
(2008) 01 AP CK 0055

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10318 of 2006

Suryadevara Nageswara Rao and Others

APPELLANT

Vs

Sai Balaji Sortex and Others

RESPONDENT

Date of Decision : 31-01-2008

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 29(A)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 120, 120(1), 125, 127, 127(11)
Constitution of India, 1950 — Article 14, 21
Water (Prevention and Control of Pollution) Act, 1974 — Section 32(A)
Water (Prevention and Control of Pollution) Rules, 1975 — Rule 32A

Citation : (2008) 4 ALD 715 : (2008) 4 ALT 482

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Vasi Reddy Prabhunath, for the Appellant; Mohan Vinod and Associates for Respondent No. 1, M. Prabhakara Rao, for Respondent No. 2, G.P., for Panchayat Raj and Rural Development for Respondent No. 3 and G.P., for Industries and Commerce, for the Respondent

Judgement

P.S. Narayana, J.—Heard Prabhunath Vasi Reddy, the Counsel representing the writ petitioners, Sri Mohan Rao, the Counsel representing the 1st respondent, the learned G.P. for Industries and Commerce and the learned G.P. for Panchayat Raj and Rural Development and Sri M. Prabhakar Rao, the Counsel representing the other respondents.

2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the 3rd respondent in permitting the running of the 1st respondent Industry in residential area by allowing the appeal filed by the 1st respondent contrary to the provisions of A.P. Panchayat Raj Act and the Rules made there under and declare that the impugned order passed by the 3rd respondent by his proceedings Roc.No. 937/2006-G5 dated 21-3-2006 as arbitrary, illegal contrary to the provisions of A.P. Panchayat Raj Act and in violation of Articles 14 and 21 of the Constitution of India and direct the respondents to close down the 1st

respondent Industry and pass such other suitable orders.

3. Sri P. Vasi Reddy had taken this Court through the impugned order and also had drawn the attention of this Court to Sections 120, 127 and 128 of the A.P. Panchayat Raj Act, 1994 (hereinafter in short would be referred to as "the Act" for the purpose of convenience). The learned Counsel would maintain that the writ petitioners are the real aggrieved parties and it is not the case of R. 1 that R. 1 made an application and the same was rejected and when the application itself was not made, the question of applying the concept of deemed permission would not arise. The Counsel also had referred to G.O.Ms.No. 63 and the other relevant material. The Counsel also would submit that Section 120 of the Act aforesaid is mandatory. While further elaborating his submissions, the Counsel had taken this Court through the pleadings of the parties and would maintain that in the facts and circumstances, the Writ Petition to be allowed.

4. The learned G.P. for Panchayat Raj and Rural Development had taken this Court through the counter affidavits of R. 3 and R. 3 and made elaborate submissions, justifying the impugned order.

5. Sri M. Prabhakar Rao, the learned Counsel representing R.2 had taken this Court through the respective pleadings of the parties and would submit that in the facts and circumstances, the stand taken by the 1st respondent cannot be justified.

6. Sri Mohan Rao, the learned Counsel representing R.1 had taken this Court through the proceedings and would maintain that the District Industries Centre had forwarded the application to the Gram Panchayat and hence, the question of filing separate application as such would not arise. The Counsel also had drawn the attention of this Court to Section 127(3) of the Act and pointed out to the concept of deemed permission. The Counsel also would submit that no reply affidavit had been filed and there is no demarcation for a residential area from a non-residential area in a Gram Panchayat. The Counsel while making elaborate submissions had taken this Court through the respective stands taken by the parties and would maintain that this is only due to political reasons and since the petitioners are having some grievance as against the landlord.

7. Heard the Counsel. Perused the records.

8. It is stated in the affidavit filed in support of the Writ Petition that the writ petitioners are aggrieved of the action of the 3rd respondent in permitting the 1st respondent to run the industry in residential area by allowing the appeal by the impugned order made by the 3rd respondent - District Panchayat Officer, Guntur by his proceedings Roc.No. 937/2006-G5 dated 21-3-2006 in an appeal filed by the 1st respondent contrary to the provisions of the Act and the Rules made there-under. The said order made by the 3rd respondent dt.21-3-2006 reads as hereunder:

PROCEEDINGS OF THE DISTRICT PANCHAYAT OFFICER, GUNTUR

Present: Sri M. Radhakrishna, B.A.

