

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

ORIGINAL APPLICATION NO. 41/2015/EZ

IN THE MATTER OF :

ASWINI KUMAR DHAL

At PO- Jakhapura, Via Dangadi

Dist. Jajpur, Odisha-755026

..... Applicant

-Versus-

- 1. Odisha Pollution Control Board
Through the Member Secretary,
Unt-III, Nilakantha Nagar, Bhubaneswar,
Odisha-751012**
- 2. District Collector,
At/PO Jajpur, Dis. Jajpur,
Government of Odisha,
Odisha-751 001**
- 3. The Station Manager,
Jakhapura Railway Station,
East Coast Railway,
At/Jakhapura, Dist. Jajpur-751001**
- 4. The Regional Transport Officer,
Chandikhol, Jajpur-755044**
- 5. The General Manager,
VISA Steel, Jakhapura,
Kalinga Nagar, Jajpur,
Odisha-755026**

6. The General Manager,
East Coast Railway Division,
Chandrasekharpur, Bhubaneswar,751017

.... Respondents

COUNSEL FOR THE APPLICANT :

Mr. Sankar Prasad Pani, Advocate

COUNSEL FOR THE RESPONDENTS :

Mrs. Papia Banerjee Bihani, Advocate, Respondent No. 1
Mr. Pravat Kumar Muduli, Advocate, Respondent No. 2 & 4
Mr. Biswajit Samanta, Advocate, Respondent Nos. 3 & 6
Mr. Sambuddha Dutta, Advocate, Respondent No. 5

JUDGEMENT

PRESENT :

Hon'ble Mr. Justice S.P. Wangdi, Judicial Member
Hon'ble Prof. (Dr.) P.C. Mishra, Expert Member

Judgement reserved on : 6th May, 2016
Judgement pronounced on : 25th May, 2016

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1. Whether the judgement is allowed to be published on the net ? Yes
 2. Whether the judgement is allowed to be published in the NGT Reporter : Yes

The applicant, a resident of village Jakhapura in the district of Jajpur of Odisha state, has approached the Tribunal under section 18(1) read with Sections 14(1) and 15(1) of the

National Green Tribunal Act, 2010 (for short NGT Act) seeking for direction to be issued upon the official respondents to take appropriate step against the respondent No. 3, the Station Master of Jhakhapura railway station, East Coast Railway and the added Respondent No. 6, General Manager, East Coast Railway Division at Chandrasekharpur, Bhubaneswar for illegally operating a Railway Siding/Stack Yard in Jakhapura railway station thereby causing severe air and water pollution in the locality leading to loss of primary productivity and pollution of water source to the detriment of health and economy of the people. Direction has also been sought against the General Manager, VISA Steel, the respondent No. 5 for contributing significant coal and iron ore dusts to the village environment, thus affecting the villagers due to transport of raw materials on the village road from the said railway siding on trucks and dumpers without any cover round the clock.

FACTS

- 2.** The case of the applicant is that Jakhapura railway station which is located near Jakhapura village in Jajpur district with a population of about 7000 with two high schools, one primary school and one primary health centre, handles loading and unloading of raw materials like iron ore, coal and dolomite for the industrial units operating in the Kalinga

Nagar Industrial area where major industrial units are established. It is alleged that the railway station has no proper siding for handling the voluminous quantities of raw materials for loading and unloading and that even the railway platform is used as storage yard. That the railway station does not have pollution control system to control emission of air pollution and treatment of waste water and the transport of raw materials in uncovered vehicles engaged by VISA steel also adds to the pollution problems in the village.

3. In response to an application filed by the applicant under the RTI Act, it was revealed by the State Pollution Control Board of Odisha that East Coast Railway was carrying on with the activity of loading and unloading of raw materials at Jakhapura railway station without consent of the State Pollution Control Board, when it was a mandatory requirement under the law.

4. It is further the case of the applicant that the villagers had approached various authorities raising the issue in the past including the District Administration for redressal of the issue, but it yielded no result leaving the villagers to suffer from air and water pollution, agriculture loss, damage to the village road caused by loaded trucks and dumpers being plied

round the clock and even the ponds located near the railway station rendered unfit even for bathing. The applicant further allege that the information provided by the Community Health Centre, Danagadi, revealed 904 cases of Amoebiasis, 1490 cases of upper respiratory tract infection and 64 cases of Bronchitis in the locality during 2014-2015.

RIVAL CONTENTIONS :

5. In their reply, it is stated by the State Pollution Control Board (PCB), the respondent No. 1, that as per the Board's resolution No. 3369 dated 16.02.2008, activities of transportation, storage, loading and unloading of minerals at stack yards/railway sidings have been brought under consent management of the Board under 'Red Category' due to its considerable air pollution potential and accordingly, a guideline was issued which was subsequently revised in April 2010. The guidelines stipulate that for such activities existing prior to the Board's resolution of 2010, it was only necessary to obtain 'Consent to Operate' dispensing with the necessity to obtain 'Consent to Establish'. The Regional Officer of PCB at Kalinga Nagar had thus directed the respondent No. 3 by his letter No. 752 dated 30.05.2014, to obtain consent from PCB and that, till such consent was obtained, to stop the activities of siding failing which appropriate action under Section 33A of the Water Act,

1974 and Section 31A of the Air Act, 1981 would be initiated without further notice. Since the railway failed to comply with the direction, the Regional Officer of the PCB caused an inspection of the railway siding conducted on 22.01.2015 and, consequential thereto, show cause notice dated 27.01.2015 was issued against the respondent No. 3.

6. After receipt of the show cause notice on 20.02.2015, the respondent had filed an application for consent but it was found to be incomplete inasmuch as neither was the project report filed nor was information on the existing facilities in respect of pollution control measures furnished along with it. Concerned by the pollution caused by such activities even the Additional District Magistrate, Jajpur, had issued notice to the Respondent No.3 vide his letter dated 03.02.2015.

7. On a subsequent inspection carried out by the Regional Officer of the PCB on 27.02.2015, it was found that the respondent No. 3 had still not adopted any pollution control measure to arrest the dust generated by the loading/unloading activities of raw materials, and accordingly, on 04.03.2015 direction was issued to the railway by the Board to stop the operation of storage, loading and unloading. In compliance to this, the railway stopped the activities from 07.03.2015.

8. On 25.3.2015, the Regional Officer of the Board at Kalinga Nagar inspected the site of respondent No. 3 and, being satisfied with the pollution control measures undertaken by the respondent No. 3 and their willingness to take additional measures and, also in consideration of the letter of the District Administration directing them to allow respondent no. 3 to operate, the PCB revoked the closure order on 04.04.2015. However, inspection carried out by the officials of the Regional Board on 30.05.2015 and 25.06.2015 revealed that the pollution control measures adopted earlier had been withdrawn and the compliance status found unsatisfactory. Thereafter, notice was issued to respondent No.3 to show cause as to why direction should not be issued to close down the unit. This was followed by the closure order dated 22.07.2015 issued by the Board and, as revealed from the affidavit filed by the Board, the activities of respondent No. 3 had been stopped with effect from 23.07.2015.

