

W.M.P.(MD)No.10257 of 2018

in

W.P. (MD) No.11220 of 2018

Reserved on : 17.05.2018

Pronounced on : 23.05.2018

M. SUNDAR, J.

&

DR. ANITA SUMANTH, J.

(Order of the Court was delivered by DR. ANITA SUMANTH, J.)

This interim order is passed in a Writ Petition filed in Public Interest challenging Environmental Clearance dated 01.01.2009 obtained by the 4th respondent in respect of Unit II of a Copper Smelter Plant located at Tuticorin and subsequently extended on 23.07.2015 and 02.03.2016.

2. The Writ Petitioner is one Ms.Fatima, a Senior Citizen, retired as an Associate Professor of English and a resident of Tuticorin.

3. The matter was mentioned before the vacation Bench on 16.5.2018 requesting listing for urgent hearing. The urgency for listing and hearing the Writ Petitioner on interim prayer was stated to be the response received by the writ petitioner to queries raised on 13.04.2018 under the Right to Information

Act. The information sought has been furnished under cover of letter dated

30.04.2018 by the Public Information Officer. The information contains 600 pages of documents including notices to show cause (in short 'SCN') issued by the Tamil Nadu Pollution Control Board (in short 'TNPCB') to the State Industries Promotion Corporation of Tamil Nadu (in short 'SIPCOT'). TNPCB has been arrayed as third respondent (R3) and SIPCOT has been arrayed as fifth respondent (R5) respectively in this writ petition.

4. The correspondence reveals, according to the petitioner, new and hitherto unknown information about environmental clearance dated 01.01.2009 (in short 'EC') upon the strength of which the 4th respondent, Vedanta Limited (formerly Sterlite Industries Limited) (in short 'Vedanta'), is presently carrying on construction activities on the site for the proposed Copper Smelter Unit II at SIPCOT, Tuticorin.

5. The clearance has, according to the petitioner, been obtained by Vedanta, without the conduct of a public hearing and the requirement for such hearing had been waived on the incorrect representation of Vedanta that Unit II was to be located in Phase II of SIPCOT Industrial Park that had itself been granted approval. Thus, the urgency and the timing of the present writ petition.

6. Since the information in question has been received by the petitioner only on 30.05.2018, clearly the petitioner could not have approached the Court during the regular sitting. In this view of the matter, we permitted listing of the

7. The array of parties and the learned counsel representing them before us are, Ms.B.Poongkhulali for the Writ Petitioner (henceforth referred to as 'petitioner'), Mr.K.Prabhu, who represented that he will be counsel on record for Mr.V.Kathirvelu, ASGI for R1 the Ministry of Environment and Forests (henceforth and in short 'MoEF'), Ms.J.Padmavathi Devi, Spl. Govt. Pleader for The Secretary to Government, Government of Tamilnadu, Environment Department (henceforth and in short 'R2'), Mr.Raghuvaran Gopalan, who submitted that he is representing Mr.R.Parthasarathi for R4 Vedanta and Mr.N.Adithya Vijayalayan for R5 SIPCOT. R3, TNPCB is unrepresented.

8. Aforesaid counsel for respondents appeared before us voluntarily (though the writ petition came up for admission), accepted notice on behalf of the respective respondents and collected copies of writ petition, writ miscellaneous petitions, affidavits in support of the same and annexures in the form of typed set of papers filed by the petitioner in support of the writ petition.

9. Though learned counsel appearing for MoEF (R1), R2 and SIPCOT (R5) merely accepted notice on behalf of their respective clients and sought time to obtain instructions, Mr.Raghuvaran Gopalan, learned counsel appearing for Vedanta (R4), not only accepted notice, but was well equipped with all the facts and information required to make detailed submissions and proceeded to do so in depth.

10. It is in the aforesaid circumstances that the hearing proceeded culminating in the present interim order.

11. At the commencement of the hearing, it was noted by us that the Principal Bench of this Court, in its order dated 28.4.2016 in W.P.No.5691 of 2010 and W.P. (MD) No.13810 of 2009 had dealt with a challenge to the same subject matter, i.e., Copper Smelter Plant, unit II, wherein the prayer was as follows:

Writ Petition filed seeking for the relief of issuance of Writ of Declaration declaring the notification of the 1st respondent dated 1.1.2009 as illegal and against the provisions of EIA Notifications dated 14.09.2006 and the provisions of the Environmental Protection Act, 1986 and consequentially directing the 1st respondent to conduct public hearing for the proposed expansion project of the 4th respondent and thereby considering the objections by constituting a assessment Committee comprising eminent environmentalist and activists.

