

Item Nos. 02&03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 253/2021
With Execution Application No. 39/2021

Jhammanlal Gautam

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 08.07.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Rohan Thawani, Advocate

Respondent: Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB

ORDER

1. This order will deal with the OA as well as the EA which is incidental to the OA. In O.A, grievance is against failure of statutory regulators to control air pollution caused by illegal operation of brick kilns in violation of environmental norms in Aligarh District in Uttar Pradesh. Violations include non compliance of Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules, 2012. Resultant pollution is adversely affecting the public health and the environment. It is also the case of the applicant that many brick kilns are operating in small area without requisite *inter-se* distance. Requisite consents under the Air (Prevention and Control of Pollution) Act, 1981 have not been granted in many cases. The technology used is FCBTK, which is outdated and is

required to be upgraded as per statutory orders of CPCB under Section 18 of the Air Act, 1981 vide letter dated 27.06.2017. Location of brick kiln is close to the habitation, without following the laid down siting criteria. Prohibited fuel like spent organic, solvent, oily residue, pet coke, filter press cake, plastic rubber, leather waste and other hazardous wastes is being used. Directions of MoEF&CC and CPCB requiring shifting to Zig-Zag Technology has not been followed nor efforts have been made to explore PNG.

2. Further case of the applicant is that a survey was conducted in the year 2014 by the State PCB and out of 350 brick kilns operating in UP, 187 were found operating without EC/consent. CPCB issued directions under Section 18 of the Air Act, 1981 vide letter dated 27.06.2017 for control of pollution by brick kilns by the State PCBs *inter-alia* by converting to Zig-Zag Technology. Further direction was issued on the subject by the CPCB on 30.09.2017 and on 25.06.2019. However, the State PCB failed to enforce the said directions and has been granting consents/EC or allowing brick kilns to operate without consent/EC, ignoring the carrying capacity and deadly pollution. As per report of the UPPCB dated 19.08.2019, 230 out of 492 brick kilns are operating in UP without consent/EC.

3. It is further stated that vide order dated 06.02.2020 in *O.A. No. 1088/2018, Dinesh Chahal v. Union of India & Ors.*, this Tribunal issued direction for control and regulation of the polluting brick kilns in the NCR. Presently, air quality in the area is beyond norms. Further reference has been made to order of this Tribunal dated 17.02.2021 in *O.A. No. 1016/2019, Utkarsh Panwar v. CPCB & Ors.* restricting operation of brick kilns in NCR only to months when air quality is within norms and by

following siting criteria as well as keeping in mind the carrying capacity. There is further study by the State PCB on 26.07.2021 that 226 out of 536 brick kilns were illegal. 50-60 brick kilns are operating within 4 km and more than 100 are operating within radius of 3 km in Village Kodiganj and Gangiri. Many are close to the densely populated area. Reference has also been made to order of this Tribunal dated 12.08.2021 in O.A. No. 93/2021, *Mukesh Kumar Aggarwal v. Central Pollution Control Board & Anr.* on the subject of regulation and control of brick kilns in Mathura District.

4. Considering that unregulated brick kilns have great potential for pollution and consequential adverse health impact when Air Quality Index (AQI) in Aligarh District is beyond norms, the Tribunal held that study of assimilative air capacity in the area is required and compliance of environmental norms in functioning of brick kilns needs to be ensured to enforce right to clean environment. The Tribunal noted the health impact of air pollution from the table quoted in *Arjun Gopal & Ors. v. UOI & Ors, (2017) 1 SCC 412* as follows:-

<i>AQI</i>	<i>Associated Health Impacts</i>
<i>Good (0-50)</i>	<i>Minimal impact.</i>
<i>Satisfactory (51-100)</i>	<i>May cause minor breathing discomfort to sensitive people.</i>
<i>Moderately polluted (101-200)</i>	<i>May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.</i>
<i>Poor (201-300)</i>	<i>May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.</i>
<i>Very Poor (301-400)</i>	<i>May cause respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.</i>
<i>Severe May (401-500)</i>	<i>May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.</i>

