

APPELLATE AUTHORITY
UNDER THE WATER (P.C.P.) ACT, 1974, AND UNDER
THE AIR (P.C.P.) ACT, 1981 ODISHA,
BHUBANESWAR

APPEAL NO. 3W OF 2019 & APPEAL NO. 2A OF 2019

Appeals under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981.

In Appeal No. 3W of 2019

Sri Biswajit Das Appellant

-V e r s u s-

The Member Secretary,
Orissa State Pollution Control Board,
Orissa, Bhubaneswar Respondent

In Appeal No. 2A of 2019

Sri Biswajit Das Appellant

-V e r s u s-

The Member Secretary,
Orissa State Pollution Control Board,
Orissa, Bhubaneswar Respondent



For Appellant : Mr. N.K. Samantaray &
Mr. D.N. Acharya.
Advocates.
(In both the appeals)

For Respondents : Mr. B. P. Pattajoshi,
Legal Consultant and
Mr. S. K. Kuanar,
Sr. Law Officer, SPCB.
(For respondent)
(In both the appeals)

For Intervenor : Mr. L.K. Maharana, Advocate.
(In both the appeals)

QUORUM :

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

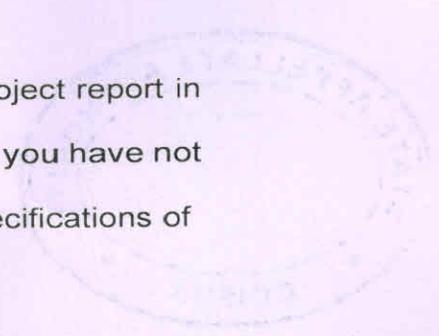
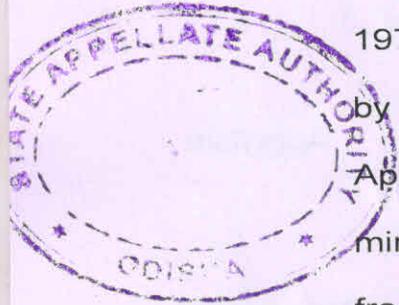
Date of Judgment : 23rd August, 2022.

Dr. D.K. Rout, Member: This common judgment shall dispose of the above mentioned two appeals between the same parties for the same cause of action.

The Appellant in the present Appeals is assailing the Order No.12560 dated 22.11.2019 of the Respondent under Sections 25/26 of Water (Prevention &Control of Pollution) Act 1974 and U/s 21 of Air (Prevention &Control of Pollution) Act 1981 by which Consent to Establish (CTE) has been refused to the Appellant to establish a unit for manufacturing of carbonaceous mineral fuel , high energy coke, carbon pellets and carburizers from spent pot lining and used anode butts on the following grounds:-.

“xxxx

(2). Though you have uploaded project report in online (not submitted hard copy), you have not furnished detailed information / specifications of



bag filter such as number of stacks, height of the stacks attached to the bag filters , capacity of the bag filters etc.

(3). The process has not been vetted from IMMT /IIT /NEERI /JNARDDC as required by SPCB, Odisha.

(4). A policy guidelines has been issued by the Board vide office order number 8091 dated 13.08.2019, which stipulates that the Board may allow establishment/authorization of actual users / recyclers of Hazardous Waste (HW) inside the state up to a capacity of 200% of generation of HW per annum.

(5). The installed capacity of Spent Pot Lining reprocessing capacity as well as used anode butt reprocessing capacity inside the state have already exceeded 200% of actual generation capacity as per information provided by the Hazardous Waste Management cell.

Xxxx"

The reasons given by the Respondent – Board, while refusing CTE to the Appellant, fall under two broad categories, i.e.,

- i) incompleteness of consent to establish applications, and
- ii) Non conformance to the policy guidelines formulated by the Respondent to regulate



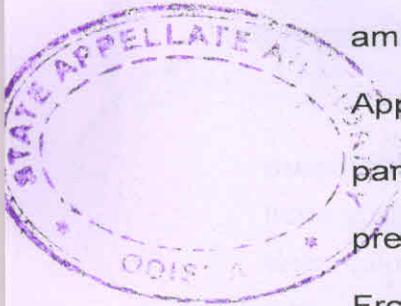
consent to establish Hazardous Waste recycling industries/ Actual users in the state.