12. This Court proceeded to pass final orders dismissing the writ petition and holding as follows:

The petitioner has filed a comprehensive writ petition earlier in W.P.(MD) No.13810 of 2009 challenging the notification dated 1.1.2009 issued by the 1st respondent in favour of the 4th respondent therein. We have considered the contentions raised on merit and dismissed the said writ petition. Therefore, in fact, nothing survives for adjudication in this writ petition. Even otherwise on merit, we do not find any error as the notification under challenge does give ample power to respondent No.1 to pass it. The petitioner has not shown any apparent injury caused by the impugned

notification and the present situation is also not placed before us. We thus dismiss this writ petition. No costs. '

13. In ordering as above, the Bench, according to the petitioner, based its findings on the fact that EC dated 01.01.2009 was valid. Since the case of the petitioner before us is that the EC was in itself invalid and the order of this Court dated 28.04.16 had been obtained suppressing critical and vital materials, we were of the view that a petition for review could well be filed before the earlier Bench that heard the matter. Both the petitioner as well as Vedanta have been heard in this regard and we will revert to this issue presently and after setting out their submissions in brief.

14. The brief submissions of Ms.B.Poongkhulali for the petitioner are to the following effect:

(i) Vedanta is engaged in the activity of managing and operating a Copper Smelter Plant and has been operating Unit I in Tuticorin since 1995. Its operations have met with severe public resistance from inception.

(ii) In 2008 Vedanta proposed expansion of its Copper Smelter Plant by putting up Unit II thereof, and obtained Environmental Clearance in this regard on 1.1.2009.

(iii) The activity carried on by Metallurgical Industries (ferrous and non ferrous) such as Vedanta has consistently been classified as one that calls for prior Environmental Clearance. The Environmental Impact Assessment (in short 'EIA') notification 1994 dated 27.01.1994 contains a schedule to this effect. So does Notification in SO 1533 dated 14.09.2006 wherein the schedule continues to categorise a metallurgical industry as one requiring prior Environmental Clearance. An exception is made for the conduct of a public hearing prior to issuance of an EC if the project is located within an industrial estate or park that has itself been granted approval. Office Memoranda dated 16.5.2014 and 10.10.2014 were issued to clarify the aforesaid position and leave no vestige of doubt that the schedule industries were to seek and obtain a prior Environmental Clearance and the exemption from public consultation was solely in cases where the project was located within the confines of an industrial park which itself had received Environmental Clearance. It is thus clear that the requirement of prior Environmental Clearance is non negotiable except in the limited scenario where the larger industrial park where the project is located has been cleared/approved in this respect.

(iv) Phase I of SIPCOT is stated to cover 1083 hectares and Phase II is stated to be proposed to cover a total of 1616 hectares of which it is proposed that Unit II of Vedanta will occupy 300 hectares (approx.).

(v) An EC was granted to Vedanta dispensing with the requirement of mandatory public hearing as set out in terms of clause 7(c) of Environmental Impact Notification dated 14.09.2006 based on its representation that the proposed unit was to be located inside a notified area of the SIPCOT Industrial park.

Clause 7(c) reads as follows:

Notification , New Delhi dated 14th September, 2006,

S.O.153

7. Stages in the Prior Environmental clearance (EC) Process for New Projects:-

I Stage (1) – Screening

.....

II Stage (2) - Scoping

.....

III. Stage (3) – Public Consultation:

(i) “Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate. All Category ‘A’ and Category B 1 projects or activities shall undertake Public Consultation, except the following:-

(a) modernization of irrigation projects (item 1(c)(ii) of the Schedule)

(b) all projects or activities located within industrial estates or parks (item 7(c) of the Schedule) approved by the concerned authorities, and which are not disallowed in such approvals.

(c) expansion of Roads and Highways (item 7(f) of the Schedule) which do not involve any further acquisition of land

(d) all Building/Construction projects/Area Development projects and Townships (item 8).

(e) all category 'B2' projects and activities.

(f) all projects or activities concerning national defence and security or involving other strategic considerations as determined by the Central Government.

(vi) It has transpired, according to the petitioner that Phase II of SIPCOT Industrial Park in which Unit II is proposed to be located has not received approval till date.

(vii) The survey numbers of the lands upon which construction activities in regard to Unit II are on-going are located in Phase II of the SIPCOT Industrial Park that is yet to receive approval. All the survey numbers of the lands in which the proposed Copper Smelter Plant Unit II is to be located form part of the Survey Numbers of the lands of SIPCOT-TIP , phase II such as S.Nos.45/2A, 45/2B and 45/3 in S.No.45, S.Nos.46/1, 46/2, 46/3, 46/4, 46/6 and 46/7 in S.No.46, S.No.66/1, 66/3 and 66/4 in S.Nos.66, 67/1, 67/3, 67/4, 67/6 and 67/8 in S.No.67, S.Nos.68/1, 68/3 68/4 in S.No.68, S.Nos.69/2, 69/4, 69/5, 69/1A, 69/1B in S.No.69, S.No.285/Part in S.No.285, S.No. 286/part in S.No.296, 288/part in S.No. 288, S.No.289 part in S.No.289, 290/1, 290/2, 290/3, 290/4 in S.No.290, 293/1A, 293/1B 294/1 in S.No.293, Sno.294/1 in

