

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

APPEAL NO.11-A OF 2007

An appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981.

Shankar Oram Appellant

V e r s u s

Member-Secretary,
State Pollution Control Board,
Orissa & another ... Respondents

For Appellant : S/Shri B. P. Tripathy,
Ramdas Achary & P. Parida,
Advocates

For Respondents : Shri B. P. Pattajoshi,
Law Officer, S.P.C.B. &
Shri P. K. Agarwal, Advocate

QUORUM :

HON'BLE SHRI JUSTICE B. P. DAS, CHAIRMAN,
PROF. G. B. BEHERA, MEMBER
AND
DR.C.R. MOHAPATRA, MEMBER

Date of Judgment: March 29, 2008

B. P. Das, Chairman : Appellant-Shri Shankar Oram, who is a former M.L.A and a resident of Rourkela town in Sundargarh district, claiming himself to be interested in the environmental issues, has filed this appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (in short 'the Act') praying to set aside the order passed by the State Pollution Control Board, Orissa, hereinafter called 'the Board',

granting consent in favour of respondent no.2-M/s.Nixon Steel and Power Ltd. to operate the Sponge Iron Plant established in the Industrial Estate at Kalunga in Sundargarh district, and to restrain the industry from operating.

2. According to the appellant, respondent no.2-company was granted consent to establish a Sponge Iron Plant with a capacity of 350 Tonnes Per Day (TDP) at Kalunga in Sundargarh district and finally on 31.5.2006 Consent to Operate the plant till 31.3.2011 was granted by the Board under section 21 of the Act, vide Annexure-6. Prior to grant of aforesaid Consent to Operate and after installation of the pollution control devices in the plant, the Board by letter dated 15.7.2005 (Annexure-2) granted permission for trial run of the plant upto 31.8.2005. During such trial run period, the unit was inspected by the Board on 31.8.2005 to verify the operational status of the Electrostatic Precipitator (ESP) and other pollution control equipments installed in the unit. During such inspection, it was found that the ESP was dysfunctional for which no Ambient Air Quality (AAQ) sample could be collected and no stack monitoring was conducted. The appellant has relied upon the inspection report dated 1.9.2005 of the Asst. Environmental Scientist of the Board's Regional Office at Rourkela, (Annexure-3) wherein it was observed that the rotary kiln was in operation without operating the ESP & GCT as a result of which heavy emission of untreated flue gas was found to be taking place from the emergency cap of the ABC stack and on inquiry the Occupier expressed that there was some process disturbances for which ESP could not be operated. After one hour, the ESP was taken into line and started operation. Thereafter the respondent-industry applied for consent to operate. The Regional Officer, Rourkela, made an inspection of the industry on 27.9.2005 and submitted the inspection report dated 28.9.2005, vide Annexure-4. During the inspection, the Regional Officer found that the AAQ did not meet the prescribed standard. It

was observed therein that in the absence of any mechanical dust handling device at the ESP hopper, heavy dust nuisance in fugitive form was observed to be taking place. The unit installed a small plugging device at the ESP hopper which was of grossly inadequate capacity and hence totally ineffective. It was also observed that the house keeping practice adopted by the unit was poor and the unit excavated garland drain alongside the southern and northern boundary of the factory without any provision of settling. The appellant has accordingly alleged that despite several inconsistencies and inadequacies found in regard to air pollution control norms during the inspection, the Board has granted consent to operate the industrial unit under section 21 of the Air Act for the period upto 31.3.2011, vide Annexure-6. It is alleged that the inspection was done in a perfunctory manner and basing upon such inspection the Board granted consent to operate in favour of the industry without proper verification of the adequacy of the pollution control measures. The appellant has stated that the consent order was granted with the following inherent defects :

- (i) The unit has not installed any bag filter at coal crusher and screening circuit only some water sprinklers/spray nozzles installed resulting in heavy fugitive dust.
- (ii) The unit has only one separate duct from Day bin bag filter connected to the cooler discharge point resulting in fugitive emission from cooler discharge area as the unit needs separate bag filters for control of Air pollution.
- (iii) Even the coal injection point as well intermediate bin point areas have fugitive emission due to lack of proper pollution control measures.
- (iv) The unit has not bother to change the small plugging device at the ESP hopper since its establishment which is totally inadequate and recently it has become defective causing heavy fugitive dust at the ESP area.
- (v) The pit is never maintained and the housekeeping is next to none.

- (vi) Even the emergency cap is not functioning properly and leak heavy fugitive emissions.
- (vii) The stack is also a victim of emission problem due to lack of maintenance to the concerned ESP.
- (viii) No ESP log book is maintained.
- (ix) The approach road is not up to the mandatory requirements of the pollution control norms and the internal roads are in worse condition and lacks the mandatory fixed type sprinklers.

