

(2001) 11 AP CK 0035

Andhra Pradesh High Court

Case No: Writ Petition No. 2334 of 2000

Chittiprolu Venkateswarlu

APPELLANT

Vs

Secretary, Ministry of
Environment and Forests, Govt.
of India

RESPONDENT

Date of Decision: Nov. 8, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226
- National Environment Appellate Authority Act, 1997 - Section 11(1)

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: D. Gopala Rao, for the Appellant; G.P. for Industries, E. Manohar, Ravikiran Rao and S.V. Bhatt, for the Respondent

Final Decision: Dismissed

Judgement

S.B. Sinha, C.J.

Grant of mining lease by the Central Government in favour of the 6th respondent - Gujarat Ambuja Cements Ltd. herein is the subject matter of controversy in this Writ Petition filed by some of the residents of the project area by way of Public Interest Litigation.

FACTS

2. Petitioners 1 to 4 herein are residents of Gamalapadu village while petitioners 5 and 6 are residents of Sankarapuram/Kotayyanagaram village, Guntur district and are said to be agriculturists by occupation. They own agricultural lands on the banks of Naguleru rivulet, which is said to be the only source of irrigation to their lands. Batrupalem, Madinapadu, Muthyalampadu villages are also located downstream of Naguleru rivulet from Nadikudi. Allegedly, the residents of all these villages are utilising the water of Naguleru rivulet, which is perennial in nature, both for

irrigation and drinking purpose. Number of villages are allegedly located on the banks of the river throughout its course until it joins river Krishna. Government constructed check dams on the rivulet, three at Gamalapad and two at Kotayyanagaram hamlet of Gamalpadu and lift irrigation scheme is said to have been provided to irrigate the fields located on both sides of the banks of rivulet. It is stated that a protected drinking water supply scheme was being maintained for supply of water to the villages of Madinapadu, Mutyalampadu and Kotayyanagaram.

3. The 6th respondent herein intends to set up a cement plant of two million tonnes capacity along with 50 MW captive power plant at Nadikudi wherefor it would be requiring 3.20 million tonnes of limestone. By G.O.Ms. No. 182 dated 9.6.1999, the Government of Andhra Pradesh has granted mining lease in favour of the 6th respondent over an extent of 277.87 hectares. Another mining lease over an extent of 673.73 hectares had been granted by the State Government during the pendency of this Writ Petition in G.O.Ms.No.594 Industries and Commerce (M.II) Department dated 30.11.2000 for a period of thirty years for quarrying of limestone from the mines located on either side of the rivulet subject to the result of this Writ Petition. The petitioners contend that the increased growth of industrialisation would have an adverse affect on the agriculture production in the area. The petitioners foresee an irresistible environmental disaster if the above two mining leases are allowed to be granted and a cement project is allowed to be established. It is further apprehended that within a ten km radius of the proposed plant site and mining area, there is hilly reserve forest area, if the project is established ecological imbalance may be caused. About ten villages are said to be situated within the blasting zone. The petitioners apprehend that due to the proposed construction and operation of the cement plant the water flow of the rivulet, which is being utilised for irrigation of about 10,000 acres of agriculture land, would be seriously affected in addition to other environmental degradation. Hundreds of agricultural lands would become fallow and water would be contaminated due to the pumping of polluted water from the industry back into the rivulet thereby affecting the health of the residents of the area. The green pastures on the banks of the rivulet, which has been serving, as a fodder to the cattle will vanish due to the impact on the water.

4. The right of the residents of the area guaranteed under Article 21 of the Constitution of India would be deprived if the project is allowed to be established in the area. It is stated that as per the guidelines issued by Ministry of Environment and Forests in 1994 no mining activity should be allowed within 500-metre distance from perennial rivulet. The leasehold would allegedly be within 60 metres from the banks of rivulet and located within 500 metres from railway track.