S.No.294, S.Nos.294/2, 294/6, 294/3A, 294/3B, 294/4A, 294/4B, 294/4C in S.No.294, S.No.295 in S.No.295, S.No.297/1 in S.No.297, S.Nos.297/2, 297/3, 297/5, 297/6, 297/7, in S.No.297, S.Nos.298/1, 298/3 in S.No.298, S.Nos.299/1, 299/2, 299/4, 299/5, in S.No.299, S.No.301/2 in S.No.301, S.No.302/1, 302/2, 302/3, 302/4, 302/5, 302/6 in S.No.302, s.No.303 in S.No.303, S.No.304 in S.No.304, S.No.305 in S.No.305, S.No.306/1 in S.No.306, S.No.306/3, 306/4, 306/6, 306/6 in S.No.306, S.No.318/2 in S.No.318, S.Nos.318/2, 318/3 in S.No.318, S.No.319 in S.No.319, S.Nos.320/1, 320/2, 320/3 in S.No.320, S.Nos.322/1, 322/3A, 322/3B, 322/3C in S.No.322, Sno.324/1A part, 324/1A part, 324/1A part, 324/1B1, 324/1B2, 324/2A, 324/2B in S.No.324, S.No.325 in S.No.325, S.No.326/2 part, 326/2 part, 326/3 part, 326/3 part in S.No.326, S.No.328/1, 328/2A, 328/2B, 328/2C in S.No.328, S.No.330/1, S.No.330/2A, 330/2B in S.No.330, S.Nos.331/1, 331/2, in S.No.331, S.No.332/1 in S.No.332, S.No.s.332/2A, 332/2B in S.No.332, S.No.333/1 and 333/2 in S.No.333, S.No.334 in S.No.334, S.Nos.335/1, 335/2 in S.No.335, S.No.336 in 336 S.No.337 in 337, S.No.338/1 in 338, S.No.338/3A, 338/3B in S.No.338,

S.No.340/1, 340/2, 340/3, 340/4, 340/6, 340/7, 340/8, in S.No.340, S.Nos.341/1, 341/3 in S.No.341.

(viii) Thus the grant of the EC when Phase II of SIPCOT is yet to be

dated 27.01.2006, 14.09.2006 and Office Memoranda dated 16.05.2014, 10.12.2014, 04.04.2016 and 27.04.18.

(ix) Vedanta has, in its application for grant of EC stated that the location of the project was in a notified area as per which no public hearing was necessary and this statement, according to the petitioner, is incorrect, to its knowledge.

(x) To this end the petitioner has placed on record SCN dated 02.04.18 to SIPCOT from the TNPCB and reply of SIPCOT thereto.

ஒப்புதலுடன் கூடிய பதிவுத்தபாலில்

மாவட்ட சுற்றுச்சூழல் பொறியாளர் அலுவலகம்
தமிழ்நாடு மாசு கட்டுப்பாடு வாரியம்,
தூத்துக்குடி.

ந.க.எண். மாசுதபொ/தநாமாகவா/தூத்துக்குடி/காற்று/2018
நாள் 02.04.2018

பொருள் 1981 ஆம் ஆண்டு காற்று (மாசு தடுப்பு மற்றும் கட்டுப்பாடு)சட்டத்தின் வரைமுறைகள் மீறுகைக்காக விளக்கம் கோரல் - தி/ள். சிப்காட் தொழிற் பூ்கா-கட்டம் II (phase II), சிப்காடதெரிழற்சாலை வளாகம், தூத்துக்குடி மாவட்டம் - முகாந்திரம் கோரல் - தொடர்பாக.

1988 ஆம் ஆண்டு திருத்தப்பட்ட 1981 ஆம் ஆண்டு காற்று (மாசு தடுப்பு மற்றும் கட்டுப்பாடு) சட்டத்தின்படி தமிழ்நாடு மாசு கட்டுப்பாடு வாரியத்தால் இந்த விளக்கம் கேட்கப்படுகிறது. (சட்டம் என இதற்குப்பின் இதில் குறிப்பிடப்படும்) மேற்சொன்ன சட்டத்தின் 21 ஆம் பிரிவின்படி துகளது நிறுவனமான தி/ள் சிப்காட் தொழிற் பூ்கா-கட்டம் II (phase II), சிப்காட் தெரிழற்சாலை வளாகம், தூத்துக்குடி மாவட்டம் தமிழ்நாடு மாசு கட்டுப்பாடு வாரியத்தின் உரிய இசைவாணை இன்றி செயல்பட்டு வருகிறது.

