

**ORISSA HIGH COURT: CUTTACK.**

**W.P.(C). NO. 23228 OF 2012**

**AND**

**W.P. (C) NO. 1066 OF 2013**

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

-----

**In WPC 23228/2012**

Rabindra Prasad Pattnaik ..... Petitioner

***-Versus-***

State Pollution Control Board,  
Odisha and others ..... Opp. parties

For Petitioner : M/s. A.A.Das,  
S.Mishra, P.Mishra,  
D.Sahoo and B.Pani.

For opp. parties: M/s. R. K.Rath, Sr. Advocate,  
G.Mukherjee, A.C.Panda,  
S.D.Ray and S.Barik.  
(For O.P. No. 4)

M/s. Bikram Pratap Das &  
S.K. Mishra.  
(For O.Ps 1 & 2).

M/s. K.P.Mishra, S.Mohapatra,  
T.P.Tripathy, & P.K. Sahu,  
(For Intervenors)

**In WPC 1066/2013**

Gokul Chandra Debata & others .... Petitioners

***-Versus-***

State Pollution Control Board,  
Odisha and others ..... Opp. parties

For Petitioners : M/s. A. A.Das, K.P.Mishra  
B.K. Parida & A.N. Pattnaik.

For opp. parties: -

-----  
**Decided on      22.02.2013**  
-----

**PRESENT :**

***THE HONOURABLE SHRI JUSTICE M.M. DAS  
AND  
THE HONOURABLE LSHRI JUSTICE C.R.DASH***

---

**ORDER**

***M. M. DAS, J.***

As both the aforesaid writ petitions have been filed for the self-same reliefs, they were heard together and are disposed of by this common order.

2. W.P. (C) No. 23228 of 2012 has been filed by one Rabindra Prasad Pattnaik in the nature of Public Interest Litigation against the opp. parties to implement the order under Annexure-3 passed by the State Pollution Control Board, Odisha and to direct the opp. party no. 3 – Collector and District Magistrate, Angul to stop operation of the plant of the opp. party no. 4 pursuant to the order of the State Pollution Control Board under Annexure-3 and further, to direct the State and its authorities – opp. parties 1 to 3 to implement the Action Plan relating to control of pollution as at Annexure-1 in the Angul – Talcher area as well as take stringent action against the opp. party n. 4 for violating the order under Annexure-3.

3. On 13.12.2012, this Court in Misc. Case No. 19969 of 2012 arising out of W.P. (C) No. 23228 of 2012, has passed an interim order to the following effect:-

“ Pending consideration of this Misc. Case, as an interim measure, this Court directs the

Regional Officer, State Pollution Control Board – opposite party no. 2 to see that the order dated 01.6.2012 under Annexure-3 shall be implemented against opposite party no. 4 by taking necessary police protection., if necessary, and submit a report before this Court on the reopening day after the Winter Holidays”.

Thereafter, a Misc. Case, being Misc. Case No. 21387 of 2012 has been filed by the opp. party no. 4 in the writ petition to vacate the interim order passed on 13.12.2012. Misc. Case No. 21469 of 2012 has been filed by some of the villagers of Ekagharia under Samal Barrage, Kaniha Police Station in the district of Angul for intervening in the matter.

4. W.P. (C) No. 1066 of 2013 has been filed by the persons, who have filed the intervention application in W.P. (C) No. 23228 of 2012 as a separate writ petition bringing to the notice of the Court the further developments in the matter and praying to declare the joint verification report under Annexure-9 dated 15.11.2012 as illegal and consent order dated 16.11.2012 issued to the opp. party no. 4 also as illegal and to quash the same.

5. Facts disclose that the opp. party no. 4 has a Coal Tar Refinery unit at Ekagharia in the district of Angul and produces Coal Tar and other industrial chemicals as bi-products. The main objection of the petitioners with regard to running of the said unit is that, the said unit without adhering to the pollution control norms being allowed to run is causing heavy pollution in the area endangering the lives and properties of the people of the locality. It has been brought to the notice of the Court that the

petitioner in W.P. (C) No. 23228 of 2012 also moved the Green Tribunal on 13.12.2012 when this Court passed the interim order.