Apart from the above, allegation has also been made by the appellant that respondent industry adopted various illegal practices like switching off all pollution control measures after 5 O'clock in the evening and also on Government holidays resulting in severe pollution in the locality.

3. Notice on the appeal was issued to the respondents. Respondent no.1-Board has appeared through its Law Officer and respondent no.2 is represented by Shri P. K. Agrawal, Advocate.

4. Pursuant to our order dated 15.12.2007, the unit was inspected by the State Board through Shri H.K.Nayak, Asst. Environmental Engineer and Dr.A.K.Mallick, Asst. Environmental Scientist of the Regional Office of the State Board on 15.1.2008 and the inspection report along with the Analysis Report of air sample is filed along with a memo. dated 1.3.2008. In the aforesaid inspection report it is indicated that (i) no emissions from product house and other material handling bag filter was observed. (ii) the house keeping was satisfactory. (iii) the industry has installed wet scrapper for collection of dusts from DSC and the performance is satisfactory (iv) no emissions observed from emergency caps and slip rings. (v) the industry has displayed environmental information near factory gate. (vi) the log book of main energy meter reading was maintained properly. (vii) dust disposal practices from bag filter was satisfactory, (viii)dust disposal practice from APC of rotary kiln was satisfactory.

The house keeping practice of the factory premises is satisfactory. Some instructions were given for taking steps for stabilization of slopes in regard to solid waste disposal practice. An overall reading of the aforesaid inspection report dated 15.1.2008 shows that there is compliance of air pollution control norms by respondent no.2 unit. The AAQ and the stack monitoring result annexed to the report also reveal that the parameters are within the prescribed norms. No reply has been filed by the Board in regard to the allegation of non-adherence of pollution control measures by the industry. However, fact remains that the consent to operate was granted subject to the special conditions, AAQ and General conditions vide the order dated 31.5.2006, Annexure-6.

5. Respondent no.2-M/s.Nixon Steel and Power Ltd. has filed a show cause reply in which several grounds have been taken including the one that the appellant has no locus standi to file this appeal. As to the merit of the appeal, the allegations made by the appellant have been denied.

6. Two questions emerge for the decision of this Authority, namely, (i) whether the appellant has locus standi to prefer this appeal, and (ii) whether there is any illegality or irregularity in the order passed by the Board in granting consent to operate the industrial unit, vide Annexure-6. That apart, there is delay in filing the appeal.

Since the appeal involves an important issue of locus standi of the appellant to file this appeal and similar question is very often raised before the authority for consideration, we condone the delay in filing the appeal and proceed to decide the said issue first.

7. It would be worthwhile to notice the provisions made in section 31 of the Air Act, which are extracted hereunder :

“31. Appeals – (1) Any person aggrieved by an order made by the State Board under this Act may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.

(3) The form and the manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.”

8. Shri Tripathy, learned counsel for the appellant, submitted that in a matter like environment, which is a concern of everybody, if any violation of the conditions attached to the consent to establish/operate is made by an industry, an individual affected thereby, can be treated as “person aggrieved” and will have locus standi to file an appeal under section 31 of the Air Act. According to Shri Tripathy, the term “person aggrieved” cannot be given a narrow connotation in environmental jurisprudence and the same may be a wider, as it is a concern of everybody. Non-adherence of pollution control norms by respondent no.2 industry may directly affect the daily normal life of the residents of that area and in the present case that having occurred, the appellant being a local resident has been affected by the low quality of AAQ, is an aggrieved person. According to him, when consent has been granted along with certain conditions and those conditions are flouted by the industry and the Board does not take any remedial measure, if an appeal filed by or on behalf of the

general public under section 31 of the Air Act is thrown out on the ground that they are not persons aggrieved, then the actual affected persons would go remediless and there will be no bridle to the act of the violators and it will be the general public who will suffer without any remedy. Further according to him, in the previous reports of the Board, as indicated in the foregoing paragraphs, there is allegation of switching off the Air Pollution Control Devices during the working hours of the factory and the same cannot be overruled.

By interpreting section 31 of the Air Act, Shri Tripathy submitted that the aforesaid provision does not imply “person aggrieved” to mean “industry applied”. In this regard he drew our attention to the provisions of section 11 of the National Environment Appellate Authority Act, 1997, (“1997 Act” in short), which provided for an appeal against grant of environmental clearance and explained the word ‘person’ to mean any person who is likely to be affected by the grant of environmental clearance; any person who owns or had control over the project with respect to which an application has been submitted for environmental clearance; any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment; the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or any local authority, any part of whose local limits is within the neighborhood of the area wherein the project is proposed to be located.

