

GAHC010015182017



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1409/2017

OMPRAKASH SHAH
PROPRIETOR OF M/S TAT BRICK FIELD -II, S/O LT. RAM PRASAD SHAH,
SITUATED AT VILL- MAZGAON, P.O. BAKOLA, P.S. JAMUGURI, DIST.
SONITPUR, ASSAM AND RESIDING AT VILL and P.O. ITAKHOLA, DIST.
SONITPUR, ASSAM, PIN - 784182

VERSUS

THE STATE OF ASSAM AND 5 ORS
THROUGH THE SECRETARY, DEPARTMENT OF ENVIRONMENT AND
FORESTS, GOVT. OF ASSAM, DISPUR, GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER

SONITPUR
ASSAM

3:THE POLLUTION CONTROL BOARD

ASSAM THROUGH ITS MEMBER SECRETARY I/C AT BAMUNIMAI DAM
GUWAHATI -21.

4:THE SUPERINTENDENT OF POLICE

SONITPUR
TEZPUR- 784001.

5:THE DEPUTY GENERAL MANAGER

DISTRIBUTION
APDCL
TEZPUR ELECTRICAL

SONITPUR
APDCL

6:THE CIRCLE OFFICER

NADUAR REVENUE CIRCLE
SOOTEA
SONITPU

Advocate for the Petitioner : MR.S K SINGH, MR.A DUTTA,MR.A GANGULY

**Advocate for the Respondent : MR.H K SHARMA, GA, ASSAM,MR.P J PHUKAN,SC,
APDCL,SC, PCB**

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

29.10.2024

Heard Mr. A. Ganguly, learned counsel for the petitioner. Also heard Mr. S. Baruah, learned Standing Counsel, PCB, Mr. C. Paul, learned counsel appearing on behalf of Mr. K.P. Pathak, learned Standing Counsel, APDCL and Mr. G. Pokolial, learned Government Advocate for the respondent Nos. 2, 4 & 6.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is assailing the impugned Closure Notice dated 23.02.2017 issued by the Member Secretary (I/C), Pollution Control Board, Assam, whereby the petitioner's brick manufacturing unit namely M/s. Tata Brick Field (II) at village Mazgaon, P.O. Bakola, P.S. Jamuguri, District Sonitpur, Assam was directed to be closed.

3. The facts of the case is that the petitioner established the subject brick manufacturing unit after obtaining Consent to Establish from the respondent No.

3, upon fulfilling all the necessary formalities on 17.02.2014. Thereafter, the Consent to Operate was granted by the respondent No. 3 on 12.05.2016, which is valid till 31.03.2017. On December, 2016, the petitioner submitted Consent Renewal Application, however, to the utmost dismay of the petitioner, the respondent No. 3 on 04.03.2017 handed over to the petitioner a copy of the Closure Notice purportedly issued on 23.02.2017, whereby it was directed to close the petitioner's brick manufacturing unit. Accordingly, the instant writ petition has been filed.

4. Pertinent that this Court by Order dated 10.03.2017 directed status quo to be maintained, consequence of which the brick manufacturing unit of the petitioner is still continuing to operate till date.

5. Mr. A. Ganguly, learned counsel for the petitioner submits that the order of closure is *per se bad*, inasmuch as, the same is issued without giving any opportunity to the petitioner to show cause despite the fact that the said Closure Notice is not a Closure Notice simpliciter.

6. Per contra, Mr. S. Baruah, learned Standing Counsel, PCB submits that in terms of the Consent to Establish, the respondent authorities are entitled to withdraw the Consent to Operate, in the event there is violation of the terms and conditions.

7. He further submits that upon receiving public complaints to the effect that the subject brick manufacturing unit of the petitioner is causing pollution, the Consent to Operate had to be withdrawn.

8. He further submits that the mandatory environment clearance has also not

been submitted by the petitioner.

9. I have given my prudent consideration to the arguments made by the learned counsels for the parties and have perused the materials available on record.