9. The respondent No. 3, the District Magistrate and Collector of Jajpur and Respondent No. 4, the Regional Transport Officer, Chandikhol, Jajpur, strongly resisted the application contending it to be 'not maintainable' and 'wholly misconceived'. As per them, transportation of raw materials

without cover is an offence under the Motor Vehicles Act 1988 punishable under section 192(A) thereunder and 32 VCRs had been drawn up against the trucks/dumpers by the Traffic Inspector for transporting raw materials without cover. The respondent No. 2 would further state, *inter alia*, that the respondent No. 3 had been allowed to continue with the loading and unloading operation of minerals at Jakhapura Railway Siding for the time being as the BDO, Danagadi, was in the process of conducting Palli Sabha/Gram Sabha.

10. The respondent No. 5, the VISA Steel Limited, in their reply affidavit asserted that it was a reputed company, and had obtained all the required clearances, licences, consents, permissions as required under the law for carrying on their business. The roads in question by which the materials and resources of the entire industry are moved, were constructed, developed and maintained solely by Jajpur Cluster Development Limited and over eight years and was being used by more than 30 companies. It is alleged that the applicant has vested interests in instituting the case and is a miscreant who had instigated the labour Union to create pressure on the respondent No. 5 to accede to their illegal demands. The fact that a number of police cases are pending against him would make it apparent that the applicant has been indulging in illegal

activities in and around Jakhapura area. It is further stated that the raw materials carried by the vehicles are covered with tarpaulin to avoid any spilling and emission and precautionary and preventive measures always taken to prevent any pollution being caused by the handling and transportation of raw materials and minerals.

DISCUSSION ON MERITS :

11. We have perused the status reports and the documents on record, considered the pleadings and also heard the Learned Counsel for the parties. The fundamental question that requires determination in this case is as to whether Jakhapura Railway Station, East Coast Railway, the Respondent No. 3, would fall in the purview of consent domain under the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act 1986, before the Tribunal can pass directions as prayed for in the application. Considering the pleadings contained in the original application and the affidavits in opposition filed on behalf of respondents, this question appears to be answered completely in the affirmative.

12. It is an admitted position that the siding/stack-yards was established by the East Coast Railway for storage, loading and unloading of raw materials in Jakhapura Railway Station prior to the year 2008 when these activities were not listed for consent management of the State Pollution Control Board. It was only in 2008 that the Pollution Control Board included “transportation, storage, loading and unloading of minerals at stack yard/ railway siding under “Red Category” thereby bringing such activities within the purview of consent management. Consequently, the earlier guidelines were revised in 2010 and circulated by the Board, relevant portions of which are reproduced below :

“GUIDELINES FOR PROCESSING OF CONSENT APPLICATION FOR MINERAL STACK YARD AND RAILWAY SIDING

Transportation, storage, loading and unloading of minerals at Stack-yards/Railway siding have considerable air pollution potential. These activities have been brought under consent administration of the Board under **RED category** as per **Board’s Resolution No.3369 dated. 16.2.08**. Applications for grant of consent to these activities are to be disposed of by concerned Regional Offices as per the **delegated power vide letter No.2186 dated.31.1.08**. The Board issued guidelines to regulate stack-yards and railway siding in April 2008. The Board received certain submissions from various stakeholders indicating certain ambiguity and operational difficulties in implementing the guidelines. Thus to further streamline it and to make it implementable, a consultative meeting with all stakeholders was convened on 31.10.09 and their views were considered. In order to facilitate timely disposal of applications and to make the procedure uniform the following guidelines are issued. These guidelines superceed the guidelines issued in April 2008 vide Board’s letter no.9718 Dt.24/04/08 and the additional guidelines issued vide Board’s letter no. 17924 dt.29/10/09.

1. DEFINITION :

1.

i) **Stack – yard** : Stack-yard means mineral stack yard over an area, which is used to receive, store either for a short period or long period, load/unload and dispatch minerals from the site and requires a trading license under Orissa Mineral (Prevention of Theft, Smuggling and illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules 2007.

ii) **Railway-siding** : A railway-siding is a place/area which is used to receive, temporarily store and load/unload material in the rakes and dispatch materials.

iii) **Cluster of stack –yards** : A cluster of stack-yards means a group of stack-yards having at least one common boundary, who enter into an agreement among them to remain collectively responsible to maintain the pollution control system while operating the stack-yards.

2. APPLICABILITY :

i) The railway-siding , stack-yards and clusters of stack-yards of minerals, which are already established and operating **prior to the date of Board’s Resolution i.e 16.2.08** are required to only obtain consent to operate from the Board.

ii) Railway-siding, stack-yards and clusters of stack-yards, which are established after the date of Board’s Resolution i.e 16.2.08 or, to be established thereafter are required to obtain consent to establish first and then consent to operate from the Board.

iii)

iv)

v)

vi).....

3. APPLICATION FORM :

The applicant shall apply for consent to establish and consent to operate (as applicable) in the prescribed form of the Board alongwith additional information in the format as per **Annexure-1** .

4. SITING CONSIDERATIONS (MINERAL STACK-YARD) :

Consent to Establish applications for mineral stack-yards shall be considered on the basis of the following site suitability criteria.

i) The boundary of proposed site shall be at an aerial distance of at least 100 meter from State/National Highway.

ii) The boundary of the proposed site shall be at an aerial distance of at least 500 meter away from Schools, Colleges, Hospitals, Archaeological monuments, and other sensitive areas.

iii) It shall be ensured that run-off during rain from the proposed site, any water body, which is used by local people, remains at minimum possible level.

iv) Location of the stack-yard should be such that there is no public inconvenience for parking or movement of vehicles.

v) The applicant for consent to establish shall obtain a NOC from Sarpanch following a gram sabha if it is proposed in a rural area or obtain NOC from the concerned ULB in case of urban area.

vi) In case of new cluster the proposed site shall conform to the above stipulations for citing as a whole.

5. ENVIRONMENTAL ASSESSMENT :

a) Check list of Environmental Issues :

The following issues shall be taken into consideration for environmental assessment.

- i) Siting of facility and proximity of nearby dwellings.
- ii) Compatibility of the activities with surrounding land use.
- iii) Need for isolating the operational areas or any additional precautionary measure to be undertaken.
- iv) Likelihood of the materials proposed to be handled to create dust nuisance.
- v) Proposed dust control measures.
- vi) Storm water management system and disposal practice.
- vii) Possibility of discharge to nearby water bodies.
- viii) Bunding of storage area and its appropriateness

ix) Impact on nearby residents, beyond normal working hours.

b. Standard conditions (RAILWAY SIDING AND MINERAL STACK YARDS) :

The following conditions may be imposed for pollution control while granting consent to establish/consent to operate for railway siding and mineral stack-yards. These conditions are only indicative and not exhaustive.

House Keeping :

.....”

13. The matter having travelled to the Hon'ble High Court of Orissa, it was clarified vide its order dated 24/01/2011 in Writ Petition (C) No.21867/2010 that it was mandatory under the revised guidelines of 2010 issued by the State Pollution Control Board for the Railway to obtain consent for establishment and operation of any railway siding, even if it is owned and operated by the railway authorities. This led to a resolution being passed by the Board that was notified vide reference no. 11025/IND-II-NOC(Misc)-40 dated 06.07.2011 which is reproduced as under :

**“ STATE POLLUTION CONTROL BOARD, ORISSA
Paribesh Bhawan, A/118, Nilkanthanagar,Unit-VIII
Bhubaneswar-751012**

No.11025/IND-II-NOC(Misc)-40 Dt. 06.07.11

RESOLUTION

The Board in its 100th meeting held on 23.3.2010 decided to implement the modified set of guidelines for environmental management in minerals stack-yards and railway sidings.