Roc.No. 937/2006-G5

Dated: 21-3-2006

Sub:- Appeal - Appeal of M/s. Sri Sai Balaji Stores, Angalakuduru -Allowed - Orders issued.

Ref:- (1) Lr.Rc.No. 46/2004 dt. 31-12-2004 of the Panchayat Secretary, Angalakuduru Gram Panchayat.

(2) No. 1467/G/2004 dt. 1-11-2004 of General Manager, District Industries Centre, Guntur.

(3) From M/s. Sri Sai Balaji Stores, Angalakuduru appeal dt. 16-3-2006:

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ORDER:

In the reference 3rd cited, Sri Sai Balaji Stores, Angalakuduru has put in an appeal against the rejection orders of Angalakuduru Gram Panchayat in resolution No. 286, dt.29-12-2004 communicated through the letter 1st cited to run their unit at Angalakuduru.

The matter has been examined with reference to the consent letter given by the General Manager, District Industries Centre, Guntur in which a consent of A.P. Pollution Control Board is also available vide reference 2nd cited. On examination, it is felt that the rejection of their application is based on political background and intentional one as no new building was constructed there and it is being utilized for procurement of rice and other materials for a long time. Therefore by invoking the provisions u/s 128(2) of A.P.P.R. Act 1994, the appeal is allowed and M/s. Sri Sai Balaji Stores, Angalakuduru are permitted to run the unit at Angalakuduru with the following conditions.

1. In case of any change in manufacturing process, raw materials or products a fresh application shall be submitted.
2. All the rules notified by the Government under environmental laws shall be complied with.
3. They shall comply with general standards notified by the Ministry of Environment and Forest, Govt. of India on 19-5-193 and 31-12-1993.
4. The unit should not be established in residential areas or close to sensitive areas such as Hospitals, Monuments, Schools, Zoological parks etc.

Sd/- M. Radhakrishna District Panchayat Officer, Guntur.

It is also averred that it came to the notice of the residents of the villagers that the 1st has taken the lease of a godown belongs to Kolla Srilakshmi, W/o.

Srinivasa Rao situated in D.No. 207, the residents of the area made representations dated 16-11-2004, 29-1-2005, 14-3-2005 and 4-4-2005 to the concerned authorities, requesting them not to give permission for establishing the petitioner firm with 40 H.P. electricity power in the name of Sai Balaji Stores Dal Mill and that the petitioner even without taking any perform which is a mandatory requirement of any industry to obtain prior permission from the Gram Panchayat established the industry in the residential area, it is stated that as per G.O.Ms.No. 63 dated 2-5-1995 in Gram Panchayats, the small scale industrial units should not be set up in residential area and that the 1st respondent made a false certificate by an affidavit to the District Industries Centre, Guntur, that the said Small Scale Industrial unit is not set up in residential area. Further it is averred that to establish an industry, if the industry is proposed to be located in a Panchayat area, an entrepreneur is required to get approval of Gram Panchayat u/s 125 of the Act, and that the Small Scale Industrial units have to comply with the conditions stipulated in G.O.Ms.No. 63 and as per a stipulation of the said G.O., at the time of registration, the Small Scale Industrial units will have to certify before the District Industries Centre that the conditions have not been violated. The Commissioner of Industries will ensure that the registration of the units is done only after this certificate obtained from the entrepreneur on a stamp paper of Rs. 10 and that in Gram Panchayats, the Small Scale Industrial units should not be set up in residential area. Further it is also averred that u/s 120 of the Act it is specified that every person intending to construct or establish any factory, workshop and work place shall make an application to be made for construction, establishment or installation of factory, workshop or work place in which steam or other power is employed, before beginning such construction, establishment or installation, obtain the permission of the Gram Panchayat. It is also stated that in the instant case, the 1st respondent did not make any application to the Gram Panchayat for obtaining the permission before installation or establishment or even thereafter and also stated that a Small Scale unit should not be established in residential areas or close to sensitive areas such as Hospital, Monuments, Schools, Zoological parks etc. It is further stated that the 1st respondent is a firm established and running a rice and dal cleaning industry in D.No. 73/1 in 9th ward of Angalakuduru Gram Panchayat, even without having valid permission from the Gram Panchayat and that when the Gram Panchayat issued a notice to the 1st respondent to stop the arrangements made by the 1st respondent to inaugurate the Rice Mill or else the appropriate action will be taken under the Act, the 1st respondent approached this Court and filed Writ Petition No. 8420/2006 before this Court for a declaration that the 1st respondent firm is deemed to have been granted licence in term of Section 127(3) of the Act on application dated 1-11-2004, and (II) to direct the respondent Gram Panchayat not to interfere with the activities of the petitioner firm and pass other order or orders in the interest of justice. It is also stated that the 1st respondent also sought for the suspension of the proceedings Roc.No. 46/04 dated 16-3-2005 issued by the Gram Panchayat and this Court granted interim stay as prayed for by order dated 7-6-2005 in W.P.M.P. No.

