

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

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**APPEAL NO.2-A OF 2011**

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

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Maa Tarini Industries Ltd.  
represented through its Director  
Hanuman Khedaria, Balanda,  
Rourkela, Dist. Sundargarh ..... Appellant

V e r s u s

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

For Appellant : S/Shri Bibhu Pr. Tripathy,  
Ramdas Achary, T. Barik  
& P. Parida, Advocates

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

**CORAM :**

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

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*Date of Judgment : January 07 2012*

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**B.P.Das, Chairman :** The appellant, which is a company registered under the Indian Companies Act and is engaged in manufacture of sponge iron in its plant set up at Balanda in the district of Sundargarh, has preferred this appeal under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (in short 'Air Act') against the order dated 16.11.2010 passed by respondent no.1-the State Pollution Control Board, Orissa, ('the Board' hereinafter) vide Annexure-9, refusing to modify the condition attached to the order granting consent to establish in respect of its 4<sup>th</sup> DRI (Direct Reduced Iron) Kiln with a capacity of 100 TPD (Ton Per Day) by exempting it from obtaining the environmental clearance as per the EIA (Environment Impact Assessment) Notification dated 14.9.2006, with the prayer to set aside the said order in Annexure-9 and to direct the respondents to issue consent to establish by modifying Office Memorandum No.4153-Ind-II-NOC-3427 dated 11.3.2010 (Annexure-7) to the extent of allowing the appellant to establish its 4<sup>th</sup> kiln without environmental clearance.

2. The case of the appellant-Industry, as delineated in the memorandum of appeal, is that with a view to expand its existing sponge iron plant located at Balanda, the appellant made an application to the Board on 30.10.2004 for grant of consent to establish 3<sup>rd</sup> and 4<sup>th</sup> Kiln with a capacity of 100 x 2 TPD and Induction Furnace by depositing the required consent fee. The Board

considering the said application of the appellant granted consent to establish 3<sup>rd</sup> kiln with 100 TPD capacity and Induction Furnace with 6 tonnes capacity with the usual conditions, vide Office Memorandum dated 5.5.2006 (Annexure-3).

According to the appellant, although it furnished the detailed information including the land details as required in the prescribed application submitted in Form-IV for grant of consent to establish under section 25 of the Water (Prevention and Control of Pollution) Act and section 21 of the Air Act on 30.10.2004, vide Annexure-2 series, the Board granted consent to establish only for 3<sup>rd</sup> kiln by the order dated 5.5.2006 (Annexure-3) and no decision for grant of such consent for 4<sup>th</sup> kiln was taken despite its request made by letter dated 23.8.2005 in Annexure-4. Long thereafter the Board by letter dated 25.7.2008 intimated the appellant about non-consideration of its application for 4<sup>th</sup> kiln on the ground that the appellant did not have adequate land for the said kiln. The appellant in response to the aforesaid communication submitted additional land documents for an area of Ac.8.42 to the Board by letter dated 26.7.2008 with a request to grant consent to establish 4<sup>th</sup> DRI kiln soon. Despite the aforesaid communications, which are annexed as Annexure-5 series, the Board by order dated 11.3.2010 in Annexure-7 granted consent to establish in respect of 4<sup>th</sup> DRI Kiln with 1 x 100 TPD capacity but attached a special condition which

required the appellant to obtain environmental clearance in terms of the EIA notification of 2006. The aforesaid action of the Board in attaching the condition requiring the appellant to obtain environmental clearance is the subject-matter of challenge in the present appeal.

3. The respondents, i.e. the Board and its Regional Officer at Rourkela, in response to the appeal memo. have filed a written note of submission wherein it has been stated that the action taken by the Board in its letter dated 16.11.2010 (Annexure-9) to reject the representation made by the appellant praying for modification of the consent condition regarding furnishing environmental clearance as per EIA notification of 2006 is legal and justified. According to the respondents, the Board received the application of the appellant dated 30.10.2004 for consent to establish two DRI Kilns of 100 TPD each and an Induction Furnace of 6 tonnes capacity on 2.11.2004 so also the revised project report for the same on 19.3.2005. According to the respondents, on the basis of the proceeding of the meeting held on 22.3.2005 under the chairmanship of the Chief Secretary, Orissa, the State Govt. in Forest and Environment Department decided not to grant any consent/NOC to new sponge iron units including on the application pending therefor with the Board, vide the letter dated 8.4.2005 in Annexure-A/1, and accordingly the application of the appellant could not be processed.

After receipt of the further decision of the State Govt. as per letter dated 4.8.2005, (Annexure-B/1) to the effect that the applications for grant of consent to establish for the pending proposal of the sponge iron units received by the Board on or before 22.3.2005, i.e., the date on which the Govt. decided to impose restriction on establishment of sponge iron units, would be considered on merit, the application of the appellant filed for grant of consent to establish vide Annexure-2 series was processed and was ultimately placed before the Consent Committee on 30.8.2005 for consideration. The said Committee in its proceedings dated 30.8.2005 vide Annexure-C/1 basing upon availability of land with the appellant decided to recommend for grant of consent to establish only for 3<sup>rd</sup> DRI kiln of 100 TPD and Induction Furnace of 6 tonnes capacity. The Committee further decided that the proposal for 4<sup>th</sup> DRI Kiln of 100 TPD would be considered after acquisition of additional land by the proponent as the land under its acquisition, i.e., 20.30 acres, was not adequate for 300 TPD sponge iron plant, i.e., existing kilns I and II with 50 TPD each and the proposed 3<sup>rd</sup> and 4<sup>th</sup> kiln with 100 TPD each, since the Board on principle decided to insist for at least 10 acres of land for 100 TPD sponge iron plant for disposal of Dolo Char, which is a major solid waste generated from sponge iron plants. In view of the aforesaid recommendation of the Consent Committee, since the appellant had only 20.30 acres of land available at its disposal and did not have adequate land for the 4<sup>th</sup>