Accordingly, a resolution was brought out in this regard vide letter No. 6559 Dated 19.4.2010.

1. In the above guidelines, it was stipulated that the railway sidings owned maintained and operated by Indian Railway Authorities shall implement all pollution control measures within a period of six months. They will not obtain consent from the Board, however, they will be required to ensure self-regulation for implementation of Water Act, Air Act and good housekeeping practice as stipulated in above guidelines and furnish environmental management plan as well as annual return in the prescribed format to concerned Regional Office, State Pollution control Board. The Hon'ble High Court of Orissa in W.P. (C) No. 21867/2010 have passed orders on 24.1.2011 that for establishment and operation of any railway siding consent of the Board is mandatory even if it is owned and operated by the Railway Authorities.

In view of the above, the Board in its 102nd meeting held on 15.3.11 resolved that the guidelines prepared for environmental management in mineral stack-yards and railway sidings will also be applicable for Railway authorities and they shall obtain consent from the State Pollution Control Board to establish and operate railway sidings.

2. Clause 4(i) of the above guidelines stipulates that the boundary of the proposed site of mineral stack-yards shall be at an aerial distance of at least 100 m from the State/National Highways. But, the guidelines is silent about the distance criteria from the Express Highways and industrial transport corridors.

The Board in its 102nd meeting also decided that the express highways and industrial transport corridors will be considered at par with National/State Highway.

This resolution is in partial modification to earlier resolution No. 6559 dt. 19.4.2010 of the Board and will come into force with immediate effect.

By order of the Board
Sd/-
MEMBER SECRETARY ”

14. From the above, it would be abundantly clear that seeking consent from the PCB for establishment and operation of any siding, had become mandatory even if it was owned and operated by the Railway.

15. Power of the State Pollution Control Board to grant consent is provided under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section 21 of the Air (Prevention and Control) Act, 1981. The object of the Water Act, 1974 as would appear from its preamble, is to provide for prevention and control of water pollution and maintaining or restoring wholesomeness of water and, that of the Air Act 1981 for prevention, control and abatement of air pollution and for establishment of Boards and matters cognate thereto. Both the Acts contain prohibitory, regulatory and punitive provisions which mandate that no person shall, without the previous consent of the State Board, establish or take any steps to establish any industry, operation or process of any treatment and disposal system or any extension or addition

thereto, which is likely to discharge untreated sewage or effluent into streams or wells or sewer or on land. The Board is empowered to issue directions including closure of an industry and disconnection of essential supplies to it as envisaged under section 5 of the Act of 1986.

Similarly, the Air Act vests the Boards with the power to issue directions for complete restriction of an activity in the notified air pollution control area. Section 21 of the Act prohibits any person from establishing and operating any industrial plant in air pollution control area, without the previous consent of the State Board. Like Section 33A in the Water Act, Section 31A was introduced in the Air Act vesting the Boards not only with the power to issue directions of closure, prohibition or regulation of any industry, but also operation or process or disconnection of essential supplies to an industry or a plant.

16. The provisions of the Acts demonstrate the object and legislative intent to prohibit establishment or any activity, which would result in emission of toxic gases to the air, discharge of domestic, municipal or industrial effluents to land or water. 'Consent' under these laws is contemplated at two stages i.e., firstly, at the stage of establishing such plant, industry, etc. and secondly, at the time of putting the unit into operation. Thus, the law imposes dual obligation upon the person or industry.

Firstly, it has to take the consent of the Board and secondly, it must ensure adherence to the prescribed conditions/parameters of the laws in force and, the responsibility of complying with the laws is placed exclusively on the person or industry.

17. Let us now examine as to whether in the present case, law has been complied with by the East Coast Railway, the Respondents no. 3 and 6.

18. It is pertinent to note that on the very first day i.e., 29th May, 2015, when this matter was taken up for admission, it was noted by this tribunal that action had been initiated by the Odisha State Pollution Control Board in issuing a show cause notice upon the Respondent No. 3 in respect of the transportation, storage, loading and unloading of minerals on the stack yard/railway siding followed by a closure notice which, however, was found to have been withdrawn later in spite of the fact that the siding was still being operated by the Railway without consent. Direction was thus issued upon the Odisha Pollution Control Board to file a report in the form of an affidavit explaining the reason as to why the closure notice had been withdrawn and at the same time, also directing them to take steps in accordance with law on the allegations contained in the application.

19. The affidavit filed by the Odisha Pollution Control Board in compliance to the above direction, contained surprising revelations which in short are as follows :- .

- (i) It was highlighted in the affidavit that Jakhapura railway siding of East Coast Railway was established prior to the year 2008 and therefore, as per Clauses 2 (ii) of the Guidelines of For Environmental Management in Mineral Stack Yards And Railway Sidings prescribed by the Board dated 16.4.2010 , it was only required to obtain 'Consent to Operate' under Sections 21 and 25 of the Air (PCP) Act 1981, and Water (PCP) Act 1974 respectively. Clause 4 (v) of the guidelines was also referred to whereby, it was stated that it was mandatory to obtain NOC from the Sarpanch following a Gram Sabha, if the project was being proposed in rural area, and urban area from the concerned ULB in case of urban area ;
- (ii)** The Respondent No.3 did not furnish prior information of the date of commissioning of the siding;
- (iii)** The Board insisted that Respondent No.3 should submit NOC from the Gram Sabha;
- (iv)** Later, it was informed by the Respondent No.3 that it was not required to submit NOC in support of the application for 'Consent to Operate' under the guidelines at the

siding/mining stack yard was commissioned prior to the year 2008;

- (v) The Board then issued letter No. 752 dated 30.05.2014 directing to Respondent No.3 to obtain 'consent' and until the 'consent' was granted, to stop all operational activities;
- (vi) The respondent No.2 , inspected the railway siding on 22.1.2015 and based on the inspection report, show cause notice was issued to the Respondent No.3 as to why direction of closure under Section 33A of Water (PCP) Act 1974 and 31 A of Air (PCP) Act 1981 should not be issued in respect of the railway siding;
- (vii) In his reply dated 13.02.2015 to the show cause notice, the Station Master, East Coast Railway, Jakhapura, it was stated that the Respondent No. 5, i.e., M/s VISA Steel Ltd., had taken necessary steps to implement pollution control measures and that the matter had been referred to higher authority and further that a Demand Draft for Rs. 30,966/- had been drawn for 'consent to operate' for 3 years and sent to the Regional Officer;
- (viii) Since show cause reply did not contain information on the project report and the existing pollution control measures adopted , an inspection of the railway siding was carried out 27.02.2015 during which, it was found that Respondent No.3 had not adopted any pollution

control measure to arrest the dust generated by the unloading of raw materials. Thus, that the Regional Officer issued a letter dated 04.03.2015 directing the Respondent No.3 to stop the activities.