ஆகவே தாங்கள் மேற்படி சட்டத்தின் 21 ஆம் பிரிவின் வரைமுறைகளை மீறியுள்ளீர்கள். எனவே, மேற்படி குற்றத்தினை உங்களது நிறுவனம் புரிந்துள்ளது. அந்தச் செய்கையானது மேற்படி சட்டத்தின் 21 ஆம் பிரிவு மற்றும் 37 பிரிவின்படி தண்டனைக்குரிய குற்றமாகும். இந்த குற்றமானது ஓர் ஆண்டு மற்றும் ஆறு மாதங்களுக்குக் குறைவுபடலாகாது ஆனால் ஆறு ஆண்டுகள் வரை நீட்டிக்கலாகும் கால அளவிற்கு சிறைத்தண்டனையும் மற்றும் அபராதமும் விதித்துத் தண்டிக்கப்படத் தக்கதாகும்.

மேற்படி சட்டத்தின் 21 ஆம் மற்றும் 31 (அ) பிரிவுகளின்படி தண்டிக்கப்படத்தக்க குற்றங்களுக்காக நீதித்துறை நடுவர் மன்றத்தில் ஏன் உங்கள் நிறுவனத்தின் மீது குற்றவியல் வழக்குத் தொடரக்கூடாது என்பதற்கும் மற்றும் உங்கள் நிறுவனத்தை மேற்சொன்ன சட்டத்தின் 33(அ) பிரிவின்படி முடுவதற்கும், மின்சாரம் வழங்குதல் மற்றும் நீர் வழங்குதலை நிறுத்தவும் ஏன் ஆணை பிறப்பிக்கக்கூடாது என்பதற்கும் இந்த அறிவிப்பு கிடைத்த 15 நாட்களுக்குள் காரணம் காட்ட வேண்டும் என்று உத்தரவிடப்படுகிறது.

மேற்குறிப்பிடப்பட்டுள்ள கால அளவுக்குள் பதில் எதுவும் பெறப்படாவிட்டால் தங்கள் தரப்பில் திருப்தி அளிக்கும் விளக்கம் ஏதுமில்லை எனக்கருதி நடவடிக்கை மேற்கொள்ளப்படும் என தெரிவிக்கப்படுகிறது.

இந்த நடவடிக்கை முகாந்திரம் கிடைக்கப் பெற்றமைக்கான ஒப்புதலை அளிக்குமாறு கேட்டுக்கொள்ளப்படுகிறீர்கள்.

மாவட்ட சுற்றுச்சூழல் பொறியாளர்

தமிழ்நாட மாசு கட்டுப்பாடு வாரியம்,

தூத்துக்குடி.

பெறுநர்

திட்ட அலுவலர்,

சிப்காட் தொழிற் பூக்கா-கட்டம் II (phase II),

சிப்காட் அலுவலகம், சிப்காட் தொழிற்சாலை வளாகம்,

மீளவிட்டான், தூத்துக்குடி வட்டம்,

தூத்துக்குடி மாவட்டம் 628 008,

அனுப்பப்பட்டது

(xi) The response of SIPCOT is revealing and is extracted below:

‘State Industries Promotion Corporation of Tamil Nadu Limited

(A GOVERNMENT OF TAMILNADU UNDERTAKING)

PROJECT OFFICE:

SIPCOT INDUSTRIAL COMPLEX,

Meelavittan Village, Madathur Post, Tuticorin 628 008

***Phone: 0461 – 2340082 Telefax: 0461 -23480083 CIN U7
4999TN1971SGC005967***

E- mail ID : sipcottt@gmail.com Website: www.sipcot.com

Regd.Post with acknowledgment due.

Ref.No.: PO/TUT/ELA/2018 dt. 6.4.2018

The District Environmental Engineer,

Tamilnadu Pollution Control Board,

Thoothukudi.

Sir,

Sub: SIPCOT – SIPCOT Industrial park, Thoothukudi (Phase-II)

Thoothukudi District – obtaining Environmental Clearance

From MoEF & CC, New Delhi – Show Cause Notice issued by

TNPCB under Water Act 1981 – Reply Sent – Reg.

***Ref: 1. ToR Lr.No.F.No.21-182/2014 –IA.III, dt.19.3.2015 from MoEF & CC,
New Delhi.***

2. Amendment ToR Lr.No.F.No.21-182/2014-IA.III, dt:

23.5.2016 from MOEF & CC , New Delhi.

3. Lr.No._மாசுசுபொ/தநாமாகவா/தூத்துக்குடி/நீர்/2018

நாள் 20/4/2018 from DEE, TNPCB, Thoothukudi.

With reference to your Notice 3rd cited, we are to inform that the area of the Phase – II of the SIPCOT Industrial Park is 654.42 Ha and Prospective industries identified for the park are like Cement Grinding, Petroleum Refining and Metallurgical Industries etc., As per EIA Notification 2006 and amendments thereof, the proposed Park comes under Category 7(C) of the list of projects or activities requiring prior Environment Clearance (EC). Accordingly, SIPCOT had applied to Ministry of Environment, Forest & Climate Change (MoEF & CC), New Delhi on 27.10.2014 and obtained on Terms of Reference (ToR) vide cited under reference 1. Further the ToR was amended vide reference 2nd cited in order to include certain prospective industries.

