

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

\*\*\*\*\*

**APPEAL NO.8-A OF 2008**

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

\_\_\_\_\_

Karunakar Samal and another ... .. Appellants

V e r s u s

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

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

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

**QUORUM :**

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

\_\_\_\_\_  
Date of Judgment : 26<sup>th</sup> December, 2009  
\_\_\_\_\_

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

The appellants, who are the residents of village Kankili under Talcher P.S. of Angul district, being aggrieved by the inaction of the State Pollution Control Board, Orissa, (hereinafter 'the Board') on the complaint filed by them, vide Annexure-8 have filed this appeal

under section 31 of the Air (Prevention and Control of Pollution ) Act, 1981 praying to set aside Consent Order No. 2475 dated 30.7.2008 issued by the Board vide Annexure-7 granting consent in favour of respondent no.2-Ardee Hi-Tech Pvt. Ltd. to operate the coal washery (dry coal beneficiation plant) set up in village Kankili. The appellants have also prayed for a direction to restrain respondent No.2 from operating its plant.

It may be stated here that the appellants had earlier filed an appeal being Appeal No. 9-A of 2007 before this Authority against the Consent Order dated 24.10.2007 issued by the Board granting consent in favour of Respondent No.2 to operate the plant in question. The said appeal was dismissed by judgment dated 19.4.2008 with the following observations.

“In view of the judgment rendered by us in Appeal No. 11-A of 2007, we hold that this appeal is not maintainable and is accordingly dismissed. It is open to the appellants to approach the Board for redressal of their grievance, if any, in accordance with law.”

In the present appeal the appellants have alleged that they had filed a complaint on 7.9.2008 before the Board vide Annexure-8, but the Board has not taken any action on the same for which they have approached this Authority in the present appeal.

2. On 19.4.2005, respondent no.2 made an application to the Board for grant of consent to establish a dry coal beneficiation plant in village Kankili with a production capacity of 68,000 tonnes of clean coal per month. Considering the said application, the Board ultimately by its order dated 21.2.2007 granted consent to establish the plant. Thereafter, the Board considering the inspection report submitted by its Regional Officer at Angul granted consent to operate in favour of respondent no.2 by Consent Order No.2475 dated 24.10.2007 which

was valid upto 31.3.2008 under Annexure-6 series. The validity of the aforesaid consent to operate was extended upto 31.3.2009, by Consent Order No.2475 dated 30.7.2008 (Annexure-7), which is impugned in the present appeal.

3. The main ground of challenge advanced by the appellants in this appeal is that the Board in granting consent to operate in favour of the respondent unit has violated the Environment Impact Assessment (EIA) Notification dated 14.9.2006 issued by the Ministry of Environment and Forest (MoEF), Govt. of India, under the provisions of the Environment (Protection) Act, 1986 and the Rules made thereunder inasmuch as the unit had not obtained the environmental clearance as required under the aforesaid notification. In support of the aforesaid ground, learned counsel for the appellants placing reliance upon certain communications of the MoEF regarding applicability of the EIA Notification, 2006 to certain coal washeries (dry process), namely, M/s. Maheswari Coal Beneficiation and Infra Pvt. Ltd., Chhatisgarh, M/s. Phil Minerals Beneficiation and Energy Pvt. Ltd., Chhatisgarh, and M/s. Jindal Power Ltd., New Delhi, contended that both dry process and wet process of coal beneficiation plants were required to obtain environmental clearance as per the EIA Notification, 2006 and as such the respondent unit being a dry coal beneficiation plant is required to obtain the environmental clearance under the EIA Notification, 2006.

4. The Board in its written note has taken the stand that under the EIA Notification dated 27.1.1994 issued by the MoEF, coal washery units were not required to obtain environmental clearance, but the EIA Notification, 2006, which was issued in supersession of the EIA Notification, 1994, required the coal washeries to obtain environmental clearance since the same were found place at Sl. No.2

(a) of the Schedule appended thereto. It was argued that the respondent coal washery being not a conventional coal washery and being a dry beneficiation technology not included in the EIA Notification, 2006, was not required to obtain the environmental clearance and the EIA Notification, 2006 was therefore not applicable to respondent unit. That apart, the Board in support of its stand relied upon the circular dated 22.3.2007 issued by the MoEF regarding Interim Operational Guidelines till 13.9.2007, vide Annexure-C/1, wherein it has been clarified that in respect of projects not included in EIA Notification, 1994 but included in the EIA Notification, 2006 and have undergone the process for consideration by the appropriate Technical Committee of the concerned State Board for grant of consent to establish (NOC) on or before 14.9.2006 but NOCs could not be physically issued due to administrative reasons, might be exempted from the requirement of environmental clearance under the EIA Notification 2006 subject to rigorous checking by the State Board of the fact that the decisions for accord of NOCs were indeed taken at the appropriate authority level on or before 14.9.2006 and communication was delayed due to unavoidable reasons. On the basis of the aforesaid circular, it was submitted on behalf of the Board that prior to issuance of EIA Notification, 2006, the appropriate Technical Committee (Consent Committee) considered the case of the respondent unit for grant of consent to establish in the meeting held on 7.10.2005 and decided in principle to grant consent to establish subject to a presentation by the project proponent on process details and receipt of detail report from the Collector, Angul, on revenue matters and any local environmental issues, which were likely to generate adverse public opinion for the project. Respondent no.2 made the presentation as desired by the Technical Committee of the Board on 10.1.2006 whereafter the Collector, Angul granted the NOC in favour of respondent no.2 for establishment of a dry coal beneficiation plant