- (ix)** In response to the letter dated 04.03.2015, the Respondent No.3 in his letter dated 11.03.2015, while admitting that the railways had not obtained necessary consent from the State Pollution Control Board, informed the Regional Office that the work of unloading and loading at the Jakhapura Railway siding had been stopped from 07.03.2015 and, requested for one month's time for holding "Palli Sabha" for the purpose of obtaining NOC.
- (x)** Inspection carried out by Regional Office on 25.03.2015 found the Respondent No.3 in full compliance of the statutory requirements and had also proposed to adopt more pollution control measures and even the District Administration, Jajpur, had made a request to the Regional Office to allow the Respondent No.3 to operate the railway siding;
- (xi)** In view of the recommendation contained in the inspection report, the State PCB reconsidered its earlier decision and revoked the direction of closure issued vide letter dated 04.04.2015 ;

(xii) Since Regional Office of the Board have been directed to monitor the progress of implementation of the pollution control measures, inspection of the site was carried out by the officers of Regional Office on 30.05.2015 and 25.6.2015 and found that the pollution control measures installed earlier based upon which the inspection report dated 25.03.2015 had been submitted, had been removed and the status of pollution control measure adopted by the unit unsatisfactory. Show Cause notice was thus issued again to the Respondent No.3 vide letter dated 07.07.2015 as to why direction of closure under Section 33A of Water (PCP) Act 1974 and Section 31A of the Air (PCP) Act 1981 be not issued.

20. The aforesaid sequence of events set out in the affidavits filed by the State Pollution Control Board narrated above, in our view, demonstrates the indifference of the railway and their deliberate defiance of the laws and also the disdain with which they treat statutory authorities.

21. In the instant case, after the guidelines were revised by the PCB whereby the railway having siding/stack-yard activities fell under the purview of the consent management with effect from 06.7.2011, the East-Coast Railway ought to have

applied for consent from the Board immediately. Surprisingly, however, the railway continued with the operation of the facility without caring to apply for consent and, the PCB on the other hand remained a silent spectator to the commission of such illegality. It was only after representations were submitted by the local people of Jakhapura to various authorities regarding the severe pollution in the area caused thereby that on 30.05.14 the Regional Officer of PCB at Kalinga Nagar ultimately wrote to the railway directing them to obtain consent from PCB and, in the meanwhile, to stop the activities of the siding/stack yard.

22. We also find it quite shocking to note that the railway, being the largest Government organisation in the country preferred not to respond and to disdainfully ignore the notice/direction of the PCB compelling PCB to conduct an inspection on 22.1.2015. The report of the inspection, that revealed gross failure of the railways to follow the anti-pollution norms, is reproduced below for convenience :-

**“INSPECTION REPORT OF JAKHAPURA RAILWAY
SIDING OF EAST COAST RAILWAY AT-
JAKHAPURA DIST. JAJPUR**

The aforesaid railway siding of East Coast Railway was inspected on 22.01.2015 to verify the pollution control measures adopted. The detail description of the observations on the above mentioned

date of inspection is as follows :-

1. The East Coast railway has been operating one railway siding at Jakhapura Rail Station ,opposite side of the main platform at Track No. 6.
2. The platform attached to Track No. 6 is concreted and this platform is being used for loading and unloading activity of minerals. The minerals after unloading from the rack are supplied to different industries at Kalinga Nagar Industrial complex of Jajpur District.
3. The unit has neither obtained Consent to Establish nor Consent to Operate from the Board in respect of operation of mineral stockyard.
4. The railway siding was earlier communicated vide letter No. 752 dt. 30.5.2014 to stop the operation activity till they obtain consent to establish and consent to operate.
5. The unit has not installed any fixed water sprinklers around the mineral storage area.
6. There is neither drainage facility which exists around the platform area nor any settling pond.
7. The unit has not provided any protection measures to restrict the flow of waste water from the stock yard area to adjacent cultivated lands.
8. Boundary wall is also not completed along the railway siding.

Conclusion :-

1. The overall environmental compliances of the aforesaid mineral stockyard was not satisfactory.
2. The unit has not applied Consent to Establish and Consent to Operate to the Board.

Recommendation :

The unit may be issued Show Cause Notice.

Sd-

SRI B.Marndi, AES

Sd/-

Sri S.Mohanty, AEE ”

23. Alarmed by the serious deficiencies as indicated above, a show cause notice was issued by the Regional Officer to the respondent No.3, the Station Master, Jakhapura Railway station which reads as such :-

“REGIONAL OFFICE OF THE
STATE POLLUTION CONTROL BOARD,ODISHA

DEPARTMENT OF FOREST & ENVIRONMENT,
GOVT. OF ODISHA
Common Facility Centre, JCD, Kalinganagar
Dist. Jagpur-755026, Odisha, India

No. 230

Dt. 27-01-2015

SHOW CAUSE NOTICE UNDER SECTION 25/26 OF
WATER (PREVENTION & CONTROL OF POLLUTION) ACT,
1974 AND UNDER SECTION 21 OF THE AIR (PREVENTION
& CONTROL OF POLLUTION) ACT, 1981

Whereas you are operating Railway Siding at Jakhapura Railway Station (East Coast Railway) without obtaining Consent to Establish/operate from State Pollution Control Board, Odisha as per provisions contained in section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 and section 21 of Air (Prevention & Control of Pollution) Act, 1981'

And Whereas a letter was communicated from this office to you vide letter No. 752 dtd. 30.05.2014 to stop all operational activities of Jakhapura Railway Siding forthwith till consent to establish/operate is obtained from the Board. It was also mentioned that as per the Resolution No. 3369 dt. 16.02.2008 of the Board, the stock yards and railway sidings which are already established and operating prior to the date of Board's Resolution are required to obtain consent to establish/consent to operate from the Board.

And Whereas you have not made any communication to this office for implementation of pollution control measures and towards obtaining Consent to Establish and Consent to Operate from the Board.

And Whereas you have not installed fixed water sprinklers/any other pollution control measures for air/water pollution control measures.

And Whereas unloading and handling of raw materials/minerals and transshipment through heavy vehicles were found to be taking place in the close proximity to nearby industries through nearby village roads. Such activity has a high potential to pollute the ambient air quality in the vicinity.

And Whereas your Railway Siding was inspected on 22.01.2015 and it was observed that the following non-compliances were observed :-

1. You are still operating your unit without obtaining consent to establish/operate from the Board even

after issuance of directive vide this office letter No. 752 dtd. 30.05.2014.

2. You have not yet installed any fixed water sprinklers at material storage area for suppression of dust particles, proper drainage system collection of waste water.
3. You have not provided any facilities to stop flow of water from the siding to nearby lands during rain;

Now, therefore, you are directed to show cause within 21 days from the date of issue of this notice as to why direction of closure under section 33A of the Water (PCP) Act, 1974 and 31A of the Air (PCP) Act, 1981 shall not be issued to your Railway Siding without giving further opportunity. In case, you fail to submit any explanation within the stipulated date and/or cause shown by you are found to be not satisfactory, an ex-parte decision in this matter shall be taken for issuance of direction of closure under section 33A of the Water (PCP) Act, 1974 and 31A of the Air (PCP) Act, 1981 directing the appropriate authorities to seal your Railway Siding and other facilities/services etc. to your unit without giving further opportunity. If you are interested for a personal hearing the same may be indicated in your reply.