6. Mr. Rath, learned senior counsel appearing for the opp. party no. 4 vehemently urged that the petitioner having sought for similar remedies before two forums, i.e., this Court as well as the Green Tribunal at Delhi, the writ petition is not maintainable. He further submitted that the petitioner having suppressed the said fact before this Court, on that score also, the writ petition should be dismissed. However, considering the nature of allegations made in the writ petition, we proposed to hear the writ petition on merits.

7. Mr. A.A. Das, learned counsel for the petitioner in W.P. (C) No. 23228 of 2012 submitted that the State Pollution Control Board on 1.6.2012 under Annexure-3 intimated the opp. party no. 4 that the unit was allowed to operate on a trial basis for a period of three months on 7.5.2012 with some specific conditions to comply within a time frame. The opp. party no. 4 intimated on 15.5.2012 that it has complied with the condition nos. 5, 6 and 7. After receiving a number of public complaints, the plant was inspected on 25.5.2012 by the Officials of the State Pollution Control Board. During such inspection, it was observed that the plant was in operation in a full-fledged manner and the opp. party no. 4 has failed to comply with most of the conditions imposed in the above trial run order. The same being in violation

of the order under sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 and further, the opp. party no. 4 having given false information to the Board that it has complied with the conditions, it attracts the penal provision under section 42 (f) of the Water (Prevention and Control of Pollution) Act, 1974 and section 38 (f) of the Air (Prevention and Control of Pollution) Act, 1981. Basing on the said inspection report, the Regional Officer of the State Pollution Control Board directed the opp. party no. 4 to stop operation of the plant forthwith till compliance of all the conditions imposed in the trial run order is made and report of compliance is submitted to the Regional Officer with immediate effect. According to Mr. Das, basing on the said order, the interim order dated 13.12.2012 was passed. He further contended that till date, the opp. party no. 4 having not complied with the same, it should not be allowed to run the unit as the pollution caused by the said unit is endangering the lives of the people living in the locality.

8. A counter affidavit has been filed by the State Pollution Control Board, inter alia, stating that after receipt of the order of this Court dated 13.12.2012, a letter dated 17.12.2012 was issued to the opp. party no. 4 directing to stop operation of its Coal Tar Refinery unit. To further ensure stoppage of operation, the said unit was sealed on 19.12.2012 by the Executive

Magistrate, Kaniha in presence of other authorities. This fact was intimated to the Member, Secretary of the State Pollution Control Board by letter dated 20.12.2012. The Green Tribunal by order dated 13.12.2012 directed the Collector and District Magistrate, Angul to implement the order dated 1.6.2012 by the Pollution Control Board.

9. It appears from the Misc. Case filed for vacation of interim order by the opp. party no. 4 as well as the annexures made to W.P. (C) No. 1066 of 2013 that on 10.10.2012, the Regional Officer of the State Pollution Control Board, Regional Office noticed the opp. party no. 4 intimating it that for the purpose of making an enquiry under sections 25 and 26, the officers named therein and the persons authorized by the Board to assist them shall inspect the water work, Sewage Work, Water Treatment Plant, Factory, Disposal system and any other parts thereof or pertaining thereto under the management, control of opp. party no. 4 on the same day. Accordingly, an inspection was conducted and a joint inspection was also conducted by the officials of the State along with the official of the Regional Pollution Control Board and some villagers on 15.11.2012 and a joint inspection report was prepared. The team suggested the industry to carry out the following works:-

“(i) To cover the raw material unloading tank with suitable cover within one month time;

- (ii) The industry shall take all precautionary and preventive measures to reduce odour nuisance.
- (iii) To develop green belt around the plant premises and plant more trees inside the plant premises”.

10. It appears from the letter dated 16.11.2012 of the Regional Officer, State Pollution Control Board, Regional Office, annexed to the above Misc. Case for vacation of stay as Annexure-E/4 that the opp. party no. 4 has been granted permission to operate the Coal Tar Refinery unit up to 31.3.2013 with the conditions stipulated therein. It has been further stated in the said letter that in case of failure of pollution control devices or non-compliance of the conditions stipulated in the earlier consent order and the specific conditions mentioned therein, steps will be taken either by the industry for stoppage of process equipment under intimation to the Board or the Board will take necessary action against the unit without further intimation and at the same time grant of consent to operate beyond the permitted period shall be considered after verifying satisfactory compliance to the conditions of the Board and other issues. The various conditions mentioned in the said letter are as follows:-

- “(1) Adequate air pollution control devices shall be installed, operated and maintained for cleaning of the gas emanated from heating of distillation chamber so as to meet the prescribed standard of the Board.
- (2) The ambient air quality shall conform to the National Ambient Air Quality standard values.