5. The Tribunal referred to earlier orders dealing with prohibiting/regulating pollution caused by brick kilns in the light of data showing huge contribution to air pollution by such activities and constituted a four member joint committee as follows:-

“

13. We also constitute a four Member Joint Committee comprising CPCB (represented by an officer not below the rank of Additional Director), Member Secretary, SEIAA, UP, Member Secretary, State PCB and District Magistrate, Aligarh to visit the site and study the available data of air quality and location of brick kilns and ascertain the number of kilns which can be ascertained by the carrying capacity of the area in terms of air quality. The Committee may also interact with the stakeholders, including the inhabitants and the brick kilns in question. The joint Committee may also verify the compliance status by the brick kilns in terms of requisite EC/consent and compliance of consent conditions as well as siting criteria. Further, it may be ascertained whether there are monitoring facilities for monitoring emissions and if not, what is mechanism to ensure that consents conditions are being complied. State PCB will be the nodal agency for coordination and compliance. The meeting of the Committee may be held within 15 days. The Committee may also keep in mind earlier studies, including those in orders mentioned above. The report may be furnished to the Tribunal within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF. The report may also be uploaded on the website of the CPCB so that any aggrieved person will be at liberty to file their response.”

6. Accordingly, report dated 19.05.2022 has been filed by the State PCB after inspection of brick kilns, acknowledging the violations and mentioning the action taken as follows:-

“4.

As per report submitted by the Regional Officer, U.P. Pollution Control Board, Aligarh, total 555 brick kilns have been identified during survey in district Aligarh and the following action has been initiated against the defaulters brick kilns situated in district Aligarh:

- i- Total closure orders issued against defaulter brick kilns for operating without valid CTO:- 234*
- ii- Total number of notices issued les 24(I) Air (Prevention and Control of Pollution) Act, 1981 by Board for*

revocation of consent due to non compliance of CTO conditions:- 315

iii- Board has also initiated prosecution and imposition of Environmental Compensation against 60 defaulter brick kilns found operating in violation of prevailing closure order till date. The details are as below:-

*a- **Prosecution:-** During survey by the committee till date, it was found that 60 brick kilns were operating in violation to the closure order issued against them. The complaints have been filed in the designated court against 13 defaulter brick kilns and its responsible persons and the process has been initiated for filing the complaint against the remaining 47 defaulter brick kilns. The details is enclosed as **Annexure-IV***

*b- **Environmental Compensation:-** Besides filing of prosecution against 60 defaulter brick kilns, Board has also initiated imposing Environmental Compensation against these brick kilns. Till date Board has initiated imposition of total amount of Rs. 1,15,24,500/-as Environmental Compensation against 20 defaulter brick kilns and imposition of Environmental Compensation against remaining 40 brick kilns is in process. The details is enclosed as **Annexure-V.** ”*

7. From the above, it is seen that closure order has been passed against 234 brick kilns operating without valid CTO, notices have been issued to 315 brick kilns for violation the consent conditions and proceedings have been initiated for compensation against 60 brick kilns. This shows alarming state of affairs and rampant violation of Rule of Law which have remained unchecked till orders of this Tribunal which is very unfortunate. We hope the statutory regulators will improve their working in the interest of Rule of Law for protection of environment, public health to prevent rampant violations of such nature even without waiting for intervention by this Tribunal.

8. While some action has been taken as shown above, much remains to be taken. Even after finding violation of consent conditions, the State PCB has not closed such units. It has merely issued notice. We hope that

if violation of consent conditions is continuing, the State PCB must pass further appropriate orders, including closure and recovery of compensation for the past violations. Further, it is necessary to ensure that brick kilns are allowed only if compatible with the assimilating air quality and compliance with the consent conditions. Frequency of verifications may have to be suitably increased in a credible way. There has to be a strong mechanism to continuously verify contribution of air pollution by the brick kilns so as to ensure that the number of brick kilns is be suitably reduced. Compliance of siting norms and inter-se distance is required.