Sd/-

Regional Officer,

To
Station Master,
Jakhapura Railway Station (East Coast Railway)
At Jakhapura, PO Jakhapura,
Dist. Jajpur "

24. In his reply to the show cause, the Station Manager, East Coast Railway, Jakhapura in letter dated. 13.2.2015 (annexure-F/1 at p. 69) instead of dealing with the responsibility of the railway in complying with the pollution control norms, informed the Regional Officer, State PCB,

Odisha that on 28.1.2015, VISA Steel Ltd and Maithan Ispat Ltd. had been asked to take necessary measures for preventing air and water pollution at Jakhapura and that in the meantime, VISA Steel Ltd. had taken steps and implemented the pollution control measures like sprinkling water during unloading and shifting of their cargo from railway siding to their plant and, covering their loaded vehicles with tarpaulin. While further informing that a demand draft for Rs. 30,966/- had been sent by the Divisional Commercial Manager, East Coast Railway, Khurdha towards consent fee, it was not disclosed in the letter as to whether or not they had submitted application for consent to the Pollution Control Board. By a subsequent letter dated 19.12.2015, the Station Manager forwarded photocopies of shifting clearance memos of Maithon Ispat Ltd, Jindal Steel Ltd., Dinabandhu Steel Ltd., etc. (Annexure-G/2 p. 70) and statement of unloaded rakes of different companies from January 2007 to January 2008 at Jakhapura. The letter thus reveals that although, apart from the Respondent No.5, VISA Steel, many other companies were involved in transportation, loading and unloading of raw materials in Jakhapura Railway Station, nothing has been found to have been stated as regards its own responsibility except a vague suggestion that for obtaining 'consent to

operate' the railway was not required to submit NOC in support of their application therefor.

25. Inspection of the railway siding carried out for the second time on 27.02.2015 by a team of three Scientists from the State Pollution Control Board revealed that the railway siding had not adopted any pollution control measures to arrest the dust generated due to unloading activities of raw materials and that the siding was still functioning without obtaining consent from the Board. We may for the sake of better appreciation of the matter reproduce below the inspection report :-

“ INSPECTION REPORT ON RAILWAYSIDING LOCATED AT JAKHAPURA RAILWAY STATION (EAST COAST RAILWAY) AT/PO JAKHAPURA, JAJPUR

Dt. Of Inspection - 27.02.2015

1. The Jakhapura railway siding is located at the opposite side of the Jakhapura railway station at Jakhapura under Danagadi Tahasil of Jajpur district. On the day of inspection Mr. Raghunath Panda, Station Superintendent was present.
2. The Jakhapura Railway Authority has constructed Rout No. 4 (Platform) for transport of raw materials. The loading and unloading are is completely concrete. The railway siding does not have any covered shed.
3. The Station Superintendent informed that the siding is functioning since 2005 for loading and unloading of pig iron, Coke, Iron ore, Lime Stone, Dolomite and Coal etc. by the industries of Kalinga Nagar areas.
4. The raw material is being loaded/unloaded on the open platform. Mr. Panda, informed that the loading/unloading activities is being done both manually and mechanically.

5. The concrete flooring of the Railway siding was found to be in dilapidated condition in various places.
6. The height of the boundary wall is approx. 5 ft. & maximum upto 1/3 length of Railway siding.
7. The authority has not provided any dust suppression system to minimize the dust generated from the site during loading & unloading of the materials.
8. No garland drain & setting pit have been constructed on the Railway siding.
9. No plantation at the site was observed.
10. During the time of inspection no loading and unloading activity was going on & so the AAQ monitoring could not be conducted.
11. The Housekeeping of Railway siding was found not satisfactory.
12. **Nearby Habitations** : At one side of the railway siding railway staff quarters is present and in other side station sahi at about 500 meter and a temple is present at about 150 mt. Distance. Two number of ponds are situated at about 50 mts. distance from the boundary wall of the railway siding. The close proximity of the railway siding is covered by agriculture land.

RECOMMENDATIONS : The railway siding has not adopted any pollution control measures to arrest the dust generated due to unloading activities of raw materials. The siding is functioning without obtaining consent from the Board . After Show Cause notice issued vide L.No.230 dt.27-01-2015, the authority has applied for consent to Operate to the Board on 20-02-2015. So, necessary action may be initiated in favour of the railway siding.

Sd/-

Sd/-

Sd/-

Inspecting Officer
(Er. S.N.Mohanty, AEE)

Inspecting Officer
(Dr.R.K.Mishra, DES)

Inspecting Officer
(Dr.A.K.Mallick,RO)

26. Considering the aforesaid report, “stop operation” order was issued by the Regional Officer for immediate implementation by the Jakhapura Railway station in exercise of the powers conferred under the provisions of Sec. 33(A) of the Water Act 1974 and Sec. 31(A) of the Air Act, 1981. Reproduced below for convenience is the said “stop operation” order :-

“ REGIONAL OFFICE OF THE
STATE POLLUTION CONTROL BOARD,ODISHA
DEPARTMENT OF FOREST & ENVIRONMENT, GOVT. OF ODISHA
Common Facility Centre, JCD, Kalinganagar
Dist. Jagpur-755026, Odisha, India

No. 621

Date.04-3-2015

To
The Station Master,

Jakhapura Railway Station (East Coast Railway)

At Jakhapura, PO : Jakhapura

Dist. Jajpur

Sub: Stop operation on Mineral loading & Unloading activity of Jakhapura Railway Siding (East Coast Railway)-

Sir,

You are operating a railway siding at Jakhapura Railway Station (East Coast Railway) without obtaining Consent to Establish/Operate from State Pollution Control Board, Odisha. Many public complaints were received by this office regarding air pollution due to loading, unloading & transportation of Minerals from Railway Siding to different industrial units at Kalinga Nagar Industrial complex. Loading, unloading and handling of minerals and subsequent transportation through heavy vehicles were found to be taking place in the close proximity to Railway siding and nearby residents of village Jakhapura and adjoining area for which Show Cause Notice was issued vide No. 230 dt. 27.01.2015. Based on Show Cause Notice from the Board, Additional District Magistrate, Jajpur also issued Show Cause Notice vide No. 304 dtd. 03.02.2015.

As per the Resolution No. 3369 dated 16.02.2008 of the Board, the stock yards and railway sidings which are already established and operating prior to the date of Board's Resolution are required to obtain consent to establish/operate from the Board. Accordingly, you have applied for consent to operate to the Regional Office which received on 20.02.2015 without submitting NOC obtained from Jakhapura Gram Panchayat. But neither have you furnished any project report nor have you submitted the existing facilities with respect to pollution control measures in the railway siding area. Subsequently, officers from State Pollution Control Board, Kalinga Nagar visited the aforesaid railway siding on 27.02.2015 and it was observed that you have not provided pollution control measures like provision of garland drain, settling pit, complete boundary wall, water sprinklers, green belt which is needed as per the guidelines. The housekeeping was also observed to be not satisfactory.

Now, in exercise of the powers conferred under the provisions of 33(A) Water (Prevention and Control of Pollution) Act, 1974 and 31(A) of Air (Prevention and Control of Pollution) Act, 1981, you are directed to stop operational of mineral loading and unloading activities of Jakhapura Railway siding forthwith till you obtained consent to operate from the Board. Violation of above directives shall be viewed seriously and appropriate legal action will be initiated against you without giving further notice.

Yours faithfully,

Sd/-
Regional Officer ”

27. In his letter dated 11.03.2015, the Station Manager while acknowledging the receipt of the 'stop operation' order of the Board, informed that work at railway siding had been stopped, requested for reconsideration of the decision as the ADM, Jajpur, had already taken immediate action to resolve the issue remarking that that the Board ought to have waited for the receipt of NOC from ADM, Jajpur, before issuing the 'stop operation' order. We may reproduce below of Station Manager letter dated 11.3.2015 which we find it to make an interesting reading :-

“From Station Manager,
E.Co.Rly, JKPR,
Jkpr/Pollution/12/15 To The Regional Officer,
SPCB Odisha,
Jakubga Nagar, Jajpur.