- (3) Utmost care shall be taken to ensure full condensation of the products and there shall be no leakage of product/fumes/gases in the process of distillation, condensation and collection to avoid odour nuisance. Heating chambers, condensers and connecting pipe lines shall be periodically checked regarding leakages and maintained properly according to the requirement to avoid odour nuisance in the locality. In case of any episodal leakages, immediate action shall be taken for necessary repair and maintenance with shut-down of the plant, if required to avoid odour nuisance in the locality.
- (4) Handling of coal tar, distilled fraction and pitch handling shall be done safely without affecting air/water at outside the factory premises.
- (5) There shall not be discharge of any process effluent to outside the factory premises.
- (6) The effluent collected in the form of condensate during initial stage of distillation shall be collected in an impervious tank and adequately treated. Under no circumstance, it shall be discharged to outside land or inland water surface.
- (7) Water used in the primary condenser shall be completely recycled in the condenser process.
- (8) Floor of heating chambers and distillers shall be cemented.
- (9) The industry shall ensure that there shall not be any leakages of gas/vapour during loading if tar into the containers and during transportation.
- (10) The raw material unloading tanks shall be covered on the top.
- (11) The boilers and coal crusher sheds shall be enclosed from all sides.
- (12) The industry shall enclose the cooling water recirculation tank from 3 sides to prevent escape of vapour to the surrounding areas.



- (13) The light creosote oil tanks shall be enclosed on two sides towards the village to obstruct the flow of odour if any to outside.
- (14) The Naptha sludge shall be bagged in polythene bags and kept under shed.
- (15) The approach road to the plant and the internal roads shall be metalled and maintained properly.
- (16) The industry shall grow a thick green belt around the boundary wall and plant trees both sides of approach road.
- (17) The unit shall improve house keeping within the plant premises.
- (18) The industry shall abide by the provisions of Environment (Protection) Act, 1986, amendments made thereafter and Rules framed thereunder."

11. After hearing learned counsel for the parties and on perusal of the documents produced in both the writ petitions and further considering the above developments, we dispose of both the writ petitions directing the authorities of the State Pollution Control Board – opp. party no. 2 to make a fresh inspection of the unit of the petitioner within a period of two weeks hence in order to find out as to how far the opp. party no. 4 has proceeded in fulfilling the conditions mentioned in the consent letter dated 16.11.2012 and further inspecting as to whether any pollution is being caused by the said unit, either air or water as per the pollution control norms. If they find that the opp. party no. 4 has proceeded to fulfil the conditions imposed in the said letter dated 16.11.2012 to some extent and they

expect that the opp. Party no. 4 shall be able to fulfil all the conditions fully by 31.3.2013 till which time they were allowed to operate the unit and further at present, there is no pollution caused by the unit or the pollution which is caused (air or water) will not endanger the lives and properties of the people residing nearby taking note of the distance and natural barriers, if any, between the industry and the nearest habitats, they shall grant a fresh consent letter to the opp. party no. 4 allowing it to operate the unit. However, during inspection, if it is found that the unit causes such pollution, both air and water, which is beyond the limits prescribed in the aforesaid Air (Prevention and Control of Pollution) Act, 1986 and the Water (Prevention of Control of Pollution) Act, 1974, such permission to run the unit shall not be granted by them to the opp. party no. 4 till they fulfil the conditions enumerated in the consent letter dated 16.11.2012. This Court further observes that as the order passed by the Regional Office of the State Pollution Control Board is appealable before the Appellate Authority, any party aggrieved by the order to be passed by the opp. party no. 2 pursuant to the above directions may prefer an appeal as provided under the Acts. It is needless to mention that for the purpose of inspection, the opp. party no. 4 shall be permitted to operate the unit during the course of inspection.

13. With the aforesaid directions, both the writ petitions stand disposed of.

.....  
***M.M. Das, J.***

***C.R. DASH, J.*** I agree.

.....  
***C.R. Dash, J.***

***Orissa High Court, Cuttack.  
February 22nd , 2013/ Biswal***