

(2013) 01 OHC CK 0008
In the Orissa High Court
Case No : Writ Petition (C) No. 2611 of 2012

Praxair India Pvt. Ltd.

APPELLANT

Vs

Sub-Collector and Sub-Divisional Magistrate, Angul and
Others

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Orissa Development Authorities Act, 1982 — Section 16, 16(7), 16(8)
Orissa Land Reforms Act, 1960 — Section 8A

Citation : AIR 2013 Ori 137 : (2013) 115 CLT 594 : (2013) 1 OLR 813

Hon'ble Judges : Pradip Mohanty, Acting C.J.; S.K. Mishra, J

Bench : Division Bench

Advocate : Pami Rath, C. Muralidhar, I. Mohanty and Mr. R.K. Rath, for the Appellant; Manoranjan Das, Addl. Government Advocate and P.P. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mishra, J.—In this case, the Petitioner company has prayed for a direction to the Opp. Parties to accept the status of deemed-grant of permission u/s 16(8) of the Orissa Development Authorities Act, 1982 (hereinafter referred to as the "Act") & further to direct the Opp. Parties not to interfere with the Petitioner's lawful activities at the Pump Fill Station set up at Angul & to allow the Petitioner to carry on the operations at the said Pump Fill Station. Finally, it has also prayed to quash Annexure-14, the letter issued by the Secretary, Talcher-Angul-Meramandali Development Authority, Angul directing the Petitioner to stop the development activities. The Petitioner is engaged in the manufacture of Oxygen, Nitrogen, Argon & other products, in both gaseous & liquid form. It has set up air separation plants of huge capacity at various locations across India. The products manufactured in liquid form in those plants are taken to different Pump Fill Stations located at various locations throughout the country. At the Pump Fill Stations, the products in liquid form are filled into smaller cylinders, so as to enable the use of these products by smaller consumers. The only activity the

Petitioner carries out at these Pump Fill Stations is the filling of Oxygen, Nitrogen & Argon from bulk containers into small cylinders. The Petitioner has set up & been operating these Pump Fill Stations at different locations in due compliance with air requirements of law, without any safety related issue for several years now.

2. With an intention to set up a Pump Fill Station at Angul, the Petitioner purchased about 91 cents/decimals or 0.91 acres of land at Angul, Vide sale deed dated 25.04.2008, which has been converted for industrial use u/s 8A of the O.L.R. Act. The R.O.R. in respect of the said land issued in favour of the previous owner clearly indicates that the said land is meant for industrial use. The Petitioner applied for & obtained all requisite approvals for the construction of the Pump Fill Station at the said land. The Petitioner received the site layout & construction approval from Petroleum & Explosives Safety Organization under the Government" of India in Ministry of Commerce & Industry. The Petitioner was granted consent to establish the Pump Fill Station from the Orissa State Pollution Control Board.

3. The village Panchayat of Balukata Gram Panchayat, through its Sarpanch also granted the permission to the Petitioner for construction of the Pump Fill Station on 30th August, 2008, by way of a resolution passed at the village committee meeting held on 15th August, 2008. A clearance certificate about the compliance of all fire prevention measures & the good conditions of the same has also been issued by the District Fire Office, Fire Station, Angul on 23.11.2011. The Directorate of Factories & Boilers, Odisha has also granted approval for the layout plan & building plan of the Pump Fill Station.

4. The Petitioner on 30.09.2008 applied to Opp. Party No. 2 by making an application u/s 16 of the Act seeking permission for construction of the plant, accompanied with "the required fees & documents. The Petitioner was not communicated with any decision either of grant or refusal of permission within two months from the date of the receipt of the application. The Petitioner again on 30.11.2008 made another application u/s 16(7) of the Act drawing attention of the Vice-Chairman of the Authority with regard to its application. Such application was sent through registered post. Even after lapse of one month of receiving such letter, no communication was received from Opp. Party No. 2.

5. Thus, it is submitted by the Learned Counsel for the Petitioner that by operation of Section 16(8) of the Act, the Petitioner has been accorded deemed grant of permission of the construction. It is clear that Opp. Party No. 2 has received the second application on 04.12.2008 & until 04.01.2009, there was absolutely no communication from Opp. Party No. 2. Thus, it is argued that deemed permission was granted from 05.01.2009 u/s 16(8) of the Act.

6. On such premises, the Petitioner commenced & completed construction of the Pump Fill Station in due compliance with the requirement of law. Opp. Party No. 1 on 01.10.2011 issued a letter to produce all relevant documents to show that

the prior approval of all authorities have been obtained by the Petitioner. On 01.11.2011, the Petitioner appeared before Opp. Party No. 1 & submitted all the documents as required on 9.11.2011. Yet the Opp. Party No. 1 on 15.11.2011 issued an order to stop construction on the ground that the Petitioner has not obtained prior permission of Opp. Party No. 2. The Petitioner made a representation to Opp. Party No. 1 stating therein that permission from Opp. Party No. 2 is deemed to have been received by the Petitioner u/s 16(8) of the Act. In the said representation, the Petitioner has also submitted the Record of Rights of the land & has mentioned that the mutation for change of ROR & recording of their name in the ROR is going on. The Petitioner also submitted details of all the approvals obtained till date & also provided a complete description of the activity that it would carry on at its Pump Fill Station at Angul & as to how the same is not going to be hazardous or explosive in nature. However, the Opp. Party No. 1 has failed to appreciate this aspect of the case & issued the order not to carry on the activities in this area. Hence, this Writ Petition is filed with the prayer as stated above.

