

The Tamil Nadu Pollution Control Board vs. Sterlite Industries (I) Ltd (Sterlite Copper Plant Case)

The judiciary in India, led by the Supreme Court of India (SC), operates at the intersection of public interest, political pressures, and social expectations. The apex court continuously negotiates such undercurrents and attempts to demonstrate ideal conduct for all levels of the judiciary to follow, including itself. This includes managing and balancing the varied expectations and interests of the society and economy and increasingly dealing with complex issues interlinking economics, environment, competition, trade, technology and allied fields.

The Shivshakti judgement noted that the law and economics interface is most relevant today as India is on the path of economic growth and development due to decades of effort. The judges made strong observations to initiate the discourse on economic analysis of law while adjudicating a sensitive economic matter, the consideration of such commentary by the judiciary in its decision-making still requires attention and adoption.

In the above background and context, this study attempts to understand the first-order direct economic impact of the select (five) judicial decisions of the SC and National Green Tribunal (NGT) on the economy and stakeholders. The study also aims to inform an evidence-based approach toward institutionalising comprehensive and balanced thinking in judicial decision-making.

Furthermore, the study intends to inform the human-centricity of economic development and environment sustainability and evaluate the best possible remedy with equal consideration to equity, environment and economy. It is purely an academic exercise and is nowhere intended to interfere with the decision-making process of the judiciary. This is an attempt to assess the economic impact of select decisions of the SC and the NGT.

Background

Since the Copper Plant's establishment in 1994, its journey has been chequered with public uproar, regulatory scrutiny, executive actions and judicial interventions emanating from various claims of flouting environmental norms and adversely impacting the health of the local inhabitants. The biggest protest lasted for 100 days and turned violent in May 2018,

after the Tamil Nadu Pollution Control Board (TNPCB) and the Tamil Nadu government ordered the permanent closure of the Copper Plant with immediate effect.

When the orders were challenged before the National Green Tribunal (NGT), in November 2018, it ordered the reopening of the Copper Plant. However, the same was dismissed by the SC in 2019, stating that the NGT has no jurisdiction to entertain appeals

against state government orders.

Consequently, the matter went before the Madras High Court, which in August 2020, confirmed the orders of the TNPCB and the Tamil Nadu government. In December 2020, the SC denied any interim relief to Sterlite.

However, in May 2021, during the second wave of the COVID-19 pandemic, the Copper Plant was allowed to reopen for medical oxygen production. More recently, a group of fishermen and a few villages petitioned the state government to reopen Copper Plant as it was a source of their livelihood.

Objective

The closure of the Sterlite Copper Plant in Thoothukudi, Tamil Nadu, in 2018 (Copper Plant) – the manufacturing plant of Vedanta Limited – typifies the debate of balancing human rights and economic rights. Various economic and social models have evolved to understand and recognise human-centricity at all fronts, environment and development. However, a balanced approach is missing in viewing these domains holistically and collectively.

About the Study

While various reports and studies have established the environmental concerns leading to health harm, there is limited secondary literature analysing the economic impact.

Impact on workers/employees of the Copper Plant: Various media reports highlighted that the net loss of employment (both direct and indirect) comes to almost 30,000 jobs. Moreover, the closure is estimated to have significantly impacted the incomes of

the people who lost their jobs, reducing their monthly incomes by at least 50 percent while rendering many jobless. On those lines, the monetary value of the cumulative net impact in terms of salaries was found to be around ₹146 crore since the closure of the Copper Plant in May 2018.

This, however, does not show the full extent of the impact, which goes beyond individuals to families and their kin. It must be noted that the indirect jobs were also gravely impacted since the associated and dependent businesses on the Copper Plant faced huge consequential impacts.

Impact on downstream businesses: Various media articles reported that around 400 businesses were associated with the Copper Plant, employing approximately 100,000 people. Moreover, the Copper Plant was also the only indigenous supplier of phosphoric acid and a key supplier of slag and gypsum to close to 20 cement companies in the region. It was found that there has been a considerable impact on the cost of procurement of raw materials after the closure of the Copper Plant.

Other than the procurement cost, the time cost of import of raw material, the quality, the bargaining power for price negotiations, and subsequent liquidity challenges are impacts. The net estimated impact on all the downstream businesses in terms of their procurement cost is around ₹491 crore.

Besides downstream businesses, the biggest impact was seen on the **service providers** associated with the Copper Plant, ranging from mechanical and maintenance, warehousing, Information and Technology, stevedore and cargo and lorry providers. The livelihoods of thousands of this ecosystem, including truckers, contractors, labourers, real estate market and even tea shops that came up

around the Copper Plant, have all been severely impacted since the closure.

