A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 7562 of 2023

along with

W.P.(C) No.29176 of 2022

(In the matter of applications under Articles 226 and 227 of the Constitution of India, 1950)

(in W.P.(C) No.7562 of 2023)

M/s Green Energy Resources, Sambalpur .... ***Petitioner(s)***

-versus-

State of Odisha & Ors. .... ***Opposite Party(s)***

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner(s) : *Ms. Pami Rath, Sr. Adv. along with associates*

For Opposite Party (s) : *Mr. Ch. Satyajit Mishra, AGA*
Mr. Bikram Pratap Das, Adv. for O.P.2
Mr. B.N. Mohanty, Adv. for O.P.4
Mr. Sreejit Mohanty, Adv. for O.P.5
Mr. Ramdas Acharya, Adv. for O.P.6
Mr. Haripada Mohanty, Adv. for intervener

(in W.P.(C) No.29176 of 2022)

M/s Green Energy Resources, Sambalpur .... ***Petitioner(s)***

-versus-

The Member Secretary, State Pollution Control Board, Orissa, Anr. .... ***Opposite Party(s)***

Advocates appeared in this case through Hybrid Arrangement Mode:

For Petitioner(s) : *Ms. Pami Rath, Sr. Adv. along with Mr. Lalit Kumar Maharana, Adv.*

For Opposite Party (s) : *Mr. Bikram Pratap Das, Adv. for O.P.1*
Mr. Nirvaya Kumar Samantray, Adv. for O.P.2

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-17.10.2023
DATE OF JUDGMENT: -10.11.2023

Dr. S.K. Panigrahi, J.

1. Since common question of facts and law are involved in both the Writ Petitions, the same were heard together and are being disposed of by this common judgment.

2. The Petitioner in W.P.(C) No.29176 of 2022 challenges the direction/orders passed at Sl. No. (ii) and (iii) of Judgement dated 23/08/2022 passed by the Appellate Authority, Constituted under Water (PCP) Act, 1974 and Air (PCP) Act, 1981 in Appeal No. 3W of 2019 and Appeal No. 2A of 2019. The same Petitioner in W.P.(C) No.7562 of 2023 challenges the Office Order dated 22.02.2023 issued by the State Pollution Control Board, Odisha, whereby the Board has cancelled its earlier Policy Decision vide its Letter No.8091 dated 13.09.2019 for regulating Consent to Establish and Authorization of Hazardous Waste Recycling Industries/ Actual Users.

I. FACTUAL MATRIX OF THE CASE:

3. The substratum of facts leading to the filing of both the Writ Petitions runs as follows:

(a) In the State of Odisha, several aluminium manufacturing industries including the National Aluminium Company Ltd. ('NALCO'), generates several tons of Hazardous Waste Spent Pot Linings ('H.W. SPL') every year. Spent Pot Lining is a waste material generated in the primary aluminium smelting industry. Earlier, there was no mechanism or process to treat H.W. SPL. Subsequently to mitigate this issue, NALCO prepared the first lab scale process to treat those hazardous and toxic waste but such lab design could not put to use without proper commercial scale of engineering design.

(b) The Petitioner unit was interested in lab design of SPL detoxification process. Accordingly, the Petitioner approached NALCO to establish its unit. Subsequently, it entered into an agreement with NALCO to use their lab design. The development of engineering process was not only time consuming but also expensive. The Petitioner had to import machines at huge cost and invested significant amount of capital and time in developing a viable commercial industrial scale process design.

(c) After completing all the statutory requisites of Central Pollution Control Board ('CPCB') as per Rule 9 of the Hazardous Waste Management Rules, 2016, CPCB granted authorisation to the Petitioner for commercial operation of the SPL detoxification

process. The Petitioner unit has been granted authorisation for 43200 Mt/year of SPL (Carbon & Refractory Portion) but the fact remains, the Petitioner are not getting enough H.W. SPL for optimum utilisation of the existing plant capacity.