9. Our attention has been drawn to Notification dated 22.02.2022 issued by the MoEF&CC on the issue of measures to be adopted by the brick kilns on the subject of stack heights and technology. Our attention has also been drawn to the order of the Hon'ble Supreme Court dated 08.04.2022 in *Civil Appeal Diary No.- 18213/2021, NCR Brick Kiln Association Vs Central Pollution Control Board & Ors., inter-alia* as follows:-

“The permission to operate will be subject to the following conditions:

(1) The production will be permitted only subject to the units complying with notification dated 22.02.2022. For the sake of clarity, we quote the same:

**MINISTRY OF ENVIRONMENT, FOREST AND
CLIMATE CHANGE NOTIFICATION New Delhi, the
22nd February, 2022**

G.S.R.143(E).—In exercise of the powers conferred by sections 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby makes the following rules further to amend the Environment (Protection) Rules, 1986, namely:—

1. Short Title and commencement: -

- (1) These rules may be called the Environment (Protection) Amendment Rules, 2022.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Environment (Protection) Rules, 1986, in the SCHEDULE-I, for entry at Sl. No. 74, the following entry shall be substituted, namely: -

"74	Brick Kilns	Particulate matter in stack emission	250 mg/Nm³
		Minimum stack height (Vertical Shaft Brick Kilns)	
		-Kiln capacity less than 30,000 bricks per day	14 m (at least 7.5m from loading platform)
		-Kiln capacity equal or more than 30,000 bricks per day	16 m (at least 8.5m from loading platform)
		Minimum stack height (Other than Vertical Shaft Brick Kilns)	
		-Kiln capacity less than 30,000 bricks per day	24 m
		-Kiln capacity equal or more than 30,000 bricks per day	27 m

Notes:

1. All new brick kilns shall be allowed only with zig-zag technology or vertical shaft or use of Piped Natural Gas as fuel in brick making and shall comply to these standards as stipulated in this notification.

2. The existing brick kilns which are not following zig-zag technology or vertical shaft or use Piped Natural Gas as fuel in brick making shall be converted to zig-zag technology or vertical shaft or use Piped Natural Gas as fuel in brick making within a period of (a) one year in case of kilns located within ten kilometre radius of nonattainment cities as defined by Central Pollution Control Board (b) two years for other areas. Further, in cases where Central Pollution Control Board/State Pollution Control Boards/Pollution Control Committees has separately laid down timelines for conversion, such orders shall prevail.

3. All brick kilns shall use only approved fuel such as Piped Natural Gas, coal, fire wood and/or agricultural

residues. Use of pet coke, tyres, plastic, hazardous waste shall not be allowed in brick kilns.

4. Brick kilns shall construct permanent facility (port hole and platform) as per the norms or design laid down by the Central Pollution Control Board for monitoring of emissions.

5. Particulate Matter (PM) results shall be normalized at 4% CO₂ as below: $PM \text{ (normalized)} = (PM \text{ (measured)} \times 4\%) / (\% \text{ of } CO_2 \text{ measured in stack})$, no normalization in case $CO_2 \text{ measured} \geq 4\%$. Stack height (in metre) shall also be calculated by formula $H = 14Q^{0.3}$ (where Q is SO₂ emission rate in kg/hr), and the maximum of two shall apply.

6. Brick kilns should be established at a minimum distance of 0.8 kilometre from habitation and fruit orchards. State Pollution Control Boards/Pollution Control Committees may make siting criteria stringent considering proximity to habitation, population density, water bodies, sensitive receptors, etc.

7. Brick kilns should be established at a minimum distance of one kilometre from an existing brick kiln to avoid clustering of kilns in an area.

8. Brick kilns shall follow process emission/fugitive dust emission control guidelines as prescribed by concerned State Pollution Control Boards/Pollution Control Committees.