7. Opp. Party No. 1 has filed a counter affidavit, inter alia, pleading that the Petitioner could be able to obtain the site layout & construction approval from Petroleum & Explosive Safety Organization under the Government of India, Ministry of Commerce & Industry after notice issued vide No. 3417 dated 01.10.2011. The construction work was going on before the notice issued to the Petitioner organization. It is further submitted that N.O.C. has not been obtained from the District Administration before granting consent to establish the Pump Fill Station by Orissa State Pollution Control Board, Odisha. It is further submitted that the Petitioner Organization could not be able to show the building permission from Talcher-Angul-Meramandali Development Authority, Angul (TAMDA). The Opp. Party No. 1 came to know from the grievance petition filed by the nearby villagers to the Collector, Angul, which has subsequently been forwarded to Opp. Party No. 1 vide Memo No. 1625/PGC. dated 27.08.2011, that no approval has been accorded in favour of the Petitioner as it has not been considered by 5th Building Permission Committee held on 18.02.2009. Since the Gas Industry is explosive in nature & may cause damage to the people in the adjacent residential area, the case was not considered & no approval has been given by TAMDA. Another grievance petition has also been filed by the adjacent villagers before the Chief Minister's Grievance Cell, which has also been forwarded to Opp. Party No. 1. The nearby villagers are alleging time & again against the proposed Gas Plant anticipating any untoward situation due to such explosive Gas Plant. Opp. Party No. 1 issued a notice to the Petitioner to appear on 10.10.2011 at 10.30 A.M. with all the relevant documents. But the Petitioner neither appeared on the date fixed nor showed any document before the Opp. Party No. 1 on the date & time fixed. After lapse of one month of the notice, the Petitioner appeared on 09.11.2011. It is submitted that the Petitioner has been asked verbally to produce the N.O.C. obtained from the District Administration. It is submitted that the Petitioner should have obtained the N.O.C. from the District

Administration & building permission from the concerned authority as well before construction of such gas plant. But without obtaining any building permission from the concerned authority, the Petitioner constructed the Explosive Gas Plant at its own sweet will.

8. On the basis of the grievance petitions filed before the Collector & the Chief Minister, which were forwarded to Opp. Party No. 1 by the District Office to sort out the grievance of the villagers, a notice was issued to the Petitioner to appear & produce the relevant documents for establishment of Gas Plant on 10.10.2011 vide letter No. 3417 dated 01.10.2011 & the Petitioner has failed to appear & produce the relevant documents on the date fixed. So as to avoid any untoward situation in the locality, Opp. Party No. 1 has issued one notice vide No. 3888 dated 15.11.2011 to stop such illegal construction unless & until necessary clearance has been obtained from all concerned. It was, therefore, prayed that the Writ Petition be dismissed.

9. The Petitioner has filed a rejoinder affidavit to the counter affidavit filed by Opp. Party No. 1. In clarifying the position, it is submitted that it is not the requirement of law that prior to applying for consent from State Pollution Control Board a person has to obtain N.O.C. from District Administration. The Petitioner had applied for the consent from the Pollution Control Board with all the documents & information required for such an application & based on the same the consent was granted to the Petitioner. The Pollution Control Board never asked for such a requirement to obtain N.O.C. from District Administration & the Petitioner believes that there is no such requirement under law to seek an N.O.C. from the District Administration.

10. In course of hearing of the Writ Petition, Learned Counsel for the Petitioner relies upon the reported case of Z. Engineers Construction (P) Ltd. Vs. Bhubaneswar Development Authority and Another, & submits that under Sub Section (8) of Section 16 of the Act, the Petitioner shall be deemed to have received permission of the Development Authority &, therefore, the order passed by the Sub-Collector & the letter issued by the TAMDA are illegal.

11. Section 16 of the Orissa development Authorities Act, 1982 provides for application for permission. Sub-Section (1) provides that any activity of development should be preceded by an application in writing to the Authority for permission in such form & containing such particulars & accompanied by such documents as may be prescribed by regulations. Sub-Section (2) provides that every application under Sub-Section (1) shall be accompanied by such fee as may be prescribed by rules. Sub-Section (3) provides that on receipt of any application for permission under Sub-Section (1), the Authority shall furnish the applicant with a written acknowledgement of its receipt & after making such enquiry as it considers necessary in relation to any matter specified in the development plan in operation or in relation to the regulations pertaining to planning & building standards or in relation to any other matter as may be prescribed under regulations, shall by order in writing, either grant the

permission, subject to such condition, if any, as may be specified in the order or refuse to grant such permission. Sub-Section (4) provides for granting of permission subject to conditions or refusing permission should be accompanied by the statement or grounds for imposing such restrictions or such refusal, as the case may be. Sub-Section (5) provides that every permission granted under Sub-Section (3) with or without condition shall be in such form, as may be prescribed by regulations. Sub-Section (6) provides that every order under Sub-Section (3) shall be communicated to the applicant in such manner, as may be prescribed by regulations.