11138/2005 in W.P.No. 8420/2005. It is also stated that the petitioners being the residents of the locality in which the 1st respondent industry is established contrary to the provisions of the Act and the Rules made therein, filed an implead petition and also filed vacate stay petition before this Court and that this Court impleaded the petitioners herein as the respondents 4 to 6 in W.P.No. 8420/2005 by order dated 10-2-2006 and that when the stay vacate petition was listed before this Court, the 1st respondent herein sought permission of the Court to withdraw the Writ Petition with liberty to pursue alternative remedy and this Court accorded permission and that the said Writ Petition was dismissed as withdrawn by order dated 24-2-2006 with liberty to file appeal before the appropriate authority. It is further stated that the contention of the 1st respondent in the above said Writ Petition No. 8420/2005 that the 1st respondent firm is deemed to have been granted licence in terms of Section 127(3) of the Act is baseless and untenable since the alleged application dated 1-11-2004 was not made to the Gram Panchayat by the petitioner for grant of licence or permission and that it seems that the Gram Panchayat with a view to help the 1st respondent herein passed the resolution dated 29-12-2004 to the effect that the Gram Panchayat will grant permission if the 1st respondent obtains "No objection" from neighbours. It cannot be construed as the deemed permission since there is no application made by the 1st respondent to the Gram Panchayat for grant of licence and Section 127(3) of the Act is not applicable as the small scale industry should not be established in a residential area of a Gram Panchayat. It is also further stated that the case of the 1st respondent herein before this Court in W.P. No. 8420/2005 is that after installation of the machinery in the leased premises, he made an application to the General Manager, District Industries Centre," Guntur (3rd respondent therein) for the registration of the Small Scale Unit and the 3rd respondent in the Writ Petition issued the provisional registration vide registration No. GTRC 0144304 dated 25-9-2005. It is also stated that on obtaining the registration, an application was made for obtaining consent and the 3rd respondent gave its acknowledgement vide its acknowledgement dated 9-11-2004 treating it as a consent of the A.P. Pollution Control Board. The 1st respondent herein made an averment in his affidavit that the 3rd respondent thereinsent the 1st respondent's application from obtaining sanction from the Gram Panchayat vide its letter dated 1-11-2004. It is also stated that the 1st respondent made an allegation that on receipt of the said application for sanction, the 2nd respondent herein kept quite for nearly four months and thereafter informed to the 1st respondent herein that on receipt of the letter dated 1-11-2004 from the 3rd respondent therein passed a resolution dated 29-12-2004 advised to obtain the No Objection Certificate from the neighbours and then only a clearance certificate would be given to the petitioner and advised the petitioner not to take steps for opening the petitioner mill. Further it is averred that the contention of the 1st respondent in the earlier Writ Petition was that the 2nd respondent herein received the application along with requisite plans from the 4th respondent herein through a letter dated 1-11-2004 and the said application has to be disposed of within 15 days in terms of proviso

to Section 127(3) of the Act, however the 2nd respondent passed the resolution only on 29-12-2004. The 1st respondent contended that the permission is deemed to have been granted as no decision has been taken within 15 days from the date of receipt of the letter dated 1-11-2004 and it is also contended by the 1st respondent that there is no requirement u/s 120 read with Section 127 of the Act, that consent has to be obtained from the neighbours for grant of licence. Thus, insisting no objection from the neighbours is illegal and arbitrary. That the action on the part of the respondents in issuing memo dated 16-3-2005 not to inaugurate the industry is irrational and arbitrary and contrary to the provisions of the Act. It was also contended by the 1st respondent herein that once deemed permission is granted in terms of proviso to Section 127(3) of the Act, on the application dated 1-11-2004 the 2nd respondent has no power or authority to stop the industry from operating. In fact, there is no such provision of law, but only under the pressure from outsiders, the memo dated 16-3-2005 has been issued which is illegal and arbitrary.

