

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

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APPEAL NO.5-A OF 2010

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

M/s.Shakti Bricks
represented by its Proprietor
Sri Bibhuti Bhusan Mishra Appellant

V e r s u s

Member Secretary,
State Pollution Control Board,
Orissa, Bhubaneswar
and another Respondents

For Appellant : S/Shri A. A. Das,
D.R.Parida, A.P.Ratha &
S.K.Jena, Advocates

For Respondents : Shri B. P. Pattajoshi,
Law Officer, SPCB.

CORAM :

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

Date of Judgment : January 07 ,2012

B.P.Das, Chairman : M/s.Shakti Bricks, which has its brick kiln unit in mouza Routrapur under Agarpada P.S. of Bhadrak district, has preferred this appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (in short 'Air Act') with a prayer to set aside the order dated 30.8.2010 passed by the Regional Officer, State Pollution Control Board, Orissa, Balasore, in Annexure-9 cancelling the Consent to Establish granted by order no.24176 dated 24.11.2003 and revoking the Consent to Operate granted by order No.719 dated 27.4.2006 with a direction to the appellant to close the operation of the brick kiln unit forthwith on the ground of violation of the siting criteria prescribed by the State Govt.

2. Briefly stated, the case of the appellant is that it made an application to the State Pollution Control Board, Orissa, ('the Board' hereinafter) for grant of consent to establish a fixed chimney brick kiln in mouza Routrapur. Along with the application, the appellant also filed affidavit of its Proprietor dated 26.8.2003

and the N.O.C. issued by the local Sarpanch in terms of the siting criteria prescribed by the State Govt. in the erstwhile Department of Science, Technology and Environment vide letter dated 26.10.1987 in Annexure-4 in respect of brick kilns. Considering the application, the Board by order dated 24.11.2003 granted consent to establish in favour of the appellant unit. Thereafter the Board on the basis of the siting clearance certificate issued by the Tahasildar, Bonth, in his letter dated 9.12.2005 (Annexure-2) to the effect that the site was suitable for fixed chimney brick kiln granted consent to operate vide order dated 24.12.2005 which was valid upto 31.3.2006. After expiry of the said term, the appellant applied for renewal and the Board by order dated 27.4.2006 also granted renewal of consent to operate till 31.3.2011 under Annexure-7 series. According to the appellant, consent in its favour was granted to operate the brick kiln unit in terms of the siting criteria prescribed by the State Govt. in t in respect of brick kilns, vide letter dated 26.10.1987 in Annexure-4. While the appellant was operating its unit after obtaining the required permission from the competent authorities, the villagers of Patakana made allegation against its unit for which an enquiry was conducted jointly by the Addl. Sub-Collector, Bhadrak, and the Tahasildar, Bonth. On the basis of the enquiry report submitted by the aforesaid revenue authorities, the Board issued notice dated 11.6.2010 to the appellant vide Annexure-8 to show cause as to why consent to establish granted by order dated 24.11.2003 would not be cancelled and consent to operate granted by order dated 27.4.2006, which was valid till 31.3.2011, would not be revoked and appropriate direction would not be issued to stop operation of the brick kiln unit on the ground that the unit violated the siting criteria prescribed by the State Govt. In the aforesaid show cause notice it was indicated that the enquiry conducted by the Addl. Sub-Collector, Bhadrak and Tahasildar, Bonth, on 18.12.2009 revealed that (i) the habitation of village Patakana is 200 meters; (ii) the river bed is 300 meters and there is no flood embankment in the river Salandi; and (iii) private agriculture lands are also existing adjacent to the brick kiln. Aggrieved by the aforesaid show cause notice issued by the Board, the appellant approached the Hon'ble High Court in W.P. (C) No.14863 of 2010. As during pendency of the writ petition the Board issued the impugned order dated 30.8.2010 in Annexure-9, cancelling consent to establish and revoking consent to operate with a direction to the appellant to close the operation of the brick kiln forthwith, the Hon'ble High Court disposed of the writ petition by its order dated 23.9.2010 granting liberty to the appellant to prefer appeal before this Authority within three weeks. The appellant accordingly has preferred this appeal against the order directing closure of its unit in Annexure-9 on the grounds that the inspection report is not at all correct since no physical measurement had been made and the said report contradicts the earlier report of the Tahasildar; that since the unit was established complying with the siting