The EIA Report in line with the ToR has been submitted to the District Environment Engineer, Thoothukudi for the Conduct of Public Hearing, Public Hearing was conducted on 25.1.2018. Therefore, the process to get Environmental Clearance is underway. As alleged in the notice, no activity is carried out by SIPCOT in the said property.

It is pertinent to note that EC being issued vide EIA Notification 2006 stipulates that after getting EC from MoEF & CC, Consent to establish (CTE) has to be obtained. And further, as per “Ready Reckoner for Entrepreneurs” issued by TNPCB under chapter 6 - Procedure for obtaining consent, it is clearly mentioned that TNPCB will issue consent to establish (CTE) to the Project which attracts EIA Notifications 2006, only on receipt of Environment Clearance from MoEF & CC/SEIAA.

Accordingly, SIPCOT will apply to TNPCB for getting CTE under Air and Water Act 1981 after obtaining EC from MoEF & CC.

Hence, there is no violation as stated in your notice dated 2.4.2018 and further action may be dropped.

Yours faithfully,

PROJECT OFFICER,

SIPCOT, TUTICORIN

(Emphasis by underlining, ours)

(xi) The Environmental Clearance, as extended on 02.03.2016 and presently in force, is valid till 31.12.2018;

(xii) Vedanta has filed an application before the MoEF in Form I in January 2018 seeking renewal of Environmental Clearance for unit II of the Copper Smelter Plant, along with required annexures

(xiii) Public hearings are on-going as part of the process for grant of approval for Phase II of the SIPCOT Industrial Park

15. In the light of the aforesaid, the petitioner prays for the issuance of a writ of Certiorarified Mandamus calling for the records of the 1st respondent in respect of the environmental clearance dated 01.01.2009 granted to the 4th respondent's Copper Smelter Plant-II and subsequently extended on 23.07.2015 and 02.03.2016 and quash the same as illegal and against the provisions of the Environmental Protection Act, 1986 and consequently impose exemplary costs

16. Mr.Raghuvaran Gopalan appearing for Vedanta refutes emphatically in full the allegations in regard to the suppression of facts and the environmental sustainability of the proposed plant itself.

17. He also reiterates the initial and preliminary issue raised by the Bench regarding the maintainability of the present petition seeing as a Review could well be filed by the petitioner as against order 28.4.2016. He would urge that this was the preferable option seeing as there is no allegation in the present Writ Petition of there being any suppression of information by Vedanta in the earlier round of proceedings, the earlier writ petitions not having been filed at the instance of Vedanta, and as such there would not be any difficulty for maintaining a review before the Court.

18. He would also point out that, in any event, Notification dated 4.4.2016 would only operate prospectively and thus, even if the same had been noticed or taken into account by the previous Bench, the conclusion might not have been any different.

19. Be that as it may, we are, at the moment, concerned with formulating only an interim arrangement, to balance and address the immediate concerns of the parties. We are conscious of the fact that the EC is in itself valid only for another seven (7) months and postponing the consideration of the interim relief sought might render the writ petition infructuous. We are guided

we believe, is a very fair statement. He confirms that, in any event, the consideration of Vedanta's application for renewal of EC post 31.12.2018 i.e, w.e.f. 1.1.2019, would have to include a public hearing in the light of Office Memorandum dated 4.04.2016. He thus states unequivocally, that Vedanta fully intends to subject itself to a public hearing in the light of MoEF Office Memorandum dated 4.4.2016.

20. The solution in respect of the interim arrangement before us, all other matters kept aside for hearing after completion of pleadings on all issues, is thus, imminent in the light of the admitted position as per MoEF Office Memorandum dated 4.4.2016 extracted in full below:

Office Memorandum

Subject: Exemption from Public Consultation for the projects/activities located within the Industrial Estate/Parks-reg.

In Original Application (O.A.)No.157 (THC)/2013 (Society for Environmental Protection Vs. Union of India & Ors.) before Hon'ble National Green Tribunal (Western Zone), Pune, in its order dated 14th March 2016 has ordered that "...We have seen from the provisions of Environment Clearance Regulations, 2006, the Schedule appended to the rules enumerates several projects and activities which require prior clearance and there is a tabular form showing the size of the industry and the threat or damage it is likely to cause to the environment. Therefore, we do not find there should be any difficulty in modifying or superseding O.M. Dated 10th December, 2014 because all that MoEF&CC is required to do is to specify which of the Industries depending upon the nature of industrial activity require prior permission etc, such of the unit which could be exempted....".

