

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

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APPEAL NO.6-A OF 2007

An appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 arising out of the order dated 14.7.2005 passed by the State Pollution Control Board, Orissa.

M/s. Sarala Stone Crusher,  
Proprietor, Shri Rama Chandra Swain,  
At-Kuradhamala, PO-Daleiput,  
Dist.Khurda

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Appellant

V e r s u s

State Pollution Control Board,  
Orissa, Bhubaneswar

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Respondent

For Appellant : Shri Gyneswar Satpathy,  
Advocate

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: March **29**, 2008

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*B.P.Das,Chairman* : The order dated 14.7.2005 passed by the State Pollution Control Board, Orissa, (in short 'the State Board' ) in exercise of the powers conferred under section 31A of the Air (Prevention and Control of Pollution ) Act, 1981 ( in short 'the Act' ), vide Annexure-3, directing closure of the stone crusher unit running in the name and style

M/s.Sarala Stone Crusher At-Kuradhamala, P.O-Daleiput, Dist-Khurda, is under challenge in the present appeal filed by the Proprietor of the unit under section 31 of the Act.

2. The case of the appellant, in brief, is that after obtaining provisional registration certificate from the District Industries Centre, Puri, he established the crusher unit in 1983. While the appellant was operating his unit, on 16.6.2005 the Board issued a notice, vide Annexure-2, to show cause as to why the direction for closure under section 31A of the Act and to stop operation of the unit shall not be issued for the alleged violation of certain siting criteria notified by the State Government in Forest and Environment Department in the order dated 13.5.1998 published in the Orissa Gazette on 5.6.1998 and for failure of the appellant despite public notice to shift the unit to a suitable site conforming to the siting criteria. The appellant submitted his reply to the show cause notice on 28.6.2005 but the Board without considering the reply properly has illegally passed the impugned direction for closure of the unit vide Annexure-3.

3. Shri Satpathy, learned counsel for the appellant, argued that since the unit was an existing unit and established since 1983, i.e., prior to the issuance of the notification fixing the siting criteria and declaration of the entire State as air pollution control area, the siting notification is not applicable to the appellant unit and, therefore, the direction for closure issued by the board is liable to be set aside. He further submitted that before considering appellant's reply, the Board in the notice dated 16.6.2005 (Annexure-2) found the reply to the show cause notice as not satisfactory.

4. Learned Law Officer of the respondent-Board has filed a written note stating that after the entire State of Orissa was declared as air pollution control area by the notification dated 18.7.2002 issued

under section 19 of the Act, which was published in the extraordinary issue of Orissa Gazette on 3.9.2002 (Annexure-A), consent of the Board to establish/operate the industrial plant in an air pollution control area under section 21 is mandatory and upon inspection of the unit on 8.7.2003 and 19.2.2004, it was found that the appellant was operating the crusher unit without obtaining consent to operate from the Board. It was also found that the unit was located within 100 meters from the National Highway and within 500 meters from another stone crusher, namely, M/s.Bauti Stone Crusher, and had not adopted any air pollution control measures. Since the unit violated the sitting criteria laid down in the notification dated 13.5.1998 issued by the State Govt. and also operating in contravention of the provision of section 21 of the Act, the Board issued the show cause notice and considering the reply submitted by the appellant and after hearing the Proprietor of the unit ultimately issued the impugned direction for closure of the unit vide Annexure-3. It is also submitted that the direction has already been implemented by the Electrical authorities in disconnecting the power supply to the appellant unit with effect from 10.8.2005.

Learned Law Officer submitted that the argument of the learned counsel for the appellant that before considering the reply to the show cause, the Board found the same to be unsatisfactory is totally misconceived as the show cause reply which was found to be unsatisfactory related to the notice issued to the appellant to show cause as to why legal action as deemed fit would not be initiated against him for violation of sections 21 and 22 of the Act as he failed to apply for consent to operate under section 21 of the Act within the stipulated time and for operating the plant in contravention of section 21 of the Act.

5. The State Govt. by order dated 13.5.1998 ( Annexure-B ) in exercise of the powers conferred by section 5 of the Environment (Protection) Act, 1986 made the following directions to the persons carrying on the operation of stone crushers in the State :

- “1. All stone crusher units are to conform to the pollution control measures and emission standards notified by the Ministry of Environment and Forest from time to time along with the standards under section 7 of the said Act.
2. No stone crusher shall be allowed within one Kilometre from a town or village boundary.
3. No stone crusher should be located within half Kilometre from the National and State High Ways.
4. Distance between two stone crusher units shall be at least half Kilometre.

Stone crusher units which are in the aforesaid prohibited limits shall shift to other area within six months from the date of publication of this notification in the Orissa Gazette.”

In the meantime the State Govt. by notification dated 1.8.2006 has amended the aforesaid order dated 13.5.1998 by omitting the siting criteria so far as it relates to the distance between two stone crusher units. But there is no dispute that the unit is located within 500 meters from the National Highway and has, therefore, violated the siting criteria notified by the State Govt. in regard to the location of the appellant crusher unit from the National Highway. That apart, the unit had also not obtained consent to operate from the Board as provided under section 21 of the Act and had not adopted the required pollution control measures for which it contravened the provisions of section 21 of the Act.

6. In this regard we observe that air pollution is now really posing a serious problem in the country and it is not unknown that the courts are taking these matters very seriously. We accordingly hold

that the direction for closure issued by the Board vide Annexure-3 does not call for any interference and as such the appeal being devoid of any merit is accordingly dismissed.

***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/-***

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

*Date : 29.03.2008  
P.C.Chhatoi, Sr. Secretary*