Further it is averred that the 1st respondent herein filed an appeal before the 3rd respondent herein on 16-3-2006 and the same was allowed by the 3rd respondent by the impugned order vide proceedings Roc.No. 937/2006-G5 dated 21-3-2006 without taking the relevant facts into consideration and taking the extraneous material into consideration. The 3rd respondent observed in its order that the rejection of the application made by the 1st respondent herein is based on political background and intentional one as no new building was constructed there and it is being utilized for procurement of rice and other materials for a long time. It was also observed by the appellate authority that by invoking the provisions u/s 128(2) of the Act, the appeal was allowed and the 1st respondent is permitted to run the unit at Angalakuduru with the following conditions:

- (1) In case of any change in manufacturing process, raw materials or products a fresh application has to be submitted.
- (2) All the Rules notified by the Government under environmental laws shall be complied with.
- (3) They shall comply with general standards notified by the ministry of environment and forest Government of India on 19-5-1993 and 31-12-1993.
- (4) The unit should not be established in residential areas or close to sensitive areas such as Hospitals, Monuments, Schools, Zoological parks.

Further it is stated that the 1st respondent illegally running the industry without valid permission since about one and half years and the area in which the industry is located as admittedly residential and that the residents of the area being aggrieved with the causing of pollution of air and environment due to running of the 1st respondent industry, had lodged complaint to all the concerned authorities for closure of the 1st respondent industry and that the Gram Panchayat has failed or neglected to perform its statutory duty to stop the running of the petitioner unit which cause injury to the residents of the locality or

area and also failed to prevent the illegal and unauthorized establishment and running of the 1st respondent Small Scale unit contrary to the provisions of the Act and gomsno.63 dated 2-5-1995 and that therefore the 1st respondent industry has to be closed forthwith. In such circumstances, it is stated that the writ petitioners approached this Court by filing the present Writ Petition praying for the appropriate reliefs.

9. In the counter affidavit filed by the 1st respondent, it is stated that the Writ Petition is filed by the petitioners with a mala fide intention to settle scores with the owner of the property in which the mill is located i.e. Smt. K. Sri Lakshmi, from whom the respondent has taken the shed on lease and that the petitioners and said Smt. K. Sri Lakshmi are engaged in a dispute relating to the way to lands of the petitioners and that therefore, the Writ Petition, which is filed in order to settle personal scores by invoking the extraordinary jurisdiction of this Court is not maintainable and the same is liable to be dismissed on this ground alone. Further it is stated that the petitioner had taken a shed bearing door No. 4-5-27/5 (73/1) in Sy.No. 105 situated in Angalakuduru Gram Panchayat, Mandal Tenali, Guntur District from its owner Smt.Lakshmi, vide lease deed dt. 18-10-2004 and that the said property is covered by a compound wall and there is another shed existing with the compound wall and that the other shed is occupied by the Rice Mill since 1983. Further it is also averred that the respondent No. 1 had taken the shed on lease with a view to establish Colour sorting machine to sort out rice and dal and that for the said purpose, this respondent has registered with the District Industries Centre, Guntur vide proceedings dt. 25-9-2004 and that the District Industries Centre, Guntur vide its letter dated 9-11-2004 has given consent under provisions of Water Act and Air Act to the said Unit as the line of activity is not covered under schedule I and II of the Water (Prevention and Control of Pollution) Rules, 1994 and Air (Prevention and Control of Pollution) Rules, 1994 and also stated that the Colour Storex Mill is used for sorting out the damaged grains in rice or dal and that the colour storex mill is very sophisticated one and the same is operated by computers under the centralized A/c atmosphere and that the said mill does not make any noise nor pollution. It is also stated that in the village Angalakuduru Gram Panchayat there is no demarcation between residential and non-residential areas and that to the knowledge of this respondent no notification has been issued notifying the Angalakudur village into different land use zones and that there is no demarcation of residential and non-residential areas in the said village. It is further averred that as per the policy of the State Government all the permissions for establishment of Small Scale Unit is processed through single window established in the Office of the District Industries Centre and that therefore as per the procedure the application of this respondent for establishment of the Storex Mill was forwarded to the Gram Panchayat on 1-11-2004 for permission, however, no reply was received from the Gram Panchayat within the prescribed time under the Act. It is also stated that as per Section 127(3) of the Act, if no reply is received within 15 days, it shall be