(d) The Petitioner's unit is the pioneer in the field of detoxification and treatment of hazardous wastes (SPL) in the entire ountry. As a matter of fact, the process has been patented in the name of the Petitioner by the Govt. of India under the Patents Act, 1970 vide Letter No. 9344, dated 04/08/2018. Similarly, since the Petitioner was using NALCO's lab design, NALCO had already applied for and was granted with registration of their patent right over the Lab Design. The said right was granted for a period of 20 years vide Patent No. 301579 dated 27/09/2018.

(e) The aforesaid engineering process has not only been accepted by CPCB as the model for detoxification of H. W. SPL but also they have accepted the engineering process in its entirety and issued a SOP which is a guideline of its process, not the complete technology and detail process variable parameters for these types of unit adopting the technical process developed by the Petitioner. The Petitioner's entire engineering process cannot be copied and covered in the Standard Operation of Procedure ('SOP') issued by the CPCB under the relevant rules.

(f) In view of the provisions contained in the said Rules, anybody interested to set up any SPL detoxification unit has to seek

permission from Opp. Party No. 1 - SPCB if they have to follow the process mentioned in the SOP, but just by using the SOP, the entire engineering design and process parameter cannot be achieved.

(g) After acceptance of engineering process for treatment of H.W. Materials like SPL, Opp. Party No. 1 declared certain policies to be adopted for regulating Consent to Establish ('CTE') and authorization of Hazardous Waste Recycling Industries/Actual users vide Officer order dated 13/08/2019. The said decision was taken in its 119th meeting held on 29/06/2019.

(h) In such meeting a decision was taken that no fresh CTE shall be issued and no authorization to new units shall be granted for processing and treatment of H.W. SPL since the installed capacity to fully utilize these hazardous wastes generated in the State on an annual basis and the installed capacity has exceeded 200% of the annual generation of hazardous wastes. Such restriction was imposed by the Board to have a control over utilization, disposal and management of such critical hazardous waste in the State. The said policy finalised by the Board includes establishment of at least 2 units to develop competitiveness and to ensure continuous utilization of hazardous waste and to avoid monopoly of such that the total installed capacity is maintained at about 200% of the generation of H. W. SPL per annum in the State of Odisha to avoid mismanagement of such a critical H.W. The present writ petition is concerned with such aspect of the policy decision.

(i) Pursuant to such policy, the Petitioner applied through RTI in order to ascertain the quantum of H.W. SPL materials generated in the State of Odisha over last three years and the Petitioner could obtain vide Letter dated 19/10/2019 wherein, it was made clear that the total H.W. SPL materials generated in the State for 2016/17, 2017/18, 2018/19 are 31,407.651 TPA, 48,257.64 TPA and 38,752.35 TPA respectively. Out of the aforesaid quantity of H.W. SPL generated in Odisha, the carbon portion is roughly around 40 - 50%. Therefore, the actual HW SPL materials available to be processed by the Petitioner's unit is half of the quantities mentioned above. In reality, around 22,000 TPA was available for the year 2018/19 to be processed by the Petitioner unit i.e. 45% of the unit's total capacity.

(j) While things stood thus, the Petitioner could learn that OSPCB has already given a CTE to another unit Regrow Tanso Pvt. Ltd. at Jharsuguda with reference to the above policy decision. The said unit had entered into an agreement with the Petitioner for using the engineering process as mentioned in the SOP. The said unit has obtained the necessary permission from the Petitioner who is the patent holder before obtaining the CTE for using the engineering process as mentioned in SOP from the competent authority.

(k) It is relevant to mention here that the combined capacity of generating HW SPL two units would be more than 86,000 Mt/year whereas, HW SPL materials generated in the entire State is around 40,000 Mt/year and out of the total generation about 50% is carbon.

Therefore, citing all impediments, the Petitioner wrote a Letter dated 10/09/2020 to the CPCB to standardize its patented process instead of CPCB's SOP. The Petitioner had also prayed for protection of their Intellectual Property right over the patented process. However, the aforesaid letter was not considered by the CPCB.

(l) Subsequently, the Petitioner could learn that OSPCB was in the process of giving more CTE for detoxification of SPL to few new companies and the board meeting was convened on 8/10/2020 for review of the existing policy. Therefore, the Petitioner made a representation on 21/09/2020 requesting both OSPCB and CPCB that while granting permission to new units, the authorities must consider all aspects of the matter including underutilization of capacity of the existing units.

