

(1994) 09 OHC CK 0029

In the Orissa High Court

Case No : Original Jurn. Case No. 1861 of 1991 and 2195 of 1992

Animal Feeds Diaries and Chemicals Limited

APPELLANT

Vs

Orissa State (Prevention and Control of Pollution) Board and
Others

RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 2, 31A

Citation : AIR 1995 Ori 84 : (1995) 1 OLR 28

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : K.N. Jena, for the Appellant; Y. Dash, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—These two writ applications were heard together and are being disposed of by this common judgment since they involve common question of law. In 1975 the petitioner had set up a factory for manufacture of cattle and poultry feed in village Jharpada within the Municipal limits of Bhubaneswar. On 8-7-1986 the Government of Orissa issued a notification in exercise of power u/s 19(1) of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "the Air Pollution Act") declaring the areas and premises of the industry coming under the air pollution control areas. Cattle and poultry feed did not find place in the said notification. On 28-3-1988 the Government of India appointed the first day of April, 1988 as the date on which all the provisions of the Air Pollution (Amendment) Act, 1987 except the provisions contained in Clauses II and IV of Sections 2, 3, Clause (1) of Section 4 and Section 15 came into force in the whole of India. Opposite party No. 2 who is the Member-Secretary of the Prevention and Control of Pollution Board, Orissa, issued a letter to the petitioner's company on 11-4-1988 requiring him to obtain the consent of the Pollution Board, opposite party No. 1, under the provisions of the Water and Air Pollution Act on payment of required fees. The petitioner submitted an

application and paid the necessary fees on 20-4-1988. It also forwarded the copies of the certificate of registration of the Company and the permanent registration certificate as a Small Scale Industry on 23-4-1988. Opposite party No. 2 by his letter dated 26-4-88, annexed as Annexure 4, called upon the petitioner to furnish certain information. Finally on 22-6-1988, opposite party No. 1 gave its consent in favour of the petitioner for a period up to 31-3-1989 as per Annexure 6 stipulating therein that the consent is subject to the provision of the Act and the Rules and orders made thereunder and is further subject to the terms and conditions incorporated in the Special and General Conditions annexed. Clause 3(b) of the special conditions was to the effect that the ambient air in the industrial plant area shall not contain constituents in excess of the tolerance limits prescribed thereunder. The petitioner sent compliance report with regard to the conditions as per Annexure 7 dated 17-3-1989. On 18-3-1989 the petitioner wrote to opposite party No. 2 requesting him to intimate the formalities for renewal of the consent order. On receipt of the aforesaid letter the Managing Director of the petitioner's company was asked to meet the Environmental Engineer of the Pollution Board for discussion. The said letter has been annexed as Annexure 9. The Managing Director met the Environmental Engineer on 8-5-1989 and on 10-5-1989 the Managing Director of the petitioner's company wrote to the opp. party No. 1 that the company had undertaken to stop the production of poultry feed from August, 1989 and would take up all pollution control measures as available for cattle feed. On 31-7-1989 opposite party No. 2 called upon the petitioner to deposit a sum of Rs. 1000/- in shape of Bank Draft for grant of renewal of consent. The petitioner's factory premises was inspected by the Assistant Engineer on 18-3-1991 and 20-3-1991. Opposite party No. 2 issued a direction u/s 31A of the Air Pollution Act, 1981 to close down the industry within one month from the date of receipt of the letter and further directed to shift the industry to a new location preferably to an isolated site. It is this direction of opposite party No. 2 which is being impugned in the O.J.C. 1861 of 1991. The petitioner submitted a representation as per Annexure 13 on 3-4-1991 but not being favoured with any reply, the petitioner has approached this Court. During the pendency of the writ application, the petitioner received a letter from the opposite parties dated 4-11-1991 wherein the renewal of consent for the year 1991-92 had been refused on the ground that the closure notice u/s 31A of the Air Pollution Act is sub judice in this Court and, therefore, the petitioner filed O.J.C. No. 2195/92 challenging the said order dated 4-11-1991 of the opposite parties.

2. The petitioner challenges the legality of the order dated 20-3-1991, annexed as Annexure 12, on the following grounds:

(i) the power u/s 31A of the Act can be exercised only by the Board and not by the Member-Secretary and, therefore, the direction contained in Annexure-12 is without jurisdiction;

(ii) Without any direction from the Central Government even the Board cannot

exercise power u/s 31A;

(iii) The area where the petitioner's factory is situated not having been declared as an air control area, the power u/s 31A cannot be exercised;

(iv) That the order under Annexure 12 as well as the report of the Inspector having indicated that there is only a problem of odour on account of manufacture of cattle feed and there being no conclusion or finding that on account of such manufacture of cattle feed air pollutant emanating from the factory has made the atmosphere polluted, there is no jurisdiction to issue direction contained in Annexure 12.