2. The Appellant, while challenging the CTE refusal order of the Respondent – Board, has submitted that he applied for CTE on 11.7.2019 and submitted a hard copy of the Project Report on 15.07.2019. The Respondent-Board refused to give consent to establish on 22.11.2019 after the lapse of statutory period of 4 months which enables deemed consent unconditionally as per Sec-25(7) of Water (PCP) Act 1974. Countering such assertion of the Appellant, it has been submitted on behalf of the Respondent – Board that since the application for CTE was not complete in all respects, the provisions of Section 25(7) are not applicable in the instant case.

Section 25(2) of the Water (PCP) Act, 1974 provides that "An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars, and shall be accompanied by such fees as may be prescribed." Similarly, Section 21(2) of the Air (PCP) Act, 1981 provides that "An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed". Thus, both the provisions mandate that, the application for consent should be complete in all



respects and should be accompanied with all prescribed and required details to enable the Board to take appropriate decision. In the instant case, the Appellant in his appeal memo at paragraph - 2 (d) on the issue of not furnishing the detailed information on vital aspects has contended that these specifications are required only after issuance of consent to establish order by SPCB. Similar is the plea of the appellant in respect of vetting of the technology proposed to be adopted, by the specified institutions. Further, it is an admitted fact that the appellant had not submitted a hard copy of the Project Report along with the CTE application. Hence, it is amply clear that the application for CTE as was submitted by the Appellant was grossly incomplete and was not containing the particulars of the industrial plant and such other particulars as prescribed in respondent's office order No. 8091 dated 13.08.2019. From the available records, we are convinced that the particulars sought for by the respondent- Board for taking decision on CTE to a Hazardous Waste reprocessing unit are not only vital but also indispensable. Not furnishing such information by the Appellant along with the application for CTE undeniably makes the application incomplete and is a reason good enough to refuse CTE to the Appellant. We are of the considered opinion that in the given circumstances, the action taken by the Respondent in refusing CTE is justified.



3. As regards the plea of deemed consent, as pleaded by the appellant, suffice it to say that since the CTE applications of the appellant were not complete in all respects, the provisions of deemed consent as per sub-section 7 of Section 25 of Water (PCP) Act, 1974 shall not apply and therefore the benefit of unconditional deemed consent for the delay in disposing the CTE application does not arise.

4. The appellant has also assailed the policy formulated by the Respondent-Board limiting the CTE to 200% of the raw materials available in the State for the proposed units.

5. The Policy Guideline as notified vide Respondent's Office Order No. 8091 dated 13.8.2019 reads as follows:-

“ In pursuance of decision taken 119th board meeting held on 29.06.2019 the following policy shall be adopted for Regulating Concert to Establish and authorization of Hazardous Waste Recycling Industries/Actual Users as follows ;

(1). priority shall be given to the actual user units inside the state of Odisha for utilization of Hazardous Waste to have control over proper utilization disposal and management of hazardous waste

(2). the Board may allow establishment /authorization of actual users / recyclers of Hazardous Waste (HW) inside the state up to a capacity 200% of generation of HW per annum and in case Hazardous Waste cannot be utilized by the actual users inside the state or there is no such actual user operating in the state, the Board can authorize



actual uses of the other states for collection and inter- state transportation of balance quantity of the HW to avoid accumulation of hazardous waste at the site of the Generator.

(3). In case a single actual user unit is operating inside the state for recycling of a particular Hazardous Waste , the 2nd unit can be allowed to establish and operate to avoid monopoly , develop competitiveness and to ensure continuous utilization of hazardous waste even in case of breakdown of one of these units . The 2nd unit can come up in another district, but close to the mother unit .