(m) Since the aforesaid representations were not considered by the Board, the Petitioner was constrained to approach this Court in W.P.(C) No. 26407 of 2020. The High Court was pleased to dispose of the said Writ Petition vide order dated 7.10.2020 with the following observations:

> *"..this Court without expressing any opinion on the merit of the case, disposes of the writ petition with a direction that the State Pollution Control Board (OP No. 2) as well as the Central Pollution Control Board (OP No. 3) before taking any decision to review the criteria of existing policy taken in 119 Board Meeting and communicated to the Petitioner vide Annexure- 3, shall take steps for disposal of the representation of the Petitioner under Annexure -9 stated to have been filed*

and pending before them giving opportunity of hearing to the Petitioner."

(n) The aforesaid order was communicated by the Petitioner to Boards and consequent upon that, a personal hearing was accorded to the Petitioner which took place on 26/02/2021. The Petitioner submitted a written note which was duly received, and the Board also provided an opportunity of hearing to the Petitioner.

(o) Pursuant thereto, SPCB relooked into the policy and took a decision vide its Order dated 08/03/2021, the operative portion of which are quoted below:

> *"(ii) Regarding representation and submission made by M/s Green Energy Resources that they have obtained a patent under Patent Act, 1970 from Intellectual Property of India with effect from 22nd September, 2017 for Novel method for detoxification of SPL by controlled heat treatment", the Patent number of this process and name of the Patent holder should be indicated in the SOP developed by CPCB based on the trial run conducted in the premises of M/s Green Energy Resources. To protect the Patent Rights the user of this SOP should take permission from the Patent Holder as per the provision of the Patent Act.*
> *(iii) Since the Board has taken a decision in its 119th meeting held on 29/06/2019 issued vide Office Order No. 8091 did. 13/08/2019 regarding adoption of a policy CTE and Authorisation of Hazardous Waste Cycling industries/actual users considering the total scenario of the environment of the State, the same has to be adhered to by all concerned."*

(p) In the meantime, the Opp. Party No.2, had applied for CTE before Opp. Party No. 1 for establishing a unit for manufacturing of carbonaceous mineral fuel, high energy coke, carbon pellets and carburizers from SPL and used anode butts. Opp. Party No. 1 refused to grant CTE to Opp. Party No. 2 vide Order No. 12560, dated 22/11/2019. Such refusal of CTE was primarily on two accounts viz. a) Incompleteness of Consent to Establish Applications and b) Non Conformance to the Policy guidelines formulated by the Board to regulate consent to establish Hazardous Waste Recycling industries/Actual users in the State. It is further clarified that Opp. Party No. 1 while refusing to grant Consent to Establish had made it clear that a policy guidelines has been issued vide Officer Order Number 8091 dated 13/08/2019 which stipulates that the Board may allow establishment/authorization of actual users/recyclers of Hazardous Waste (H.W.) inside the state up to a capacity of 200% of generation of HW per annum.

(q) Assailing such refusal to accord CTE, Opp. Party No. 2 preferred appeals wherein, it assailed its rejection on incompleteness of Consent to Establish Applications also assailed the policy formulated by the Board limiting the CTE to 200% of the raw materials available in the State for proposed units. The appeals were registered as Appeal No 2A of 2019 and Appeal No. 3W of 2019. The copies of those appeal memos are not available with the Petitioner because the Petitioner was not a party to the said proceeding.

(r) In fact, vide Appeal No.2A of 2019, the Appellant's application for CTE (Consent to Establish), which was rejected by the SPCB has been assailed. The Authority vide its Order dated 25/02/2021, was pleased to adjourn the matter in view of the direction passed by the High Court in W.P.(C) No. 26407 of 2020 filed by the present Petitioner.