5. The petitioners alleged that the Government and the authorities without having due regard to the constitutional provisions under Articles 41 and 51A have granted the necessary permissions to the 6th respondent for establishment of the project.

6. The petitioners, therefore, filed the writ petition for issuance of a writ of mandamus directing the authorities not to give effect to the mining leases granted in favour of the 6th respondent, to stop all further proceedings regarding acquisition of land on behalf of Gujarat Ambuja Cements Ltd. (GACL) and to direct the GACL not to proceed with any construction activity related to the proposed cement plant and captive power plant.

7. The respondents herein including the Pollution Control Board in the respective counter-affidavits denied and disputed the averments made in the writ petition and, inter alia, contended that all precautionary measures had been taken before grant of mining leases under the relevant provisions of the Statutes.

8. The respondents denied the existence of any irrigational system in the area in question. Respondent No.6 avers that before filing this writ petition, M/s Andhra Cements Ltd., a cement factory in the neighbourhood and which was aspiring to establish their own cement factory in the area, having failed in their attempt to stall the process of establishment of the factory in question by filing Writ Petition No.15705 of 1999, has engineered the present litigation. It was stated that before granting the requisite permissions in terms of the statute, the authorities have strictly followed the rules and regulations framed under the relevant statutes viz., Environment (Protection) Act, 1986, Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act and it is only after satisfying themselves as to the precautions taken by them, the necessary permissions were granted. Several safeguards are provided to protect the environment and ecology of the area. As per the Mineral Concession Rules mining activity is prohibited only within 50 metres distance from any river or railway track. The Environment (Siting for industrial Projects) Rules, 1999 mentions that only certain industries are not to be allowed within 500 metres of railway track and mining is not included in the list of industries annexed to the said rules.

STATUTORY PROVISIONS:

9. The Parliament enacted Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957). Section 10 of the Act provides for application for prospecting licences or mining leases. Section 18 provides for mineral development. Sub-section (1) of Section 18 provides that the Central Government shall take all steps as may be necessary for conservation and systematic development of mineral in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such other purposes. u/s 13, the Central Government was empowered to make rules. Sub-Section (2) thereof says that such rules may provide for (a) the opening of new mines and the regulation of mining operations in any area, (b) the regulation of the excavation or collection of minerals from any mine, (c) the measures to be taken by owners of mines for the purpose of beneficiation of ores and (d) the development of mineral resources in any area etc.

10. In terms of the provisions of the said Act, the Central Government made Mineral Concession Rules, 1960. Rule 22 provides for applications for grant of mining leases. Rule 27 provides for conditions for grant of mining leases. Rule 27(1)(h) of the said Rules which is relevant for the purpose of this case reads thus:

(1) Every mining lease shall be subject to the following conditions:

(h) the lessee shall not carry on, or allow to be carried on, any mining operations at any point within a distance of fifty metres from any railway line, except under and in accordance with the written permission of the railway administration concerned or under/beneath any ropeway or any ropeway trestle or station, except under and in accordance with the written permission of the authority owning the ropeway or from any reservoir, canal or other public work, or buildings, except under and in accordance with the previous permission of the State Government.

11. It appears that the Ministry of Environment and Forests under the Government of India by reason of S.O. (E) dated 27.1.1994 upon inviting objections from the public in terms of Sub-rule (3) of Rule 5 of Environment (Protection) Rules 1986, against the intention of the Central Government to impose restrictions and prohibitions on the expansion and modernisation of any activity or new projects being undertaken in any part of India unless environmental clearance has been accorded by the Central Government or the State Government in accordance with the procedure specified in the notification in S.O.No.80 (E) dated 28.1.1993, in exercise of the powers conferred by sub-section (1) and clause)v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules 1986, has issued notification on Environmental Impact Assessment (EIA) of Development Projects. According to the said notification, new projects listed in Schedule I thereof shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure specified in the said notification. An application for environmental clearance is required to be made in the proforma specified in Schedule II and shall be accompanied by a project report which shall include an Environmental Impact Assessment Report/Environment Management Plan prepared in accordance with the guidelines issued by the Central Government in the Ministry of Environment and Forests from time to time. In the list of projects mentioned in Schedule I, Mining Projects (major minerals) with lease of more than 5 hectares (S.No.20) and Cement (S.No.27) were mentioned. Environmental guidelines for industries have been issued in addition to the directives, which are in existence under the Industries (Development and Regulation) Act, to ensure optimum use of natural and man-made resources in sustainable manner with minimal depletion, degradation and/or destruction of environment. Para 2.2 of the said guidelines relates to areas to be avoided. The relevant guidelines read thus:

In siting industries, care should be taken to minimise the adverse impact of the industries on the immediate neighbourhood as well as distant places. Some of the natural life sustaining systems and some specific land uses are sensitive to industrial impacts because of the nature and extent of fragility. With a view to protecting such an industrial sites shall maintain the following distances from the areas listed:

xx xx xx

(c) Flood Plain of the Riverine Systems: at least 1/2 km from flood plain or modified flood plain affected by dam in the upstream or by flood control systems.

(d) Transport/Communication System: at least 1/2 km from highway and railway.

12. As regards siting criteria, the following guidelines were issued:

No prime agricultural land shall be converted into industrial site.

Land acquired shall be sufficiently large to provide space for appropriate treatment of waste water still left for treatment after maximum possible reuse and recycle reclaimed (treated) wastewater shall be used to raise green belt and to create water body for aesthetics, recreation and if possible, for aquaculture. The green belt shall be 1/2 k.m. wide around the battery limit of the industry. For industry having odour problem it shall be a kilometre wide.

SUBMISSIONS:

13. Mr. D. Gopal Rao, learned counsel appearing for the petitioners brought to this Court's notice that the environmental guidelines for industries provide for restrictions for establishment of factory within 500 mtrs and the same is violated in the case of the appellant. He would further submit that the project would affect the irrigational system in the area, which is the source of irrigation for agriculture and drinking water. He would urge that the project, if permitted to be established, would affect the environment and ecology of the area.

14. The learned counsel appearing for the 6th respondent supported the grant of lease. He would submit that necessary permissions had been granted only after through examination of the project area and environmental aspects. Permissions have been granted only subject to terms and conditions specified in the orders. There is a stipulation that the mining activity should not be allowed within 500 mtrs from a perennial rivulet and as per the Mineral Concession Rules mining activity should not be carried on within 50 mtrs. from any river or rail line.

15. Mr. Bhatt, learned counsel appearing for the A.P. Pollution Control Board would submit that consent has been granted in favour of GACL after conducting a public hearing on 5.12.1998 as required under the statutory notification dated 10.4.1997. He would further submit that it is only after fulfilment of all the requirements and norms as required under the relevant statutory enactments, clearance had been

granted for the establishment of the unit and no departure had been made while granting the clearance.

16. It is not in dispute that there are two major cement factories viz., Andhra Cements Ltd. and Rassi Cements in the area within a radius of 20 kms. The villages are situated at about 15 kms. away from the mining operations and the plant. The petitioners have not filed any similar Writ Petitions against those cement factories and they have not stated as to whether any ecological imbalance has been caused by reason of operation of the said two factories. In the Writ Petition, it is stated that further industrialisation will cause ecological imbalance and they have been mining within a radius of 5 to 10 kms of the petitioners villages and working under similar environmental conditions. It may be noticed herein that this Writ Petition has been filed immediately after the writ petition filed by Andhra Cements Ltd was dismissed by this Court. The bona fides of the petitioner, in the aforementioned situation, appear to be doubtful.

SUSTAINABLE DEVELOPMENT:

17. Ecology is profoundly serious matter. Its solutions on environmental quality may directly or indirectly have adverse effects on the poor and lower income groups. Hence economic or distributive justice must become an active component in all ecology debates. Priority should be given people living in slum areas as they don't look forward to "living in a pollution-free, unjust and repressive society.", ECOLOGICAL RESPONSIBILITY AND ECONOMIC JUSTICE - NORMAN J. FARAMELLI.

