
(2008) 02 OHC CK 0029

In the Orissa High Court

Shree Jagannath Stone Crusher and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 19, 21, 31A, 54, 9
Environment (Protection) Act, 1986 — Section 5, 7
General Clauses Act, 1897 — Section 13

Citation : (2008) 105 CLT 661 : (2008) 1 OLR 667 Supp

Hon'ble Judges : I.M. Quddusi, J;A.K. Samantray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—Since identical prayer has been made in all the Writ Petitions, they were taken up together and are being disposed of by this common Judgment.

2. The Petitioner in each of the Writ Petitions has prayed for quashing of the Notification dated 17/18th July, 2002 issued by the Government of Orissa in Forest and Environment Department in exercise of the powers conferred by Sub-section (i) of Section 19 of the Air (Prevention and Control of Pollution) Act, 1981. By the said notification, the State Government in suppression of the notification No. 3044/STE dated 29th February, 1988 of the Government of Orissa in the erstwhile department of Science, Technology and Environment and Notification No. Env-I-3/88/14439/F&E. (Env.) dated 4th June, 1993 of the Forest and Environment Department and after consultation with the State Pollution Control Board, declared the entire State of Orissa as Air Pollution Control Area for the purposes of the said Act. They have also prayed for a direction to the Opposite Parties to adapt the siting criteria followed in neighboring States for the purpose of allowing the Stone Crusher Units to run their business. In W.P.(C) Nos.9529 of 2005, 668, 669 and 671 of 2007, the Petitioners have prayed for quashing the decision of the State Pollution Control Board in exercise of powers

conferred u/s 31A of the Air (Prevention and Control of Pollution) Act, 1981, directing closure of the units.

3. The Petitioner in each of these Writ Petitions is a Stone Crusher Unit established at different places in the district of Khurda in different years" Noted against its name.

1. Shree Jagannath Stone Crusher ... 1987 2. M/s.Royal Stone Crusher ... 1997 3. Maa Kalika Stone Crusher ... 1997 4. Maa Sarala Stone Crusher ... 1999 5. M/s. J.B.Stone Crusher ... 1999 6. M/s. Tara Stone Crusher ... 1997 7. Maa Durga Stone Crusher ... 1999 8. M/s. Tapaswini Stone Crusher ... 1999 9. Maa Chandi Stone Crusher ... 1999 10. Maheswari Stone Crusher ... 1999 11. M/s. Pratap Stone Crusher ... 1992 12. Maa Ramachandi Stone Crusher ... 1986 13. Shree Raghunath Jew Stone Crusher ... 1988

At the time of establishing the Stone Crushers, the State Government had not declared the entire State of Orissa as air pollution control area. Therefore, the Petitioner in each of the Writ Petitions had fulfilled all the formalities before installation of the stone crusher units. As there was no necessity of obtaining permission/clearance from the State Pollution Control Board, they did not apply for the same. In the mean time, the State Government declared in the year 2002 vide Notification dated 17/18th of July, 2002 issued by the Forest and Environment Department the entire State of Orissa as the air pollution control area for the purpose of Air (Prevention and Control of Pollution) Act, 1981. Thereafter the provisions of the Act became applicable in the case of the Petitioners. However, for a long time no action was taken and ultimately inspection of the units were being started by the State Pollution Control Board, Orissa and in the result in some cases Notice to show cause as to why the unit should not be closed down for not following the siting criteria was issued and in some cases order for closing down the units on that ground was passed. Being aggrieved these Writ Petitions have been filed praying for the reliefs, as mentioned above.

4. Section 19 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "the Act, 1981"), empowers the State Government after consultation with the State Pollution Control Board to declare any area or areas within the State as pollution control area or areas for the purpose of the Act. Section 21 restricts establishment and operation of any industrial plant in an air pollution control area without the previous consent of the State Pollution Control Board. However, under the proviso to Sub-section (1) of Section 21 a person operating any industrial plant in any air pollution control area immediately before the commencement of Section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, has been allowed to continue for a period of three months from such commencement or till disposal of the application before the Pollution Control Board if the same has been made within three months. Proviso to Sub-section (2) of Section 21 provides that where any person immediately

before the declaration of any area as an air pollution control area operates in such area any industrial plant, such person shall make the application under that Sub-Section within such period (being not less than three months from the date of such declaration), as may be prescribed, and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

5. The question that arises in these Writ Petitions is as to whether the State Government can declare the entire State of Orissa as pollution control area under the powers conferred on them u/s 19 of the Act, 1981. For this purpose, it is necessary to peruse Sub-Sections (1) and (2) of Section 19 of the Act, 1981 which are reproduced below:

19. Power to declare air pollution control areas-(1) The State Government may, after consultation with the State Board, by Notification in the official gazette, declare in such manner, as may be prescribed, any area or areas within the State as air pollution control area or areas for the purpose of this Act.