9. The ash generated in the brick kilns shall be fully utilized in-house in brick making.

10. All necessary approvals from the concerned authorities including mining department of the concerned State or Union Territory shall be obtained for extracting the soil to be used for brick making in the brick kiln.

11. The brick kiln owners shall ensure that the road utilized for transporting raw materials or bricks are paved roads.

12. Vehicles shall be covered during transportation of raw material/bricks”.

**[F. No. Q-15017/35/2007-CPW] NARESH PAL
GANGAWAR, Addl. Secy.**

Note : The principle rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number S.O. 844(E), dated the 19th November, 1986 and lastly amended vide number G.S.R. 724(E), dated the 04th October, 2021”

(2) The Officers of both Central Pollution Control Board and the State Pollution Control Boards shall conduct surprise inspections without any notice and warning to the persons

running the units from time to time to ensure that the production is being carried out in terms of the aforesaid notification.

- (3) *Production will be further subject to the condition that it will be limited to the production capacity as per the consent granted by the respective State Pollution Control Boards as has been in fact documented in the compliance affidavit dated 06.04.2022 (Annexure R2) filed by respondent No. 2.*

As an example, we would take the case of M/s. Shiv Brick Field, Pura Mahadev, Bagpat. Production will be limited to six lakhs for this unit. In similar vein other units will be entitled to undertake production, as per the consent granted by State Pollution Control Board in the affidavit which is filed by the Pollution Control Board.

- (4) *The persons running the units shall report at the end of every cycle, the actual total production which has been carried out in their units (arising out of each cycle) to the respective State Pollution Control Boards. The State Pollution Control Boards shall promptly intimate the Central Pollution Control Board, the said figures and on the date of the next hearing, the Central Pollution Control Board will produce a chart showing the production so that the Court may analyse as to whether there is a violation of this Court's order.*
- (5) *The Central Pollution Control Board and the State Pollution Control Board will monitor the impact of the pollution which is generated as a result of the units being permitted to operate, and actually carrying out the production in such form as is measurable.”*

10. Further order of the Hon'ble Supreme Court in the same matter is dated 13.05.2022 *inter-alia* is as follows:-

“We record the submission of Shri Nidhesh Gupta, learned senior counsel, that, in fact, 95 per cent of the units are making use of agricultural residue also. We would expect that in view of the rather encouraging results revealed from the test conducted at Baghpat, the units will make every attempt to make use of maximum amount of agricultural residue along with coal so that the prospect of the threat to environmental pollution is reduced to the minimum possible.

We further make it clear that the units are permitted to operate only till 30th June, 2022, subject to all the conditions imposed in earlier orders.

We add two conditions for the units to be allowed to operate:

- (1) *All units will provide platforms for conducting the monitoring of the pollution having minimum dimension of 4 feet by 6 feet.*
- (2) *The diameter of the portholes in all the units shall be not less than 4-5 inches diameter.*

We further direct that in all the units portholes must be of the size we have indicated. Surprise inspections as envisaged in the earlier orders are to be continuously conducted with utmost vigour and action in terms of the inspections conducted shall be taken by the appropriate authority.

We further direct that in all the units portholes must be of the size we have indicated. Surprise inspections as envisaged in the earlier orders are to be continuously conducted with utmost vigour and action in terms of the inspections conducted shall be taken by the appropriate authority.”

11. Even though the orders of the Hon'ble Supreme Court are in relation to NCR, District Aligarh being close to NCR and having regard to air quality of Aligarh, the said directions will apply in relation to operation of brick kilns in Aligarh District also. As observed earlier, only those brick kilns be allowed to operate whose location is as per siting norms, those who have requisite consents and compliance with terms of consent and compatible with the assimilative air quality of the area.

The Application will accordingly stand disposed of. If any grievance survives, it will be open to the aggrieved party to take remedy afresh as per law.

A copy of this order be forwarded to the State PCB by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

July 08, 2022
OA No. 253/2021 with EA No. 39/2021
IN Original Application No. 253/2021
(I.A. No. 08/2022)
AB