

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

.....

ORIGINAL APPLICATION No. 110/2015/EZ

IN THE MATTER OF:

Joydeep Mukherjee,
Son of Late Sailendranath Mukherjee,
R/o 292, Roybazar, PO: Hooghly,
District Hooghly, West Bengal,
PIN : 712103

.....Applicant

V e r s u s

1. The Pollution Control Board,
Jharkhand service through the
Chairman, office at HEC, Dhurwa,
Ranchi-834004
Jharkhand
2. The Chief Secretary,
Government of Jharkhand,
Project Building, 1st Floor,
Ranchi- 834004, Jharkhand.

.....Respondents

COUNSEL FOR APPLICANT:

In person
With Mrs. Leena Mukherjee, Advocate

COUNSEL FOR RESPONDENTS:

Mr. Surendra Kumar, Advocate, Respondent No.1

Mr. Binod Kumar Gupta, Advocate, Respondent No. 2

PRESENT:

Hon'ble Mr. S.P.Wangdi, Judicial Member

Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

Reserved on : 02.02.2017
Pronounced on : 15.02.2017

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

JUDGEMENT

Prof. (Dr) P.C. Mishra (EXPERT MEMBER)

The application was filed by Mr. Joydeep Mukherjee of Roybazar in Hooghly, West Bengal, who claims to be a public spirited citizen, an advocate of the Supreme Court of India, Secretary of All India Legal Aid Forum and All India Bar Association and also as a Member of International Council of Jurists, alleging illegal operation of brick fields in the State of Jharkhand without obtaining consent from the State Pollution Control Board, Jharkhand. The applicant further alleged that although he informed the Chairman, Pollution Control Board, Jharkhand as well as the Chief Secretary, Govt. of Jharkhand about the illegal operation of 2000 brickfields in different districts of the State, some of these even besides the rivers, leading to ecological imbalance, the local Administration has not taken any step to stop the illegal activities. Against the alleged 2000 illegal brick fields running in the State, a list of 20

such brick fields operating illegally in the State is annexed to the OA. Considering the environmental issue raised by the applicant to be substantial we directed the State Pollution Control Board, Jharkhand, the respondent No. 1 and the Chief Secretary, Govt. of Jharkhand, the respondent No. 2, to identify the brickfields operating illegally in the State and to file action taken report in terms of the statutory provisions against such illegally operating units.

2. After granting several opportunities to the PCB and the State Government for compliance to our orders dated 1.12.2015, 11.1.2016, 11.2.2016 and 16.3.2016, 26.4.2016 and 17.5.2016, the Chief Secretary as well as the PCB filed the status report on 1st June 2016. As per the affidavit filed by the Jharkhand PCB, brick kilns which did not possess Environmental Clearance (EC) from the State Environmental Impact Assessment Authority (SEIAA) and consent to establish and consent to operate from the State PCB have been directed to be closed. We found that certain information was not provided in the affidavit of the Chief Secretary for which further opportunity was granted to the respondent No 2 to file

additional affidavit. It was also decided by us that those brick fields, which were operating their units without obtaining Environmental Clearance and without having a valid consent to establish and consent to operate would be liable to pay environmental compensation. Finally, when the affidavits filed by both the Respondents No.1 and 2 were examined we observed certain inconsistencies and the Respondents were directed to reconcile the same in order to enable us to pass appropriate orders.

3. Finally, when both the respondents filed their affidavits supposed to be after reconciliation, we found that the affidavit filed by the Chief Secretary to be clear and to the point i.e., it has met the queries raised by us. Therefore, we have accepted the final affidavit of the Chief Secretary on the details of the illegal brick kilns operating without EC and Consent to operate for which they have been directed to be closed and those which have been allowed for being compliant as indicated in the summary sheets for 24 districts of the State vide annexure-I at page 300 of the Affidavit , i.e.,

i)	No. Of brick kilns in the State;	945
ii)	No. Of brick kilns closed for non-compliance;	483
iii)	No of brick fields allowed to operate for having EC and consent to establish & consent to operate;	317
iv)	No of brick kilns against whom action is in progress;	503

4. Thus, out of 945 brick kilns identified by the State respondent, only 317 have obtained necessary EC from SEIAA and consent to Operate from the PCB and the rest, being non-compliant, were directed to be closed or are in the process of closure.