18. Natural resources are required to be tapped for the purpose of social development, which undoubtedly must be done with requisite attention and care so as to prevent ecological imbalance and environmental degradation in any serious way. In [Rural Litigation and Entitlement Kendra and Others Vs. State of Uttar Pradesh and Others](#), the Apex Court held:

It is for the Government and the Nation and not for the Court, to decide whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine and on the basis of appropriate advice, Government should take a policy decision and firmly implement the same.

19. It is always to be remembered that natural resources are permanent assets and are not intended to be exhausted in one generation. Brundtland defines "Sustainable development" to mean development that meets needs of the present without compromising the ability of the future generations to meet their own needs. Sustainable development is a balancing concept between ecology and development which include Inter-Generational Enquiry, use and Conservation of Natural Resources, Environmental Protections, the precautionary Principle, obligation to

assist and cooperate, Eradication of poverty and financial assistance to the developing countries (See [Vellore Citizens Welfare Forum Vs. Union of India and others, , A.P. Pollution Control Board Vs. Prof. M.V. Nayadu \(Retd.\) and Others,](#) and [Narmada Bachao Andolan Vs. Union of India and Others, .](#)

20. The State has responsibility to protect the environment for the future generations. It is also well settled that right to pollution free environment is recognised as a fundamental right under Article 21 of the Constitution. Under Article 48A of the Constitution, the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. But at the same time, it has also a duty to do economic justice to the people. Under Article 47, a duty is also cast on the State to raise the level of nutrition and the standard of living and to improve public health. For doing economic justice, one has to necessarily depend upon the natural resources available in a particular region or area. Therefore, a balance has to be struck between economic justice and environmental protection, which has assumed importance in recent years by utilising the natural resources to the optimum level. Without tapping the natural resources in a sustainable manner with minimal effect on the environment, it would be impossible to do economic justice. Where rich mineral resources are available, naturally, there is scope for development of the area and increase of the standard of living of the people. In the area in question, it is not in dispute that limestone, an essential mineral required for the manufacture of cement is amply available. If such available material resource is utilised to its optimum level without hindrance to environment, the people in the area will be benefited by way of employment and there is scope for sustainable economic justice.

FINDINGS:

21. Any action on part of the State carries with it a presumption that the official acts have been done upon compliance of the procedures laid down therefor.

22. It is not in dispute that an application for grant of mining lease was filed by the 6th respondent herein before the Director of Mines and Geology on 19.10.1995. The site was inspected on 29.12.1995. The proposal was registered with the Secretariat for Industrial Approvals, Ministry of Industry and Commissioner of Industries on 21.7.1996. The State Government recommended the case to Government of India for grant of mining lease on 23.9.1996. The mining plan was submitted to Indian Bureau of Mining for approval on 25.1.1997 whereafter consent of patta dars of plant site and mining lease was obtained and submitted to the Director of Mines and Geology, Hyderabad. Yet again, site was inspected and the Indian Bureau of Mining approved the plan on 14.7.1997. An application for clearance of the project was also filed before the A.P. Pollution Control Board (for short PCB) on 14.10.1998. Before the Director of Ground Water Department also application was filed. The PCB issued a notification on 4.11.1998 for public hearing in two local newspapers. The Environmental engineer of the PCB inspected the site and the Technical Committee

of PCB examined the proposal on 29.12.1998. It is not in dispute that pursuant to the notification issued by the PCB for public hearing several people including Sarpanches of various villages and others participated and no objection thereto was raised by them for establishment of the cement factory by the 6th respondent. The rate for compensation for acquisition of land was fixed at Rs. One lakh per acre. On 3.1.1999, application was submitted to Chief Engineer, Minor irrigation for permission to draw Naguleru stream water. The Technical Committee of PCB again examined the proposal on 8.2.1999 and 12.2.1999 and finally PCB granted consent for establishment of the factory on 3.3.1999.