Date. 11/3/15

Sub : Reconsider on Mineral loading & unloading activity of
JAKHAPURA Railway Siding (E.CO.Rly)

Ref: Your letter No. 623 date. 04/03/15.
My letter No. JKPR/AIR/WATER/PPLLUTION/12/15 date.
19/02/15.
ADM/JAJPUR LETTER NO. 1-J-08/2015/443 Dt. 19/02/15.

Sir,

After receiving your letter, I implemented your order i.e. stopped unloading & loading at Jakhapura Railway siding from 07/03/15 as railway is not obtained consent from State Pollution Control Board, Odisha as mentioned in your letter. But for obtaining consent NOC from “PALLI SABHA” of Jakhapura locality is highly necessary for which I had given appeal to you for enhancing one month time conducting PALLI SABHA by Govt. of Odisha. In the same day I had also given a copy of appeal to ADM/Jajpur for early compliance.

ADM/Jajpur has also taken immediate action as reflected in his letter which is enclosed for your reference. I very much sorry to say that before receiving NOC from ADM/Jajpur you exercised your power to stop the operation at Jakhapura railway siding.

Hence, I request you for the greater & better interest of the Govt. companies & public reconsider on your imposed order & issue necessary instruction to continue.

Sd/-
STATION MANAGER

Copy to Additional District Magistrate, Collectorate, Jajpur.”

28. In order to ascertain the circumstances under which the District Administration, Jajpur, had intervened in the functioning of the PCB, an independent statutory authority, we, by order dated 22.07.2015, directed the Respondent No. 1, to file an affidavit with particular reference to the correspondence made by the District Collector. With the additional affidavit filed by the Respondent No. 1, i.e., the State Pollution Control Board, in compliance of the said direction, letter no. 89 dated 16.3.3015 of the Collector and District Magistrate, Jajpur, addressed to the Regional Officer was thus filed which reads as follows :-

“COLLECTORATE JAJPUR
(Judicial Section)
No. 89 dated 16/3/15

From

Shri Anil Kumar Samal, IAS
Collector & District Magistrate, Jajpur

To

The Regional Officer,
State Pollution Control Board, Odisha,
Common Facility Centre, JCD, Kalinga Nagar,
Dist. Jajpur.

Sub : Stop operation on mineral loading & unloading activity of Jakhapura Railway Siding.
(East Coast Railway)

Ref : This office Memo No. 694 dt. 13.3.15 and your letter No. 623 dt. 4.3.2015

Sir,

With reference to the letter on the subject cited above, you are directed to allow loading & unloading operation of minerals at Jakhapura Railway Siding (East Coast Railway) for the time being since conducting of Palli Sabha/Gram Sabha by the BDO Danagadi is under process.

Yours faithfully,
Sd/-
Collector & DM, Jajpur "

29. As would appear from the letter, the Regional Officer was directed by the Collector and DM, Jajpur (Respondent NO.2), to allow the activities at Jakhapura Railway Siding for the time being because conduct of Palli Sabha/Gram Sabha by the BDO, Danagadi, was under process.

30. The question that would then arise is as to whether the DM was possessed of the power to pass such direction. As the steps being taken by the State PCB in issuing the notices and passing the directions under consideration, were in pursuance of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, it would be necessary to examine the provisions of both the Acts on the issue. In doing so we find that Section 18 of both

the Water Act, 1974 and Air Act, 1981 which are identically worded vests only the Central Board and State Government with the general power to give directions to the State Board as would appear from the provisions reproduced below :-

Water (Prevention and Control of Pollution) Act, 1974

“ Section 18.

Power to give directions :- (1) In the performance of its functions under this Act-

- (a) The Central Board shall be bound by such directions in writing as the Central Government may give to it; and
- (b) Every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it.

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.”

- 2.
- 3.
- 4.....”

31. While issuing the direction, the District Magistrate has not disclosed the source of the power under which he could issue such direction. In any case, such a direction could not have been issued as the activity of siding/stackyard, as already discussed, cannot be carried on without prior consent of the Board, being mandatory under the Air and Water Acts. Thus, direction of the District Magistrate issued upon the Regional Officer to allow operation of the siding unit pending grant of “consent to operate certificate” is bad in law and by doing so the

District Magistrate has unmistakably exercised a jurisdiction which he did not have.

32. The State Pollution Control Board, as would appear from their pleadings in their affidavit, had informed the Station Master, Jhakupura Railway Station, the Respondent No. 3, that under the guidelines dated 16.04.2010 issued by the State PCB, the Respondent No. 1, the railway siding having been established prior to the year 2008, it was necessary only to obtain consent to operate from the Board and, that for any such new project before consent to operate can be granted, it was mandatory to obtain consent to establish for which NOC from Sarpanch/concerned ULB was mandatory. That this position was in the knowledge of the respondent No. 3 would be evident from the fact he had informed the Board that since the commissioning of the unit prior to 2008, the railway was not required to submit NOC for consideration of application for consent to operate. It is of relevance to note that application for consent was filed by the railway before the Board on 20.2.2015 whereas the District Magistrate's direction to the Regional Officer that was issued on 16.03.2015 was much after.

33. By the same order dated 18.01.2016, we directed the District Magistrate and Collector, Jajpur, to explain

on oath the power vested in him under the Air Act, 1981 to issue direction to the Regional Officer, PCB to allow the railway to continue with their Loading and Unloading activities pending the grant of consent. The submissions made in the reply affidavit at page 320 of O.A to the queries from the Bench are as follows :-

- i) The Collector has no power to issue direction under the law. He has only to give no objection for the purpose of grant of consent to establish.
- ii) The Collector has not 'directed' but had only 'requested' the RO.
- iii) The letter of the Collector was never acted upon by the State Pollution control Board which was a mere recommendation having no effect unless it was approved and acted upon by the Authority concerned.

34. The explanation given in the affidavit obviously is contrary to the contents of the letter dated 16.03.2015 as would be apparent from a bare reading of the letter extracted earlier. It is difficult for us to accept that a District Collector, who presumably is a senior officer in the IAS cadre, is unable to distinguish between the words 'directed' and 'requested'. Even the third contention that the letter of the Collector was not given effect to is apparently incorrect as an inspection team, which

carried out an inspection, in their report has categorically referred to the letter of the Collector in the column for recommendation and, while revoking the closure order pending grant of consent, the Chairman, PCB, had taken into consideration the report of the inspection team upon which we shall allude to shortly hereafter.

We thus, find the reply of the district Collector to be grossly unsatisfactory and, in our considered opinion, the functioning of the District Collector in the matter to be most improper and left much to be desired.

35. On 25th March 2015 when the application of the railway siding unit seeking consent to operate was still pending, the Board conducted another inspection, as adumbrated above, by a team consisting of following scientists:-

1. Dr. Anup Kumar Mallik, Regional Officer
2. Dr. R.K.Mishra, Dy. Environmental Scientist
3. Sri Bhinsen Marndi, Asst. Environmental Scientist
4. Er. Soumendra Mohanty, Asst. Environmental Engineer.