(s) Further, vide Order dated 16/03/2021, the Authority framed the moot question as to whether the limit of 200% of waste material to be processed has been exhausted so as to refuse permission either to the appellant or to any new unit for the said purpose. The Authority vide order dated 27.07.2021 has observed taking clue from a memo filed by SPCB that two units have been granted with permission to process the waste material namely, M/s Green Energy Resources at Sambalpur, and M/s Regrow Industries Jharsuguda for reprocessing of 43,200 Tons and 44, 288 Tons per annum respectively. It is further submitted that the capacity of these two processing units is much more than 200% of the waste material available in the State. In the said order, the Appellant - present Opp. Party No. 2 had raised disputes so far as the figures as submitted by the SPCB regarding waste material reprocessing capacity of M/s Green Energy Resources.

(t) Vide order dated 17/08/2021, the Authority took note of the memo filed by the SPCB furnishing the Annual Statement of four units including the Intervener in the State of Odisha. Similarly, vide Order

dated 30/11/2021, the Appellant - present Opp. Party No. 2 raised an objection that although his application for CTE was rejected by the board, but CTE was granted in favour of two other units. The Authority vide order dated 30/11/2021, called for a specific chart showing dates of applications and date of CTE.

(u) The Petitioner was granted CTB, thus, his intervention was necessary for effective adjudication of the dispute. Vide Order dated 28/12/2021, the Authority has sought for clarification of source of raw material for M/s Green Energy Resources. The Authority while observing vide order dated 24.05.2022 the crux of the matter, was of the opinion that restricting the NOC to only two units functioning in the State, does not appear to be justified without absence of any policy decision. The matter was adjourned for further instruction.

(v) The Petitioner is one of the units, in favour of which, authorization has been granted by SPCB. The Petitioner had also filed a writ petition before this Court specifically opposing the grant of NOC to other units on the ground that the Petitioner unit has patented its technology of commercial detoxification process involving hazardous Waste Materials. The Petitioner had also sought for a direction to the SPCB to regulate in such a manner that the existing unit in the field do not face any closure and new proposed units may be granted permission in accordance with the decision taken by the board. Based on the order of disposal of the writ petition filed by the Petitioner, the SPCB has taken a decision, thus, the Petitioner was a

proper party to the appeal especially when the policy decision was also under challenge.

(w) In view of the aforementioned facts and circumstances, the Petitioner filed intervention application bringing all these aspects to the notice of the Appellate Authority, thereby, seeking an opportunity of hearing in the matter in order to assist the Learned Appellate Authority to take a just decision in the matter.

(x) On 23/08/2022, the matter was listed before the Learned Authority. The Id. counsel for the Intervener therein, was notified about listing of the said date well in advance. While the Learned counsel for the Intervener therein, was waiting for an order to be passed on his intervention application, astonishingly, Learned Authority disposed of both the appeals on merit by pronouncing the judgement in the Court itself.

(y) The Ld. Counsel for the Petitioner could realise that the appeal has been dismissed by the Ld. Authority and the order of refusal to grant CTE has been confirmed. However, while dismissing the appeal, the Ld. Authority has issued a direction to Opp. Party No.1 Board, to relook into the guidelines mentioned in the Policy issued by the Board in 119th meeting held on 29/06/2019 to make it more effective keeping in view the interest of both the existing and aspiring units in the field. Further, while dismissing the appeal, the Learned Authority has also dismissed the intervention applications of the

present Petitioner on the ground that since the appeals have been disposed of, there is no need to entertain intervention applications.

(z) The present Petitioner is aggrieved with such order to the extent of rejection of its intervention applications as well as direction to Opp. Party No. 1 to relook into its policy decision taken in 119 meeting held on 29/06/2019, which necessitate filing of the present Writ Petition.

II. PETITIONER'S SUBMISSIONS:

4. Learned counsel for the Petitioner(s) earnestly made the following submissions in support of his contentions:

(a) The intervention application was heard on merit and order was reserved on such intervention application. However, without passing any order further, either allowing such intervention or rejecting such intervention application, the entire appeal was disposed of vide a common order and as a consequence, the intervention application was rejected. Such approach of the Ld. Authority is per se unjustified and unsustainable in law.