criteria indicated in the 1987 guidelines and the renewal was granted till 31.3.2011, the revised siting criteria guidelines and establishment of any new habitation cannot at all be a ground at that stage to cancel the consent and that the appellant having complied with all the required siting criteria of 1987 and there being no complaint with regard to violation of 1987 guidelines or the conditions stipulated in the consent order of 2003, the order passed by the Board vide Annexure-9 is illegal and arbitrary and is liable to be set aside.

3. On behalf of the respondent-Board, a written note of submission was filed wherein it is indicated that consent to establish was granted to the appellant unit by order dated 24.11.20003 under Annexure-7 series on the basis of the affidavit filed by the appellant stating compliance of the conditions of the siting criteria of 1987. It has also been indicated that the inspection report dated 19.12.2009 submitted by the Tahasildar, Bonth and the Addl. Sub-Collector, Bhadrak, which was forwarded by the A.D.M, Bhadrak, to the Board vide his letter dated 19.1.2010, under Annexure-B/1 to the written note of submission, revealed violation of the siting criteria as the unit is located at a distance of 200 meters from the habitation of village Patakana, 300 meters from the river bed of river Salandi and 425 meters from the temple of Lord Shiva. The report further revealed that private agriculture lands are also existing adjacent to the brick kiln area. That apart, the Regional Officer and the A.E.S. of the Regional Office of the Board at Balasore inspected the appellant unit on 25.5.2010 and submitted their report, vide Annexure-C/1, with a finding that the existing fixed chimney has violated the siting criteria of 1987. Thereafter show cause notice dated 11.6.2010 was issued to the appellant and ultimately the impugned order directing closure of the unit vide Annexure-9 was passed for violation of the siting criteria. The Board has also filed copy of the letter dated 10.11.2010 of the Tahasildar, Bonth, addressed to the Regional Officer, Balasore, vide Annexure-G/1, wherein the Tahasildar has indicated that villages Patakana and Routrapur are situated very close to the brick kiln of the appellant and found that the residential houses of villages Patakana and Routrapur are existing within a distance of 200 meters to 400 meters from the habitations as detailed in the list enclosed thereto. The letter further discloses that the habitations exist prior to installation of the brick kiln.

4. During the course of hearing, this Authority on going through the materials on record and finding that the reports submitted by the Tahasildar, Bonth, dated 9.12.2005 (Annexure-2) and dated 19.12.2009 (Annexure-B/1) were contradictory, by order dated 26.2.2011 directed the Tahasildar, Bonth, to make a fresh survey of the area and submit report indicating whether any habitation has come up after submission of the report dated 9.12.2005 and the nature and

character of the lands over which habitation, if any, has come up. The relevant part of the order is extracted herein below :

“xxx xxx xxx

The main dispute, in our considered opinion, arises due to the report of the Tahasildar dated 19.12.2009 wherein it is indicated that the habitation of village Patakana comes within 200 meters of the appellant unit whereas from the river bed it is 300 meters. The appellant relies upon the report which was initially given by the Tahasildar of the same Tahasil dated 9.12.2005 in which it is indicated that the unit is situated at a distance of 26 kms. from National Highway, 16 kms. from State Highway, 24 kms. from Railway Line, Bhadrak, and 74 kms., from high tide line, Chandabali, one km. from flood plains of Salandi river, 700 meters from village Patakana and four kms. distance from small town Agarpada. It appears, both the reports are totally contradictory to each other.