The inspection report submitted by the team by

which the unit was found to be compliant is reproduced below:-

“ INSPECTION REPORT OF M/S JAKHAPURA RAILWAY SIDING (EAST COAST RAILWAY) AT-JAKHAPURA, P.O.-JAKHAPURA, DIST.-JAJPUR

1	Date of Inspection	25-03-2015										
2	Name of Inspecting Officer	Dr. Anup Kumar Mallick, Regional Officer Dr. R.K.Mishra, Dy. Env. Scientist Sri Bhinsen Marndi, Asst. Env. Scientist Er. Soumendra Mohanty, Asst. Env. Engineer										
3	Nature of the Project	Private Railway siding for unloading & stacking of iron ore, coal dolomite and loading/dispatch of the same to the nearby industries through Trucks. The Jakhapura Railway unit has been operating its platform No. 6 for loading and unloading of minerals like iron ore, coal, dolomite etc. It has applied Consent to Operate to the Board.										
4	Person present during inspection	Sri R.N.Bala, Station Superintendent										
5.	Name & address of the Proponent/ Occupier	Shri Raghunath Panda, Station Manager Jakhapura Railway Station, East Coast Railway at Po-Jakhapura, Dist. Jajpur.										
6.	Project Details	<table border="1"> <thead> <tr> <th>Project Cost (Lacs)</th> <th>Project Location</th> <th>New/Expansion</th> <th>Area in Acre</th> </tr> </thead> <tbody> <tr> <td>38.638 Lakhs</td> <td>Jakhapura Rly Siding</td> <td>Existing siding Before 16.02.2008</td> <td>Length 700m with 28m width which is concreted platform adjacent to line No. 6</td> </tr> </tbody> </table>	Project Cost (Lacs)	Project Location	New/Expansion	Area in Acre	38.638 Lakhs	Jakhapura Rly Siding	Existing siding Before 16.02.2008	Length 700m with 28m width which is concreted platform adjacent to line No. 6		
Project Cost (Lacs)	Project Location	New/Expansion	Area in Acre									
38.638 Lakhs	Jakhapura Rly Siding	Existing siding Before 16.02.2008	Length 700m with 28m width which is concreted platform adjacent to line No. 6									
7.	Project details for which CTE is applied	Principal projects/By project Railway siding for unloading & Stacking of iron ore, Iron Pellet, coal, Coke, dolomite, and Quartzite for Loading/dispatch of the same to the Nearby industries through Tricks Principal Raw Materials		Quantity per month 7698 MT/Day								
8.	Principal raw Material Including fuels	Principal Raw Material Railway siding for unloading & stacking of iron ore, Iron Pellet, coal, coke, dolomite, and Quartzite for Loading/dispatch of the same to the nearby industries through Trucks		Quantity Per month 7698 MT/Day								

9.	Site description and its compliance to the notification by OSPCB during April 2008	<table border="1"> <tr> <td data-bbox="652 379 1003 2024"> <p>Nearby habitation detail E.W.N.S. direction (The habitation should be at safe distance)</p>  <p>Nearby highway (The nearest highway should be at safe distance)</p> <p>Nearby Industries</p> <p>Water body (The nearest water body should be at safe distance)</p> <p>The site should be at least 1 km away from nearest school, College, Hospital, Archaeological monuments, market place and other sensitive areas</p> </td> <td data-bbox="1003 379 1354 2024"> <p>Jakhapura village is situated at North direction which is about 520 m distance from Railway track. Kendudhipi Village is situated at South West direction which is about 2 km distance from railway track. Rabana village is situated at West direction which is about 740 m distance from railway track</p> <p>Duburi Chandikhol Express highway is about 5.3 km.</p> <p>*Visa Steel Ltd. *Maithan Ispat Ltd. *Jindal Stainless Ltd. *Yajdani Steels Ltd. *Rohit Ferro Tech. Ltd. & MESCO Steels Ltd.</p> <p>Brahmani River is about 4 km distance</p> <p>There is no school, college, Hospitals, Archaeological monuments, market place and other sensitive areas within one km. There is one Temple near 60 m distance from the siding.</p> </td> </tr> </table>	<p>Nearby habitation detail E.W.N.S. direction (The habitation should be at safe distance)</p>  <p>Nearby highway (The nearest highway should be at safe distance)</p> <p>Nearby Industries</p> <p>Water body (The nearest water body should be at safe distance)</p> <p>The site should be at least 1 km away from nearest school, College, Hospital, Archaeological monuments, market place and other sensitive areas</p>	<p>Jakhapura village is situated at North direction which is about 520 m distance from Railway track. Kendudhipi Village is situated at South West direction which is about 2 km distance from railway track. Rabana village is situated at West direction which is about 740 m distance from railway track</p> <p>Duburi Chandikhol Express highway is about 5.3 km.</p> <p>*Visa Steel Ltd. *Maithan Ispat Ltd. *Jindal Stainless Ltd. *Yajdani Steels Ltd. *Rohit Ferro Tech. Ltd. & MESCO Steels Ltd.</p> <p>Brahmani River is about 4 km distance</p> <p>There is no school, college, Hospitals, Archaeological monuments, market place and other sensitive areas within one km. There is one Temple near 60 m distance from the siding.</p>
<p>Nearby habitation detail E.W.N.S. direction (The habitation should be at safe distance)</p>  <p>Nearby highway (The nearest highway should be at safe distance)</p> <p>Nearby Industries</p> <p>Water body (The nearest water body should be at safe distance)</p> <p>The site should be at least 1 km away from nearest school, College, Hospital, Archaeological monuments, market place and other sensitive areas</p>	<p>Jakhapura village is situated at North direction which is about 520 m distance from Railway track. Kendudhipi Village is situated at South West direction which is about 2 km distance from railway track. Rabana village is situated at West direction which is about 740 m distance from railway track</p> <p>Duburi Chandikhol Express highway is about 5.3 km.</p> <p>*Visa Steel Ltd. *Maithan Ispat Ltd. *Jindal Stainless Ltd. *Yajdani Steels Ltd. *Rohit Ferro Tech. Ltd. & MESCO Steels Ltd.</p> <p>Brahmani River is about 4 km distance</p> <p>There is no school, college, Hospitals, Archaeological monuments, market place and other sensitive areas within one km. There is one Temple near 60 m distance from the siding.</p>			
10.	Air Pollution Control practices to be followed.	<ol style="list-style-type: none"> 1. During visit it was observed that Railway authority has concreted the entire platform of about 700 m with 28 m width. 2. The railway has provided garland drain of about 500 m with two nos. of setting pit. 3. Water sprinklers have been provided which will be used during loading and unloading of minerals. The water sprinklers are connected 		

		<p>through water tankers.</p> <ol style="list-style-type: none"> 4. Reportedly during operation all pollution control norms to be followed. 5. Boundary wall of about 200 m constructed towards west side of the railway siding. 6. The approach road connecting to the railway siding is black topped.
11	Quality of water used in KLD	For dust suppression 150 Kl will be used during loading and unloading activities.
12	Conclusion	<ol style="list-style-type: none"> 1. Water sprinkling facility along the stockyard area 2. It has also provided two water tanker for spray of water along the roads. 3. It has provided Tarpaulin to cover the minerals 4. It has provided black topped and concrete road for transportation of raw materials. 5. It has constructed boundary wall of the passenger movement area.
13	Recommendation	As the railway authority have been arranged the pollution control measures and also proposed for adopting more pollution control measures, and as District Collector has given a letter for allowing the railway siding for time being, so the railway siding may be considered for allowing loading and unloading of minerals.