(b) Undisputedly, the Petitioner is one of the units, in favour of which, Authorization has been granted by SPCB. The Petitioner had also filed a writ petition before the High Court of Orissa specifically opposing grant of NOC to other units on the ground that the Petitioner Unit has patented its technology of commercial detoxification process involving this critical H. W. SPL. The Petitioner had also sought for a direction to the SPCB to regulate in

such a manner that the existing units in the field do not face any closure and new proposed units may be granted permission in accordance with the decision taken by the board. Based upon the order of disposal of the writ petition filed by the Petitioner, the SPCB has taken a decision thus, the Petitioner was a proper party to the appeal especially when the policy decision was also under challenge. Therefore, without hearing the Petitioner, a decision on the policy issued by the Opp. Party No. 1 ought not to have been passed.

(c) Law is fairly settled that any person, who shall be affected by any order passed, is a necessary party and as such has a right to be heard. Thus, without hearing the Petitioner, if a decision on the policy has been taken, then such decision is required to be interfered with.

(d) While issuing direction to relook into the policy, the Ld. Authority has made an observation that the guideline in its present form as notified by the Board prescribing a limit of 200% of total SPL production for regulating CTE is not good enough to accomplish the desired goal since any interested party like the appellant, after fulfilling all requirements under law can source SPL independently, on their own through open auction, transboundary movement and import which is permissible under other Acts and Rules. In fact, vide such observation, the Learned Authority has, in effect, declared such existing policy not effective and on that score has directed the Board to relook into it. Therefore, when a decision/observation on the

existing policy has been made, the Intervention application ought to have been allowed or at least decided first to ensure opportunity of hearing to the affected party i.e. the present Petitioner.

(e) The Learned Authority has completely ignored the fact that the High Court while disposing of the writ petition had given a specific direction to the Board both CPCB and SPCB to grant opportunity of hearing to the Petitioner before taking any decision to review the criteria of existing policy taken in 119th Board Meeting. In fact, the reason behind passing such an order by this Court was that, the Petitioner had made out a case that they were necessary party to the whole process of policy making because, they are the patent holder and the 1st one to bring such mechanism into operation. As such, passing any order vis-à-vis the policy on H. W. SPL unit, without hearing the Petitioner, would amount to violation of principles of natural justice.

(f) Furthermore, pursuant to the direction of this Court, after granting opportunity of hearing to the Petitioner, the Board had taken a decision and it was duly communicated to the Petitioner on 08/03/2021. Therefore, when a decision was already been taken by the Board pursuant to the direction of this Court, a direction by the Learned Authority for re-agitating those issue, once again, without any reason, is unjustified.

(g) Since the Intervention Application was not allowed, the present Petitioner was not provided with the appeal memo or any of the

pleadings available on record, however, it can be gathered from the order itself that the Board had taken a stand that SPL is a hazardous waste material generated by Aluminium Smelters. There are four such Aluminium Smelters operating in the State. As per the return of 2020-21 their combined generation was 25,656 tons of SPL carbon per annum 200% of such quantity comes to 51, 312 tons. The Board further submitted that two actual users units have been granted with CTE prior to the application of Opp. Party No. 2 with combined recycling capacity of 87,488 tons which far exceeds the total combined generation of all generators. Under these circumstances, CTE to the 3rd unit of Opp. Party No. 2 would not be a viable option.

(h) It was the case of the Opp. Party No. 2 that any person with valid permission from SPCB can participate in auction process and ensure supply of raw materials for his industry. Thus, imposing a restriction in the guise of 200% production of such H.W. is of no significance.

(i) After hearing the parties concerned, the Learned Authority rendered its observation that the policy formulated by the Board coined with an ideal intention to regulate SPL reprocessing industry falls short of being broad based and all encompassing. As per the Learned Authority, restriction of 200% of total generation of SPL as a limit to restrict new aspirants to come up in the Sector, the policy document does not have any legal control on the generators, prohibiting them to adopt an auction route for disposal of SPL. Such observation on

the part of the Learned Authority is not permissible and legally not viable.

(j) The case of the Petitioner in the earlier writ petition was that the Policy notified by the Opp. Party No. 1 in its 119th meeting held on 29/06/2019 is justified because the said policy was issued after taking into consideration all aspects, both legal and practical, hence, the said policy need not to reviewed.

