

**APPELLATE AUTHORITY  
UNDER THE AIR ( P.C.P. ) ACT, 1981, ORISSA,  
BHUBANESWAR**

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APPEAL NO.15-A OF 2006

An appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 arising out of the order dated 28.6.2006 passed by the State Pollution Control Board, Orissa.

Smt. Mamata Dalai,  
Proprietor of M/s.Trishul Bricks,  
Dist.Mayurbhanj ..... Appellant

V e r s u s

State Pollution Control Board, Orissa,  
Bhubaneswar and another ... Respondents

For Appellant : S/Shri Umesh Chandra Patnaik,  
& Somanath Patnaik

For Respondents : Shri B. P. Pattajoshi,  
Law Officer, S.P.C.B.

For Intervenors : S/Shri Amitav Das,  
J. K. Mohanty & S. S. Jena

QUORUM :

**JUSTICE SHRI B. P. DAS, CHAIRMAN  
AND  
DR. C. R. MOHAPATRA, MEMBER**

Date of Order : October 28, 2006

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This appeal has been filed challenging the order dated 28.6.2006 issued by the State Pollution Control Board, Orissa, (hereinafter 'the Board') vide Annexure-4 directing revocation of the

consent accorded in favour of the appellant on 12.8.2005 for establishment of a brick kiln unit.

2. During the course of hearing of this appeal, our attention was drawn by the learned counsel for the appellant to the order dated 28.6.2006 directing revocation from which it transpires that the consent was revoked as certain facts and materials were suppressed in the affidavit dated the appellant in the affidavit filed had suppressed the facts and materials and chosen to adopt fraudulent means to get the consent to establish from the Board

had suppressed the facts and materials and chosen to adopt fraudulent means to get consent to establish from the Board certain facts and materials by order dated 17.6.2006 we directed the Board to cause a fresh inspection of the appellant's unit and submit a detailed report on the points noted therein and also to report as to the action taken against the other stone crushing units forming the cluster.

3. Learned Law Officer of the Board has filed the inspection report ( Annexure-R/2 ) along with a memo. dated 17.7.2006 indicating therein that fresh inspection of the appellant's unit was made on 13.7.2006 in terms of the order dated 17.6.2006.

4. In the aforesaid inspection report, it is indicated that the appellant's crusher unit is located at a distance of about 0.5 k.m. away from N.H. No.5 and more than 1 k.m. away from villages Kadalibadi and Daleiput but there are 7-8 houses in village Kadalibadi situated in a scattered manner within 1 k.m. It is, however, indicated in the inspection report that the unit is not meeting the siting criteria in regard to its distance from the other stone crushers. The submission of the learned counsel for the appellant in this regard is that when the appellant's unit was established, there was no crusher unit in that area but subsequently the cluster of

crusher units came up in that area for which the appellant cannot be held liable as its unit is situated within the siting criteria. In the report it is further indicated that as the unit was not in operation due to break down on the date of inspection, the sprinklers were not operating but on being asked the Proprietor operated the sprinklers and it was found that all the sprinklers were in operational condition. The inspecting officers further found that seven numbers of saplings have been planted about four months back and another eight numbers of trees exist here and there inside the premises. It is indicated that the boundary wall constructed towards the road side at a distance of about 30' from the crusher acts as the wind-breaking wall and the total length of the wall is 140' out of which 77' is of 8' height and the rest 63' is of 6' height.

5. Save and except saying that the appellant's unit is close to the other units situated in that area, there is no other objection in the aforesaid report and in the submission made by the learned Law Officer on behalf of the Board so far as siting criteria is concerned. The initial report as well as the subsequent reports of the Board are silent and have not refuted the claim of the appellant that his unit was established first and other units forming the cluster came up later on. As to the action taken against other crusher units forming the cluster in the locality, the Inspecting Officers of the Board made inspection of those 13 crusher units situated adjacent to the appellant's unit and submitted a consolidated report which is produced before us along with the memo. as Annexure-R/3. On behalf of the Board, it is submitted that the Board has already initiated appropriate action in accordance with law against those units located in and around the appellant's unit.

6. This being the position, we are inclined to allow the appeal as the appellant's unit is situated within the siting criteria as its

distance is 0.5 k.m. away from N.H.5 and more than 1 k.m. away from the nearby villages. But considering the fact that the appellant has not yet applied for consent to operate the unit and as the learned counsel for the appellant undertakes that the appellant shall file an application for consent to operate within a period of one month from today along with all required documents and fees, we allow this appeal and set aside the impugned order of closure dated 21.2.2005 passed by the Board under Annexure-4 and direct that in the event the appellant files application for consent, the Board shall deal with the same in accordance with law and dispose of the same as expeditiously as possible. If consent is given to the appellant to operate his unit, the Board shall monitor the air pollution control measures adopted by the unit. Till consent is given, the appellant shall not operate his unit.

.....**Sd/-**.....  
**Dr.C.R.Mohapatra,**  
**Member**

.....**Sd/-**.....  
**Justice B. P. Das,**  
**Chairman**

Date : 22.7.2006/Chhatoi