vide his order dated 5.1.2007 (Annexure-F/1). Finally the Board granted the consent to establish on 21.2.2007, vide Annexure-G/1. The learned Law Officer of the Board contended that although the appropriate Technical Committee of the Board had taken the decision to grant consent to establish prior to the EIA Notification, 2006, the same could not be issued due to administrative reason, as indicated above, and as such the same was issued on 21.2.2007 for which the respondent unit was not required to obtain environmental clearance in terms of the Interim Operational Guidelines issued by the MoEF in the circular dated 22.3.2007 (Annexure-C/1).

5. Shri Tripathy, learned counsel appearing for the appellants, argued that the respondent unit was required to obtain environmental clearance even though it was a dry coal beneficiation process in view of the clarification made by the MoEF, as stated earlier. He further argued that the circular of the MoEF dated 22.3.2007, which was relied upon by the Board, was not applicable to the respondent-unit as the process of grant of consent to establish was not completed by 14.9.2006.

6. Learned counsel appearing for the respondent no.2 unit contended that the unit being a dry beneficiation plant and first of its kind in the world, the authenticity of which has been attested by no less a body than the Department of Scientific and Industrial Research of the Ministry of Science & Technology, Govt. of India, the EIA Notification, 2006 has no application as the respondent unit is not a coal washery but a coal dry beneficiation unit, which needs no water for its manufacturing process.

7. Considering the arguments advanced by the heard learned counsel for the parties and upon going through the materials produced before us, we find that coal washeries were not included in the EIA

Notification, 1994. But in the subsequent EIA Notification, 2006, which superseded the 1994 EIA Notification, coal washeries were included and were required to obtain environmental clearance. But in the circular dated 22.3.2007 issued to the Pollution Control Boards regarding the Interim Operational Guidelines till 13.9.2007, it was clarified that in respect of projects not included in the EIA Notification, 1994 but included in the 2006 EIA Notification and have undergone the process for consideration by the appropriate Technical Committee of the concerned Board for grant of consent to establish (NOC) on or before 14.9.2006, but NOCs could not be physically issued due to administrative reasons might be exempted from the requirement of environmental clearance under EIA Notification, 2006 subject to rigorous checking by the Board of the fact that decisions for accord of NOC were indeed taken at the appropriate authority level on or before 14.9.2006 and communication was delayed due to unavoidable reasons. In other words, it was clarified that if consent which could not be physically issued due to administrative reasons, the unit may be exempted from the requirement of environmental clearance under the EIA Notification, 2006, subject to rigorous checking by the State Board. In the case at hand, the appropriate Technical Committee of the Board in its meeting held on 7.10.2005, i.e. prior to supersession of EIA Notification, 1994, considered the case of the respondent and decided in principle to grant consent to establish subject to a presentation by the project proponent on process details and receipt of NOC from the Collector, Angul. Respondent no.2 accordingly made the presentation on 10.1.2006 but the Collector, Angul, by letter dated 5.1.2007 vide Annexure-F/1 granted the NOC in terms of the Board's letter dated 30.12.2005 for which the Board could not grant the consent to establish by 14.9.2006 due to administrative reason.

9. In view of the above, as per the Interim Operational Guidelines issued by the MoEF under the circular dated 22.3.2007, the respondent unit was liable to be exempted from the requirement of environmental clearance, even though the communications of the MoEF relied upon by the appellants issued in respect of some other coal washeries, dry process unit required environmental clearance. That apart, the Department of Scientific and Industrial Research, Ministry of Science and Technology, Govt. of India in its communication dated 8.10.2007 made to the Board vide Annexure-A/1 in regard to coal dry beneficiation project indicated that such industry needs no water and hence generates no effluents and adds no moisture to clean coal and helps reduce ash in coal which can help mitigate to a large extent the fly ash generation problem. It was also indicated therein that such unit is an environmentally-friendly, low cost technology and being first of its kind in the world patent protected.

10. During the course of hearing learned counsel for the respondent no.2 alleged that appellant no.2-Dillip Kumar Pradhan had given an affidavit that he was neither a signatory to the appeal memo nor had he authorized any body to file this appeal on his behalf before this Authority. The aforesaid allegation is not tenable in view of the fact that both the appellants appearing before us in person on 28.3.2009 filed an affidavit and stated that they have filed the present appeal and have signed the appeal memo.

11. For the reasons indicated above, we do not find any infirmity in the order issued by the State Pollution Control Board granting consent to operate in favour of respondent no.2 unit. The appeal is accordingly dismissed being devoid of merit.

12. We, however, direct the Board to monitor and regulate the performance of the respondent unit at regular intervals and be vigilant on the follow-up action on the conditions stipulated in the consent order granted by the Board.

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

**B. P. Das, Chairman :**

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

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

.....Sd/-.....  
**Prof. G. B. Behera,**  
**Member**

*Date : 26.12. 2009.*  
*P.C.Chhatoi, Sr.Secretary*