23. The applications filed by the 6th respondent before the Director, Ground Water Department dated 29.10.1998 was allowed by the Chief Engineer, Minor Irrigation on 6.4.1999 granting permission to draw Naguleru stream water. Two representatives from each of the project affected villages were taken to Gujarat with a view to show existing similar operations in Gujarat and they gave consent for acquisition of land for establishment of a similar plant at the site in question upon satisfying themselves that GACL was adhering to environmental protection in the area. Only thereafter, a notification u/s 4(1) of the Land Acquisition notification was issued between 10.4.1999 and 15.4.1999. An application was filed before Ministry of Environment and Forest (MOEF) by GACL and the Government of A.P. granted mining lease on 9.6.1999. Mining lease deed was executed on 15.10.1999. The Environmental Appraisal Committee examined the proposal and granted clearance on 19.11.1999. The draft declaration u/s 6 of the Land Acquisition Act was published on 26.6.99 and 28.6.99 and meeting of Consent Acquisition Committee for acquisition of land was held on 22.11.1999 and consent awards were passed on 17.1.2000 and the Company paid compensation to pattaadars between 25.1.2000 to 27.1.2000 at the rate of Rs.1.50 lakhs per acre.

24. It is not in dispute that Andhra Cements Ltd. was also a contender for grant of mining lease. It had also filed an application for grant of prospecting licence. Andhra Cements filed a writ petition before this Court which was marked as W.P.No.15705 of 1999 questioning the order of the State Government rejecting its application for grant of lease and the same was dismissed by this Court on 18.1.2000. This Writ Petition was filed on 15.2.2000.

25. The contention of the State is that no drift irrigation project is situated within the area in question. According to the State, the Nagarjunasagar right bank canal would meet the irrigational requirement and also drinking purpose. It was stated that the cement factory proposed to be established by the 6th respondent fulfils the conditions. In this connection, the recommendations made by the Ground Water Department of Andhra Pradesh may be noticed:

After a careful review of the investigation results derived from Geological, Hydro geological, Geophysical and Hydrological studies it is opined that the Ground water resources in the study area mainly depend on the recharge from the canal system.

Considering the factors of recharge conditions, quifer resistivity, thickness of aquifer and also depth to the basement (12) twelve sites are recommended for Groundwater exploitation by constructing bore wells. The total requirement of the factory is 9000m3/d. Based on the pump tests conducted, it is concluded that on an average a bore well may yield 750 m3/d. Keeping in view these discharges, it is possible to tap water from these bore wells, about 10000m3/d. However, actual yields of the individual bore wells need to be conducted after construction. Besides these bore wells, existing three bore wells in the study area can also be utilised, and further additional sites can be identified if required. Though the massive limestones are in general expected in the depth range of 30 to 40 m recommendations are made for drilling to 55 to 65 m, keeping view the horizontal and layered structure of limestone which may facilitates flow of groundwater, though it is hard and massive.

26. A status report on ground water in respect of the Dachepalli, Gurazala and Karempudi mandals in Guntur district has been furnished by the Ground Water Department of Guntur District wherein the quality of ground water has been stated to be good. The petitioners, however, relied upon a letter-dated 26.4.2000 purported to be written by the Mandal Revenue Oficer, Dacehpalli in response to a letter written by Sri Vulli Krishna Murthy, Advocate, Gurazala. The said letter of the MEO states:

1. There is one check dam onnagulru at Bhatrupalem village irrigating 20 acres.
2. A Lift Irrigation scheme has been functioning at Bhatrupalem village on Naguleru irrigating 100 acres.
3. There is a protected water supply scheme on Naguleru for Madinapadu and Mutyalampadu villages.
4. An extent of about Ac.100.00 are being irrigated through Naguleru water through pump sets in Nadikuri village.
5. There is check dam at Nadikudi on Naguleru and through it an extent of Ac.20.00 of Nadiuuri and Ac.200 of Dacehpalli are being irrigated.
6. There is protected water supply scheme on Naguleru water for railway station and railway quarters.
7. There are check dams in Gamalapdu and Sankarapuram village limits locally known as Chakrievu Katta for irrigation purpose irrigating about 120 acres.