deemed that license or permission is granted and that therefore, in the absence of any reply within 15 days, it is deemed that the respondent is granted license/permission required for establishing the Storex Mill. However, contrary to the provisions of the Act, the Gram Panchayat passed a resolution on 29-12-2004 stating that Gram Panchayat will grant permission if this respondent obtains No Objection from the neighbours, however, the resolution was communicated to this respondent. It is further stated that the representations alleged to have made against the establishment of the Mill by some people are with an ulterior motive and that the mill is located on the Guntur-Tenali road and there are no residences around the Mill compound. The Guntur-Tenali road is towards the south of the compound and there are paddy fields on the northern side and that there is open place towards the west and there is road towards the east and that therefore, it is very clear that there are no residences in the vicinities of the Storex Mill and the same is not established in the residential area and that the petitioner has not made any false certificate and the Storex Mill established by them is not prohibited by any Government Orders. Further it is stated that since the application of the respondent was not disposed of within 15 days, the Gram Panchayat is deemed to have been granted license/permission for establishing the Mill, however, the Gram Panchayat on extraneous considerations has passed order dated 16-3-2005 directing this respondent to close the Mill and the same is without jurisdiction and ultra vires the provisions of the Act. Against the orders dt. 16-3-2005, this respondent had filed W.P.No. 8420/2005 and this Court had suspended the order dated 16-3-2005 passed by the Gram Panchayat and subsequently, the Writ Petition was withdrawn with a liberty to file appeal and the same was granted by this Court by an order dated 24-2-2006. It is also averred that this respondent filed an appeal to the 3rd respondent against the orders dt. 16-3-2005 passed by the Gram Panchayat and the same was allowed by an order dt. 21-3-2006 and that this respondent has got all permissions for establishment of the Mill as required under law and the same is not situated in a residential area. Since, there is no notification prescribing the residential area in Angalakuduru village, the allegation of the petitioners that the Mill is located in the residential area is without any legal force and the same is not valid. It is also further averred that there is already Rice Mill existing in the same premises since 1983, where the Storex Mill is established. The premises is abutting Guntur-Tenali Road and the same is not in the residential area and there are no sensitive areas nearby the Mill like Hospitals, Monuments, Schools, Zoological parks etc. It is also stated that there are already two Rice Mills and one Mirchi and Flour Mill situated within the vicinity of 50 meters, hence the allegation that it is situated within the residential area is not true and correct. Further it is stated that the Gram Panchayat is headed by the persons, who are against this respondent on political grounds and supporting the petitioners and that this respondent has established the Storex Mill by investing heavy amount after borrowing the same from financial institutions and is paying monthly instalments towards its repayment and also stated that this respondent is dependent on the Mill for his livelihood and he has no other source of livelihood. It is also stated that this Writ

Petition is filed by the petitioners with oblique motives to settle personal scores against the owner of the premises. It is also stated that the air samples were collected by the A.P. Pollution Control Board officials on 1-3-2006 and report of the analysis was communicated by their letter dated 5-7-2006 and that as per the report there is no air pollution due to operation of the mill. It is also stated that the Storex Mill established by the respondent is the sophisticated one and the operation of the does not result in any air or noise pollution and does not cause any disturbance to the neighbours if any. Further it is stated that this respondent has established the Mill after complying with the provisions of the Act. It is also stated that the copy of G.O.Ms.No. 63 dt.2-5-1995 relied on by the petitioners in their Writ Petition has not been filed along with the Writ Petition and without filing the copy of the G.O., it is not open to the petitioners to rely on the said G.O., in support of their case and that the unit established does not cause any pollution or nuisance to anybody.

