

## **EPISODE 2: Why this judgement against Vedanta matters?**

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R. Vaigai: See, this is a, I would say the first ever decision by a court by one of the High Courts in the country where an order passed by the government directing closure of a massive industry run by a corporate giant has been upheld by the High Court. And the decision has largely relied upon the materials that have been placed before the court by the people of the township of Thoothukudi.

The day she laid the foundation stone for the factory on October 31, 1994, Tamil Nadu's late Chief Minister J. Jayalithaa hailed Vedanta's copper smelter in Thoothukudi as a "dream project in the process of industrialising the state".

From court documents, data obtained through Right To Information applications and admissions by governmental authorities, Vedanta appears to have established a pattern of circumventing regulations right from the outset.

The Madras High Court's August 18<sup>th</sup> ruling denying permission to reopen Sterlite Copper's facility is being hailed as a precedent setting judgement for environmental jurisprudence in the country. The court blamed both the state's pollution control authority and government officials for enabling Vedanta's cause.

**Hi, I am Kunal Shankar, your host for this series on the Climate Emergency podcast: A rare environmental victory in India.**

On July 5, 1997, six months since the plant became operational, 160 women from a nearby factory complained of breathlessness and vomiting. Some of them were hospitalised for a week.

Fatima Babu: For the first time we were able to summon the collector, he just brought a bunch of keys. He told us, see, I've locked the company, I've locked the plant. It was a very painful moment, showing us a bunch of keys. I've locked the company, he said.

A commission was appointed by the district administration. It did not find fault with Vedanta's operations.

Fatima Babu: We don't want you to tell us who's not guilty. If Sterlite is not guilty, come on, tell us who is guilty for whatever happened on that particular day. Otherwise, another Bhopal might happen, killing thousands and thousands of people.

This would be the first of several such complaints that would follow in the next two decades. About four months later, on August 20<sup>th</sup>, employees of the Electricity Board's sub-station located across the Sterlite plant complained of symptoms like those experienced by the women at the other factory. The electricity board employees had headaches, cough, and breathlessness.

Such incidents were routinely disregarded by district officials until late November 1998, when the Madras High Court for the first of many instances, ordered the plant to be shut relying on a scathing report against Vedanta by the Nagpur-based National Environmental Engineering Research Institute. The report highlighted that the copper smelter had come up within 14 kilometres from the shore, when the norm for hazardous industries was 25 kilometres inland, particularly at ecologically sensitive zones like the Gulf of Mannar where Thoothukudi is located.

The closure was short-lived. It was overruled by the Supreme Court, and this would be the first of many such instances. But it would also be the beginning of a long legal battle waged by several groups opposing Vedanta.

Apart from sulphur dioxide, a significant by-product of copper extraction is slag – an iron rich substance. Slag includes several other more toxic metals as well. It has many uses, like road building, which makes it a commercially tradable commodity.

Nityanand Jayaraman: The slag, if I take a little bit of slag and hold it, it's not going to poison me, because the poisons inside the slag are not mobile, are not easily mobile. They are held very tightly. But what happens when you have 1 million tonnes of slag that is generated as a waste.

And for every ton of copper concentrate, 2.2 tons of slag is produced. Meaning Vedanta had been producing about a million tonnes of slag every year since 2008, the year the company had reached 400, 000 tonne production capacity.

Nityanand Jayaraman: It has to be stored somewhere. Storing it improperly or in the wrong place would expose the slag to the elements, which is wind and water and moisture and things like that and that can have a very serious effect in terms of pulling out the toxins from the slag into the environment and making it airborne or making it available in the soil or into the water, into the local hydrology.

Sterlite's CEO Pankaj Kumar disagreed with this assessment.

If you go to smelters outside, abroad, copper slag is used as embankments at riverbanks and at the sea as well. All the elements in slag are fixed.

In June 2001, residents living close to the Sterlite factory complained of toxic wastewater flooding their village reservoirs. TNPCB, the state's environment watchdog, blacked it on Sterlite. The company was simply asked to stop further releases. It was not asked to pay for clean up the water bodies, neither was it asked to compensate for loss of livelihood or possible health consequences.