2. The concept of Public Hearing was introduced for the first time in the Environment Impact Assessment vide Notification S.O. 60

(E) dated 27.01.1994 and subsequently formalized vide Notification S.O.318 (E) dated 10.04.1997 making amendment in the Environment impact Assessment Notification, 1994. Whereas, the Industrial estates were added in the Schedule to the EIA Notification mandating the requirement of environmental clearance vide notification S.O. 801 (E) dated 7.07.2004. In between, the above two notifications, another notification no.S.O.737 (E) dated 1st August, 2001 introducing the concept of exemption from public hearing for certain category of projects and activities in the process of environmental clearance was published. The said notification reads as “However, Public Hearing is not required in respect of (i) small scale industrial undertakings located in (a) notified / designated industrial areas/industrial estates or (b) areas earmarked for industries under the jurisdiction of industrial development authorities; (ii)widening and strengthening of Highways; (iii) mining projects (major minerals) with lease area up to twenty-five hectares, (iv) units located in Export Processing Zones, Special Economic Zones and (v) modernization of existing irrigation projects.” The provisions of this notification were reflected as Para 7 of the new EIA Notification, 2006 with some more additions.

3. The Hon'ble NGT, Western Zone, Pune based on the interpretation of the provision of Para 7(i) III. Stage (3) (i) (b) of the EIA Notification, 2006 given by the Ministry vide O.M.No.J-11013/36/2014-IA-1 dated 16th May 2014 ordered on 8th August 2014 in above O.A. That exemption from public consultation will be available to only those industrial units which are coming up in industrial estates which have got environmental clearance under EIA Notification, 2006. The O.M.dated 16th May 2014 issued by the Ministry, was reviewed in the Ministry in the light that the EIA Notification 2006 on this subject provides for exemption from public consultation for the industries coming up in industrial areas, means that those industrial areas must be in existence on the day of EIA Notification, 2006, as is the case of other category of projects and activities which have got this exemption under para -7 of the EIA Notification, 2006. The ministry clarified the status as per the provisions vide O.M.No.J-11013/36/2014-IA-1 dated 10th December 2014. The above O.M. Dated 10th December 2014 was also challenged before the Hon'ble High Court of madras, in W.p.No.3514 of 2015; Hon'ble Court ordered on 10.09.2015 that “..... we are thus of the view that the impugned

notification/Office Memorandum cannot be faulted and if there is any individual grievance qua any particular nature existing, it is always open to the petitioner to move the NGT with requisite material. The writ petition accordingly stands dismissed with aforesaid observations.”

4. The above O.A.(157 (THC)/2013) was instituted against EC given to a Thermal Power Plant of 6 x 276 MW over an area 546.55 ha of land in which public hearing was exempted as the said TPP was in industrial area.

5. The industrial estate in EIA Notification, 2006 in Schedule at item 7(c) provides that industrial estates with an area greater than 500 ha and housing at least one Category B industry will be Category A, and industrial estate of area greater than 500 ha. and not housing any industry belonging to Category A and B is Category B. Industrial estate of area below 500 ha and not housing any industry of Category A or B does not require prior environmental clearance under EIA Notification, 2006. If the area is less than 500 ha but contains building and construction projects greater than 20000 sq. mt. and development area more than 50 ha. it will be treated as activity listed at S.No.8(a) or 8(b) in the Schedule as the case may be.

6. It is evident from the Notification of 2001 as mentioned above and provisions at Item 7(c) of EIA Notification, 2006 regarding size of the industrial estates, the intent of the Notification has been to grant exemption from public consultation for small industrial units located in industrial estates of 500 to 1000 ha. area. The industrial units or activities itself located on an area of 500 ha in industrial estate or regions of 10000 ha. has not been in the intent to be granted exemption from public consultation. So a Thermal Power Plant, Cement Plant, or Integrated Steel Plant even if located in notified Industrial Regions / Zones cannot be granted exemption from the public consultation, as that is not the intent of the EIA Notification, 2006.

7. It is accordingly clarified that the category of projects and activities mentioned in the Annexure of this O.M will require Public consultation in the process of Environment Impact Assessment and environmental clearance irrespective of its location in or outside a notified industrial area/estate/region.

8. *The O.M. No.J-11013/36/2014-IA-I dated 16th May 2014 and dated 10th December 2014 will stand modified to the extent of this O.M.*

This issues with the approval of the Competent Authority.”

(Emphasis in bold, supplied)

21. The trajectory that the prescriptions in the office memoranda have taken are to be strictly construed seeing as they are a mandatory requirement and can be eschewed only in a specific scenario. In any event, there is no exclusion as on date as regards public hearings/consultations and all industrial units as per the Annexure of Notification dated 4.4.16 are liable to submit to the same.

22. We also note that the process of scrutiny of the application filed by Vedanta for renewal of EC is on-going. The proceedings of public hearing for the proposed development of SIPCOT Industrial Park (464.2 hectares approx.) have been placed on record. Though the minutes reveal that the public hearing appears to have been cancelled, we are heartened to be informed that the process has commenced.

