
(2013) 05 JH CK 0042

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1416 of 2013

Small Crusher Owners Association

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Air (Prevention and Control of Pollution) (Amendment) Act, 1987 — Section 9

Air (Prevention and Control of Pollution) Act, 1981 — Section 21

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26, 27, 30

Citation : (2014) 4 EFLT 26 : (2013) 4 JLJR 134

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan, for the Appellant; T.N. Mishra and Prabhash Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

Aparesh Kumar Singh, J.—The petitioner is an association of small crushers owners, who also claim to carry on mining operation of minor minerals pursuant to lease granted to them. The petitioner is aggrieved as they have been asked to obtain consent to operate certificate in respect of mining operation from State Pollution Control Board though they are otherwise required to obtain environmental clearance. They have been asked to obtain consent to operate certificate on the basis of a letter of the State Pollution Control Board to the Commissioner of Mines, Government of Jharkhand made applicable to all such minor minerals lessees. The relevant provisions of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and Section 25/ 26 of the Water (Prevention and Control of Pollution Act), 1974 are quoted herein below:--

Section 21 of the Act, 1981:- Restrictions on use of certain industrial plants. (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area;

Provided that 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(47 of 1987), for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) 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;

Provided 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 this 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.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as maybe specified in the order, or refuse such consent;]

[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled;

Provided further that before cancelling a consent or refusing a further consent under the first proviso, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely;-

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) Chimney, wherever necessary, of such specifications as the State board may approve in this behalf shall be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf;

Provided that in the case of a person operating any industrial plant [***] in an air pollution control area immediately before the date of declaration such area as an air pollution control area, the period so specified shall not be less than six months;

Provided further that-

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred in to sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

Section 25/ 26 of the Water (Prevention and Control of Pollution Act), 1974:-
25:--Restrictions on new outlets and new discharges - (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,-

(a) Establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of

sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage: Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1980, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement, or if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) 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.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may-

(a) grant its consent referred to in sub-section (1), Subject to such conditions as it may impose, being-

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such

conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30,-

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

Section 26:--Provision regarding existing discharge of sewage or trade effluent:- Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a (stream or well or sewer or on land), the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that Section subject to the modification that the application for consent to be made under sub- section (2) of that section (shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette).

2. A perusal of aforesaid provisions shows that u/s 21 of the Air (Prevention and Control of Pollution) Act, 1981 previous consent of the State Pollution Control Board is required by any person to establish and operate industrial plant in air pollution control area. The Industrial plant has been defined u/s 2K means that any plant the petitioner's association as lessees" of minor minerals, who also claim to be owners of crushers units. Accordingly, this Court does not consider it proper to interfere in the writ application preferred on behalf of the association of

Small Crusher owners. This writ petition stands disposed of with aforesaid observation.