10. In the counter affidavit of R.3, it is stated that the 1st respondent has applied to the Gram Panchayat seeking permission to operate Dal Mill in Angalakuduru village, Tenali Rural Mandal, Guntur District situated in Door No. 207 in a Godown belonging to one Smt. K. Sri Lakshmi, with an 40 H.P. electric power in the name of Balaji Storex Dall Mill. It is also stated that certain objections were raised by the neighbouring residents of the said premises to the 2nd respondent Gram Panchayat not to give permission to the 1st respondent since the said Dal Mill will generate noise and air pollution and further submitted that it is violative of G.O.Ms.No. 63, dated 2-5-1995. It is further stated that after verifying the application dt.1-11-2004 made by the 1st respondent, the 2nd respondent has passed resolution dated 29-12-2004 that the Gram Panchayat will grant permission if the 1st respondent obtains no objection certificate from the neighbouring residents. Further it is averred that the 1st respondent has applied to the Department of Industries, Government of Andhra Pradesh, seeking acknowledgement under Rule 32A of the Water (Prevention and Control Pollution) Rules 1994 and the same is acknowledged vide 1407/G/2004 dated 9-11-2004 saying that the 1st respondent is acknowledged as the line of activity is not covered under schedule No. I and II of the above said Rules, this acknowledgement is treated as consent of A.P. Pollution Control Board subject to the guidelines. Further it is also stated that aggrieved by the resolution No. 286 dated 29-12-2004 by the 2nd respondent rejecting the permission to establish Dal Mill which is subject to obtaining no objection certificate from the neighbouring residents, an appeal was preferred by the 1st respondent u/s 128(2) of the Act to 3rd respondent. Further it is stated that the 3rd respondent has issued proceedings vide Roc.No. 937/ 2006-G5 dt.21-3-2006 allowing the appeal preferred by the 1st respondent and permitted to run the Unit of Dal Mill at Angalakuduru village, Tenali Rural Mandal, Guntur District with the following conditions:

(i) In case of any change in manufacturing process, raw materials or products a fresh application shall be submitted.

(ii) All the Rules notified by the Government under Environmental Laws shall be complied with.

(iii) They shall comply with general standards notified by the Ministry of Environment and Forest, Government of India, on 19-5-1993 and 31-12-1993.

(iv) The Unit should not be established in residential areas or close to sensitive areas such as Hospitals, Monuments, Schools, Zoological parks etc.

It is also stated that as per the provisions u/s 128(3) of the Act and Rules issued in G.O.Ms.No. 139 PR & RD Rules, dt. 18-4-2000 the District Panchayat Officer is the competent authority to entertain appeal taking into consideration the facts and circumstances of the case. It is also stated that in the instant case, the 3rd has acted upon the appeal preferred before him basing on the acknowledgement made by the Industries Department in No. 1407/G/2004 dated 9-11-2004 which says that acknowledgement is treated as consent of A.P. Pollution Control Board subject to the guidelines. This is the stand taken in the counter affidavit filed by R.3.

11. The 4th respondent filed counter affidavit wherein it is stated that no affidavit was given by the 1st" respondent to this Office as per G.O.Ms.No. 63, Inds. & Comm. (IP) Department, dated 2-5-1995 as the 1st" respondent directly obtained provisional Small Scale Industry Registration through on line. It is also stated that as per the said G.O., the 1st" respondent did not file any affidavit on Rs. 10/- Non-Judicial Stamp Paper at District Industries Centre, Guntur since they obtained provisional SSI directly through On Line. Further it is stated that as per the Single Window Act, 17 of 2002, there is a provision of any Small Scale Industry can apply for their Departmental clearances/approvals at Nodal agency i.e., DIC, Guntur. Under this provision, the 1st" respondent was applied at 4th respondent for the approvals of Gram Panchayat, Angalakuduru village and power connection from Divisional Electrical Engineer (Operations), Tenali and the same was sent to the respective Departments on 1-11-2004 for giving approvals as per their norms. Further it is averred that basing on the provisional registration obtained through On Line, they applied for pollution acknowledgement in the prescribed proforma with reference to the papers and features shown in Topoplan (within 500 Mtrs radius) submitted by the Unit holder the Pollution acknowledgement has been issued, since the activity is not come under polluting category u/s 32(A) of the Water (Prevention and Control of Pollution) Act, 1994 and Section 29(A) of the Air (Prevention and Control of Pollution) Act, 1994 prescribed by the APPCB, Hyderabad, subject to condition that the Unit should not be established in residential area or close to sensitive areas such as Hospitals, Monuments, Schools, Zoological Parks etc.