(k) Both CPCB and SPCB are authorities to grant authorisation to set up and rum H. W. SPL material processing units. While granting permission/authorization under Law/Rules, the authorities are required to keep in mind the volume of hazardous wastes likely to be generated in the near future, may be over a specified period of time and whether those wastes are sufficient to cater to the existing units in the State. Undoubtedly, the CPCB and SPCB are competent to bring new policy and/or change and/or amend policies but such policies are to be brought into force keeping in mind the reality.

(l) When the SPCB has taken a specific stand that as per the return of 2020-21 their combined generation was 25,656 tons of SPL carbon per annum 200% of such quantity comes to 51, 312 tons and that two actual users units have been granted with CTE prior to the application of Opp. Party No. 2 with combined recycling capacity of 87,488 tons which far exceeds the total combined generation of all generators and CTE to the 3rd unit of Opp. Party No. 2 would not be

a viable option, then forcing the Board to relook into the policy, is unreasonable.

III. SUBMISSIONS OF OPPOSITE PARTY NO.1:

5. Per *contra*, learned counsel for the Opp. Party No.1/ State intently made the following submissions:

(a) The present Writ Petitions are not maintainable as alternative statutory remedy of filing appeal before the National Green Tribunal is available to the petitioner under Section 16(a) and (f) of the National Green Tribunal Act, 2010.

(b) The Writ, petition is also premature in nature in as much as the petitioner challenges the judgment of the learned Appellate Authority, wherein the O.P Board has been directed to take a relook at the guidelines to make it more effective.

(c) Since the learned Appellate Authority issued direction as above, which in no way affects the petitioner adversely at this stage, the intervention applications of the petitioner were rightly rejected. It is submitted that the petitioner has no locus-standi to challenge the judgment of the learned Appellate Authority simply on the apprehension that upon reconsideration of the guidelines pursuant to the judgment the O.P Board may revise the same and may adversely affect the petitioner.

(d) It is clarified that the O.P No.2, M/s Regen Materials had applied for Consent to Establish (CTE) to the O.P Board to set up a reprocessing facility for Carbon Part of Spent Pot Lining (SPL) in the State of

Odisha. As the O.P Board has already granted CTE to two such units and the capacity of such units already exceeds the 200% of authorized generation, so the CTE was refused vide letter No. 12560 dated 22.11.2019 as per policy decision taken by the O.P Board. Being dissatisfied with the refusal order of the O.P Board, the entrepreneur appealed before the learned Appellate Authority and the impugned judgment was passed upholding the refusal consent but directing for a relook at the guidelines. Thus it is only the O.P No.2 who has locus to challenge the judgment.

(e) It was open to the petitioner to urge the grounds of non-application of judicial mind, violation of principles of natural justice etc. by filing appeal before the learned NGT. It may be noted that the petitioner has filed the writ petition on dated 01.11.2022, long after the time of 30 days stipulated for filing of statutory appeal before the learned NGT.

(f) There are four Aluminium Smelters namely M/s Hirakud Smelter Plant (M/s Hindalco Industries Limited), Sambalpur, M/s Aditya Aluminum (Smelter Plant) Sambalpur, M/s Vedanta Limited (Smelter and CPP), Jharsuguda and M/s National Aluminium Company Ltd. (Smelter Plant), Angul. Spent Pot Lining (SPL) is generated from such smelter units which is categorized as hazardous waste under Hazardous and Other Transboundary Waste (Management Movement) Rules, and 2016 (schedule -I, Stream-11.2).

The O.P Board has granted authorization to these units for authorized generation of a total of 75,200 Ton per Annum.

(g) Disposal of such waste (SPL) was due to on-going research and issue development of technology, potential use by reprocessing carbon part of SPL was possible. It is pointed out that SPL consists of mostly carbon part and Refractory part. As the technology was developed for reprocessing and utilization of the carbon part of SPL, all Smelters have been advised to segregate Carbon and Refractory Parts. During such segregation activities, Mixed Fines are also being generated which is now being used in the Co-processing in Cement Kilns. No Process technology has yet been developed for reprocessing and utilization of the Refractory Part of SPL.

