

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4958 OF 2010
(Arising out of SLP(C)No.12782 of 2008)

STATE POLLUTION CONTROL BOARD,ORISSA

....APPELLANT

VERSUS

JAGANNATH STONE CRUSHER & ORS.

....RESPONDENTS

WITH

CIVIL APPEAL No.4959 OF 2010
(Arising out of SLP(C)No.12931 of 2008)

CIVIL APPEAL No.4960 OF 2010
(Arising out of SLP(C)No.13018 of 2008)

CIVIL APPEAL No.4961 OF 2010
(Arising out of SLP(C)No.13133 of 2008)

O R D E R

Leave granted.

These appeals are directed against order dated 19.02.2008 passed by the Division Bench of Orissa High Court whereby it allowed the writ petitions filed by the contesting respondents and quashed the orders passed by the State Pollution Control Board, Orissa (for short 'the Board') directing closure of the stone crushers being operated by them.

In exercise of the power conferred upon it under Section 4 of the Environment (Protection) Act, 1986 read with Notification dated 10.2.1988 issued by the Government of India, Ministry of Environment and Forests, the Government of Orissa issued order

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dated 13.5.1998/5.6.1998 and prescribed the following guidelines for operation of the stone crushers in the State:

(i) All stone crusher units are to confirm pollution control measures and emission standard notified by Ministry of Environment and Forest from time to time along with the standards under Section 7 of the said Act;

(ii) No stone crusher unit shall be allowed within one K.M. from a town or village boundary;

(iii) No stone crusher should be located within half

K.M. from the National of State High Ways;

(iv) Distance between two stone crusher units shall be at least half K.M. Stone crusher units which are within the aforesaid prohibited limit shall shift to other areas within six months from the date of publication of the notification in the Gazettee.

The aforementioned notification was amended by another notification dated 1.8.2006 and item No.iv of the earlier notification was deleted.

By an order dated 17/18.7.2002 issued under Section 19 of the Air (Prevention and Control of Pollution) Act, 1981 (for short 'the Air Act'), the State Government declared the entire State as Air Pollution Control Area.

The stone crushing units of the respondents were inspected by the officers of the Board sometime in February, 2004 and reports were submitted highlighting violation of the siting criteria and guidelines issued by the State Government for operating the stone crushers. Thereafter, show cause notices were issued to the respondents under Section 31A of the Air Act pointing out that they are operating the units in violation of the siting criteria; that they have not taken adequate air pollution control measures as

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prescribed under the Environment (Protection) Rules, 1986 by the Ministry of Environment & Forests, Government of India vide Notification No.GSR 742(E) dated 30.8.1990 and No. S08(E) dated 31.12.1990 read with Notification dated 13.5.1998 of the State Forest & Environment Department. The respondents filed separate

replies to contest the show cause notices. According to the respondents, they had taken adequate measures for checking air pollution. They also pointed out that the State Government has been holding discussion with the Stone Crushers Owners Association to minimize the emission of air pollution. After considering the replies of the respondents, the Board passed orders under Section 31A of the Air Act and directed closure of the stone crushers.

Although, the respondents could have challenged the closure orders by filing appeals under Section 31 of the Air Act, but instead of availing the statutory alternative remedy, they filed

writ petitions under Article 226 of the Constitution of India. With a view to avoid the objection that the writ petitions should not be entertained because statutory remedy of appeal is available against the closure orders passed by the Board, the respondents also prayed for quashing notification dated 17/18.7.2002 issued by the State Government declaring the entire State as Air Pollution Control Area.

The Division Bench of the High Court upheld the validity of the notification issued by the State Government under Section 19 of the Air Act but quashed the closure orders passed by the Board by recording the following observations:-

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"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"

However, liberty was given to the Board to make fresh survey of the sites and take action in accordance with law.

We have heard learned counsel for the parties and perused the record including the inspection reports, show cause notices issued by the Board, replies of the respondents and the final orders passed by the Board.

In our view, the High Court committed serious error by quashing the closure orders only on the ground that no specific violation of the amended notification issued in 2006 has been pointed out in the show cause notices. A reading of the inspection reports and the show cause notices shows that multiple deficiencies were found in the operation of stone crushers established by the respondents. In the replies filed by them, the respondents did state that they have taken measures for checking the air pollution but did not give the details of those measures. They also did not give satisfactory reply on the issue of violation of guideline No.ii specified in notification dated 13.5.1998/5.6.1998. The

Division Bench of the High Court granted relief to the respondents without examining the issues raised in the writ petition in a correct perspective in the backdrop of the violations pointed out

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in the inspection report and in the show cause notices.

In our

opinion, omission on the part of the Division Bench of the High Court to direct its attention to the material produced by the parties has resulted in substantial failure of justice.

In the result, the appeals are allowed. The impugned order is set aside and the matter is remitted to the High Court for fresh adjudication of the writ petitions insofar as they relate to the respondents' challenge to the closure orders passed by the Board. At the rehearing, the appellant herein shall be free to raise the objection to the maintainability of the writ petition on the ground that the respondents herein did not avail the statutory remedy of appeal under Section 31 of the Air Act.

If the High Court accepts the objection that an effective alternative remedy is available to the writ petitioners, then it should pass appropriate order facilitating availing of such remedy.

.....J.
(G.S.SINGHVI)

.....J.
(ASOK KUMAR GANGULY)

EW DELHI;
JULY 06, 2010.

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ITEM NO.1

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).12782/2008

(From the judgement and order dated 19/02/2008 in WPC No. 9529/2005 of The HIGH COURT OF ORISSA AT CUTTACK)

STATE POLLUTION CONTROL BOARD,ORISSA
VERSUS

Petitioner(s)

JAGANNATH STONE CRUSHER & ORS.

Respondent(s)

(With prayer for interim relief and office report)

WITH SLP(C) NO. 12931 of 2008

(With prayer for interim relief and office report)

SLP(C) NO. 13018 of 2008
(With prayer for interim relief and office report)

SLP(C) NO. 13133 of 2008
(With prayer for interim relief and office report)

Date: 06/07/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Janaranjan Das, Adv.
Mr. Swetaketu Mishra, Adv.
Mr. P.P. Nayak, Adv.

For Respondent(s) Mr. Yasobant Das, Sr. Adv.
Mr. Shibashish Misra, Adv.

Mr. Raj Kumar Mehta, Adv.
Mr. Antaryami Upadhyay, Adv.
Mr. S.L. Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeals are allowed in terms of the signed order.

(Satish K. Yadav) (Phoolan Wati Arora)
Court Master Court Master
(Signed order is placed on the file)