5. Before we consider and decide on the imposition of Environmental Compensation against the brick kilns owners for operating their respective units without obtaining consent from State PCB as well as Environmental Clearance from the State Level Environmental Impact Assessment Authority, it may be relevant to discuss the provisions under the related Environmental laws, viz., the Water (Prevention & Control of Pollution) Act,1974 and the Air (Prevention & Control of Pollution) Act,1981 and what are the legal

requirements for the operation of brick kilns to be fulfilled by the project proponent.

6. Sub-section 1 of Section 21 of the (Air Prevention & Control of Pollution) Act, 1981, provides that no person shall establish or operate any industrial plant in an air pollution control area without the previous consent of the concerned State Pollution Control Board.

Section 21 of the act reads as under :-

“21. Restrictions on use of certain industrial plants.

(1) [Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area :

Provided that a person operating any industrial plant in any air pollution control area, immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act, 1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed :

Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, {*** } such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, [and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse consent:]

[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled: Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely –

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; .and

(v) such other conditions as the State Board, may specify in this behalf, and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf

Provided that in the case of a person operating any industrial plant *** in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months :

Provided further that-

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or

(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-created except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other

person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.”

7. So also Section 25 of the Water (Prevention & Control of Pollution) Act, 1974, provides restrictions for establishing or taking any steps for establishing any industry, operation or process which is likely to discharge sewage or trade effluents into a stream or well or sewer or on land without any consent. Section 25 of the Water (Prevention & Control of Pollution) Act, 1974, reads as follows :-

“25. Restrictions on new outlets and new discharges.- [(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, -

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter, in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in Such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

[(4) The State Board may –

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being –

(i) in case referred to in Cls. (a) and (b) of sub-section (1) of Sec. 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process; or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such registers shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and Secs. 27 and 30, -

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement; .

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent; substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be

deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

8. It has not been disputed before us that the brick kilns installed and operated are not in air pollution control area or that a brick kiln is not an industrial plant under Section 21 of the Air Act, 1981. The Central Pollution Control Board has already identified brick kiln units under ‘orange’ category in terms of pollution potential and therefore, it is mandatory that the owner/operator of the brick kiln is legally bound to take consent to establish and also consent to operate as prescribed under the Water Act, 1974 and the Air Act, 1981.

9. The requirement for obtaining Environmental Clearance (EC) for excavation of Brick Earth for manufacturing bricks even from an area of less than 5 ha came into being after the notification dated 9th September, 2013 and dated 15th January, 2016 issued by the MOEF & CC in pursuance of the order of the Hon’ble Supreme Court dated 27.2.2012 in I.A. Nos. 12-13 of 2011 in SLP (C) No. 19628-19629 of 2009 in the matter of **Deepak etc.-vs- State of Haryana & Ors.**

10. It is, therefore, clear that the excavating Brick Earth for manufacturing bricks without obtaining EC is a violation of the provisions of EIA notification, 2006 and operating the brick kiln without obtaining consent from the State Pollution Control Board is violation of the Water Act, 1974 and the Air Act, 1981 and therefore these non-complaint units have caused environmental degradation for which they are liable to compensate the loss applying the principle of 'polluter pay'.

11. In this context it may be relevant to state that several cases of violation of the aforesaid provisions of the Air Act, 1981 and the Water Act, 1974 as also EIA notification referred to above have been brought to our notice from different States, viz., West Bengal, Bihar, Odisha, Assam etc. under our jurisdiction. So far as the State of West Bengal is concerned, several OAs had been filed by the same applicant, Shri Joydeep Mukherjee raising the question of illegal operation of brick kilns in different districts. After issuing show causes and after obtaining the affidavits from the defaulting units, this Tribunal categorised those brick

fields into four categories, viz. Category-A, B, C and D in OA 02/2015/EZ (**Joydeep Mukherjee –vs- West Bengal Pollution Control Board & Ors**) vide order dated 30.10.2015, the relevant portion of which is quoted below :-

“ On scrutiny of the affidavits filed by respective added respondents in reply to the show cause notice issued to them on the question of imposition of Penalty for illegally operating their respective Brick Kilns without obtaining consent from Pollution Control Board thereby contributing Environmental Pollution and land degradation, it appears that there are four types of cases, viz.