Let both the reports be sent to the present Tahasildar, Bonth, who shall make a fresh survey of the area and submit his report to this Authority on or before 26.3.2011, when this matter shall be taken up. The Tahasildar shall also indicate in his report whether any habitation has come up in the meanwhile, i.e., after the report of the Tahasildar dated 9.12.2005 and the nature and character of the land over which habitation, if any, has come up.

xxx xxx xxx”

5. In terms of our order, the Tahasildar conducted a fresh survey of the area and submitted his report vide letter no.416 dated 21.3.2011 to the Board and the Board produced the same along with a memo dated 11.5.2011. In the aforesaid report it is stated thus :

“With referene to the letter on the subject cited above I am to say that on receipt of complaint from the villagers of Patakana regarding functioning of Brick kiln by M/s.Sakti Bricks, the matter was enquired into and measurement of distance was taken by Revenue field staff in presence of Addl. Sub-Collector, Bhadrak and the villagers of Patakana on 18.12.09. The distance measured was 300 metres from river bed, 200 meters from the habitation of village Patakana and 425 metres from the Temple of Lord Siva to the brick kiln. Further it is to mention here that the habitation of village Patakana was existing prior to functioning of brick kiln by M/s.Sakti Bricks, Routarapur.

However fresh survey has been undertaken on 18.3.11 and found the distance mentioned in the report dt.19.12.09 is correct.”

6. At this stage it would be appropriate to quote herein below the relevant part of the siting criteria of 1987 (Annexure-4) :

“Siting Criteria for Brick Kilns, Lime Kilns and Coal Briquetting Units –

(i)

(ii) They must be located at least ½ K.M. away from the Railway lines, National and State High Ways, high tide line, flood plains, villages and small settlements and 2 K.Ms. away from the outskirts of small towns and population of 50,000 or less and 5 K.Ms. away from the out skirts of large towns of population of more than 50,000.

(iii)”

7. The State Govt. in Forest and Environment Department, in exercise of the powers under section 5 of the Environment (Protection) Act, 1986 and the Rules framed thereunder, in its order dated 6.12.2005 (Annexure-5) required the persons carrying on the operation of brick kilns in the State to comply with the directions indicated therein. The relevant part of the said directions are quoted hereunder :

“... ..”

2. No brick kiln unit shall be allowed on forest land or on prime agricultural land.
3. No brick kiln unit shall be established within 500 meters from Railway lines, National and State Highways, High tide line, places of worship, Educational institutions, hospitals and health care centres;
4. No brick kiln unit shall be established within 250 meters of flood embankments. Wherever flood embankments do not exist, no brick kiln unit shall be established within 500 meters from the nearest river bank.
5. No new brick kiln unit shall be located within a distance of 5 kms. from the periphery of a town with a population of more than one lakh and 2 Kms. from the periphery of a town with a population between 50,000 to 1,00,000.”

8. The Tahasildar in his report submitted in the letter dated 21.3.2011, which is quoted hereinbefore, has indicated that the unit is located within 300 meters from river bed, 200 meters from the habitation of village Patakana and 425 meters from a temple of Lord Shiva and further the habitation of village Patakana was existing prior to the functioning of the appellent unit. From the aforesaid report of the Tahasildar dated 21.3.2011, as quoted above, we find that the appellent unit was established violating the siting criteria of 1987 as it is located within 500 meters from village Patakana, which was existing prior to the functioning of the appellent unit and the earlier report of the Tahasildar dated 9.12.2005. That apart, we also find from the aforesaid report of the Tahasildar that the appellent unit has violated the revised siting criteria of 2005 vide Annexure-5, which is applicable to the persons carrying on the operation of brick kilns in the State, since appellent unit is located within 300 meters from river bed

and 425 meters from a temple (place of worship) as against the prescribed norm of 500 meters, as indicated in condition nos.3 and 4 of 2005 siting criteria.

9. For the foregoing reasons, we hold that the final order passed by the Regional Officer, State Pollution Control Board, Balasore, dated 30.8.2010 vide Annexure-9 directing the appellant to close the operation of its brick kiln unit forthwith is legal and valid. The appeal having no merit is accordingly dismissed.

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Justice B. P. Das,
Chairman

Prof. G. B. Behera, Member

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Prof. G. B. Behera,
Member

Dr. C.R. Mohapatra, Member

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Dr. C.R. Mohapatra,
Member

Dated : January 07 , 2011/Chhatoi