10. Pertinent to refer to the Consent to Establish granted by the PCB to the brick manufacturing unit of the petitioner on 17.12.2014, which is reproduced hereunder for ready reference:-

"POLLUTION CONTROL BOARD, ASSAM BAMUNIMAIDAM, GUWAHATI-21

WB/TEZ/T-1470/14-15/81 983

Dated Guwahati 17/12/14

"CONSENT TO ESTABLISH"

"CONSENT TO ESTABLISH" is hereby granted to M/s. Tata Brick Field II for setting up a Brick Manufacturing Unit with Production Capacity 7.0 Lakh units of Bricks per round at Village - Mazgaon; P.O.: Bakula; Dist.; Sonitpur (Assam) under Section 21 of Air (Prevention and Control of Pollution) Act, 1981 as amended under the following terms and conditions and subject to obtaining the Environmental Clearance (EC) from the SEIAA, Govt. of Assam and permission from Forests Department under the Assam Minor Mineral Concession Rules, 2013:

1. No Air, Water, Soil pollution shall be created by the industry beyond the permissible limits prescribed by the Board. The industry would incorporate adequate pollution control measures before they put the plant into operation.
2. To maintain the environment and ecology in the area provisions for planting selected species of tree within the compound and approaches along with provisions for park, garden and fountain shall have to be made. Massive aforestation will have to be made by the industry in the factory and township if any.
3. As per provisions of Water (Prevention & Control of Pollution) Act,

1974 and Air (Prevention & Control of Pollution) Act, 1981 any officer, employed by this Board on its behalf shall without any interruption, the right at any time to enter the industry for inspection, to take samples for analysis and any call for any information etc. violation of this right will be withdrawal of this permission.

4. As per provisions of the Act, regular monitoring is to be done by the Industry from the location/points fixed by the Board and the report to be submitted to the board monthly.

5. Effluent carrying drains must be segregated from storm water drain and effluent must be disposed in effluent pond, in no case effluent will be allowed to discharge into nearby nullah/natural water course etc. without treatment and bringing it within permissible limits fixed by the Board.

6. Standard linings on flat embankment of effluent pond shall have to be provided to prevent and control of overflow seepage and leakage of effluent to the nearby areas.

7. To regularise the subsequent, the legal provisions of "Consent to Operate" as per Act and Cess Returns as per Cess Act, 1977 shall have to timely adhered to.

8. Gaseous pollution due to the burning of fuel to run engine boiler, etc. should be controlled by adopting preventive measures adequately.

9. Solid waste that arises during the operation should be properly graded and disposed of scientifically without causing nuisances.

10. For Low lying areas, special care is to be taken by the industry to prevent any overflow, seepage and leakage of effluent.

11. For warning (Alarm, Siren) is to be installed by the unit to guard against accidental pollution/ mishap together with fire fighting devices.

12. All pipe connection, Joints; fittings etc. in the factory and plant are to be frequently checked and shall be leak proof all the time.

13. Proper housekeeping and adequate maintenance has to be ensured/ enforced as per provisions of Acts.

14. All unwanted Toxic Chemical/Fluid/Gases are to be neutralized and flared up as necessary.

15. Production process is to be monitored and in the event of danger immediate shut down is to be ensured by the industry.

16. CONSENT TO ESTABLISH" has been issued basing on the particulars furnished by the applicant and subject to imposition to further/more conditions if warranted by the subsequent development such as Environmental Clearance from MoEF.

17. "CONSENT TO ESTABLISH" will be valid for one year from the date of issue of the order.

18. Healthy working environment for the worker must be maintained and there should not be any health Hazard to the workers for inadequate arrangement for ventilation, dust removal arrangements should be adequate and full proof for the health of the workers. Their health should be regularly monitored.

19. The unit must submit compliance report of action taken on the conditions given by the Board before commissioning the unit.

20. Adequate trees should be planted and maintained in the vacant space of the premises and all around the factory and township if any.

21. This issuance of the "CONSENT TO ESTABLISH" does not convey any property right in their real or personal property or any exclusive privileges nor does it authorize any injury to private property nor any invasion right any and infringement of Central, State or Local Laws or Regulations.

22. The "CONSENT TO ESTABLISH" does not authorize or approve the construction of any physical structures or facilities or the undertaking of any work in any natural watercourse except of the works specially instructed herein.