Category-A : Those brick fields who have valid consent to operate till date or for longer date, still closure order was issued against them for no fault of them.

Category-B :

Those brick fields who have valid consent to operate upto December 2014 and they applied for renewal but their applications are pending. In the meantime, closure notice has been issued against these brick fields.

Category-C :

Those brick fields who had earlier obtained consent to establish and consent to operate from the Pollution Control Board but on expiry of the term, they never renewed the consent to operate and running their units illegally without any permission.

Category-D: Those brick fields who never obtained consent to establish nor consent to operate from the PCB but running their unit illegally all along.”

13. Since brick kilns falling under categories A and B were very limited, main thrust was given on large number of brick fields falling under categories C and D and accordingly, it was decided as follows :-

“Having gone through the record, we find that the applicants in the Table-I had earlier obtained consent to operate from PCB but after expiry of the validity period, they never obtained or renewed their consent to operate

certificate. So far as respondents named in Table 2 are concerned, they had never obtained any consent to establish or consent to operate from PCB and have been operating their business illegally and thereby polluting the environment. According to our previous decisions on the subject, the units named in Table 1 fall in **category C** whereas the units named in Table 2 fall in **category D**. Both these categories have breached the environmental law in terms of Air Act 1981, the Water Act 1974 and have contributed to environmental pollution and environmental degradation. Moreover, there is no mention in the reply about the income, expenditure and stock in hand, payment due etc. and economic status of the individual respondents. Therefore, we impose a penalty of **Rs. 1.00 lakh** on each of the owners of the units falling in category C (Table-I) and **Rs. 1.5 lakh** on each of the owners of units falling under category D, which shall be deposited by the respective respondents with the State Pollution Control Board within four weeks. PCB will consider applications for renewal of consent as per guidelines issued by the State of West Bengal under Memo No. 1251 dt. 29.5.2015 subject to payment of the penalty amount as aforesaid. Immediately after the deposit of penalty amount by the respondents, the PCB will intimate the concerned DL & LRO so that the DL & LRO may proceed with considering the pending application seeking consent to operate filed by the respective applicants. The penalty amount be kept in a separate account by the PCB which will be utilised for upgradation of the environment of the locality concerned for which appropriate orders will be passed in due course.

We have fixed the penalty for the respective applicants by applying 'polluter pay' principle and having regard to judgement of the Apex Court passed in the case of **Research Foundation for Science (18) –vs- UOI & Ors, reported in 2005 (13) SCC 186 (para 30)**, as they are liable to pay penalty/compensation for polluting the locality by illegally operating the brick field without consent to establish or consent to operate.”

13. Subsequently also several cases of such defaulting brick fields were decided in a number of OAs and MAs arising thereof, viz. M.A.No. 187/2015/EZ arising out of O.A 41/2014 etc. vide order dated 10.10.2015, MA 690/2015/EZ arising out of OA 39/2014/EZ dated 8.2.2016 and **OA 2/2015/EZ and other OAs along with group of cases viz. M.A. No. 634/2015/EZ and by an**

order dated 29.3.2016, this Bench had passed the following order :-

“All these OAs have arisen out of Applications filed before us by the applicant stating that a large number of brick kilns are in operation illegally in different districts of the State of West Bengal without obtaining requisite consent to operate as required under the law. On the directions issued by us upon the respondent authorities, lists of such persons were furnished and accordingly, those persons were impleaded as parties to these proceedings and notices were issued against them.

Those who responded to the notices admitted to having run the brick kilns without necessary consent to operate. After considering their responses, they were categorized primarily under two categories viz. (1) those, who had operated without any consent to operate at all, and (2) those who had consent to operate initially but did not renew those after the terms had expired. These categories were identified as **D and C categories** respectively. As the data base of income, economic status and other particulars of the erring brick kilns were not available, reasonable penalties @ **Rs.1.5 lakhs** for **category D i.e.**, those who are operating without at all having any consent to operate and, **Rs. 1 lakh** for **category-C**, i.e., those who had consent to operate initially but did not renew after the terms had expired was fixed.

