

APPEAL NO. 1-W of 2009

1. 26.12.2009 Admit.

Since copy of the appeal memo. has already been served on the learned Law Officer of the respondent-Board, no notice need be issued. On the request of the learned counsel for the appellant, the appeal was taken up for hearing with the consent of the other side.

2. Heard Shri S. K. Padhi, learned Senior Advocate, for the appellant and Shri B. P. Pattajoshi, learned Law Officer of the Board.

3. This appeal has been filed by Kalinga Calciner Ltd. through its Director Shri S. K. Hazra under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 against the order dated 29.9.2009 (Annexure-4) passed by the State Pollution Control Board, Orissa, under section 25/26 of the Water Act as well as under section 21 of the Air (Prevention and Control of Pollution) Act, 1981, refusing consent to establish in favour of the appellant unit for production of Calcined Petroleum Coke at Udayabata of Paradip in Jagatsinghpur district. The appellant has also simultaneously filed an appeal being Appeal No.8-A of 2009 under section 31 of the Air Act challenging the same and similar order refusing consent to establish.

4. On behalf of the appellant, an additional statement has been filed before this Authority on 19.12.2009 enclosing therewith the letter dated 1.8.2009 received by the appellant from the Board and the reply submitted by the appellant on 17.12.2009.

5. Shri Padhi appearing for the appellant submits that after filing of this appeal, the appellant has received the letter dated 1.8.2009 from the Board (Annexure-8) on 24.11.2009 directing it to furnish certain information and documents in connection with its application for grant of consent to establish in response to which

the appellant has already submitted the required information and documents vide the letter dated 17.12.2009 (Annexure-9), which was received by the Board on 17.12.2009. In the premises stated above, Shri Padhi further submits that non-furnishing of the documents and information was one of the grounds taken in refusing consent to establish and the appellant having furnished the required documents and information in compliance of the letter dated 1.8.2009, which was received at a very belated stage, i.e., on 24.11.2009 and during pendency of this appeal, this appeal may be disposed of with a direction to the Board to consider the matter afresh after taking into consideration the documents and information submitted by the appellant as well as the ground taken in the present appeal.

6. Shri B. P. Pattajoshi, learned Law Officer of the respondent-Board, submits that non-furnishing of documents and information was not the sole ground to refuse the consent to establish.

7. Be that as it may, one of the grounds for refusal, as indicated in the order itself, was non-furnishing of the information and documents required in the letter dated 1.8.2009, which the appellant received after passing of the impugned order of refusal dated 29.9.2009 and after filing of this appeal. Since the appellant has already submitted its reply to the aforesaid letter dated 1.8.2009 on 17.12.2009 furnishing therewith the required documents and information, in our considered opinion, interest of justice would be served best if the application of the appellant for grant of consent to establish along with the documents and information already furnished as well as the grounds taken in the present appeal is considered afresh by the Board. Accordingly we set aside the order refusing consent to establish dated 29.9.2009 (Annexure-4) and direct the Board to re-consider the case of the

appellant for grant of consent to establish in the manner indicated above within a period of three months from today.

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

.....Sd/-.....
Prof. M. C. Dash,
Member

.....Sd/-.....
S. M. Pattanaik,
Member