23. Vedanta also does not dispute the position that construction activities are on-going in full swing in Unit II of the plant. The renewal application itself, in column 16 of the Application states thus;

16	<i>Details of Alternative Sites examined, if any. Location of these sites should be shown on a topo sheet</i>	<i>Copper Smelter Project – II is under construction as per EC F.No.J-11011/431/2008-IA II (I) dated 01st January 2009 valid up to 31.12.2018. Hence alternative sites are not examined.</i>
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24. On the basis of the materials furnished and noticed by us as above, we are of the prima facie view that Phase II of SIPCOT Industrial Park awaits approval as can clearly be seen from SCN dated 02.04.18 and reply of SIPCOT dated 06.04.18. Undisputedly, all survey numbers comprising Unit II of Vedanta's Copper Smelter Plant are also seen to comprise part of Phase II of SIPCOT's Industrial Park.

25. We do not however, see any need to base a decision on the aforesaid parameters, as admittedly Office Memorandum of the MoEF requires all metallurgical industries to go through a public consultative process prior to being considered for the grant of an environmental clearance. In acquiescing to this position in full, a resolution to the lis (qua interim relief at this stage) in this writ petition has been presented to us by Vedanta itself and we need look no further in this respect.

26. What remains is to balance the interests of both the petitioner as well as Vedanta in this regard.

27. Various allegations regarding the acts of omission and commission of Vedanta have been illustrated in the writ petition to which we do not propose to advert at this moment seeing as all the respondents are fully entitled to file counter affidavits and any reference to the allegations can be made only post consideration of such counters.

28. Undoubtedly however, as per the position prevailing now, the public is entitled to be heard in regard to their apprehensions to the project and, even assuming for a moment that the Memorandum is prospective as submitted by Mr.Raghuvaran Gopalan, such entitlement of the public would get invoked with respect to a project approved post the date of Notification, being 04.04.2016 which date is prior to the date of the earlier order of this court being 28.04.2016. Dare we say that had the aforesaid memorandum been brought to the attention of the court earlier there might well have been some observation by the Bench in that respect? We do not however wish to speculate. Suffice it to state that the requirement of a public hearing is now mandatory and one that Vedanta, admittedly, intends to subject itself to.

29. The period for which the approval remains is seven (7) months, till 31.12.2018. To a pointed query as to whether it might not be in the best interests of Vedanta to cease all construction activity till such time the process for grant of approval including the public hearing is successfully completed to

permitted to continue with the construction and goes as far as to state that such construction would evidently be subject to approval being granted in future. In other words, should there be a scenario where Vedanta is not granted approval he assures us that status quo ante will be restored by the company.

30. We are afraid we fail to see the merit in this submission, as in our view, it lacks vision, and tantamounts to putting the cart before the horse. It might have been quite another matter had there been a substantial period of the approval still remaining. However, what remains is a mere seven months. Admittedly, the process of scrutiny of Vedanta's renewal application as well as the public consultative process has already commenced. In such circumstances, we see no reason to permit Vedanta to continue with construction activities investing substantial resources by way of effort, money and materials. We cannot, under any circumstances, be party to what might well be a national waste of precious resources. सत्यमेव जयते

31. Learned counsel would also urge that construction is, in itself, not a polluting activity and the embargo, if at all, could only be with reference to production activities. In this connection this Court has, vide order dated 26.4.2018 passed in W.P.(MD). No.9283 of 2018 and WMP.(MD).No.8593 of 2018 considered the prayer to issue a Writ of Mandamus directing the respondents not to extend the license/consent or Environmental Clearance to the

immediate steps to close down the existing industries and has passed an order stating as follows;

' We have heard Mr.M.Ajmal Khan, learned Senior Counsel, representing Mr.P.Subbaraj, learned counsel on record appearing for the petitioner, Mrs.V.Ragaventheri, learned Central Government Standing Counsel, for the respondents 1 and 3, Mr.M.Govindan, learned Standing counsel appearing for the fourth respondent, Mr.K.Chellapandian, learned Additional Advocate General, assisted by Mr.R.Sethuraman, learned Special Government Pleader appearing for the respondents 2 and 5 and Mr. R.Parthasarathy, learned counsel appearing for the respondents 6 and 7.

2. Mr.K.Chellapandian, learned Additional Advocate General, submits that insofar as the existing unit is concerned, the application submitted by M/s.Sterlite Industries India Limited, the seventh respondent herein, seeking environmental clearance, has been rejected by the Tamil Nadu Pollution Control Board and the seventh respondent moved an appeal before the Appellate Authority under the Air (Prevention and Control of Pollution) Act, 1981. The learned Additional Advocate General further submits that insofar as the application of the seventh respondent company for expansion of the unit is concerned, no permission has been granted there regards.

