

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

APPEAL NO.1A OF 2016

An appeal under Section 31 of the Air (PCP) Act, 1981.

M/S. Hotel Mohapatra,
represented through its Proprietor,
Sri Rabindranath Mohapatra. Appellant

- Versus -

State Pollution Control Board,
Odisha, Bhubaneswar & another ... Respondents

For Appellant : Mr. Niranjana Lenka,
Mr. H.K. Mohanty,
Mr. L.Sahu &
Miss. Rani Lenka, Advocates.

For Respondents : Mr. B.P. Pattajoshi,
Legal Consultant and
Mr. S.K. Kuanar,
Sr. Law Officer, Level-I.

QUORUM :

**HON'BLE SHRI JUSTICE J. P. DAS, VICE-CHAIRMAN,
PROF.(DR.)P.K.J. MOHAPATRA, MEMBER
AND
DR. D.K.ROUT, MEMBER.**

Date of Judgment : 18th October, 2022

**J.P.Das, J.
Vice -Chairman :**

The appellant herein challenges the order no. 1036 dated 3.5.2016 issued by the respondent no.2 - State Pollution Control Board, Odisha, Balasore asking him to deposit Rs. 3,00,000/- as environmental compensation as per the

direction of the Hon'ble National Green Tribunal (Eastern Zone), Kolkata. The records reveal that the appellant made an application before the respondent no. 2 for consent to establish a hotel unit on 29.12.2014. Since it was an operating unit by then and there was no point in applying for consent to establish, the Board directed the unit on 4.3.2015 to apply for consent to operate along with necessary documents and requisite fees. The appellant made an on-line application on 18.6.2015 and after enquiry, he was issued with the consent to operate the restaurant and the lodging with 8 double bedded rooms, which was valid up to 31.3.2020. The appellant alleged that he was served with a notice by the Hon'ble National Green Tribunal (Eastern Zone), Kolkata in O.A. No. 53/15/EZ (Biranchi Narayan Mohapatra v. State of Odisha and others) on 2.1.2016 (wherein the appellant was arrayed as respondent no.233) to show cause as to why penalty/compensation shall not be imposed upon him for illegally operating the hotel business without obtaining valid consent from the S.P.C.B. The appellant filed objection therein in M.A. No. 724/16/EZ on 29.2.2016. The Hon'ble N.G.T. (EZ) in O.A. No. 53/15/EZ. passed an interim order on 2.3.2016 fixing penalty/environmental compensation on the principle of "Polluters Pay" for various categories. Rs.3,00,000/- was fixed for category appropriate for the appellant unit, i.e., 4B(b) "Hotels



with 20 bed rooms or less, had consent from the PCB to operate earlier than 6th August, 2015, but has expired or consent obtained after court intervention after 6.8.2015". In compliance to the said interim order of the Hon'ble N.G.T., respondent no.2 issued the order No. 1036 dated 3.5.2016 asking the appellant to deposit a sum of Rs. 3,00,000/- within a period of six weeks.

2. The appellant assailed the said order of the Hon'ble N.G.T.(EZ) before the Hon'ble High Court of Orissa in a writ application and also in a writ appeal since his prayer was not allowed by the Hon'ble Single Judge. In the writ appeal, the appellant was directed to move this Authority since it was available as the Appellate Forum. Thereafter, the appellant filed the present appeal.

3. The Hon'ble N.G.T. again by order dated 23.9.2016 modified the earlier direction dated 2.3.2016 mentioning that there shall be only two categories of hotels, viz. 'Category-A' and 'Category-B'. Category-A shall include those hotels, which never obtained any consent from the State-Board and operated hotels illegally and Category-B shall include those hotels which had earlier obtained consent, but on expiry of the validity period, it was never renewed and continued to operate even thereafter. The cut-off date for the said purpose of obtaining consent was fixed to be 6.8.2015. Further in the same order, the earlier



amount of penalty/environmental compensation imposed was revised to Rs. 1,00,000/- for those falling under Category-A and Rs. 50,000/- for those under Category-B. The State Boards were directed to take actions accordingly.