Sub-Section (7) of Section 16 provides that if the authority does not communicate its decision either granting or refusing permission to the applicant within two months from the date of receipt of the application by the Authority, the applicant shall in the form prescribed by regulations draw the attention of the Vice-Chairman of the Authority with regard to his application, by registered post.

Sub-Section (8) provides that if, within a further period of one month from the date of receipt of the application drawing such attention, as mentioned in Sub-Section (7), the Authority does not communicate its decision, either granting or refusing permission, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of three months' period. In proviso, it has been laid down that in computing the period of two months under Sub-Section (7) & further one month under Sub-Section (8), the period in between the date of requisitioning any further information or documents from the applicant & the date of receipt of such information or document from the applicant shall be excluded.

12. It is argued by the Learned Counsel for the Petitioner that there has been a deemed sanction of the Petitioner's permission for construction of the plant &, therefore, Talcher-Angul-Meramandali Development Authority cannot now issue an order for stopping construction/operation of the Pump Fill Station on the pretext of non-existence of sanction by it.

13. In the aforementioned case of M/s. Z. Engineers Construction (P) Ltd. v. Bhubaneswar Development Authority & another (*supra*), Division Bench of this Court has held that the deeming provision in Sub-Section (8) & the time limit in Sub-Section (7) has been introduced with the dominant purpose to see that the applications which are filed for grant of sanction by the applicants do not remain pending with the authorities for an unreasonably long period. On the other hand, the legislative intention is that such an application should receive-immediate attention of the sanctioning authority. So the deeming provision introduced in Sub-Section (8) of Section 16 of the Act is meant to expedite the entire process of sanction under the threat of a deemed sanction. Further, in order to attract the deeming provision of Sub-Section (8), their Lordships have further held that the first condition is that it has to be in the form prescribed by the Regulation & the second condition is that the application has to be sent by registered post. Thus, it is necessary to see whether in this case the two conditions have been fulfilled or

not.

14. Annexure-9 is the notice sent u/s 16 of the Orissa Development Authorities Act drawing attention of the Vice-Chairman of TAMDA about the application for permission made by the Petitioner-company. Regulation 9 of the Talcher-Angul-Meramandali Development Authority (TAMDA), Angul (Planning & Building Standards) Regulation, 2011 provides for permission & the method to be adopted in disposing of the applications. Clauses 5 & 6 are relevant for this purpose, which read as follows:

(5) If the authority, does not communicate its decision either granting or refusing permission to the applicant within 60 days from the date of receipt, of the application by the Authority, the applicant shall draw the attention of the Vice-Chairman of the Authority with regard to his application, by registered post in Form-III. The Planning Member shall within the fifteen days from the date of receipt of notice in Form-III place the details of the case before the Vice-Chairman.

(6) If, within a further period of one month from the date of receipt of the application drawing such attention as mentioned in sub-regulation (5) above, the authority does not communicate its decision, either granting or refusing permission, such permission shall be deemed to have been granted to the applicant on the date following the date of expiry of the three months period.

It is further seen that Form-III of the Regulations is the specimen of the application for drawing of attention under Sub-Section (7) of Section 16 of the Orissa Development Authorities Act, 1982. The Petitioner has sent the said notice in the prescribed format & it also appears from Annexure-9 at page 48 that the document has been sent through registered post & it has been received by the office of the Vice-Chairman of the TAMDA on 04.12.2008. It may be noted here that the TAMDA has not filed any counter affidavit denying the assertion of the Petitioner that a notice drawing attention of the Vice-Chairman, TAMDA was sent by office on 04.12.2008. Since all the technical requirements have been satisfied in this case, this Court finds no impediment to come to a conclusion that the benefit of the deemed provision should be extended to the Petitioner-company. Therefore, the order issued by the TAMDA through its Secretary on 08.02.2012 asking the Petitioner to stop further construction claiming the construction to be unauthorized is illegal.

15. It is further noted that as far as parrying an industrial activity concerned, the Petitioner has obtained the no objection certificate from the Pollution Control Board. The nature of the land has been changed to industrial purpose & in such view of the matter, the District Authority has no jurisdiction to stop the operation of the Petitioner company. Accordingly, the order passed by the Sub-Collector & Sub-divisional Magistrate, Angul is illegal.

16. Hence, the writ application is allowed. Annexures 10 & 14, the notice issued by the Sub-Collector & Sub-Divisional Magistrate, Angul & the order of the

Secretary, TAMD, Angul respectively are hereby quashed. The Opp. Parties are directed to accept the status of the Petitioner as having granted deemed permission u/s 16(8) of the Orissa Development Authorities Act, 1982.

Pradip Mohanty, A.C.J.

I agree.