By rough estimates, according to media reports, the Copper Plant used to spend around ₹600 crore per year on logistics, material purchases and other requirements, which are now non-existent. As per the calculations undertaken through the data collected and available, it was found that the total loss to the service providers stands at ₹1,390 crore since the closure of the Copper Plant. The net impact includes impact on the service providers, workers/employees, associated businesses and the government.

Impact on the production volume, revenues, expenditures and profit: Various articles reported that the Copper Plant became a loss-making venture incurring as much as ₹5 crore per day since its closure. Sterlite has also claimed that the maintenance damages run to almost ₹100 crore in a year because of the negligence on the part of district authorities, as they were not allowed to reopen the Copper Plant even for maintenance purposes.

When computing the impact on the Copper Plant itself, through the data collection and analysis, it was found that the overall impact on the Copper Plant in terms of the impact on its profit after tax and the sunk costs incurred translates to the loss of around ₹4,777 crore since its closure. This further translates to a loss of ₹4.42 crore per day for the Copper Plant since its closure in May 2018.

Impact on government: Through various media reports, it is estimated that the Copper Plant paid up to ₹2,559 crore annually to the exchequer through taxes and other statutory contributions. However, when the impact

through loss in taxes and other revenue from power and water consumption was calculated based on the data collected and analysed, it was found that the impact is substantially higher at around ₹7,642 crore since May 2018.

Impact on exports and imports of copper and related items: While the exports have significantly fallen from FY 2018- 2019 onwards, the imports have risen sharply to cater to the domestic demand. With the Copper Plant contributing close to 40 percent to the copper production in India, its closure has amounted to significant losses in terms of Foreign Exchange (Forex), cutting down the country's net production by 46.1 percent.

According to media articles, this loss is estimated to tune of ₹14,000 crore by some experts. It was also reported that the copper import increased by 26 percent to 60,766 tonnes in the June quarter of 2020-21 and is further expected to increase in the remaining part of the financial year.

Recommendations and Conclusion

The results and findings of this assessment of the economic impact of the Copper Plant closure have highlighted certain crucial learnings. The underlying aim of the recommendations is to find the best alternate remedies to prevent critical matters concerning the development-environment debate from escalating to a problem requiring judicial intervention and being adequately addressed by an effective appraisal, monitoring and implementation by the executive and regulators. Furthermore, the objective is also to inform decision-making at all levels, including the judiciary.

1. Ensuring Human-centric Vision as a

Guiding Principle of Institutions: To institutionalise a human-centric approach towards dealing with issues relating to the economy, environment and development at different tiers of governance, regulatory bodies, judiciary, polity and the larger society. The renewed vision of the economy, to transcend from being an abstract, which is currently measured through gross domestic product (GDP), to measurement premised on the welfare of people as the key indicator.¹ Similarly, environmental and ecological concerns should also be contextualised and envisioned in the larger perspective of the quality of life.²

2. Institutionalising Cost-benefit

Assessment as a Continuous Process for a more economically informed and environmentally responsible decision-making by relevant authorities and institutions.³ This entails using the framework as a dynamic tool of information rather than a one-off number used for making the final decision. Ideally, this should be housed as a mandate of independent regulators or can be a function of any state authority. However, it becomes equally important to act on the findings of such cost-benefit assessments, especially on environmental norms.

For instance, despite the TNPCB having a real-time update about the level and extent of pollution by the Copper Plant, there was hardly any affirmative action taken against such environmental digressions, other than ordering the closure of the Copper Plant multiple times before 2018 as well.

Such extreme closure orders have far-reaching implications on the livelihoods of many who are dependent. Instead, the Copper Plant should have been fined heavily or directed rigorously to course correction under third-party supervision to inspire the confidence of people. Thus, it is important to make the cost-benefit assessment approach and decision-making transparent, consultative and collaborative.

3. Moving Beyond Only Numbers: The cost-benefit assessment framework also needs to be more realistic and responsive to ground realities, which might not be easy to quantify. This ensures that due importance is accorded to vital indicators of people's welfare, which cannot be measured in numbers. Additionally, this also fits well with a dynamic cost-benefit assessment exercise, which can capture qualitative aspects when and when certain developments happen.⁴

4. Placing a System of Checks and Balances:

In the case of the Copper Plant, if an effective system of checks and balances had been institutionalised since its establishment, perhaps the environmental violations could have been addressed better corrected. In leading up to the Copper Plant's closure, the Tamil Nadu government enforcement agency should have also ensured that the protests were in control and did not get violent, which led to the death of 13 people. While the Justice Aruna Jegadeesan Commission recommended the government give compensation to the affected, perhaps greater checks and balances were required to ensure that the police firing did not happen in the first place.⁵

Furthermore, the recommended compensation and jobs to certain eligible candidates in the families of the deceased were awarded only in late 2020 and early 2021.