27. The learned counsel for the 6TH respondent contends that the said letter is contrary and in consistent with the stand taken by the State. It is so.

28. Admittedly, the environmental guidelines for Industries recognised that an industry cannot be set up within half km from the railway track and Transport/Communication system. The guidelines are only recommendatory in nature. Rule 27(1)(h) of Mineral Concession Rules, 1960 prohibits mining operation

only within a distance of 50 metres except in accordance with the written permission of the railway authority concerned. The respondents in the counter-affidavits have categorically stated that the cement factory would be situated far away from the railway track or national highway.

29. In a situation of this nature can it be said that permissions for establishment had been granted by the concerned authorities without any application of mind ? The answer to the said question must be rendered in negative. The letter of the Ministry of Environment and Forests dated 19.11.1999 clearly discloses that before according environmental clearance, a public hearing of the project was held on 5.12.1998 in terms of the provisions of Environment Assessment in the presence of the District Collector, Ex-M.L.A. Gurazala, Sarpanches of the villages, ZPTC members etc.. It may also be noted herein that NOC has been granted by the PCB on 3.3.1999 subject to terms and conditions specified therein. Further, environmental clearance had been accorded subject to strict compliance of number of terms and conditions/stipulations made by APPCB viz., disposal of hazardous wastes as per environmental aspects which include, noise pollution, air pollution, development of green belt in an area of 200 acres, strict adherence of Hazardous Waste (Management and Handling) Rules, 1989 etc. The clearance was also subject to the following conditions:

The project proponent shall also comply with all the environmental protection measures and safeguards recommended in the EIA/EMP.

The project proponent should have a scheme for social upliftment in the surrounding villages with reference to contribution in road construction, education of children, festivals, health centres, sanitation facilities, drinking water supply, community awareness and employment to local people whenever and wherever possible both for technical and non-technical jobs.

A separate environmental management cell with full-fledged laboratory facilities to carry out various management and monitoring functions should be set up under the control of Senior Executive.

30. The A.P.P.C.B., as noticed hereinbefore, has made intensive study on the project, obtained several clarifications, its technical committee inspected the site more than once and thereafter only permission for establishment of the factory had been granted. When the mining operations starts and factory commences its operation, naturally, it will be subject to all such other and further conditions which the 6th respondent must comply with. In the counter-affidavit, it has been categorically denied that the villages in question were located on the banks of Naguleru rivulet. It was stated that the villages are located at 1000 Mtrs. To 3500 Mts from the rivulet. It was also stated that Madinapadu reserve forest areas are far away from the proposed site and the Divisional Forest Officer, Guntur in his letter dated 22.6.1999 has confirmed that there are no wild animals within ten kms radius of the project.

The respondents" further state that the cement plant proposed to be set up by it will be pollution free by adopting the state of art technology. The factory would be located between 2 to 3 kms away from the village Nadikudi. Only about Ac.450 acres of acquired land would be utilised for factory purpose and out of the said extent also, Ac.200 would be developed as green belt for improvement of the environmental conditions. It was further stated that the unique feature of the limestone quarries in the area is that there would be no overburden or waste rock and the entire limestone is cement grade and it will be utilised in its entirety and therefore there would be no occasion for careless disposal of any debris.