(4). the technology adopted for reuses, recycling, recovery, pre -processing, utilization and co-processing of Spent Pot Lining (SPL) of Aluminum Smelters should be vetted through a National Level Government Institution like Jawaharlal Nehru Aluminium Research Development and Design Center (JNARDDC)/Institute of Mineral and Materials Technology (IMMT) / National Environmental Engineering Research Institute (NEERI) to ensure authentic utilization of SPL in an environmentally sound manner, since SPL contains Cyanide and Fluoride and toxic in nature. The technology is required to be also approved by CPCB having SoP.

This order will be given immediate effect from the date of issue of this order”.

6. In order to justify their action of refusing the application for CTE, it was submitted on behalf of the Respondent – Board that SPL is a hazardous waste material generated by Aluminum Smelters. There are four such Aluminium Smelters



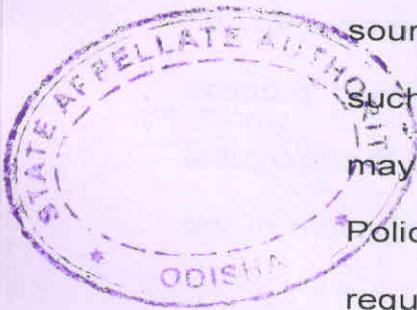
operating in the state. As per the return of 2020-21, their combined generation was 25,656 tons of SPL Carbon per annum. 200% of such quantity comes to 51,312 tons. The respondent further submitted that two actual user units have been granted with CTE prior to the application of the appellant with combined recycling capacity of 87,488 tons which far exceeds the total combined generation of all generators. Under these circumstances CTE to the 3rd unit of the appellant would not be a viable option and hence refused.

7. In this regard, it was submitted on behalf of the appellant that though the Respondent-Board fixed the 200% limit, no legal provision is there with the Board to restrict the generators from supplying their SPL waste through auction. In support of such a claim, the appellant submitted a copy of the tender papers meant for open auctioning of SPL, floated by one of the generating industries for disposal of such waste to authorized recycling units / actual users. The appellant further contended that, any person with valid permission from the SPCB can participate in the auction process and ensure supply of raw material for his industry. Therefore, imposing a restriction in the guise of 200% of production of such HW is of no significance. To a specific query of this authority, the Respondent submitted that there is no restriction on any authorized person/actual user to get



their supply of SPL from outside the state. Over and above, it is an undisputed fact that, the Hazardous Waste (SPL), can be legally imported from outside the Country by any actual user or his agent.

8. In the stated circumstances, it is our considered opinion that the policy formulated by the Respondent-Board, coined with an ideal intention to regulate the SPL reprocessing industry falls short of being broad based and all-encompassing. While imposing 200% of total generation of SPL as a limit to restrict new aspirants to come up in the sector, the policy document doesn't have any legal control on the generators, prohibiting them to adopt an auction route for disposal of SPL. That means, any highest bidder, even from outside the State, can source the raw material(SPL) from the state Generators and in such a scenario, the 2 actual users in the state having CTE/CTO may not get the raw material for their use, in spite of the existing Policy Guideline. At the same time, an aspiring unit accorded with required permission to establish a Hazardous Waste reprocessing/ recycling industry has no restriction to source such raw material from outside the state through open auction and from a foreign country through import. Therefore, in our considered opinion, the Policy Guideline needs a relook by the S.P.C.B. to make it more effective in dealing with the issue of regulating



Consent to Establish and authorization of Hazardous Waste Recycling Industries/Actual Users in the state. Obviously, therefore, the limit of 200% cannot be the sole ground for refusing an application for CTE made by any new aspirant in the field.

9. In the course of hearing, it was submitted on behalf of the Respondent –Board that the appellant has already established an industry by the same name on the same plot manufacturing different products after obtaining CTE from its RO office, Angul and thereby making this appeal infructuous.

Countering such assertion, the appellant submitted that the plot, on which an industry has already been established, is big enough to accommodate the proposed industrial unit of the appellant without any space constraint. This authority is of the view that, there should not be any bar on establishing another unit on the same plot as long as there is no space and process constraint, of course, subject to full compliance of the technical requirements by the applicant/appellant, to the satisfaction of the SPCB as per Rules.

