

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

APPEAL NO.23-A OF 2006

An appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 arising out of the order dated 15.11.2006 passed by the State Pollution Control Board, Orissa.

M/s.Mahalaxmi Stone Crusher Unit
Represented through its Proprietor
Shri Pramod Kumar Routray
At/P.O – Tapang, Dist.Khurda

..... ..

Appellant

V e r s u s

State Pollution Control Board,
Orissa, Bhubaneswar

... ..

Respondent

For Appellant : S/Shri Srikanta Ku. Sahoo,
M. Mohapatra, B. B. Biswal
& A. K. Patnaik

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

QUORUM:

HON'BLE SHRI JUSTICE B. P. DAS, CHAIRMAN,

PROF. G. B. BEHERA, MEMBER

AND

DR. C. R. MOHAPATRA, MEMBER

Date of Judgment : May 05, 2007

Prof. G.B. Behera, Member: The appellant, M/s. Mahalaxmi Stone Crusher Unit, At/Po-Tapang, District Khurda, has filed this appeal u/s. 31 of the Air (Prevention and Control of Pollution) Act, 1981 (in short 'Act')

challenging the order dated 15.11.2006 passed by the State Pollution Control Board, Orissa, (in short 'the Board') u/s.31A thereof directing the appellant to close down operation of his stone crusher unit with immediate effect on the ground that the unit violated the siting criteria, vide Annexure-6.

2. The brief facts leading to the filing of this appeal may be stated thus:

The appellant established its stone crusher unit in 1989 on transfer basis from Berhampur O.S.F.C. Branch. The O.S.F.C. sold it to the present proprietor, namely, Shri Pramod Kumar Routray in 1985. The appellant has submitted that old machines were overhauled and the operating system was changed. The respondent-Board issued a letter bearing no.8485/NOC (MISC) 2 dated 6.8.1996 (Annexure-1) wherein D.O. letter no.4255 dated 9.12.1987 was referred to. It was clearly mentioned that the stone crusher units fulfilling the following siting criteria will be directly registered by the concerned District Industries Centre.

- (i) No stone crusher should be allowed within 1 KM of a town or village.
- (ii) They must be located at least $\frac{1}{2}$ KM away from National & State High Ways.
- (iii) Each unit should be at least $\frac{1}{2}$ KM away from another such unit.

Besides, a number of pollution control measures were also indicated for implementation by the stone crusher units. The Collectors were requested to take legal action against the stone crushers not following the siting criteria and pollution control measures. A meeting of the stone crusher entrepreneurs through their federation/Association was convened by the Forest and Environment Department, Govt. of Orissa, on 28.10.1999 and decided that violators of siting criteria shall approach the District Administration for alternative sites. The desire of the Hon'ble Chief Minister to take a meeting to sort out various issues raised by the stone

crusher units was also noted, vide Annexure-2. A review meeting was held on 10.2.2004 by the Hon'ble Minister, Energy, Science & Technology and Environment, and the Federation of stone crushers wherein it was decided as follows :

- (i) The Federation will approach the Chairman, S.P.C.B. to take up the matter with the Govt. for re-consideration of the siting criteria. They must undertake for installation/implementation of pollution control measures within three months; and
- (ii) A committee under the chairmanship of the Principal Secretary to Govt. in F. & E. Deptt. to be constituted to examine the siting criteria/guidelines in respect of stone crusher units presently followed in the States like Karnataka, Tamilnadu, W.B., A.P., etc.

The Hon'ble Chief Minister chaired a meeting on the regulation of stone crusher units on 12.1.2005 and the following decisions were taken in the said meeting:

- (i) Action to be initiated against violators of all the three siting criteria.
- (ii) The original definition in the revenue/settlement records of a village/habitation needs to be followed.
- (iii) Sec. 133 of the Cr.P.C. may be applied by District Administration against those stone crusher units which are violating the siting criteria.

Thereafter on 14.7.2006 the Board issued a show cause notice to the appellant under section 31A of the Act for violation of the siting criteria to which the appellant submitted his reply vide Annexure-5, and after hearing, the Board passed the impugned order dated 15.11.2006 vide Annexure-6 directing the appellant to close down the operation of the stone crusher unit.

