

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

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APPEAL NO.7-A OF 2007

An appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 arising out of the order dated 8.2.2007 passed by the Regional Officer, State Pollution Control Board, Orissa, Cuttack.

M/s. Rout Crusher,  
represented through its Proprietor  
Sri Niranjan Rout,  
At-Nuagaon, P.O. Mundali,  
P.S. Baranga, Dist. Cuttack ..... .. Appellant

V e r s u s

The State Pollution Control Board,  
Orissa, Bhubaneswar ... .. Respondent

For Appellant : Smt.Rati Mohanty,  
Shri P. K. Nanda,  
Shri S.P.Das & Shri S.K.Das,  
Advocates

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

QUORUM:

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

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Date of Judgment: September 06, 2008

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**B.P.Das, Chairman :** This appeal under Section 31 of the Air (Prevention and Control of Pollution ) Act, 1981 ( in short 'the Air Act' ) is directed

against the order dated 8.2.2007 passed by the Regional Officer of the State Pollution Control Board, Cuttack, vide Annexure-9, refusing consent to establish the appellant stone crusher unit, i.e., M/s.Rout Crusher at Nuagaon under Baranga P.S. in Cuttack district, in purported exercise of the power under Section 21 of the Air Act with a direction not to take up any construction/operation activity. The impugned order has been passed on the ground that the proposed stone crushing unit does not meet the siting criteria specified in Order dated 13.5.1998 issued by the Govt. of Orissa in the Forest & Environment Department since the campus of the Central Industrial Security Force having barracks and staff quarters is located within 1.0 K.M. to the south of the proposed site of the stone crushing unit.

2. Heard Shri P. K. Nanda, learned counsel for the appellant, and Shri B. P. Pattajoshi, learned Law Officer of the State Pollution Control Board ('Board' hereinafter).

3. The claim of the appellant as advanced in the memorandum of appeal is that the General Manager, District Industries Centre, Cuttack, granted a Provisional Registration Certificate dated 10.10.2006 for a period of five years considering the necessity of a stone crusher unit in the locality, i.e., Nuagaon, on the condition that the appellant has to obtain No Objection Certificate from the concerned Tahasildar, the Board and the Sarpanch of the Grama Panchayat before commencement of production, vide Annexure-1. The appellant procured the NOC from the Tahasildar and the Sarpanch and submitted the same along with the application to the Board for grant of consent to establish the unit. The Board in course of its field verification found that the proposed stone crushing unit is located within 1.0 K.M. from the boundary line of village Nuagaon as well as the CISF Campus. According to the appellant, the CISF campus does not come within the definition of 'village', as given

in the Orissa Survey and Settlement Act, 1958. It was contended by the appellant that in the proceedings of the 4<sup>th</sup> meeting of the District Level Single Window Clearance Authority held on 10.1.2007 it has been indicated that the Tahasildar, Baranga, clarified that the proposed site is more than 1.0 K.M. distance from the village and the Regional Officer was advised for early clearance of the proposal.

4. The case of the Board, as disclosed in the written notes filed in this appeal, is that the proposed unit is located within 1.0 K.M. from a human settlement, i.e., the Barracks of the CISF, which has started functioning since September, 2002 whereas the appellant submitted the application for grant of consent to establish through Single Window Clearance Authority on 6.11.2006.

5. Learned counsel for the appellant alleged that since the Regional Officer was a party to the proceeding for clearance of the unit under the Single Window Clearance Authority, the proceeding under section 21 of the Air Act for refusing the consent to establish the unit is not tenable. Considering the aforesaid allegation, by order dated 19.1.2008 we required the Regional Officer to furnish a report clarifying the position. The Regional Officer in the report dated 8.2.2008 clarified that the Single Window Clearance Authority had neither recommended nor cleared the proposal but had only advised to clear the proposal early as per the clarification letter of the Tahasildar, Baranga, dated 9.1.2007.

6. Be that as it may, the question that arises for consideration before this Authority is whether human settlement in the CISF Barracks can be treated to be a village, as defined in the Orissa Survey and Settlement Act.

