

Item No. 04

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Original Application No.31/2015 (EZ)  
(M.A. No. 188/2017, M.A. No. 189/2017, M.A. No. 190/2017,  
M.A. No. 212/2017 & M.A. No. 302/2017)

Bishnu Prasad Mishro

Applicant(s)

Versus

The State of Odisha & Ors.

Respondent(s)

Date of hearing: 10.02.2020

**CORAM : HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER  
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER**

For Appellant(s):

For Respondent (s):

Mr. Ashok Kumar Panda, Sr. Adv and Mr.  
Manoranjan Paikarag, Adv for R-5  
Mr. Janmejaya Katikia, Addl. Gov. Adv for R-  
1,2,3 & 6

**ORDER**

1. This original application had been instituted on 06.05.2015 and has been under consideration of the Tribunal since then.
2. The case pertains to a large number of illegal brick-kiln units operating in the Ganjam District of Odisha for having violated the provisions of the Environment (Protection) Act, 1986 and the Air (Prevention and Control of Pollution) Act, 1981. The primary contention of the applicant is that the regulatory regime was lagging in implementing the relevant laws. Clay brick-kiln units had been set-up in violation of the laws by unscrupulous elements rendering the

agricultural lands redundant and the environment polluted. Brick earth was being excavated rampantly and sand extracted from river beds for the use in the brick-kilns without obtaining prior environmental clearance. Directions issued by the Tribunal in respect of such matters had been overlooked and wilfully violated. By order dated 06.05.2015, the Odisha Pollution Control Board (SPCB) and the Chief Secretary, Government of Odisha, were directed to submit a status report with reference to the environmental pollution issue and other factors raised by the applicant and to furnish a list of all illegal brick fields owners operating in the District. Report was directed to be filed by the SPCB of the action taken against those which were operating without Consent to Operate and Consent to Establish.

3. On 15.07.2015, report filed on behalf of the SPCB was considered and the following observations were made:

***“Mrs. Banerjee Bihani, ld. Adv. appearing for Odisha PCB has filed affidavit. On perusal of para 8 and 9 of the report it appears that 22 nos. of fixed type chimney brick kilns are operating in the district without consent from State PCB. Similarly 20 Nos of moving type chimney are operating in the district in violation of MoEF & CC notification dt. 22.01.2002 as well as consent norms. On perusal of para 10 thereof, it further appears that there are 98 number of brick Kilns operating without any chimney. PCB has not granted any consent to operate and it is not under their purview in view of Sec. 21 of Air (Prevention & Control of Pollution) Act, 1981. It is further stated that out of those 98 units, in respect of six brick field units which are in operation, the Tahasildar, Surada has already issued notice on 24.4.15 for demolishing the brick kilns within 3 days.*”**

***Having regard to above, PCB is directed to submit action taken report in respect of those 42 brick fields who are operating without any consent to operate from PCB and with moving chimney, as the case may be. The District Magistrate of Ganjam and PCB are directed to take all steps and measure to close illegal operation of those brick fields in the district. List of 98 brick kilns who are in operation without any chimney and any consent from Odisha PCB be submitted on the next date by the District Magistrate, Ganjam along with action taken report”***

4. Thereafter, matter was taken up from time to time and various affidavits filed by the SPCB leading to an order dated 14.12.2015 by which it was noted that there were 140 illegal brick fields in the District of Ganjam which was operating without obtaining consent to establish and consent to operate. Notices were thus issued against such brick fields directing them to show cause as to why compensation of Rs. 5,00,000/- should not be imposed against them for having operated the brick fields illegally.

5. Order dated 01.02.2016 revealed that notices had been issued by the SPCB against 111 of the 140 illegal brick fields and against the rest of the 29, process was on. Without going further into the other developments that took place during the intervening period, it may be observed that ultimately there were altogether 640 illegal brick fields identified out of which, 22 had paid the environmental compensation pursuant to the direction of the Tribunal as would be apparent from the order dated 15.05.2017. Order dated 24.04.2017 revealed that the learned Counsel for the Applicant had filed an affidavit giving further list of non-compliant brick-kilns which led the Tribunal to

direct the SPCB to include those also in the report to be filed by them. The additional non-compliant brick-kilns were stated to be 604 in number as would appear from the last paragraph of the order dated 24.08.2017.

6. On 21.05.2019, when the matter came up for hearing for the first time after 24.11.2017, we had issued the following orders:

***“3. The question that remained to be considered in the case was the steps taken in respect of the additional 604 non-compliant brick kilns apart from the 640 which have been already identified. The State PCB had sought for time on 11.10.2017 to file affidavit containing the information in this regard. However, the matter appears to have remained without any conclusion on that aspect. The affidavits filed by the State PCB do not reflect any action in this regard.***

***4. We, therefore, direct the State PCB to file an affidavit furnishing the updated action taken against all the erring brick kilns including the information pertaining to the additional 604 such brick kilns.”***

7. By order dated 21.01.2020, we had expressed our dissatisfaction against the State Pollution Control Board for having not filed a proper affidavit giving correct information in the affidavit filed on 19.01.2020 and had accordingly directed the Chairman and the Member Secretary of the Odisha State Pollution Control Board to be present before us. Pursuant to that order, they had appeared on 04.02.2020 when it was explained to us that the total number of illegal brick-kilns was actually 640 inclusive of 604 and action had been initiated against those which were in the breach.

8. Report has accordingly filed on 06.02.2020 placing on record cumulative status report of the 640 brick-kiln units which we may reproduce below for convenience:

Sl. No	Particulars	Fixed Type Chimney	Moving Type Chimney	Clamp Type	Vertical Shaft	Total
1	Total No. Of brick kiln involved	57	32	547	4	640
2	Repeatedly enlisted	30	1	24	1	56
3	Found to be not in existence	--	--	--	--	22
4	Actually existing	27	30	502	3	562
5	Env. Compensation already paid	18	3	1	0	22
6	Env. Compensation not liable to pay	2	0	0	0	2*
7	Env. Compensation to be paid	7	27	501	3	538

**\*NB 1 unit namely M/s Konark Bricks (Sl. No. 43 of the list of 239) is operating by virtue of interim order dated 21.12.2016 of the Hon'ble High Court of Orissa in WP (c) No. 21983/2016**

**1 unit namely M/s Balaji Bricks Industry (Sl.No. 118 of the list of 261) is not liable to pay environmental compensation since the unit has established and started operation with consent to establish and operate to his board."**

9. In view of the above nothing further remains to be decided by the Tribunal in the present case except to direct the State Pollution Control Board to maintain vigil and complete all actions initiated and are presently in process within the time frame fixed by them.

10. With the above directions, this O.A along with M.A. No. 188/2017, M.A. No. 189/2017, M.A. No. 190/2017, M.A. No. 212/2017 & M.A. No. 302/2017, are disposed off.

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Siddhanta Das, EM

10<sup>th</sup> February, 2020  
Original Application No.31/2015 (EZ)  
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