31. The petitioners herein have not brought out any adequate or factual data showing that the proposed plant was situated in a delicately balanced micro environmental situation or is threatened with environmental disaster. In the counter-affidavit filed by the PCB it has been stated that a public hearing was conducted by District Collector at R & B Guest House, Nadikudi on 5.12.1998 at 3.00 p.m. in accordance with Gazette Notification S.O. 318(E) dated 10.4.1997 of Ministry of Environment and Forest, Government of India duly giving wide publicity, before issuing the clearance. It has been categorically stated that the 6th respondent manufacture cement utilising dry process and as such no wastewater is expected to be generated from the manufacturing process. The effluent generated from cooling tower and boiler is proposed to be treated in an ETP consisting of neutralisation, etc. The untreated wastewater will be utilised to develop green belt but would not be discharged into Naguleru river. It was also stated that in the draft siting guidelines there is no stipulation with regard to maintenance of 500 m distance from perennial rivulet. Condition was, however, imposed to maintain a distance of 50m between the edge of the proposed mine and the High Flood Ldvel of Naguleru., Only eco-friendly conditions were stipulated in the order so that environmental damage caused due to the activities of mining and cement plat operations are minimised.

32. The Government of India and the State Governments have enacted various environmental laws for protection of the environment and ecology and various authorities have been constituted under the statutes for giving clearance or permissions for establishment of industrial units. Elaborate procedures have been laid down under the statutes before according permission to the applicants and such permissions are always subject to such terms and conditions as may be prescribed by the statutory authorities empowered under the enactments.

33. In the instant case, there is no dispute that the various authorities viz., Industrial Bureau of Mines, A.P. Pollution Control Board, Ground Water Department, Ministry of Environment and Forest Department and other authorities have thoroughly examined the proposal for establishment of the cement plant in question at Nadikudi and only after satisfying themselves as to the protection of the environment which we have in extenso detailed above granted permissions for the establishment of the unit. The petitioners have not placed any material before us to

show that the authorities before according permissions have failed to take into account any material, which is against the 6th respondent. At various levels, the Officers empowered under the relevant statutes have inspected the site and the committees have examined the materials placed before it and after consideration of the same, the expert bodies accorded permissions. This Court in exercise of the jurisdiction under Article 226 of the Constitution cannot sit in appeal over those expert bodies as appellate authority and give its opinion unless it is shown that those authorities have failed to discharge the statutory duty cast upon them under the relevant statutes. As already noticed, the petitioners have not been able to establish with reference to any material particulars how the authorities went wrong in according the permissions to the 6th respondent for the establishment of the cement unit.

34. We are, therefore, of the view that necessary criterion has been followed in the instant case by the respective statutory authorities before according permission for the establishment of the unit. The statutory authorities have examined the matter by physical verification of the area. We, therefore, do not see any illegality in the action of the authorities in granting necessary permissions in favour of the 6th respondent. Unless it is established that the statutory authorities have granted the necessary permissions in violation of the provisions of the statutes without due regard to environmental and ecological aspects of the area contrary to the provisions of the statutes and the notifications issued by the Government of India from time to time on the subject, this Court cannot interfere in the matter on mere allegations. We are, therefore, convinced that necessary permissions have been granted by the statutory authorities in accordance with law and hence no interference is called for.

36. We may also notice that the Parliament has enacted the National Environment Appellate Authority Act, 1997 (Act. No. 22 of 1997) to provide for the establishment of National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (protection) Act, 1986 and for matters connected therewith or incidental thereto. Section 3 of the said Act provides for constitution of Appellate Authority. Sub-section (1) of Section 11 provides that any person aggrieved by an order granting environmental clearance granted in respect of any industry is entitled to prefer an appeal within thirty days from the date of such order or clearance. Sub-section (2) defines "person" to mean any person who is likely to be affected by the grant of environmental clearance, any association of persons, local authority or Central Government. Therefore, if the petitioners are aggrieved of the environmental clearance granted by the Ministry of Environment and Forest or the Pollution Control Board or any authority connected with the granting of clearance to the project, they ought to have approached the Appellate Authority for redressal.

37. The Writ Petition is, therefore, devoid of any merit and it is accordingly dismissed. There shall be no order as to costs.