7. 'Village' has been defined in sub-section (14) of Section 2 of the aforesaid Act to mean "any tract of land which has been

recognized as a village in the revenue records or which the Board of Revenue may, from time to time, declare to be a village”. The appellant further produced certain photographs to give an idea about the surroundings of the stone crushing unit. The said photographs depict small hillocks with scrub and bush vegetation as well as fallow degraded land. It is not understood how such vegetation can help in the abatement of air pollution. Moreover, the nearby road does not have any road-side tree plantation or tree growth to act as a shelter belt.

8. During the course of hearing of this appeal, this Authority by order dated 15.12.2007 directed the Board to inspect the unit along with the Revenue Authority and to submit report regarding (i) the distance of the unit from the revenue village as well as from the CISF location and (ii) whether the unit came up after the CISF unit was established. Accordingly, the Senior Environment Scientist (W) of the Board along with the Tahasildar, Baranga, made a joint inspection of the unit on 10.1.2008 and submitted the report to this Authority on 16.1.2008 observing thus :

“1) Distance from the Revenue Village : The nearest revenue village is Ramdaspur towards North-East of the site and the distance, as measured from the map is 720 mtrs. (Map enclosed as Annexure-1). Since, there is a hillock in between the habitation of the village Ramdaspur and crusher unit, physical measurement of the distance could not be done.

2) Distance from C.I.S.F. location : The distance between the crusher and the boundary of the C.I.S.F. Unit was physically measured with the help of revenue staff and was found to be 580 mtrs. The same is also confirmed from the enclosed map.

3) Establishment of C.I.S.F. Unit : Discussed with Mr.Arun Kumar, Commandant, C.I.S.F., National Disaster Response Forces, Mundali, Cuttack. He informed that the land acquisition for C.I.S.F. was

done in 1998 and construction activities started in 2000. He further informed that office of C.I.S.F. started functioning from September, 2002. The crusher unit applied for Consent to establish through single window clearance, which reached Regional Office, State Pollution Control Board, Cuttack, on 06.11.2006 via District Industries Centre (DIC), Cuttack. So, it is concluded that C.I.S.F. Unit was established much before the installation of said stone crusher.”

9. The main thrust of the argument of the learned counsel for the appellant was that the CISF unit could not be construed to be a village. At this juncture, we may say that this question should usually be decided by the Court keeping in mind the aims and objectives of the Air Act vis-à-vis the safety and well-being of the common citizens. The Statement of Objects and Reasons for enacting the Air Act are that the presence in air, beyond certain limits, of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse, incinerations, etc., has a detrimental effect on the health of the people as also on animal life, vegetation and property, and to take appropriate steps to preserve the quality of air and control of air pollution. So, the intention behind the legislation is to have a quality air and control of pollution so that it will not have a detrimental effect on the health of the people so also on the animal life, vegetation and property.

10. The above being the aims and objectives, we cannot shut our eyes to the effect it will have on the human settlement on the CISF barrack and quarters. Hon'ble Supreme Court in the case of S. Nagaraj v. State of Karnataka, 1993 Supp. (4) SCC 595, observed :

“Justice is a virtue which transcends all barriers. Neither the rules of procedures nor technicalities of law can stand in its way.....Even the law bends before justice. ....If the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right. ....”

So, to declare the habitation in CISF barracks as a village is not the question to be decided. The point to be resolved is whether the establishment of the crusher unit would affect the human settlement. The intention of the legislation is to protect human settlement and from the joint inspection report it appears that human settlement in CISF came before application for consent to establish the crusher unit was made and the same is 720 mtrs. from the revenue village Ramdaspur and 580 mtrs. from the human settlement, i.e., CISF barracks.

11. In view of the above, we do not find any infirmity in the order passed by the Board in refusing to grant consent to establish the crusher unit. The appeal, therefore, has no merit and the same is accordingly dismissed.

**Sd/-**

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

Prof. G. B. Behera :

**Sd/-**

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

Dr. C. R. Mohapatra :

**Sd/-**

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

*Date : September 06, 2008*  
*P.C.Chhatoi, Sr. Secretary*