3. On behalf of the opposite parties a counter-affidavit has been filed indicating therein that the order of the Member-Secretary under Annexure 12 has been duly ratified by the Board in its meeting dated 30-3-1991 and, therefore, there is no infirmity with the decision under Annexure 12. It is further contended that the entire area coming under the jurisdiction of the Bhubaneswar Development Authority has been declared to be the air control area by the State Government which notification has been published in the Gazette dated 20-7-1984. Therefore, the area where the petitioner's factory is situated comes within the aforesaid notification. It has been further stated that the emission of foul odour itself is sufficient to pollute the area and, therefore, the authorities rightly exercised the power u/s 31A of the Act.

4. Before examining the correctness of the rival submissions of the parties, it would be necessary to notice some of the relevant provisions of the Act, The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981) was enacted pursuant to a decision taken at a Conference of the United Nations on the Human Environment held in Stockholm in which India also had participated. It was felt in that Conference that the preservation of the quality of air and control of air pollution is essential for preservation of the natural resources of the earth and it was decided that the decision should be implemented by enacting appropriate legislation. The pollution of air by virtue of emission of various pollutants discharged through industrial emission as well as through certain human activities has a tremendous detrimental effect on the human health and also on animal life and vegetation. In India with the policy of rapid industrialisation and the tendency of the industries to congregate in areas which are already saturated with the industries the problem of air pollution has become acute. To achieve the objectives as per the decision of the United Nations taken in its meeting held in Stockholm in July 1972, the Parliament has passed the legislation in question constituting the autonomous bodies like Central Pollution Board and State Pollution Board and conferring powers on them for issuance of appropriate direction to check the pollution of air. Section 3 provides for the constitution of the Central Pollution Board and Section 5 provides for constitution of the State Pollution Control Board. Section 14 provides for appointment of a Member-Secretary of a State Board and Section 14(2) provides that the Member-Secretary shall exercise such powers and perform such duties as may be

prescribed, or as may, from time to time, be delegated to him by the State Board or its Chairman. Section 15 provides that a State Board may, by general or special order, delegate to the Chairman or the Member-Secretary or any other officer of the Board, such of its powers and functions under the Act as it may deem necessary. Section 17 provides the functions of the State Board. Chapter IV provides for prevention and control of air pollution and Section 19(1) in the aforesaid Chapter authorises the State Government to declare any area within the State as air pollution control area for the purposes of the Act. Section 22 is a restraint on persons carrying on industry not to discharge the emission of any air pollution in excess of the standards laid down by the State Board u/s 17(1)(g). Section 24 is the power of the State Board or its officers of entry and inspections. Section 31A is the power to give direction. In the case in hand, we are not concerned with any other provisions of the Act. In the context of the aforesaid provisions, of the Act, the contentions raised are required to be answered.

5. The first question that arises for consideration is whether the Member-Secretary of the Board is authorised to issue direction u/s 31A of the Act. Section 31A is extracted hereinbelow in extenso:

"31A. Power to give directions:

Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

Explanation.-- For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service."

On a plain reading of the aforesaid provision, it is crystal clear that it is only the Board who has been authorised to issue any directions in exercise of its power and performance of its functions under the Act. The expression "Board" has been defined in Section 2(f) to mean the Central Board or a State Board. This power that has been conferred on a Board cannot be exercised by the Member-Secretary of the Board. Mr. Das appearing for the Board being faced with the aforesaid problem contends that under Sub-section (2) of Section 14, the State Board can delegate its power in favour of the Member-Secretary and u/s 15 the Board is entitled to delegate its power by a general or special order in favour of the Chairman or Member-Secretary or any other officers of the Board, as it may deem necessary. Though such a delegation is permissible but Mr. Das could not produce either a general or special order of the Board delegating the power of

the Board u/s 31A in favour of the Member-Secretary. In the absence of any such delegation the power u/s 31A could not have been exercised by the Member-Secretary and, therefore, the direction contained in Annexure-12 must be held to be without jurisdiction. The first contention of Mr. Jena the learned Counsel for the petitioner must accordingly be sustained.

6. The next question that arises for consideration is whether in exercise of power u/s 31A direction from the Central Government can be held to be a precondition. The answer to this question must be in the negative. Mr. Jena, however, because of the expression "to any directions that the Central Government may give in this behalf in Section 31A contends that until and unless a direction is issued by the Central Government, the power u/s 31A cannot be exercised by the State Board. We are unable to accept this contention and Section 31A is not susceptible of such a construction. The only interpretation that can be made of Section 31A is that the Board can issue any directions in exercise of its powers and performance of its functions under the Act but such direction must be subject to any directions which the Central Government may give in this behalf. Where in Central Government has not given any direction the power of the State Board is unfettered and where the Central Government has given any direction, then the direction of the State Board is subject to such direction. But by no stretch of imagination it can be said that in exercise of power u/s 31A the direction of the Central Government is a precondition. Mr. Jena's contention on this score is wholly unsustainable and we accordingly reject the same.

