

ORISSA HIGH COURT : CUTTACK

W.P. (C) No. 2611 of 2012

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Praxair India Pvt. Ltd.

...

Petitioner

Versus

Sub-Collector and Sub-Divisional Magistrate,
Angul and others.

...

Opposite parties

For petitioner

-

***M/s. Pami Rath, C.Muralidhar,
I.Mohanty and Mr.R.K.Rath
(Sr. Advocate)***

For opposite parties

-

***Addl. Government Advocate
(for opp.party no.1) and
M/s. Manoranjan Das and P.P.Mohanty
(for opp.party no.2).***

P R E S E N T

**THE HONOURABLE ACTING CHIEF JUSTICE MR. PRADIP MOHANTY
A N D**

THE HONOURABLE MR. JUSTICE S.K.MISHRA

Date of judgment - 29th January, 2013

S.K.Mishra, J.

In this case, the petitioner company has prayed for a direction to the opposite parties to accept the status of deemed grant of permission under Section 16(8) of the Orissa Development Authorities Act, 1982 (hereinafter

referred to as the “Act”) and further to direct the opposite parties not to interfere with the petitioner’s lawful activities at the Pump Fill Station set up at Angul and 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.

2. The petitioner is engaged in the manufacture of Oxygen, Nitrogen, Argon and other products, in both gaseous and 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 and Argon from bulk containers into small cylinders. The petitioner has set up and been operating these Pump Fill Stations at different locations in due compliance with all requirements of law, without any safety related issue for several years now.

3. 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 under Section 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 and obtained all requisite

approvals for the construction of the Pump Fill Station at the said land. The petitioner received the site lay out and construction approval from Petroleum and Explosives Safety Organization under the Government of India in Ministry of Commerce and Industry. The petitioner was granted consent to establish the Pump Fill Station from the Orissa State Pollution Control Board.

4. 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 and 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 and Boilers, Odisha has also granted approval for the lay out plan and building plan of the Pump Fill Station.

5. The petitioner on 30.09.2008 applied to opposite party no.2 by making an application under Section 16 of the Act seeking permission for construction of the plant, accompanied with the required fees and 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 under Section 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 opposite party no.2.

6. 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 opposite party no.2 has received the second application on 04.12.2008 and until 04.01.2009, there was absolutely no communication from opposite party no.2. Thus, it is argued that deemed permission was granted from 05.01.2009 under Section 16(8) of the Act.

7. On such premises, the petitioner commenced and completed construction of the Pump Fill Station in due compliance with the requirement of law. Opposite 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 opposite party no.1 and submitted all the documents as required on 9.11.2011. Yet the opposite 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 opposite party no.2. The petitioner made a representation to opposite party no.1 stating therein that permission from opposite party no.2 is deemed to have been received by the petitioner under Section 16(8) of the Act. In the said representation, the petitioner has also submitted the Record of Rights of the land and has mentioned that the mutation for change of ROR and recording of their name in the ROR is going on. The petitioner also submitted details of all the approvals obtained till date and also provided a complete description of the activity that it would carry on at its Pump Fill Station at Angul and as to how the same is not going to be hazardous or

explosive in nature. However, the opposite party no.1 has failed to appreciate this aspect of the case and issued the order not to carry on the activities in this area. Hence, this writ petition is filed with the prayer as stated above.

8. Opposite party no.1 has filed a counter affidavit, *inter alia*, pleading that the petitioner could be able to obtain the site lay out and construction approval from Petroleum and Explosive Safety Organization under the Government of India, Ministry of Commerce and 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 opposite 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 opposite 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 and may cause damage to the people in the adjacent residential area, the case was not considered and 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 opposite party no.1. The nearby villagers are alleging

time and again against the proposed Gas Plant anticipating any untoward situation due to such explosive Gas Plant. Opposite 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 opposite party no.1 on the date and 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 NOC obtained from the District Administration. It is submitted that the petitioner should have obtained the NOC from the District Administration and 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.

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

10. The petitioner has filed a rejoinder affidavit to the counter affidavit filed by opposite 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 NOC from District Administration. The petitioner had applied for the consent from the Pollution Control Board with all the documents and information required for such an application and 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 and the petitioner believes that there is no such requirement under law to seek an N.O.C. from the District Administration.

11. In course of hearing of the writ petition, learned counsel for the petitioner relies upon the reported case of ***M/s. Z. Engineers Construction (P) Ltd. v. Bhubaneswar Development Authority and another***, 2006 (II) OLR 277 and 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 and, therefore, the order passed by the Sub-Collector and the letter issued by the TAMDA are illegal.

12. 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 and containing such particulars and 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 and 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 and 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) and further one month under Sub-section (8), the period in between the date of requisitioning any further information or documents from the applicant and the date of receipt of such information or document from the applicant shall be excluded.

13. 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 and, therefore, Talcher-Angul-Meramundali 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.

14. In the aforementioned case of ***M/s. Z. Engineers Construction (P) Ltd. v. Bhubaneswar Development Authority and another*** (supra), Division Bench of this Court has held that the deeming provision in Sub-section (8) and 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 and 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.

15. Annexure-9 is the notice sent under Section 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 and Building Standards) Regulation, 2011 provides for permission and the method to be adopted in disposing of the applications. Clauses 5 and 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 and it also appears from Annexure-9 at page 48 that the document has been sent through registered post and 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 carrying an industrial activity is 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 and 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 and Sub-divisional Magistrate, Angul is illegal.

16. Hence, the writ application is allowed. Annexures 10 and 14, the notice issued by the Sub-Collector and Sub-Divisional Magistrate, Angul and the order of the Secretary, TAMDA, Angul respectively are hereby quashed. The opposite parties are directed to accept the status of the petitioner as having granted deemed permission under Section 16(8) of the Orissa Development Authorities Act, 1982.

.....
S.K.Mishra, J.

Pradip Mohanty, A.C.J. *I agree.*

.....
Pradip Mohanty, A.C.J.

*Orissa High Court, Cuttack,
Dated, January 29, 2013/JNS.*