kiln, and as the appellant had requested the Board by letter dated 23.8.2005 (Annexure-4) to grant consent to establish only for the 100 TPD sponge iron plant, i.e., 3<sup>rd</sup> kiln, and to defer grant of consent to establish for the 4<sup>th</sup> kiln till it acquired the required land, the Board vide its order dated 5.5.2006 (Annexure-3) granted consent to establish only for the 3<sup>rd</sup> kiln and asked the appellant by letter dated 25.7.2008 to submit the detailed land record for grant of consent to establish in respect of 4<sup>th</sup> kiln under Annexure-5 series. Thereafter considering the land documents submitted by the appellant in its letter dated 26.7.2008 and the letter dated 6.5.2009 wherein the appellant pursuant to the Board's letter dated 18.8.2008 undertook to establish WHRB based power plant of 4 MW capacity, the Board finally by order dated 11.3.2010 (Annexure-7) granted consent to establish in respect of the 4<sup>th</sup> kiln with the condition to obtain environment clearance as per EIA notification of 2006 which was then in force.

4. Shri B. P. Tripathy, learned counsel for the appellant, contended that the application submitted by the appellant on 30.10.2004 for grant of consent to establish in respect of 3<sup>rd</sup> and 4<sup>th</sup> kiln with required information including the details of the land vide Annexure-2 series was received by the Board on 2.11.2004. The revised project report was also received by the Board on 19.3.2005. The Board instead of granting consent only for 3<sup>rd</sup> kiln, vide

Annexure-3, should have granted or refused consent for 4<sup>th</sup> kiln within four months in terms of sub-section (4) of section 21 of the Air Act, which required the Board to grant consent applied for subject to such conditions and for such period, as may be specified in the order, or refuse consent, within a period of four months from the date of receipt of the application. The same having not been done within the statutory period of four months, the application of the appellant would be deemed to have been granted without any condition and, therefore, the condition attached to the consent order dated 11.3.2010 (Annexure-7) requiring the appellant to obtain environmental clearance as per EIA notification of 2006 is illegal and arbitrary. The learned counsel further contended that if the consent for the 4<sup>th</sup> kiln would have been granted while granting consent for the 3<sup>rd</sup> kiln on 5.5.2006 vide Annexure-3, then the appellant would not have been required to obtain environmental clearance as sponge iron units/DRI kilns were not under the purview of 1994 EIA Notification, which was then in force, and the environment clearance as per 2006 EIA Notification, which came into force from 14.9.2006, was not required to be taken. It was also contended that inadequacy of land, which was the sole ground for non-consideration of grant of consent to establish the 4<sup>th</sup> kiln was for the first time raised by the Board and as such as per the settled position of law the same cannot be sustained in the eye of law. In support of his contention, Shri Tripathy relied upon a decision of the Hon'ble Karnataka High

Court in the case of **M/s. Vijayanagar Educational Trust v. Karnataka State Pollution Control Board, Bangalore, reported in AIR 2002 Karnataka 123**, wherein it was held that in the absence of any order passed within the statutory period of six months regarding grant or refusal of consent, it would be deemed to have been granted without any condition as per section 25 (7) of the Water (PCP) Act.

5. Refuting the arguments advanced by learned counsel for the appellant, Shri Pattajoshi, the Law Officer appearing for the respondent-Board, argued that since the appellant vide its letter dated 23.8.2005 (Annexure-4) had requested the Board only to consider its application for 3<sup>rd</sup> kiln as adequate land was not available for the 4<sup>th</sup> kiln, the Board has only granted consent to establish for 3<sup>rd</sup> kiln vide Annexure-3 and as such the application dated 30.10.2004 was finally disposed of and the appellant has no case so far as 4<sup>th</sup> kiln is concerned. As regards deemed consent, it was submitted that the provision therefor was not available in Air Act and the same was available only in the Water (PCP) Act. In support of his submission, he relied upon a judgment of Hon'ble Andhra Pradesh High Court in **Uday Kumar Crushings v. A.P. Pollution Control Board, reported in 1996 (I) ALD 381**.

6. The sole question for consideration in the present appeal is whether any illegality can be attributed to the Board for not disposing of the application submitted by the appellant for consent in respect of the 4<sup>th</sup> kiln within the statutory period of four months.

It is a fact that the Board had not taken any decision either to grant or reject the application of the appellant for the 4<sup>th</sup> kiln within the statutory period. It took about six years' time for passing the final order in Annexure-7 in which the appellant has been asked to obtain the environment clearance as per EIA notification of 2006. The application filed by the appellant on 30.10.2004 was received by the Board 2.11.2004, when the EIA Notification 1994 was in force. Had the EIA guidelines been changed within the four months of receipt of the application of the appellant, the Board could have taken recourse to the new guidelines, i.e., EIA Notification of 2006 while dealing with the application of the appellant. Having not done so and keeping the application pending for a long period without reasonable cause, the action of the Board is against the spirit of law and we deprecate such action of the Board.

7. For the foregoing reason, we allow this appeal and set aside the impugned order dated 16.11.2010 passed by the Board in Annexure-7 and direct the Board to re-consider the application of the appellant and dispose of the same in accordance with the rules

governing the field and taking into consideration the EIA Notification which was in force on the date of receipt of such application.

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

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

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

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

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

*Dated : January 07 , 2012/Chhatoi*