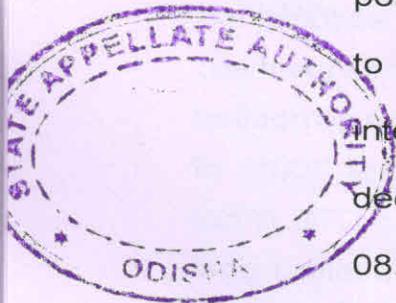
10. Towards the last part of hearing, one M/s Green Energy Resources, represented through its partners, filed an interim application for impleading it as an intervenor to the appeal. As per the contention made in the interim application, M/s Green Energy Resources is a patent holder of the technology “ A Novel



Method for Detoxification of Spent Pot lining (SPL) by Controlled Heat Treatment " to reprocess SPL carbon . Besides being a patent holder of the technology, M/s Green Energy Resources is also an authorized reprocessor having an industrial unit in the state of Odisha. Earlier, they had approached the Hon'ble High Court in W.P.(C) No.26407 of 2020 seeking for a direction to the SPCB to regulate in such a manner that the existing units in this field do not face any closure and new proposed units may be granted permission in accordance with the decision taken by the Board. The Hon'ble High Court, vide their order dated 7.10.2020, without expressing any opinion on the merit of the case, disposed of the writ petition with the direction to the SPCB and CPCB to dispose the representation of the petitioner giving opportunity of hearing before taking any decision to review the criteria of the existing policy as per decision in the 119th Board meeting. In compliance to such an order, the Board has already heard the present attending intervener in person on 26.02.2021 and reiterated its decision as taken in its 119th meeting (Ref. Order No. 3417 dated 08.03.2021).

The CPCB, on the other hand, has revised its SoP for utilization of SPL generated from primary aluminum smelting industries incorporating the following; -

"Patent has been granted for "A Novel Method for Detoxification of Spent Pot Lining (SPL) by



Controlled Heat Treatment " by The Patent Office, Government of India , therefore , to protect the patent rights the utilizers of this particular SoP should take permission from the patent holder and abide by the regulations stipulated for patent No 343974 date 22.09.2017 , as per provisions of the Patent Act, 1970.

The above stated facts amply suggest that by virtue of the order of the Hon'ble High Court, the present intervenor has ensured all possible protections under the law meant for a patent holder. That apart, since we are disposing of these two appeals in this judgment, there remains no further scope to consider the intervenor's application for intervention.

11. In the light of our observation, as aforesaid, we conclude both the appeals with the following orders: -

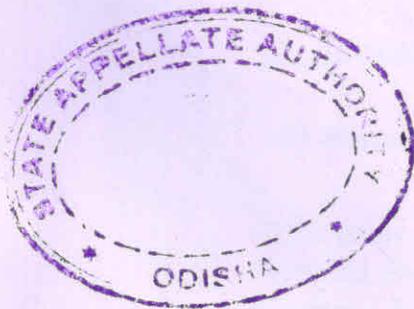
- (i) The refusal of Consent to Establish to the Appellant by the Respondent is in accordance with the provisions of law and hence justified;
- (ii) The Guideline in its present form as notified by the Board prescribing a limit of 200% of total SPL production for regulating CTE is not good enough to accomplish the desired goal since any interested party like the present Appellant after fulfilling all requirements



under law can source the SPL independently on their own through open auction, transboundary movement and import which is permissible under other Acts and Rules. Hence, the SPCB shall take a relook at the guidelines to make it more effective keeping in view the interest of both the existing and aspiring units in the field.

(iii) The intervention applications filed by the third party petitioner in both the appeals stand rejected.

Both the appeals are disposed of accordingly.



I agree.

Justice J.P.Das, Vice-Chairman

I agree

Prof.(Dr.)B.C.Acharya, Member

I agree.

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

I agree

P.K.Tripathy, Member

Sd/-

Dr. D. K. Rout,
Member

Sd/-

Justice J. P. Das,
Vice-Chairman.

Sd/-

Prof.(Dr.) B.C.Acharya,
Member

Sd/-

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

Sd/-

P. K. Tripathy,
Member

Date : 23.08.2022
K. K. Biswal, P.A.