(2) The State Government may, after consultation with the State Board, by Notification in the official gazette,-

- (a) alter any air pollution control area whether by way of extension or reduction;
- (b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof.

6. A perusal of the above quoted provisions shows that the State Government has been conferred with powers to declare any area or areas within the State as air pollution control area or areas or alter any air pollution control area whether by extension or reduction or declare a new pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof. The State Government vide Notification dated 17/18th July, 2002 after consultation with the State Pollution Control Board has declared the entire State of Orissa as air pollution control area for the purpose of the Act, 1981. The Notification is reproduced as under:

No. ENV-I-14/02.11480/F&E. In exercise of the powers conferred by Sub-section (i) of Section 19 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) and in supersession of the Notifications of the Government of Orissa in the erstwhile department of Science, Technology and Environment No. 3044/STE, dated 29th February, 1988 and in the Forest and Environment. Department No. Env./1/3/88/14439/F&E (Env.) dated the 4th June, 1993, the State Government after consultation with the State Pollution Control Board do hereby declare the entire State of Orissa as Air Pollution Control Area for the purpose of the said Act.

7. By Notification dated 20th of August, 2003 published in the Orissa Gazette dated 30th of August, 2003, the State Government after consultation with the State Board for the Prevention and Control of Air Pollution amended the Orissa Air (Prevention and Control of Pollution) Rules, 1983. By the said amendment,

Rule 3A has been inserted in to the Rules as under:

3A(1) Every Notification under Sub-section (1) of Section 19, declaring any area within the State as air pollution control area, shall specify:

(i) The boundaries of the area, if the area is not a whole district or the whole State;

(ii) The date on which such declaration shall come into force: Provided that no such Notification may be made without prior consultation with the Board who may assess/evaluate the pollution potential/levels of different air polluting activities and on identification, recommend to Government for the purpose.

(2) A Notification referred to in Sub-Rule (I) shall be published in the official gazette and at least in one English and one vernacular daily newspaper having a circulation of not less than 5000 in the State including the local area.

8. Prior to declaration of the entire State as pollution control area, challenge was made to the earlier Notification of the Government declaring certain areas as Air Pollution Control areas on the ground of absence of statutory rules. The Apex Court in the case of Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Another, upheld the validity of the notification and held that merely by absence of rules the State would not be divested of its power to notify in official gazette any area declaring it to be air pollution control area Paragraphs 13 and 15 of the said Judgment are reproduced as under:

13. Thus, in case manner is not prescribed under the Rules, there is no obligation or requirement to follow any, except whatever the provision itself provides viz. Section 19 in the instant case which is also complete in itself even without any manner being prescribed as indicated shortly before to read the provision omitting this part "in such manner as may be prescribed." Merely by absence of Rules, the State would not be divested of its powers to notify in Official Gazette any area declaring it to be air pollution control area. In case, however, the Rules have been framed prescribing the manner, undoubtedly the declaration must be in accordance with such rules.

15. It is thus clear from the decision referred to in the preceding paragraph that the power which vests in an authority would not cease to exist simply for the reason that the rules have not been framed or the manner of exercise of the power has not been prescribed. So far Section 54 of the Act is concerned it only enumerates the subjects on which the State Government is entitled to frame rules.

9. The Act, 1981 is a Central Act. By the said Act, the State Government have been conferred with jurisdiction to declare any area or areas within the State as pollution control area. Having regard to the language used in Section 19 of the Act, 1981 that the State Government after consultation with the State Board may declare any area or areas within the State as air pollution control area or areas and alter any air pollution control area whether by way of extension or reduction,

it cannot be said that the State Government has no jurisdiction under that Section to declare the whole of Orissa State as air pollution control area. Moreover, Section 13 of the General Clause Act, 1897 provides that in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa.

10. Therefore, in view of the above, we are of the firm opinion that the State Government have power to declare the entire State as pollution control area u/s 19 of the Act, 1981 and, therefore, we uphold the Notification dated 17th/18th July, 2002.

11. With regard to the prayer for a direction to adapt the siting criteria of neighbouring States, it is necessary to mention that the environment of every State is different. The border of Orissa State on one side is towards the State of Andhra Pradesh and the other side is towards Jharkhand. Similarly another side is towards Chhatisgarh and West Bengal. Therefore, the siting norms fixed by Chhatisgarh State certainly would not be similar to the siting norms of Andhra Pradesh. In such circumstances, Orissa State has to fix its siting criteria according to the environment of the State. Such a consideration, i.e., to issue direction to the State Government to fix the siting criteria according to the siting criteria of neighbouring States is beyond the scope of Judicial review of this Court.