A large number of Miscellaneous Applications and affidavits have emanated from the original applications and upon consideration of the facts averred in the MAs and affidavits, we could identify several categories of cases as enumerated below viz.:-

- (1) Those who have not at all responded to our notice;
- (2) Those who have filed their responses but have failed to appear even after several adjournments.
- (3) Those who have responded to our notice and had volunteered to pay the penalty as per **category 'C' and 'D'**;
- (4) Those who had agreed to pay the penalty but, despite our permitting them to do so, could not pay within the time stipulated and are thus seeking extension of time to do so;
- (5) Those seeking conversion **from D to C** for having been able to trace out the consents to operate, which they had possessed when they had started the brick kilns, but were unable to produce when their cases were decided;
- (6) Those who received the show cause notice recently but could not file their reply affidavit but are willing to pay the penalty.

(7) Those who are found to be operating despite order of closure passed by us on the report submitted by the concerned S.Ps. and DL & LROs of the concerned districts.

(8) Those who have prayed for correction of name of the brick kiln or respondent Number wrongly recorded in our orders.

In consideration of the importance of these matters, the Hon'ble Chairperson of the National Green Tribunal, Principal Bench, has deemed it fit and necessary to constitute a larger bench to be headed by his lordship

The above respondents, who are willing to pay the penalty are at liberty to approach the concerned DL&LROs and deposit the penalty amounts of Rs. 1.5 lakh or Rs. 1.00 lakh in the respective Regional Office of the State PCB under category D or category C respectively in terms of our previous orders subject to the satisfaction of the PCB or its delegates i.e. DL & LROs.....

We make it very clear that pendency of the matter before us shall not be considered as an embargo upon the WB State PCB or its delegates in considering and disposing of the applications filed by any person for grant of consent to operate including the present applicants, in accordance with law, subject to deposit of penalty amount imposed by us, if any.

State PCB henceforth shall dispose of all the pending applications for consent to operate within a period of 30 days from the date of this order.

In the event of the PCB requiring any clarification on any matter, it shall be open to them to approach and seek clarification from us.....”

14. Subsequent thereto a Full Bench presided over by the Hon'ble Chairperson considered the matter and approved the aforesaid order passed on 29.3.2016 vide order dated 16.4.2016 issued in a group case heading M.A. No. 850/2015/EZ. The relevant portion of the order of the Full Bench is quoted below :-

“ In all these cases, the Id. counsel appearing for the parties commonly concede before us that the controversy arising in these cases is squarely covered by the order passed by the Tribunal dated 29th March, 2016 in OA 2/2015/EZ, OA 3/2015/EZ, OA 39/2014/EZ, OA 41/2014/EZ, OA 42/2014/EZ and OA 48/2015/EZ. They further submit that despite order of the Tribunal some of the parties could not pay the compensation. Furthermore, even where compensation is intended to be paid, the Board is not accepting the compensation because of lack of specific direction. They also raise the issue that in a number of cases where the compensations have been paid, their

applications for consent to operate have not been disposed of in accordance with law.

Having heard the Id. counsel appearing for the parties and in view of commonly conceded position, we pass the following directions :

- a) All these cases would be covered by the terms and conditions stated in the order dt. 29.3.2016 stated (supra).
- b) The parties, who have not yet deposited the environmental compensation/penalty in terms of the order passed by this Tribunal, shall pay the same positively within two weeks from today.
- c) The Board shall not refuse receiving of such compensation from the brick kiln owners, who are covered under the orders of this Tribunal i.e. present order or the order dt. 29.3.2016 passed in OA 2/2015/EZ, OA 3/2015/EZ, OA 39/2014/EZ, OA 41/2014/EZ, OA 42/2014/EZ and OA 48/2015/EZ .
- d) The Board will receive the compensation. The compensation so received shall be maintained in a separate head of account and shall be spent for improvement of the environment and ecology of the concerned areas of the districts subject to the direction of the Tribunal. The Board shall submit a complete comprehensive plan for improvement and restoration of environment and ecology of the areas falling in different districts of West Bengal. Head of Accounts would be maintained district-wise.
- e) The applicants who have paid the compensation or who may pay the compensation within two weeks from today, their applications for consent to operate shall be dealt with by the Board as expeditiously as possible and in any case not later than six weeks from today, in accordance with law.
- f) The brick fields who have consent to operate in force will also be allowed to operate subject to verification of the documents by the Board.