12. These are the respective stands taken by the parties.

13. Section 120 of the Act dealing with "applications to be made for construction, establishment or installation of factory, workshop or work place in which steam or other power is to be employed" reads as hereunder:

(1) Every person intending:

(a) to construct or establish any factory, workshop or work-place in which it is proposed to employ steam power, water power or other mechanical power or electrical power; or

(b) to install in any premises any machinery or manufacturing plant driven by steam, water or other power as aforesaid, not being machinery or manufacturing plant exempted by rules made in this behalf shall, before beginning such construction, establishment or installation, obtain the permission of the Gram Panchayat in the prescribed manner for undertaking the intended work.

(2) The application to be made under Sub-section (1) shall conform to such rules and shall be processed in such manner and in consultation and approval of such authorities and subject to such conditions as may be prescribed.

Section 127 of the Act dealing with "General provisions regarding licences and permissions" reads as hereunder:

(1) Every licence and permission granted under this Act or any rule or bye-law made under this Act shall specify the period, if any, for which, and the restrictions limitations and conditions subject to which the same is granted and shall be signed by the executive authority or by some person duly authorized by him in this behalf.

(2) Save as otherwise expressly provided in or may be prescribed under this Act, for every such licence or permission fees may be charged on such units and at such rates as may be fixed by the Gram Panchayat.

Provided that a person who is a barber, washerman, medari or kumara or other village artisan by profession shall not be liable to pay any fees in relation to the licence granted to him for the use of any place in the Gram Panchayat for exercising his profession or transacting his business as such.

(3) Every order of the authority competent under this Act or any rule or bye-law made thereunder to pass an order refusing, suspending, canceling or modifying a licence or permission shall be in writing and shall state the grounds on which it proceeds:

Provided that every application for a licence or permission under this Act shall be disposed of within fifteen days from the date of receipt thereof or from the date of receipt of approvals or completion of other formalities prescribed failing which it shall be deemed that licence or permission is granted.

(4) Subject to the special provisions regarding private markets, any licence or permission granted under this Act or any rule or bye-law made thereunder it may the any time, after giving the persons concerned an opportunity of making a representation be suspended or revoked by the executive authority if any of the restrictions, limitations or conditions laid down in respect thereof is evaded or infringed by the grantee, or if the grantee is convicted of a breach of any of the

provisions of this Act, or of any rule, bye-law or regulation made under it, in any matter to which such licence or permission relates or if the grantee has obtained the same by misrepresentation or fraud.

(5) It shall be the duty of the executive authority to inspect places in respect of which a licence or permission is required by or under Act, and he may enter any such place between sunrise, and sunset, and also between sunset and sunrise if it is open to the public or any industry is being carried r-> it at that time; and if he has reason to believe that anything is being done in any place without a licence or permission where the same is required by or under this Act, or otherwise than in conformity with the same, he may at any time by day or night without notice enter such place for the purpose of satisfying himself whether any provision of law, rules, bye-laws or regulations, any condition of a licence or permission or any lawful direction or prohibition is being contravened; and no claim shall lie against any person for any damage or inconvenience necessarily by the executive authority or any person to whom he has lawfully delegated his powers; or by the use of any force necessary for effecting an entrance under this sub-section.

(6) When any licence or permission is suspended or revoked or when the period for which it was granted, or within which application for renewal should be made has expired, whichever expires later, the grantee shall for all purposes of this Act, or any rule or bye-law made under this Act, be deemed to be without a licence or permission, until the order suspending or revoking the licence or permission is cancelled or subject to Sub-section (11) until the licence or permission is renewed as the case may be.

(7) The grantee of every licence or permission shall, at all reasonable times, while such licence or permission remains in force produce the same at the request of executive authority.

(8) Whenever any person is convicted of an offence in respect of the failure to obtain a licence or permission or to make a registration as required by the provisions of this Act or any rule or bye-law made thereunder, the Magistrate shall, in addition to any fine which may be imposed recover summarily and pay over to the Gram Panchayat the amount of the fee chargeable for the licence or permission or for registration and may, in his discretion, also recover summarily and pay over to the Gram Panchayat such amount if any as he may fix as the costs of the prosecution.

(9) Save as otherwise expressly provided in or may be prescribed under this Act, every application for a licence or permission or for registration under this Act or any rules, bye-law or regulation made thereunder or for renewal thereof, shall be made not less than thirty and not more than ninety days before the commencement of the period or such less period as is mentioned in the application.