12. However, in some of the Writ Petitions impugned orders directing closure of the units have been passed only on the basis of alleged violation of siting criteria prescribed under the Environment Protection Act, Notified by the Government in Forest and Environment Department Notification dated 13th May, 1998 published in the Orissa Gazette dated 5th June, 1998. The said Notification is reproduced as under:

FOREST & ENVIRONMENT DEPARTMENT ORDER The 13th May, 1998

No.9507-Env.I.9507-80/97-F&E- In exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 (29 of 1986), read with the Notification of the Government of India in the Ministry of Environment and Forests (Department of Environment, Forest and Wildlife) No. SO-152(E) dated the 10th February, 1988 and Rule 4 of the Environment (Protection) Rules, 1986, the State Government do hereby issue the following directions to the persons carrying on the operation of Stone Crushers in the State, namely:

1. All Stone Crusher units are to conform to the pollution control measures and emission standards Notified by the Ministry of Environment & Forest from time to time along with the standards u/s 7 of the Act.
2. No Stone Crusher shall be allowed within one kilometer from a town or villager boundary.
3. No stone crusher should be located within half Kilometer from the National and State High Ways.

4. Distance between two Stone Crusher units shall be at least half kilometer.

Stone Crusher units which are in the aforesaid prohibited limits shall shift to other areas within six months from the date of publication of this notification in the Orissa Gazette.

As such all the Stone Crusher units operating in the State of Orissa are requested to comply the directions in the stipulated time, i.e, latest by 4.12.1998.

13. A perusal of the above notification would show that the siting criteria as in item 4 was that the distance between two Stone Crusher units shall be at least half kilometer. But State Government vide subsequent notification dated 1.8.2006 omitted the said condition which is reproduced as under:

Government of Orissa Forest and Environment Department ORDER Bhubaneswar dated the 1.8.2006.

NO. ENV.I-55/2003-13091/F&E. In exercise of the powers conferred by Section 5 of the Environment (Protection) Act, 1986 (29 of 1986), read with the Notification of the Government and Forests (Department of Environment, Forest and Wildlife) No. SO-152(E) dated 10th February, 1988 and Rule 4 of the Environment (Protection) Rules, 1986, the State Government do hereby make the following amendment to the order of the Government of Orissa in the Forest and Environment Department No. 9507 -Env.I-80/97-F&E, dated the 13th May, 1998, namely

AMENDMENT

In the said order, the item No. 4 along with expression "Distance between two Stone Crusher units shall be at least half kilometer" shall be omitted.

The order shall come into force from the date of its publication in the Orissa Gazettee.

By order of the Governor S.P. Nanda Principal Secretary to Government.

14. It appears that in the impugned orders of closure in some of the Writ Petitions, as mentioned above, only violation of the siting criteria laid down in the Notification of 1998 has been alleged in general. But the said Notification of 1998 has been amended in 2006 deleting item No. 4 of the 1998 Notification. No specific violation has been alleged therein. Therefore, the impugned orders are not sustainable in the eye of law.

15. No other point has been urged on behalf of the Petitioners.

16. In the result, we uphold the validity of the Notification dated 17th/18th July, 2002 declaring the entire State of Orissa as Air Pollution Control Area u/s 19 of the Act, 1981 and refuse the prayer of the Petitioners to issue direction to the State Government to adapt the siting criteria followed in the neighbouring States.

17. However, we quash the impugned order of closure in W.P.(C) No. 9529 of

2005 and W.P.(C) Nos.668, 669 and 671 of 2007 passed on the basis of alleged violation of the siting criteria fixed by Government in 1998 which has since been amended. It will be open for the Opposite Parties to make re-survey of the sites and see if there is violation of the siting criteria fixed by Government in 1998 except item 4 which has been omitted and if it is found that there is any violation, the Opposite Parties shall specifically mention the particulars in the show cause within a reasonable time and after considering the show cause shall take appropriate decision.

18. Accordingly, W.P.(C) No. 9529 of 2005 and W.P.(C) Nos.668, 669 and 671 of 2007 are allowed in part and rest of the Writ Petitions W.P.(C) Nos. 5359/2006, 15360/2006, 15361/2006, 15362/2006, 15655/2006, 15656/2006, 17253/2006, 17254/2006 and (W.P.(C) No. 52 of 2007) are dismissed.

There would be no order as to costs.

A.K. Samantray, J.

19. I agree.