Taking a cue from the aforesaid provisions of the 1997 Act, Shri Tripathy submitted that since no definition of the term “person aggrieved” has been given in the Air Act, aid of the pari materia provision in the 1997 Act can be taken.

In this regard, Shri Tripathy drew our attention to a decision of the Hon'ble High Court of Andhra Pradesh rendered in ***W.P. No.5742 of 2006 (Capt. J. Rama Rao I.N. (Retd.) v. Union of India and others)*** where a question was raised by the respondent-Uranium Corporation of India Ltd., which was granted environment clearance for uranium mining in Nalgonda district, that the writ petition was not maintainable on the ground that under section 11 of the 1997 Act an effective alternative remedy by way of appeal has been provided and the National Environment Appellate Authority shall 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. The Hon'ble High Court ultimately held that the expression "any person aggrieved" appearing in section 11 of the 1997 Act was of wide import. It took within its fold a person like the petitioner who has shown keen interest in protecting environment and has throughout been opposing the grant of environmental clearance to the Corporation for uranium mining and has also participated in the public hearing held in compliance of the direction given by the High Court. The Court dismissed the writ petition with liberty to the petitioner to prefer an appeal under section 11 of the 1997 Act. Relying on the aforesaid decision, learned counsel for the appellant submitted that when the court was reluctant to entertain the application of the petitioner under Article 226 of the Constitution on the ground of availability of remedy of appeal, there was no reason why in this case the Appellate Authority would not hear the matter and decide the same. Learned counsel for the appellant then took us through the decision of the Hon'ble Gujarat High Court in the case of ***Gujarat Pollution Control Board v. Parmar Devusinh Shersinh and others, AIR 2001 Gujarat 11***, wherein the question raised was whether the appeal preferred by a person, who was not a party to the consent order

passed by the Gujarat Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974 ('Water Act' in short), was maintainable and it was held that –

“....It is true that respondent no.1 was not a party to the consent order, but in case that order adversely affects the petitioner, certainly, the appeal is maintainable. He was not a party to the order impugned before the Appellate Authority and copy of the same was not required to be sent to him. But merely because he was not a party or that the copy of the order was not sent to respondent no.1, is hardly any ground to disallow him from filing of the appeal. This is a matter of pollution control and all the affected persons can file an appeal under Sec.28 of the Act, which is very specific and clear. Any person aggrieved by an order made by the Board under Sec.25, Sec.26 or Sec.27, has a right of appeal. It is not the case of the petitioner that the order which has been challenged by respondent No.1 before the Appellate Authority does not fall under any of the provisions of Sec.25, 26 or 27 of the Act. The water and air pollution are really a serious problems in the country and it is not unknown that the Courts are taking these matters very seriously. Public interest litigations are being filed in the Court in many of the matters where there is endanger of water or air pollution by installation of industry. If this is the position then, I fail to see in case the respondent No.1 has gone to the Appellate Authority by filing an appeal, how he could have been deprived of his right of pollution-free air and water.

A person who was not a party to the order has a right of appeal to the Appellate Authority though with the leave of the Appellate Authority, where the impugned order adversely affects him. This position of law is well settled. The petitioner, in case is aggrieved of the order of the Board, an appeal is permissible with the leave of the Appellate Authority. Here the Appellate Authority has entertained the appeal and objection raised by the petitioner regarding its maintainability thereof has been turned down. In view of this legal position, the petitioner has no case whatsoever.”

9. Here the question is whether this Appellate Authority has jurisdiction to entertain the appeal filed by a person, who claims that he is a “person aggrieved” because he is interested in the field of environment and the industry has violated the conditions attached to the consent order and its emission does not meet the standard fixed by the Board.

It would be profitable to have a look at the provisions made in Section 11 of the 1997 Act, which are quoted hereunder :

“(1) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operation and processes shall not be carried out or shall be carried out subject to certain safeguards may, within thirty days from the date of such order, prefer an appeal to the Authority in such form as may be prescribed.

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date of aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) For purposes of sub-section (1), ‘person’ means-

- (a) any person who is likely to be affected by the grant of environmental clearance;
- (b) any person who owns or had control over the project with respect to which an application has been submitted for environmental clearance;
- (c) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;
- (d) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or
- (e) any local authority, any part of whose local limits is within the neighborhood of the area wherein the project is proposed to be located

(3)

(4)

Learned counsel for the appellant argued that the aforesaid being the provisions in the 1997 Act, the term “person

aggrieved” in section 31 of the Air Act should be given the same interpretation/meaning as in the 1997 Act. Admittedly in the Air Act, ‘person’ has not been defined under the definitions given in section 2 nor in Rule 13 of the Orissa Air (Prevention and Control of Pollution) Rules, 1983 framed under the Air Act, which provides the information an appeal should contain.