(10) Recovery of the fee under Sub-section (8) shall not entitle the person

convicted to a licence or permission or to registration as aforesaid.

(11) The acceptance by or on behalf of a Gram Panchayat of the pre-payment of the fee for a licence or permission or for registration shall not entitle the person making such pre-payment to the licence or permission or of registration as the case may be but only to refund of the fee in case of refusal of the licence or permission or of registration, but an applicant for the renewal of a licence or permission or registration shall, until communication of orders on his application, be entitled to act as if the licence or permission or registration had been renewed and save as otherwise specially provided in this Act, if orders on an application for licence or permission or for registration are not communicated to the applicant within thirty days or such longer period as may be prescribed in any class of cases after the receipt of the application by the executive authority, the application shall be deemed to have been allowed for the period if any, for which it would have been ordinarily allowed and subject to the law, rules, bye-laws and regulations and all conditions ordinarily imposed.

14. It is no doubt true that the proviso of Sub-section (3) of Section 127 of the Act says that every application for a licence or permission under this Act shall be disposed of within fifteen days from the date of receipt thereof or from the date of receipt of approvals or completion of other formalities prescribed failing which it shall be deemed that licence or permission is granted. Heavy reliance was placed on the said provision.

15. Section 128 of the Act dealing with Appeal from the order of executive authority reads as hereunder:

(1) An appeal shall lie to the Gram Panchayat from -

- (a) any order of the executive authority granting, refusing, suspending or revoking a licence or permission;
- (b) any other order of the executive authority that may be made appealable by rules made u/s 268.

(2) A second appeal shall lie from the decision of the Gram Panchayat passed in an appeal under Sub-section (1) to such authority as may be prescribed whose decision thereon shall be final.

16. When an appeal is preferred to the appellate authority - the D.P.O., Guntur -3rd respondent, the 3rd respondent is expected to deal with the merits and demerits of the matter. But, however, it was specified that by invoking the provisions of Section 128(2) of the Act, the appeal is allowed, no doubt, with certain conditions specified as No. 1, 2, 3 and 4, which are referred to as hereunder:

(1) In case of any change in manufacturing process, raw materials or products a fresh application shall be submitted.

(2) All the rules notified by the Government under environmental laws shall be

complied with.

(3) They shall comply with general standards notified by the Ministry of Environment and Forest, Government of India, on 19-5-1993 and 31-12-1993.

(4) The units should not be established in residential areas or close to sensitive areas such as Hospitals, Monuments, Schools, Zoological parks etc.

Lr.Rc.No. 46/2004, dt.31-12-2004 of the Panchayat Secretary, Angalakudum Gram Panchayat; No. 1407/G/2004, dt. 1-11-2004 of General Manager, District Industries Centre, Guntur; and From M/s. Sri Sai Balaji Storex, Angalakuduru, appeal dt. 16-3-2006, had been referred to in the Order dt.21-3-2006. The 1st respondent had put an appeal against the, rejection orders of Angalakuduru Grarp Panchayat in resolution No. 286 dt.29-12-2004 communicated through the letter 1st cited to run their unit at Angalakuduru.

17. As can be seen from the impugned order, no convincing reasons as such had been recorded. It is no doubt true that elaborate submissions were made by the Counsel representing 1st respondent that political ground had been specified and it is only an incidental observation. Whatever the reasons may be, the appellate authority while disposing of the appeal is expected to record sustainable reasons. It is no doubt true that the Gram Panchayat as such had not preferred the Writ Petition, but however, it is stated that these objectors are making several representations taking objection to the location for establishment of the Unit in question on the ground that the same cannot be established or located in a residential area. In the light of the peculiar facts and circumstances, the order impugned in the present Writ Petition dated 21-3-2006 is hereby set aside and the matter is remitted to the 3rd respondent - D.P.O., Guntur - the appellate authority, to reconsider the whole issue receiving the appropriate further objections, if any, which may be filed by the 2nd respondent and also the writ petitioners as well and decide the matter afresh in accordance with the provisions of the Act specified above.

18. Accordingly, the Writ Petition is allowed TO the extent indicated above. It is needless to say that till appropriate decision is taken in this regard by the 3rd respondent, status quo obtaining as on today to be maintained.

19. Accordingly, with the above observations, the Writ Petition is allowed to the extent specified above. No order as to costs.