Sd/-
AEE
S. Mohanty

Sd/-
AES
B.Marndi

Sd/-
DES
R.K.Mishra

Sd/-
RO
A.K.Mallick "

36. Thus, we find from the above that in their report the team recommended allowing loading and unloading of minerals as the Railway authority had arranged for the pollution control measures and had also proposed for adopting more pollution control measures. As already observed earlier, the Inspection team has also referred to the letter of the District Magistrate.

37. The Member Secretary, PCB, Odisha, by a communication No. 6163/Ind./Con. 6458 dated 04.04.2015 much to our astonishment, revoked the stoppage/closure order only by taking into consideration the action by the railway for compliance of the statutory provision. It is pertinent to note that closure order was issued by the Board to the railway siding unit as it was a 'red category' unit admittedly operating without consent from the Board and also that there were violations of pollution norms. Once a closure order was issued for want of consent to operate as one of the reasons, the unit could not have been allowed to operate before grant of consent after due consideration of their pending application therefor by following the due process. We find it difficult to comprehend as to how the State Pollution Control Board could have revoked its own closure order issued against a red category industry which was admittedly operating from the beginning in violation of the requirements under the Air Act, 1981, the Water Act 1974 and in non-compliance of the mandatory consent management. The reply affidavit filed by the PCB that "considering the report of the inspection team, closure order was revoked", clearly shows that the Chairman, PCB did not follow the consent management rules and allowed the Railway to undertake Loading Unloading activities even when it had not been granted consent to operate. Clearly, therefore, the decision of the Chairman, State PCB, is

undeniably in violation of the environmental norms and is to be seriously deprecated.

38. Having discussed on the facts and circumstances in detail, we are of the considered view that -

(a) East Coast Railway is undeniably guilty of violation of the mandatory statutory provisions having breached the Environmental Laws, particularly, the Water Act, 1974 and the Air Act, 1981 by operating their units illegally from 2011, after the revised guidelines had come into force, without consent to operate from the State Pollution Control Board and, for contributing to air and water pollution thereby degrading the environment.

(b) The District Magistrate, Jajpur, has misused his power in directing the Regional Officer, State Pollution Control Board, to allow loading/unloading and transportation of raw materials at the railway siding in the absence of consent to operate from the Board.

(c) The Chairman and Member Secretary, State Pollution Control Board have not functioned in accordance with the power vested on them under the Water Act, 1974 and the Air Act, 1981 in revoking closure order issued against a non-compliant Unit operating without consent of the Board and the Board acted in haste and under

pressure in allowing the unit to continue operating illegally without consent of the Board.

DIRECTIONS :

39. For the reasons stated above we direct as follows:-

I. (i) The Govt. of Odisha through the Chief Secretary, shall seek appropriate explanation from the District Magistrate, Jajpur, for his misconduct in interfering with the functioning of the State Pollution Control Board and take suitable penal action against him.

(ii) The Govt. of Odisha through the Chief Secretary to constitute a High Power Committee to enquire into the action of the Chairman and Member Secretary, PCB, who have been delegated by the Board vide order No. 9832/Ind-I-CON- MISC-306 dated 25.1.2008, in revoking the closure order and thereby allowing the Railway siding at Jakhapura to undertake the activities in the absence of consent to operate certificate of the Board and, recommend appropriate action against them to the Government.

(iii) The allegation of the applicant that VISA Steel has been contributing to air pollution and damage to village roads for transporting raw materials by uncovered vehicles has been opposed by VISA Steel, the respondent No. 5. From the

letter of the Station Manager, Jakhapura Railway station, it is revealed that many other companies have also engaged vehicles for transportation of raw materials. Besides, as per the affidavit of respondent No. 5, the Jajpur Cluster Development Activity maintains the road. The VCRs, issued by the traffic Department also do not indicate anything against VISA Steel. Therefore, we do not pass any order against respondent No. 5.

II. (i) We find, and admittedly so, that the East-Coast Railway has committed breach of both the Water Act, 1974 and the Air Act, 1981 and contributed to air and water pollution in the area since last five years till the last inspection conducted by the Board on 25.3.2015. In all previous inspections by the Board, the Unit had been found in default in the adoption of pollution control measures. The applicant has also alleged pollution of environment and reduction in agriculture productivity due to siding activities of East Coast Railway which has not been opposed by either the PCB or by the railway. Because of railway-siding activities in the absence of valid consent to operate from the State Pollution control Board and also in the absence of regular monitoring by the Board, the ore dust emissions, which largely contain toxic heavy metals, exceeding the permissible norms are bound to cause environmental

imbalance affecting the primary productivity, soil fertility, water quality and health of the people in the locality.

Keeping these factors in mind, the Tribunal has to invoke the “Polluter Pays” principle. The source of pollution is obviously attributable to the operation of railway siding illegally for loading and unloading of minerals which has led to adverse impacts on environment and public health. Thus the East Coast Railway is liable to pay environmental compensation on the principle of “Polluter Pays”.

‘Polluter Pays’ principle, which is an overarching principle, mandates the polluter to bear the cost of pollution, prevention, control and reduction measures. This principle is an integral component of sustainable development. The Apex Court of India in **Indian Council for Enviro-Legal Action –vs- Union of India: (1996) 3 SCC**, **Karnataka Industrial Area Development Board –vs- C. Kenchappa: (2006) 6 SCC 371**, **M.C.Mehta –vs- Union of India: (2006) 3 SCC 399**, has held that the “remediation of the damaged environment is a part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology.”

Similarly in **Hindustan Coca Cola Beverages Pvt. Ltd.-vs- West Bengal**, it has been held that “it is no more *res integra*, with regard to the legal proposition, that a polluter is

bound to pay and eradicate the damage caused by him and restore the environment.

We may also refer to judgement dated 22.07.2013 in the case of **Manoj Mishra –vs- Union of India** decided by the Principal Bench of NGT in which the ‘polluter pays’ principle was applied while directing payment of compensation for dumping debris and construction wastes on the bank of the river Yamuna.

(ii) Therefore, we direct that East Coast Railway Division at Chandrasekharpur, Bhubaneswar, under whose authority the illegal railway siding was in operation at Jakhapura railway station, to pay environmental compensation of Rs. 50.00 lakhs @ Rs. 10.00 lakhs per annum for the five years of violation of Environmental norms, which shall be paid within a period of two months to the District Magistrate, Jajpur, who will spend Rs. 25.00 lakhs on infrastructure development of Primary Health Centre (PHC) at Jakhapura towards the cost of building, laboratory and instruments and the remaining Rs. 25.0 lakhs towards improving the environment in and around the railway siding and, for sanitation, supply of drinking water, etc., in the affected village.

(iii) Besides this, we also direct the East-Coast Railway to pay Rs. 1.0 lakh cost to the Applicant, Shri Aswini

Kumar Dhal, who had filed the application seeking to restrain the East Coast Railway from allegedly emitting harmful air pollutants in violation of environmental norms.

(iv) The East-Coast Railway, Bhubaneswar, the District Magistrate, Jajpur, the State Pollution Control Board, Bhubaneswar and the Chief Secretary, Govt. of Odisha are directed to file their respective affidavit on compliance of this order within three months in the Registry of the Tribunal.

(v) It is further directed that the railway siding at Jakhapura railway station shall remain closed till consent to operate is granted by the Board after being fully satisfied that all pollution control measures are in place.

40. With the above directions this application stands disposed off.

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Justice S.P.Wangdi (JM)

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Prof.(Dr.) P.C.Mishra(EM)

Kolkata

Dated : 25th May, 2016



NGT