Pathak, who headed the bench that arrived at the settlement, was later elevated as judge to the International Court of Justice.
Over 3,000 residents of Bhopal were killed when toxic methyl isocyanate (MIC) gas leaked from Union Carbide’s pesticide plant in Bhopal. Thousands more were seriously affected and hundreds of people became disabled for life.

The total amount of compensation awarded, the petitioner argued, was meagre compared to the scale of the tragedy and loss of life and harm inflicted. The petitioner contended that the compensation amount be enhanced considerably to do justice to the victims, most of whom belong to weaker sections of society.

The court, however, did not agree and said that the gap of 18 years since the settlement and the date of filing this application could not be lost sight of.

The BGPMUS claims that the number of people killed in the disaster is four times greater than the number originally arrived at and so more compensation in the same ratio should be given to the victims. “The court has not given the reasons behind rejecting our plea,” says Abdul Jabbar, convenor of the BGPMUS.

The compensation of $ 478 million paid by the Union Carbide Corporation was for 102,000 people injured, while the number of people dead was put at 3,000. However, the Gas Claims Court disbursed compensation to 572,000 injured, and for 15,272 deaths. “This in itself means that the number of injured and those who died is almost four times that initially believed,” Jabbar says, adding that the central government should have paid the amount according to earlier orders of the Supreme Court.

Shobha Soni, aged 60, said that although she lost two children she received only Rs 120,000 as compensation. She was given a meagre Rs 20,000 for her own treatment, an amount that has long been spent.

Champalal Gupta was an operator at Union Carbide’s pesticide plant from where the gas leaked. Till date he has received only Rs 25,000 for the drastic toll the gas has taken on his health. His dues from Union Carbide too are yet to be cleared; he has been fighting a case against his former employers in the Jabalpur High Court for years.

Justices Thakker and Bedi, while dismissing the petition for enhanced compensation, ruled, however, that an individual victim could approach the claims tribunal in case he/she had been denied proper compensation.

Meanwhile, other organisations like the Bhopal Gas Peedit Mahila Stationery Karmachari Sangh (BGPMSKS), Bhopal Gas Peedit Mahila Purush Sangharsh Morcha (BGPMPSM), Bhopal Group for Information and Action (BGIA), and Bhopal Ki Aawaaz (BKA) refused to comment saying that they still had to study the verdict.