Nityanand Jayaraman: All this is stored in extremely large quantities, mountains of it are stored inside the factory, and in 2010, the factory is closed. The entire matter goes to the attention of the Supreme Court and the Supreme Court sets up a committee. The committee finds that they

have a hell of a lot of slag and gypsum stored inside. And one of the conditions that was imposed on them was that they should try and dispose as much of it as possible. So, under the orders of the Supreme Court, what was concentrated toxins in one place was taken and distributed democratically all through Thoothukudi. So, about three and a half lakh tonnes of slag was disposed, was dumped on the banks of river Uppar in Thoothukudi.

R. Vaigai: Pollution Control Board found that 3.52 lakh (352, 000) metric tons of slag were found dumped in huge mounds and this had hampered the free flow of river Uppar, causing floods in Thoothukudi town.

TNPCB ordered Sterlite to build a barrier between the slag and the riverbank to prevent further leaching, and to store it in impervious containers.

R. Vaigai: Sterlite adopted a very ingenious argument before the court, saying that I had disposed off the slag to private parties, owners of private properties. They had dumped the slag. It's not my responsibility anymore because slag being a material capable of commercial transaction, it had gone out of my hand, and therefore I am not responsible for any kind of a dumping, was their argument. Now, that argument was rejected by the court because the court said you are the generator of this waste. And it's your responsibility to contain the waste as per the conditions imposed by the pollution control board, since you have failed to do so, you have violated the condition.

While sulphur dioxide emissions and slag dumps are well-known, little has been known about the dangerous levels of mercury pollution until recently.

Nityanand Jayaraman: But things that is most infamous for CNS or central nervous system effects is mercury and mercury is part of the trace you know, elements present in Copper concentrate. And Vedanta was not reporting it. They had hidden the fact that there was mercury in the process, other plants of copper smelters around the world have a Mercury recovery system and Vedanta proposed a recovery system for the plant that they were planning to set up a second plant.

And they had a Mercury recovery system in that. And what we find is that the company's emissions from the factory were quite high in terms of mercury. And they were released that there's about 25.91 tons of mercury that is not accounted for. And what needs to be understood is that the Unilever plant in Kodaikanal was shut down for discharging just 7.9 kilograms of mercury.

Kodaikanal was the location for Hindustan Unilever's thermometer plant, which was forced to shut down in 2001 after a dump of crushed glass laced with mercury was found within the factory premises. There have been many comparisons between these two instances as both were grassroots campaigns that were fought in the courts as well.

Nityanand Jayaraman: For 15 years, We'd been trying every trick in the world to get the world to notice there's a massive injustice done by this corporate giant called Unilever that was going around throughout town trying to pretend as if it was a Mother Teresa of the corporate world. And then one of the several tricks that we tried was to avoid the media, boycott the media almost entirely because the media was completely beholden to the corporation, which is a big advertiser. And we produced this rap song called kodaikanal won't, which went viral. We had nothing to do with it. We just produced a video and something happens, something clicks, and magic happens. So like with most of this is the unfortunate thing is that justice happens through magic, not because we have a constitution and laws and court.

Unilever swiftly negotiated an out-of-court settlement with past employees of the thermometer plant for an undisclosed amount. They had been protesting exposure to mercury pollution and several other workplace and environmental hazards. Unilever's settlement was also the first of its kind. But in Sterlite's case, the court has emphatically ruled in favour of the protesting townsmen after hearing exhaustive submissions by all concerned parties.

The protests against Sterlite had been affected by factionalism between the two dominant communities of Thoothukudi – the fishermen and the traders. The fishermen are either Paravars, who are Hindus, or Fernandos who are Christians. And the traders are Nadars. Activists blame Tamil Nadu's political class and the company for dividing them on caste lines to weaken their fight.

I met Ashok Jesurathinam along-with Fatima, on a recent trip to Thoothukudi to report on this issue for Al Jazeera. Ashok was a young 20-year-old when he participated in the protest at sea. He pointed to an innocuous skirmish between friends in 1996, which quickly turned into seething caste clashes. This was months after the successful blockade of the ship and DMK's return to power after Jayalithaa's first term as Chief Minister.

Ashok Jesurathinam: **(translation)** He says, all this began as a small skirmish at a whole in the wall restaurant. One guy runs into another guy in the restaurant and then talks ill of his caste. Both exchange slurs. They call for support and fisticuffs follow – what's puzzling is that they are all those who were friends and acquaintances earlier. This then leads to the attack on one Charles, theatre owner

Fatima Babu: It is an artificially created fight.