3. The respondent-Board through its Law Officer submitted that (a) under section 21 of the Act any stone crusher situated within the air pollution control area is required to obtain consent to establish/

operate from the Board. The Govt. of Orissa, F. & E. Deptt. have declared the entire State of Orissa as air pollution control area vide notification dated 18.7.2002 (Annexure-A); (b) Prior to the declaration, the Govt. of Orissa have issued directions/guidelines vide notification dated 13.5.1998 (Annexure-B) for the operation of the stone crusher units as mentioned in Clause (2) thereof. Further, it was said that the stone crusher units which are in the aforesaid prohibited limits shall shift to other areas within six months from the date of publication of the notification in the Orissa Gazette. (c) The Govt. of Orissa in the F. & E. Deptt. have amended the notification bearing No.9507 dated 13.5.1998 (Annexure-B) by omitting the item IV of the aforesaid notification vide no.13091 dated 1.8.2006 (Annexure-D). (d) The Hon'ble High Court of Orissa in the case of ***Nehru Paribesh Suakshya Committee v. State of Orissa, reported in 94 (2002) C.L.T. 34***, observed that the guidelines in respect of establishment of stone crusher units have to be adhered to. (e) The Board published a notification in the newspaper asking the stone crusher units in Orissa to obtain consent from the Board on or before 30.9.2002 failing which legal action would be taken against them (Annexure-E) (f) The unit of the appellant was inspected by the Board on 21.2.2006 after due notice. The Inspectors reported that (i) the unit had not followed the siting criteria; (ii) the unit had not adopted any pollution control measures; and (iii) the unit was operating without valid consent. (g) On the basis of their report, the Board issued a show cause notice dated 14.7.2006 to the said stone crusher unit and asked the Proprietor to submit his reply by 5.8.2006 (Annexure-F). (h) In response to this show cause notice, the appellant submitted a reply on 5.8.2006 and requested for a personal hearing. A personal hearing was granted and the appellant was asked to attend on 21.9.2006.(i) The appellant unit appeared through Shri Pramod Kumar Routray on 21.9.2006 for personal hearing. The Committee recommended for closure notice to the respondent.

4. The appellant in his reply to the show cause notice dated 14.7.2006 submitted that –

- a) He had obtained the necessary no-objection certificate from the Grama Panchayat and was registered as an industrial unit having fulfilled all such criteria required then.
- b) The distance fell short later due to massive widening of N.H. No.5.

5. During the course of hearing, the appellant filed a written note of submission stating therein that there was massive widening of N.H. No.5 in a later date; no siting criteria existed at the time of establishment of the unit; the State Govt. incorporated a new rule to obtain consent in terms of section 21 of the Act and the Board should have given more time to adopt the air pollution check and control measures and to shift the unit itself to any other suitable site within a reasonable time frame.

6. The learned counsel representing the appellant raised the same arguments as indicated above and argued strongly for lifting the closure order of the unit so that his client no longer suffers economically and mentally.

7. Environment has become a sensitive subject in the recent past. The problems arising out of mismanagement of environment have posed a threat to the very existence of the living beings. All the four basic principles of existence, namely, earth, water, air and space, need to be saved from massive pollution hazard. Health of all kinds of living being need to be protected and it is the responsibility of all concerned to provide a pollution free environment. It should be borne in mind that environment laws will be enforced strictly with time, if necessary with additional directives, with a view to provide a better living atmosphere to all. No industry – small or big – should take cover of the old statutes or law and continue to pollute the environment. Society is becoming more and more aware of the pollution problem. Number of industries has also increased exponentially, resulting in increasing concentration of pollutants beyond limit.

The appellant has not adopted any pollution control measures as is seen from his submission and from the report of the Inspectors of the Board.

8. Taking into consideration all these factors and the fact that the appellant unit established in 1989 has not bothered to adopt pollution control measures, has not applied for consent in spite of the notifications and has not attempted to shift to a safer site as per norms, we feel that the closure notice issued by the State Pollution Control Board, Orissa, vide Annexure-6 is justified.

9. In order to mitigate the hardship, if any, to be caused to the appellant, we direct that the appellant be given a suitable period of time by the Board to shift the unit to a suitable alternative place, which satisfies all the criteria stipulated by the State, apply for consent and the said application shall be dealt with by the appropriate authorities with prompt affording priority.

The appeal is disposed of with the above directions.

.....Sd/-.....

**Prof. G. B. Behera,
Member**

B.P.Das, J.

I agree.

.....Sd/-.....

**Justice B. P. Das,
Chairman**

C.R.Mohapatra

I agree.

.....Sd/-.....

**Dr. C.R. Mohapatra,
Member**

Date: 05.5.2007/Chhatoi

Later: In view of the order passed today in the order-sheet, this judgment shall not be given effect to until further orders of the Hon'ble High Court in W.P. (C)

No. 5342/2007.

...Sd/-.....
Member

....Sd/-.....
Member

.....Sd/-.....
Chairman