4. In the present appeal, the appellant has assailed the imposition of penalty/compensation mainly on the ground that he had applied for consent to operate by depositing the required fees before the S.P.C.B on 18.6.2015 and after due enquiry, he was granted with consent to operate by the S.P.C.B. on 24.8.2015. Hence, it was submitted that since his application for consent to operate was pending before the concerned authority prior to the cut-off date fixed by the Hon'ble National Green Tribunal (Eastern Zone), Kolkata as 6.8.2015, he is not liable to pay penalty/compensation.

5. Per contra, it has been submitted on behalf of the respondents that the hotel came under Category-A as fixed by the Hon'ble National Green Tribunal (Eastern Zone), Kolkata and having no valid consent on 6.8.2015, the appellant is liable to pay compensation of Rs. 1,00,000/-. It was contended that as per the direction of the Hon'ble National Green Tribunal (Eastern Zone), Kolkata, which still remains unchallenged and the appellant - unit having no valid consent to operate on 6.8.2015, is liable to pay compensation of Rs. 1,00,000/-. It was also



submitted that the appellant was a party in the proceedings before the Hon'ble National Green Tribunal (Eastern Zone), Kolkata and, hence, is bound by the orders by the Hon'ble National Green Tribunal (Eastern Zone), Kolkata. It was further submitted that it has been the observation of the Hon'ble National Green Tribunal (Eastern Zone), Kolkata that mere making an application or pendency thereof for consideration, as has been pleaded by the appellant, cannot be said to have valid consent so as to escape the mandate of the Hon'ble National Green Tribunal (Eastern Zone), Kolkata.

6. It is not in dispute that the appellant did not have a valid consent to operate on the cut-off date 6.8.2015 as has been fixed by the Hon'ble National Green Tribunal (Eastern Zone), Kolkata. He made the application 18.6.2015 and was granted with the consent order on 24.8.2015. Thus, he did not have a valid consent on 6.8.2015 and also did not have the benefit of deemed consent since his application was disposed of within a period of two months six days.

7. The Pollution Control Acts are socially beneficial legislations to check unauthorized operation of units causing damage to the peripheral environment. As per those Acts, it is mandatory on the part of a unit to obtain consent to establish and then the consent to operate from the State Pollution Control



Board. Through those consents, the Board prescribed standards and norms to be strictly adhered to by the unit and are to be verified by the Board for effective pollution control and minimize environmental damage. Obviously, therefore, the Hon'ble N.G.T. (EZ) taking into consideration the facts and circumstances of the operation of hundreds of hotel units in the State without valid consent from the Pollution Control Boards, has imposed the penalty as environmental compensation.

8. It may be further mentioned that at the inception of this proceeding before this Authority, the appellant was granted with an interim order restraining the S.P.C.B. not to take any coercive action subject to the appellant depositing a sum of Rs. 25,000/- before the S.P.C.B. It was directed by this Authority that the appellant unit was to be inspected through the Regional Officer, Balasore. The inspection was carried out on 31.12.2021 and it was found that the S.T.P. installed by the appellant in his hotel unit was found defunct and non-operational since long discharging the waste water generated from the hotel unit directly in to the municipality drain without any treatment.

9. In the stated circumstances, we find no merit in the submissions made on behalf of the appellant and he is liable to pay the penalty/compensation of Rs. 1,00,000/- to be deposited



before the S.P.C.B. as per the direction of the Hon'ble National Green Tribunal (Eastern Zone), Kolkata. Since the appellant has already deposited an amount of Rs. 25,000/-, he shall deposit the balance amount of Rs. 75,000/- (Rupees seventy five thousand) only before the Member-Secretary, S.P.C.B. - respondent no. 1 within a period of three months hence.



10.

The appeal is disposed of accordingly.

9 April

Pof. (Dr.) P.K.J.Mohapatra, Member :

.....
Justice J.P.Das,
Vice-Chairman.

I agree

Dr. D.K. Rout, Member:

.....
Pof. (Dr.) P.K.J.Mohapatra,
Member

.....
Dr. D.K. Rout,
Member

Date : 18.10.2022.
K.K. Biswal, P.A.

CERTIFIED TO BE A TRUE COPY

.....
Designated Officer
State Appellate Authority