(In Tamil, I say) I see. It really does sound quite like a fight!

Fatima then explains who Charles is. Speaking in Tamil she says, A prominent shopping complex in the city was earlier a cinema theatre owned by one Charles Fishier and that he was a Fernando. Until the '50s Thoothukudi was a predominantly fishing community. Nadars began arriving from Virudhunagar and Sivakasi in the 1950s sensing scope for growth. And according to Fatima it was not until 1974, when the port arrived, and that's when even more communities began arriving in Thoothukudi.

**(Tamil Translation)** What's unfortunate about Sterlite's operations in Thoothukudi is that neither Dravida parties can claim innocence here. They both have a hand in bringing Vedanta to our city. It was Jayalalithaa who invited Sterlite to Thoothukudi and laid the foundation stone for the factory's construction. But it was Karunanidhi who inaugurated the factory once it was completed. And he says another tragedy is that their legateses are still benefiting from the company. Now their resistance which is the DMK's resistance is a political opportunism according to Ashok which is due to the change of people's perception on the ground against Sterlite.

Veteran journalist Ilangovan Rajasekaran who covered Thoothukudi for The Hindu during this volatile period told me the pressure from the State government on the trader community not to lend support to the protesting fishermen was intense. As early as in 2008, a comprehensive health screening of over 80,000 people living within a 5-kilometre radius of the plant revealed fatal health consequences.

Nityanand Jayaraman: In the study, they studied close to 80,000 people which is a significant study and it is not a small kind, very comprehensive and tonnes of pages. 80,000 people had been surveyed and this study found that the local population within the vicinity of influence, of Sterlite. There were brain tumors among males that was more than thousand times the national average. They found that nervous disorders and deaths due to nervous disorders was in two digits, around 12.6 or 13.6%.

Matters came to head in 2013 when a massive sulphur dioxide leak from Sterlite led to serious health consequences across the city. On March 24<sup>th</sup> that year, morning walkers swooned to the ground due to suffocation. Several were hospitalised unable to eat. Some vomited what they ate.

Fatima Babu: Number one, respiratory disorders, and then skin problems, eye problems, burning sensation in the throat, hair fall, and several other things including cancer, in certain areas of the town, every household has a cancer patient.

Despite blaming Sterlite for flouting environmental laws and for the widespread health concerns, the Supreme Court let the copper smelter to operate after paying a fine of Rs. 100 crores. But this was a wake-up call to Thoothukudi's residents. Several of them, even those who were sceptics earlier, began linking unexplained health disorders to Sterlite's pollution.

On my trip to Thoothukudi, I met at least three families who had lost loved ones to cancer. A conch trader in his late 30s, Reegan lost his fiancé Melpa to brain tumour when she was only 23. Four other family members died of either bone or lung cancer. Reegan is now active in the Anti-Sterlite People's Movement – an umbrella group of anti-Vedanta organisations founded by Fatima Babu.

The Central Government's decision to double the copper smelter's capacity to 800,000 tons per annum alarmed city residents and re-energised the campaign against Vedanta. It led to a

unique mobilisation of political parties, farmers, traders, fishermen and several other groups. The protests lasted a 100 consecutive days in 2018. It culminated in a march from the city-centre to the district collectorate. The police claimed, some among the protestors, left-wing extremists – instigated violence against them, forcing them to shoot at protestors, which killed 12 people on May 22, 2018 and one more person died of injuries the next day. The family members of those who died have been given low-paying government jobs.

While city residents are relieved following the Madras High Court's order, they are fearful of the outcome of the company's appeal in the Supreme Court. For now though, they speak of being able to breath more easily.

Fatima Babu: There is one specific thing that we will, all of us would like to talk about is the rains. We've been deprived of rains all these years. It was like a rarity. But now we had a rain, storm, and all things. We were actually also deprived of drinking water in terms of supply. All the water would be sold off to them and used to get water, drinking water once in 10 days. Now we are getting water once in three days...

I asked what comes next in the anti-Vedanta movement to both Fatima and Nityanand.

Fatima Babu: They have to leave at the earliest but before they leave, they will have to pay for all the damages that they've done to us in health, in terms of environment, loss of livelihood. Yes, you're right. It is there in our minds deep down in our hearts. Yes, there is one thing still not settled. We have to get it done.