IV. COURT'S REASONING AND ANALYSIS:

6. The State and its functionaries and authorities are well equipped with necessary powers to put reasonable restriction to regulate a particular field of business activity in larger public interest and the same is permissible under Article 19(1)(g) of the Constitution of India.

7. The Learned Authority at Paragraph No.8, have seemed to have a purported justification by stating that the policy does not have legal control on the generators. The Learned Authority has proceeded on an assumption that what if in an auction proceeding, any highest bidder, even from outside the State, can source the raw materials from the State Generators and in such scenario the two actual users

in the State having CTE/CTO may not get the raw materials for their use. Further, an aspiring unit accorded with required permission has no restriction to source such raw materials from outside the state through open auction and from a foreign country by way of import. Such reasoning based on assumption cannot be construed as basis to direct the Board to relook into the policy.

8. Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31 of the Air (Prevention And Control Of Pollution) Act, 1981 gives the power to the Appellate Authority to interfere with any condition imposed by the State Board on the ground of unreasonableness. However, in the present case, the conditions enshrined in the policy in question are not hit by unreasonableness rather they are just and proper. Moreover, when the appeal of the Opp. Party No. 2 was dismissed and the order passed by the Board refusing to grant CTE was found to be correct, there was no occasion on the part of the Ld. Authority to interfere further into the policy, which was never the subject matter of concerned in both the appeals.

9. The Learned Authority ought to have taken note of the fact that Opp. Party No. 2 Appellant therein, had assailed his refusal to grant of CTE and one of the grounds taken in the appeal was that rejection of CTE on the ground of the restriction imposed in such policy is bad in law. When the refusal of CTE of Opp. Party No. 2 was found to be just and proper on the ground of incomplete information, therefore, there was no occasion further on the part of the Ld. Authority to dig

into the legality and justifiability of the policy without involving the affected parties to the proceeding.

10. The Supreme Court in ***Udit Narain Singh Malpaharia v. Board of Revenue***[1], while explaining the distinction between necessary party, proper party and proforma party has held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice.

11. However, it is pertinent to mention here that the cancellation of the impugned policy decision was made taking into account various factors impeding proper implementation as regards the consent administration and authorization of the Board as deliberated in the Board meeting. It is the SOP of CPCB which regulates the utilization of SPL generated from primary aluminium smelting industries and not the cancelled policy of the Board which was on a different aspect. The petitioner seems aggrieved because the cancellation of the policy does away with the 200% limit which resulted in the petitioner and another unit to operate without any further competition. But such restriction does overlook several other variables and situations in which aspiring industries will be deprived of entering into the sector.

12. It is pointed out that it is not the responsibility of the Board to ensure smooth operation of petitioner's business and guarantee source of raw material by restricting consents to other units of the state and

[1] AIR 1965 SC 786

outside the state. The Board as well as the CPCB having ensured that the patent right of the petitioner is not compromised and the SOP of CPCB being comprehensive regarding utilization of SPL, the petitioner cannot have any grievance as regards the cancellation of the earlier policy decision of the Board. However, in case the petitioner feels aggrieved of the same, it holds the liberty to raise the matter in the appropriate forum before approaching this Court.

13. Accordingly, the directions/orders passed at Sl. No. (ii) and (iii) of Judgement dated 23/08/2022 passed by the Appellate Authority, constituted under Water (PCP) Act, 1974 and Air (PCP) Act, 1981 in Appeal No.3W of 2019 and Appeal No.2A of 2019 are quashed owing to the fact that the said order has been passed in violation of the principles of natural justice. Accordingly, let the matter be remitted back to the Appellate Authority to rehear the same by affording an opportunity of hearing to the parties and pass a reasoned order.

14. Accordingly, both the Writ Petitions are disposed of.

15. Interim order dated 29.11.2022 passed in I.A. No.14978 of 2022 arising out of W.P.(C) No.29176 of 2022 stands vacated.

Sd/-Dr. S.K. Panigrahi, J.

Orissa High Court, Cuttack,
Dated the 10th Nov., 2023/ *True copy*

AR-cum-Sr. Secretary