10. In our view, the Legislature at its wisdom has thought it proper not to give any definition to the term “person aggrieved” in the Air Act, as has been given in the 1997 Act. We cannot borrow the same from the 1997 Act and add it to the Air Act. So, we are at a loath to accept the argument advanced by the learned counsel for the appellant that the definition of “person aggrieved” as given in 1997 Act should be adopted in the Air Act and the Appellate Authority should proceed with the appeal filed by the third party, i.e., the present appellant. In other words, there is no necessity of taking the aid and assistance of 1997 Act to give a meaning to “person aggrieved” in the Air Act.

11. At the same time, let us examine whether the statute, i.e., Air Act, as it stands today, is having any scope for a person like the appellant to approach this Appellate Authority. A reading of section 31 of the Air Act compared with section 28 of the Water Act makes the intention of the Legislature very clear. In section 28 of the Water Act it is clearly mentioned that any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate authority. Section 25 of the Water Act deals with restrictions on new outlets and new discharges, section 26 deals with the provision regarding existing discharge of sewage or trade effluent and section 27 deals with refusal or withdrawal of consent by State Board. But under section 31 of the Air Act, the

Legislature on its own wisdom has not restricted filing of appeals against orders passed under certain specific provisions of the Air Act because section 31 of the Air Act permits any person aggrieved by an order made by the State Board to prefer an appeal within thirty days from the date on which the order is communicated to him. A conjoint reading of sections 31, 43 and 51 of the Air Act would show that there is scope of involvement of third party individuals or public because section 43 gives right to any person to make a complaint before the competent court subject to certain terms and conditions and section 51 mandates the State Board to maintain a register containing particulars of the persons to whom consent has been granted under section 21 and such register is open to inspection by any person interested in or affected by such standards for emission or by any other person authorized by such person in that behalf. Even though similar provisions have been made in section 49 and sub-section (6) of section 25 of the Water Act so far as the provision of appeal in the Water Act is concerned, the same is only restricted to the orders passed under sections 25, 26 and 27 thereof. This is not the situation in the Air Act. In the Air Act, appeal can be filed against any order passed by the Board. The Hon'ble Gujarat High Court in Parmar Devusinh Shersinh (supra) while deciding the question of locus standi of a person, who was not a party to the consent order passed by the Gujarat Pollution Control Board in favour of an industry under the Water Act, held – "It is true that respondent No.1 was not a party to the consent order, but in case that order adversely affects the petitioner, certainly, the appeal is maintainable. He was not a party to the order impugned before the Appellate Authority and copy of the same was not required to be sent to him. But, merely because he was not a party or that the copy of the order was not sent to respondent No.1, is hardly any ground to disallow him from filing of the appeal. This is a matter of pollution control and all the affected persons can

file an appeal under Sec.28 of the Act, which is very specific and clear.”

12. From the discussions made above and the judicial pronouncements cited above, it is clear that the case at hand stands on a better footing because under the Air Act, as we have indicated earlier, any person can file appeal against any order passed by the State Board if he is aggrieved by that order. So, the irresistible conclusion is that a person, who is affected by an order made by the State Board even if he is not a party, can file appeal under section 31 of the Air Act because section 31 can never be interpreted that it is only restricted to persons who obtained the consent vis-à-vis the Board, as argued by the learned counsel for the respondent industry.

13. In our considered opinion, the intention of the statute is very clear and it allows any person aggrieved by an order made by the State Board to file an appeal within thirty days from the date on which the order is communicated to him. So, in case a member of general public ultimately who takes the burn of the air pollution wants to ventilate his grievance, in our considered opinion, should approach the Board drawing its attention to the deviation, if any, in the consent conditions as well as the standards of emission laid down by the Board in relation to each such consent. If the Board does not take any action on the same or the Board passes an order on the same by which the complainant is aggrieved, he can file an appeal under section 31 of the Air Act.

14. But in the present case, the inspection report submitted by the Board pursuant to the direction of this Authority shows that the respondent industry has complied with the consent conditions and meets the standard of emission laid down in the consent order.

In that view of the matter, we decline to grant the relief sought by the appellant. But looking at the report of the Board we direct the Board to regularly and periodically monitor the Pollution Control Devices of the industry. The appeal is disposed of accordingly.

Sd/-

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Justice B. P. Das,
Chairman

Prof.G.B. Behera : **I agree.**

Sd/-

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Prof. G. B. Behera,
Member

Dr.C.R.Mohapatra : **I agree**

Sd/-

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

Date : March 29, 2008.
P.C.Chhatoi, Sr.Secretary