7. The next question that arises for consideration is whether the area where the petitioner's factory is situated has been declared to be an air control area or not. In view of the Gazette Notification dated 20-7-1984 produced before us by Mr. Das appearing for the Board notifying the entire area under the Bhubaneswar Development Authority to be the air pollution control area, there cannot be any manner of doubt that the area where the petitioner's factory is situated comes within the same and, therefore, Mr. Jena's contention on this score is devoid of any force.

8. The only other question that survives for our consideration is whether on the respect of the Inspector which has been annexed as Annexure G/1 as well as the conclusion contained in Annexure-12 itself to the effect that only foul odour gets emitted from the petitioner's factory, was it open for the Board or its officer to issue any direction u/s 31A of the Act. The report of the Inspector which has formed the basis of issuance of direction under Annexure-12 has been annexed as Annexure G/1 to the counter-affidavit of the opposite parties. The said report is extracted herein below in extenso :

"Inspection report of Sri P. K. Mittra, Assistant Environmental Engineer on M/s. Animal Feed, Diaries and Chemicals Ltd., Jharpada, Bhubaneswar-6 on 18-3-1991.

During the inspection period the factory was running. The grinding etc. were

done inside a large room which is situated inside the factory premises. Since the grinding and mixing are usually done inside the building, there is remote chance of dust pollution outside the factory premises.

However there was foul odour from the room where the dry fishes were stored. The foul odour should have been avoided had he stored the same in the closed vessel, as per the consent condition.

Since sufficient quantity of dry fishes is stored there is likely hood of manufacturing poultry feed although the Managing Director denied the same.

During preparation of poultry feed there is possibility of foul odour in the nearby locality."

The aforesaid report unequivocally indicates that there is possibility of foul odour in the nearby locality on account of preparation of poultry feed and foul odour was coming from the room where the dry fishes have been stored. Even the directions issued under Annexure-12 indicate that there was problem of odour due to storing of poultry feed materials. u/s 31A the Board is authorised to issue direction in exercise of its power and performance of its functions under the Act. u/s 19 of the Act after an area is declared by the State Government to be air pollution control area, the State Government can prohibit use of fuel if it is of the opinion that use of such fuel will have the effect of air pollution. It can also direct that no appliance other than an approved appliance could be used in the premises situated in an air pollution control area. The State Government also can prohibit the burning of such materials if it is of the opinion that the burning of materials may cause or likely to cause air pollution. The air pollutant has been defined in Section 2(a) to mean any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. Air pollution as defined in Section 2(b) to mean the presence in the atmosphere of any air pollutant. The Act is designed to prevent control and abatement of air pollution. The provisions under the Act relate to preservation of quality of air and control of air pollution. Keeping these objects in view, the Act has provided for measures which are preventive in nature in the case of industries to be established and in the cases of industries already established. The measures are remedial and that is why in case of an established industry consent of the Board is insisted upon. But the Board can issue such directions within the ambit of Section 31A only on being satisfied that the industry in question emits "air pollutant" by which there has been an "air pollution". Possibility of emission of foul odour or emission of foul odour itself without a finding that there has been emission of air pollutant would not clothe the jurisdiction with the Board to issue any direction. In this view of the matter, in the absence of any finding that the petitioner's factory emits any air pollutant as defined in Section 2(a) of the Act it was not within the jurisdiction of the Board to issue the direction to shift or close down the industry in exercise of power u/s 31A of the Act. Consequently the contention of Mr. Jena on this score must be sustained and the impugned

direction under Annexure-12 must be held to be without jurisdiction. 1

9. In the premises, as aforesaid we quash the direction contained in Annexure-12 in O.J.C. No. 1861/91 and we allow the writ application. So far as the renewal to issue the consent order which is the subject-matter of consideration in O.J.C. 2195/92 is concerned, the aforesaid renewal had not been made because of the pendency of the earlier writ application and because of the direction contained u/s 31A. The direction u/s 31A as per Annexure-12 in O.J.C. No. 1861/91 having been quashed, the basis of the order of renewal to give consent is wiped of and necessarily, therefore, the said order dated 4-11-1991 annexed as Annexure-9 in O.J.C. No. 2195/92 must be quashed and we accordingly quash the same and direct that the appropriate authority may reconsider the question of renewal of consent bearing in mind the observation and directions given by us in O.J.C. No. 1861 of 1991. In the net result, therefore, both the writ applications are allowed. There would be no order as to costs.

R.K. Patra, J.

10. I agree.