3. Recording the said submission made by the learned Additional Advocate General, this Court considers it appropriate to issue notice on admission to the respondents returnable by 13.06.2018. Respective learned counsel take notice.

4. Registry is directed to post the Writ Petition on 3.06.2018.'

Thus, as of now, there is no approval granted for expansion of the unit and in the light of the admission of learned counsel for Vedanta, such approval can be considered only after public hearing and consultation is conducted.

32. In the light of the above discussion, we issue the following directions:

(i) The application for renewal of EC submitted by Vedanta shall be processed expeditiously after conduct of mandatory public hearing. In any event, the application shall be decided by the appropriate authorities within a period of four months from today i.e. on or before 23.09.2018.

(ii) In the meanwhile, Vedanta shall cease construction and all other activities on-site proposed Unit-II of the Copper Smelting Plant at Tuticorin with immediate effect. The resumption/continuance thereof, if it be so, shall be subject to the decision taken upon (i) above.

33. In issuing the above directions, we believe that we have taken into account and balanced the interests of all parties before us, the public as well as Vedanta. While, on the one hand, the economic benefits of encouraging industries cannot be ignored, the toll extracted on available resources, water and soil regimes by such industries, cannot also be lost sight of. There is thus yet another stakeholder before us, one that is invisible in the array of parties, the environment in itself. In balancing the interests of all parties to this Public Interest Litigation, we believe that the interests of this hapless party be treated

34. Mr.Ramachandra Guha, historian and environmentalist says in his tome, 'Environmentalism' that India is in the midst of the 'Age of Ecological Arrogance'. Various rules, regulations and memoranda issued over the years by the State are targeted to address this arrogance and bring a modicum of responsibility to our treatment of this very fragile asset, India's ecology and environment. We must do what is necessary to ensure that the environmental movement stays its course and that, we believe, is what we have now done.

35. Notice to R3 returnable 13.06.2018. Private notice is permitted, also upon standing counsel.

36. List along with W.P.(MD). No.9283 of 2018 on 13.06.2018.

37. Counters, if any, to be filed by then.

(M.S.,J.) & (A.S.M.,J.)

23.05.2018

msr

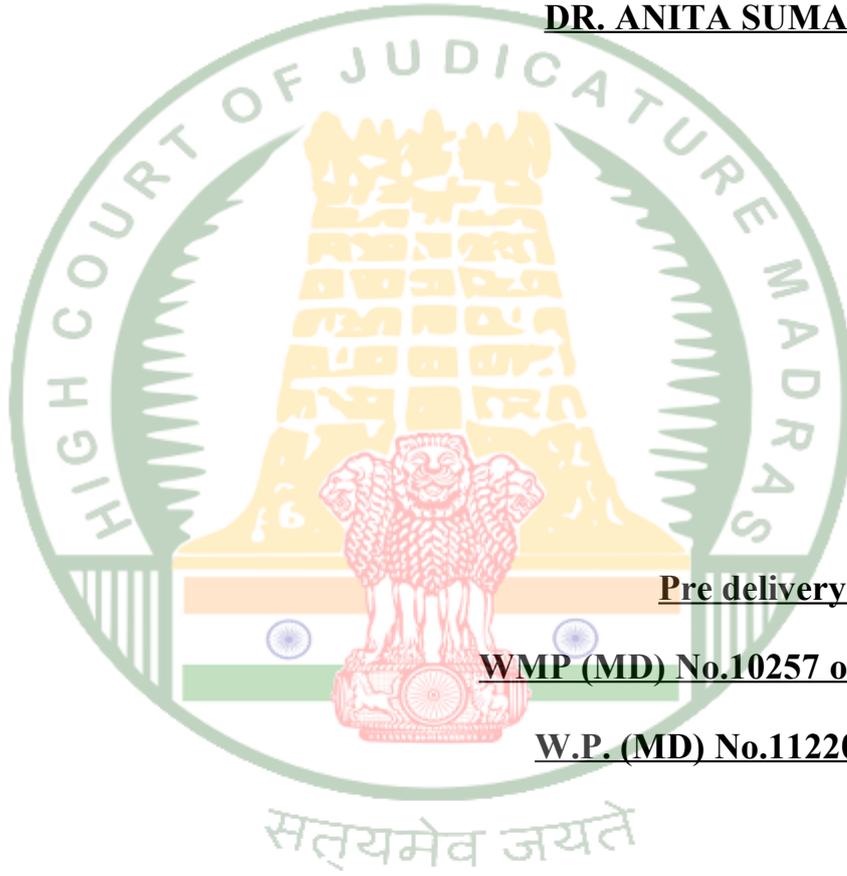
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M. SUNDAR, J.

&

DR. ANITA SUMANTH, J.

msr



Pre delivery order in

WMP (MD) No.10257 of 2018 in

W.P. (MD) No.11220 of 2018

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23.05.2018