23. Height of fixed chimney should be minimum 30 mtrs. from ground level.

24. Only Fixed Chimney kiln should be provided with stack monitoring facilities.

25. The brick manufacturing units which are located with in a radius of 50 kms. from any thermal power plant should utilize fly ash in optimal proportion for making bricks.

26. The Board will have the liberty to withdraw the "CONSENT TO ESTABLISH" if adequate pollution control and safety measures are not taken.

27. *The applicant shall provide dust containment cum suppression system at their unit.*
28. *The industry shall preserve the top soil at least half a foot for further useful use and this shall be informed by the industry to the board.*
29. *The applicant shall have to handover the top soil if it is required by Agricultural Department for agricultural land development.*
30. *The industry shall take all necessary steps to minimize smoke.*
31. *The industry shall maintain a green belt along the periphery of the unit.*
32. *The industry shall provide hygienic drinking water and sanitary facilities to its employees.*
33. *The industry shall not acquire any additional land adjacent to its brick unit for their industrial purpose and no damage shall be caused to any new agricultural land.*
34. *The unit should follows as per Appendix - "A".*

Sd/-

Member Secretary (i/c)"

- 11.** Apparent from the above, that the respondent has kept the liberty to withdraw the aforesaid Consent to Establish, in the event the petitioner does not take adequate pollution control and safety measures.
- 12.** A perusal of the impugned withdrawal of the Consent to Operate dated 23.02.2017 appears that in view of public complaint to the effect that adequate pollution control measures have not been taken, the Consent to Operate granted to the petitioner was withdrawn. Copy of the withdrawal of the Consent to Operate dated 23.02.2017 is also reproduced hereunder for ready reference:-

"No. WB/TEZ/T-1470/14-15/96

Dated Guwahati, the 23rd Feb., 2017

To,

M/s. Tata Brick Field (11)
Vill.: Mazgaon, P.O.: Bakola
Dist.: Sonitpur (Assam).

Sub: WITHDRAWAL OF "CONSENT TO OPERATE".

Ref: i) Public complaint of AASU (Jamugurihat Branch) and Satya Mahila Samity, Jamugurihat, Sonitpur forwarded by the Circle Office, Naduar Revenue Circle, Sonitpur.
ii) Letter from RO, Tezpur, vide No. PC/ROT/T-2317/2014-15/109 dtd. 23.02.2017.
iii) Consent to Operate of the Board vide No. WB/TEZ/T-1470/14-15/93 dtd. 12.05.2016.

With reference to the above, Consent to Operate granted to your unit cited at Ref (iii) is hereby withdrawn on the following grounds:

1. Your unit has failed to submit stack and ambient monitoring report.
2. No green belt development activities have been taken. The plantations done earlier have failed.
3. The sanitary and drinking water facilities have not been found to be adequate.
4. Proper house keeping and adequate maintenance of the unit have not been taken.
5. Environmental clearance have not been submitted till date.

Sd/-

Member Secretary(i/c)"

13. It is apparent that because of the complaint received from AASU (Jamugurihat Branch) and Satya Mahila Samity, Jamugurihat, primarily the Consent to Operate was withdrawn. It defies the conscious and logic of this Court as how the same could be done without issuance of any show cause notice to the petitioner or give opportunity of hearing to the petitioner before withdrawing the Consent to Operate, inasmuch as, the impugned notice is by way of penalty for not maintaining required Pollution Standards and for not submission of environmental clearance. On the face of it, it infringes the principles of natural justice and fair play. Therefore, the impugned withdrawal of Consent to Operate is *per se bad* in law and illegal. Any order passed in violation of natural justice is honest in eye of law. Accordingly, the withdrawal of Consent to Operate dated 23.02.2017 is illegal and is hereby set aside.

14. It appears that an application for renewal was submitted on 22.12.2016 by the petitioner before the Senior Environmental Engineer, Polution Control Board, Assam for the period 2017-2018 by depositing the requisite consent fees.

15. In view of the interference of the withdrawal of Consent to Operate by this Court, this Court deems appropriate to direct the respondent authorities to consider the renewal application in accordance with law within the statutory period.

16. Accordingly, the writ petition stands disposed of.

17. It is needless to clarify that while deciding the renewal application, the respondents shall give due opportunity to the petitioner in accordance with law.

JUDGE

Comparing Assistant