This common order disposed of all the above-noted cases. No order as to costs.

It is made clear that we confirm the order passed on 29.3.2016 in OA 2/2015/EZ, OA 3/2015/EZ, OA 39/2014/EZ, OA 41/2014/EZ, OA 42/2014/EZ and OA 48/2015/EZ by the Division Bench and the said order shall be treated as being approved by this larger Bench.

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Ld. counsel appearing State PCB and State respondents had certain difficulties and wanted the order to be clarified so as to enable the Board to take effective and expeditious action. We clarify as follows :

- I) All cases where show cause notices have been issued by the Tribunal to the Brick Kiln owners, irrespective of the time when those were issued, the Pollution Control Board shall dispose of all their applications for consent to Establish and Consent to operate in accordance with law unhindered by any proceeding pending before us.
- II) Board will accept environmental compensation of Rs. 1.00 lakh or Rs. 1.5 lakh, as the case may be, depending on the categories under which the brick field falls irrespective of the fact that whether they were added as party respondent or parties in any lis, pending or decided by the Tribunal."

15. Following this decision, such illegal brick kilns operating in the States of Odisha, Bihar Assam,

Meghalaya, etc. we directed that an environmental compensation of Rs. 0.1 lakh falling under C category and Rs.1.5 lakh for units under category D be imposed on the non-compliant Brick Kiln units. We have fixed the environmental compensation on the illegal brick kiln units by apply 'polluter pay' principle and in terms of the judgements of the Apex Court passed in the case of **Research Foundation for Science (18) –vs- UOI & Ors, reported in 2005 (13) SCC 186 (para 30), Indian Council for Environ-legal Action –vs- UOI, (1996) 3 SCC 212, Karnataka Industrial Area Development Board –vs- C.Kenchappa (2006) 6 SCC 37, M.C.Mehta –vs- UOI & Ors (2006) 3 SCC and Manoj Mishra –vs- UOI & Ors, NGT Judgement dated 22.7.2013.**

16. Applying the same principle and following the precedents, we, therefore, issue the following directions :-

- i) All the 317 brick kiln units which have obtained Environmental Clearance from SEIAA for Brick Earth mining and have also obtained consent to establish and consent to operate as per the list annexed with the affidavit of the Chief Secretary

shall be allowed to operate by the Board till the validity of the consent to operate exists.

- ii) Against all other brick kiln units, which have been directed to be closed or in the process of issuing such closure order due to absence of EC, consent to establish and consent to operate, an environmental compensation of Rs. 1.5 lakh and Rs.1.00 lakh, as the case may be, depending upon the category under which they fall, shall be imposed by the State Pollution Control Board and such environmental compensation shall be deposited by the non-compliant units by demand draft either with the State PCB's office or in the Regional offices of the Board within six weeks of issuance of such letter by the PCB.
- iii) The PCB shall consider the applications of such non-compliant units for grant of consent to establish/consent to operate only after depositing the environmental compensation subject to grant of EC by the SEIAA.
- iv) It is left open to the State PCB to extend the period of six weeks for deposit of environmental compensation in appropriate cases on consideration

of the merit of each application to be filed by the non-compliant units for such extension.

- v) The environmental compensation so collected shall be deposited in a special account of the PCB and the PCB shall file a compliance report after three months i.e., on 15th May 2017 in the Registry on the status of the brick kiln units in the State as well as total amount of environmental compensation collected from the non-compliant units which may be used for environmental upgradation in areas with low human development index in the State for which separate order will be passed.
- vi) The District Magistrates and Superintendents of Police of the concerned district in the State of Jharkhand shall ensure that this order is strictly complied with.

19. With these directions, the OA stands disposed of.

20. No order as to costs.

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Justice S.P. Wangdi, JM

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

Kolkata

Dated : 15TH February, 2017