- 5. Revamp the Existing Legislations:** For a system of checks and balances to be implemented, it is essential to amend and revamp the existing legislations to minimise regulatory overlaps. Because the NGT was constituted as a specialised tribunal to only look into environmental cases, its jurisdiction should be expanded to include adjudication of state government orders in all circumstances.

In the present case, the process followed by the NGT preceding its judgment in December 2020 was laudable and appropriate given the case's contours. It constituted a three-member panel that visited the Copper Plant, and held public consultations in Thoothukudi and Chennai, after which it submitted its report to the NGT.⁶ However, the SC on appeal set aside the order by the NGT, stating that the tribunal does not have overarching powers to adjudicate on matters related to state government orders.

- 6. Capacity Building:** The proposed recommendations will likely require a robust capacity-building exercise to drive change and achieve the envisaged objectives. However, along with capacity building, there must be mechanisms to fix accountability, linking it to performance appraisals for government officers.

The fact that the Copper Plant was established before the company conducted the EIA or that it was established by violating the setback condition of being 25

km away from the Gulf of Mannar point to the fact that there was no sense of accountability either by the Sterlite representatives or government officials. This also indicates the limited and lax monitoring by the relevant officers and regulators. At the same time, it is also essential for such capacity building in the judiciary to enable holistic decisions.

The fact that matters escalate to the level of judicial intervention should be given more attention and an attempt must be made to get the perspectives of all related and relevant stakeholders – even though they might not be parties to the case. Given the limited resources and multiple constraints of the judiciary, along with the persistent problem of a backlog of cases, it might be prudent for the judiciary to engage expert committees or amicus curiae more often to get the perspectives of experts. However, it is equally important for judicial officers to be trained on (basic) economic issues to recognise the need for a holistic and balanced decision and approach.

- 7. Community-Driven Approach:** Against the backdrop of all the recommendations laid above, perhaps the most important would be for the government, regulators and the judiciary to take a more community-driven approach. This was witnessed in the proceedings before the MHC, where six public interest litigants were party to the case, representing the community and the aggrieved. This enabled the MHC to know and hear the perspectives of the community. However, even then, the community was aggrieved because of environmental and health concerns, and not the workers and employees who were

aggrieved because of lack of basic financial needs also led to health concerns.

One way to perhaps engage the community throughout the dichotomy of environmental development could be to empower them to monitor the operations of such companies, as was done when the Copper Plant is reopened to produce oxygen. At the same time, it must also ensure that companies utilise their Corporate Social Responsibility funds appropriately, especially for the neighbouring and local communities. In

cases where there are environmental violations, such funds should be used for and towards the sustainable development of the community. This, however, does not mean that the companies should be allowed to continue polluting.

These recommendations can catalyse the process of institutionalising holistic and balanced thinking in all ranks of decision and policy-making to converge the development and environmental interests for the larger welfare of the society.

Endnotes

- ¹ Amit Kapoor and Bibek Debroy, 'GDP is not a measure of human well-being', *Harvard Business Review*, 04 October 2019, <https://hbr.org/2019/10/gdp-is-not-a-measure-of-human-well-being>.
- ² 'About Doughnut Economics', Doughnut Economics Action Lab, <https://doughnuteconomics.org/about-doughnut-economics>
- ³ 'Cost-Benefit Analysis and the Environment: Further Developments and Policy Use', Organisation for Economic Cooperation and Development (OECD), September 2018, <https://www.oecd.org/env/tools-evaluation/CBA-brochureweb.pdf>
- ⁴ Appendix A: Qualitative Factors Assessment Tools', U.S. Nuclear Regulatory Commission, <https://www.nrc.gov/docs/ML1528/ML15281A052.pdf>
- ⁵ 'Compensation handed over to victims of anti-Sterlite protest', *The Hindu*, 05 June 2021, <https://www.thehindu.com/news/cities/Madurai/compensation-handed-over-to-victims-of-anti-sterliteprotest/article34739545.ece>
- ⁶ The panel was headed by Justice Tarun Agarwala, former Chief Justice of the Meghalaya High Court, together with two experts, one being a representative of the Central Pollution Control Board and another a representative of the Ministry of Environment and Forest.

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