Nityanand Jayaraman: Is the closure permanent or will there be relief down the line, Is something that we will have to see at the Supreme Court. The company of course will go there with all its guns blazing, claiming that the order was unwarranted. Besides, but assuming that the factory remains shut, there is this whole issue of the legacy of the site, which is the toxic contaminant is contaminants contained within the factory site. The contamination caused outside the factory site in the places where slag was dumped, and stored for a very long time, groundwater contamination, the long term health monitoring for surrounding Villagers and long term health rehabilitation and compensation. And besides all these things, there's also the issue of the workers from the factory who have now lost their jobs for no fault of theirs. These are workers who don't have control over whether the factory obeys the law or not.

Here's advocate Vaigai again explaining the significance of the August 18<sup>th</sup> order, and how it might impact environmental jurisprudence in India.

R. Vaigai: Usually, litigation before the courts are contested by the party concerned that is the company which claims to be the victim of the government action and the government authorities or the regulatory authorities, namely the pollution control board on the other side. Now the people's voices are not heard in such a strong measure. The records that are produced by the government or the company or the pollution control board are what are relied upon by the court to evaluate whether there's pollution or no pollution. But in this case, produced by the company

were very strongly challenged by the people based on scientific facts. And the court has tended to believe or rely upon the facts and the materials that have been produced by the people to challenge or to rubbish the company's contentions. Therefore, it's very important.

Nityanand Jayaraman: The magic in this case was also to get judges who were patient enough to listen to people. We know the state of the judiciary. And I'm saying that we were, we were lucky to get judges who are interested in listening to the case of a 40 to 42 days of hearing, right non-stop. It was non-stop it was broken in between, but it was 42 days of hearing, most of it taken by Vedanta and the pollution control board. But respondents, private respondents, and the people of Thoothukudi were given as much time as they asked for.

In closing, I asked Sterlite's CEO Pankaj Kumar what the company might do if the Supreme Court ruled in its favour.

What I wanted to ask you was in the eventuality that you get a favourable order, do you think you might have the support of the people of Thoothukudi or particularly the residents living around the plant who have been opposed to the company now for decades?

Oh yes, there will not be any problem in restarting the plant after a favourable order. We have been running the plant for the last 25 years. And the people who are close to the plant, the villagers nearby, do want the plant to start because the prime shall we say issue today is, employment. And almost 50,000 people in the vicinity are suffering because of us. I'm sure they will want the plant to start. In the last 5 years that we have been operating, there has not been a single case of allegation, complaints against our operations. The nation needs a company like us.

Anil Agarwal, Vedanta's Chairman has said that the company's losses were 200 million dollars due to the plant's closure in the first year alone. He spoke of how Vedanta had catapulted India into a copper goods exporting nation, and that this position has now been reversed. Lawyer Vaigai said, courts the world over attempt to apply a core principle of environmental jurisprudence, which is the principle of Sustainable Development. She said, while courts have held that environmental concerns must go hand in hand with economic interests, often courts lean in favour of economic considerations. But in this case, she said, the court has unequivocally positioned the environment and human health above economic interests.

Authoring the judgment Justice T.S. Sivagnanam, the lead judge on the bench said, "we need to apply the broad principles of environmental jurisprudence, which has been evolved by the Hon'ble Supreme Court over four decades and the common thread which runs in all these decisions is to preserve the environment for "future inter-generational equity". If there is uncertainty in scientific opinion, it would be appropriate to err on the side of caution. The theory of sustainable development has been eloquently explained. The conclusion arrived in all Supreme Court decisions is that environmental protection is always at a higher pedestal compared to economic interest.

Countering Vedanta's position on the benign use of slag, the court observed: We have also noted that anything in abundance, could be dangerous. We have noted that laboratory tests and opinions are rendered on idealistic situations and not in a case where several tons of copper slag have been indiscriminately dumped, left to lie open to the fury of nature for nearly a decade. Therefore, there is definitely a scientific uncertainty on the effects of copper slag. We have no hesitation to hold that the State and the Regulator would be well justified in invoking the "Precautionary Principle" bearing in mind the aspect of sustainable development.

**And in closing it said:** The Doctrine of Sustainable Development, Precautionary Principle and the Polluter Pays Principle needs to be applied to the case on hand. If applied, facts speak for themselves. The petitioner needs to be closed and permanently sealed.