

Item No. 02

Court No. 1

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

Original Application No.837/2022
(I.A. No. 294/2022)

Suntera Singh Yadav

Applicant

Versus

UP Pollution Control Board &Ors.

Respondent(s)

Date of hearing: 21.11.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Sidhinath Singh Sengar, Advocate for Applicant

ORDER

1. Grievance in this application is against failure of the statutory regulators in U.P in enforcing environmental norms in operation of the brick kilns as per details mentioned in the application.

2. Violations alleged include absence of requisite consent to establish and operate, illegal extraction of ground water for casting of bricks and for spraying on dust, not using mandatory zig-zag technology, not limiting operation to period when the air has assimilative capacity i.e. from March to June.

3. According to the applicant, above failure of the statutory regulators has resulted in deterioration of Air Quality Index (AQI). The applicant has

given chart of the data of AQI in the concerned Districts from November, 2021 to February, 2022 as follows:-

“

Month	AQI				
	Agra (Bodla)	Agra (Nunhai)	Firozabad CDGISN Marg	Firozabad Tilak Nagar	Firozabad Raja ka Tal
Nov. 2021	282	246	207	263	240
Dec. 2021	164	235	195	194	189
Jan. 2022	135	172	197	195	193
Feb.2022	121	166	219	216	213

”

4. It is further stated that there is a proposal to legalize more than 3700 units operating in violation of laid down siting criteria which will further degrade air quality to the detriment of public health and the environment.

5. The applicant has relied upon directions of CPCB dated 28.06.2017 as follows:-

“1. All the Brick Kilns operating without permission and valid consent from SPC'Bs. not meeting prescribed norms and siting guidelines be closed down with immediate effect.

2 Provide status on conversion of natural draft to induced draft Brick Kilns (with rectangular kiln shape and zig-zag brick setting).

3. Enforce strictly the siting criteria guideline for Brick Kilns.

4. All the moving area around the main Brick Kiln should be paved with the bricks to minimize the fugitive dust emissions from the Brick Kiln operations. This condition should be incorporate in the Consent condition while granting the consent by the respective State Boards.

5. Ensure that tine dust not to accumulate all around the Brick Kiln.”

6. Further, reliance has been placed on order of this Tribunal dated 17.02.2021 in O.A No. 1016/2019, *Utkarsh Panwar v. Central Pollution Control Board & Ors.* and order dated 09.05.2022 in O.A No. 93/2021, *Mukesh Kumar Aggarwal v. Central Pollution Control Board & Anr.* Order dated 09.05.2022 in O.A No. 93/2021 (*Supra*) refers to order of 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.* 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	16 m (at least 8.5m

		bricks per day	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: $PM (normalized) = (PM (measured) \times 4\%) / (\% \text{ of } CO_2 \text{ measured in stack})$, 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.”

7. Further reference has been made to article “Innovation in Brick Kilns : Baghpat raising the bar” published on web portal www.Downtoearth.org.in dated 30.04.2019, media reports in Times of India dated 10.11.2021 and 18.11.2021, ETV Bharat UP dated 22.04.2022 and Hindustan Times, Lucknow Edition, dated 18.09.2022.

8. Lastly, the applicant has referred to the compliance status of the brick kilns in State of U.P. compiled by the UPPCB. List of the defaulter brick kilns in the 7 districts in U.P. issued by UPPCB dated 26.07.2021 which lists the defaulting brick kilns in Kasganj, Hathras, Etah, Firozabad, Agra, Etawah, and Mainpuri Districts of U.P. The chart of information in Annexure A-6 about the status of compliance of brick kilns in the State of U.P is as follows:-

“STATUS OF BRICK KLINS IN UTTAR PRADESH

S.N.	Regional Office	District	Total No. of Brick Kilns	Compliance Status of CTO Air				Total No. of Defaulter Brick Kilns (6+8)	Status of Action Taken against Defaulter Brick Kilns as shown in Column No. 9	
				Grant	Reject	Pending	Not Applied		Closure order issued	Procecution under Section 37/39 of Air Act, 1981
1	2	3	4	5	6	7	8	9	10	11
1	Ghaziabad	Ghaziabad	313	142	17	0	154	171	171	14
2		Hapur	126	116	10	0	0	10	10	12
3	G.B. Nagar	G.B. Nagar	100	53	5	0	42	47	47	22
4	Prayagraj	Prayagraj	617	308	0	0	309	309	309	20
5		Kaushambi	250	140	0	0	110	110	110	1
6		Fatehpur	436	230	0	0	206	206	206	0
7	Banda	Banda	0	0	0	0	0	0	0	0
8		Chitrakoot	1	1	0	0	0	0	0	0
9		Hamirpur	14	14	0	0	0	0	0	0
10		Mahoba	1	1	0	0	0	0	0	0
11	Jhansi	Jhansi	0	0	0	0	0	0	0	0
12		Lalitpur	0	0	0	0	0	0	0	0
13		Jalaun	13	7	0	0	6	6	6	6
14	Kanpur Nagar	Kanpur	292	241	0	0	51	51	51	6
15		Farrukhabad	153	121	0	0	32	32	32	7
16	Kanpur Dehat	Kanpur Dehat	249	242	0	0	7	7	7	1
17		Auraiya	137	124	0	0	13	13	13	3
18		Kannauj	129	103	0	0	26	26	26	6
19	Sonbhadra	Mirzapur	356	145	0	0	211	211	211	10
20		Sonbhadra	10	4	0	0	6	6	6	0
21	Meerut	Meerut	238	91	0	0	147	147	147	6
22		Baghpat	525	368	0	0	157	157	157	12
23	Muzaffar Nagar	Muzaffarnaga	347	270	0	0	77	77	77	15
24		Shamli	206	151	0	0	55	55	55	3
25	Saharanpur	Saharanpur	263	238	0	0	25	25	25	3
26	Aligarh	Aligarh	536	307	26	3	200	226	226	1
27		Hathras	186	114	12	0	60	72	72	1

28		Etah	176	59	6	0	111	117	117	0
29		Kasganj	222	111	21	0	90	111	111	3
30	Mathura	Mathura	227	184	0	10	33	33	33	0
31	Firozabad	Firozabad	186	148	0	0	38	38	38	7
32		Etawa	205	60	0	0	145	145	145	0
33		Mainpuri	166	38	0	0	128	128	128	0
34	Agra	Agra	113	77	0	0	36	36	36	2
35	Bulandshahar	Bulandshahar	410	241	10	0	159	169	169	13
36	Lucknow	Lucknow	263	220	9	0	34	43	43	2
37		Sitapur	269	255	0	0	14	14	14	6
38		Barabanki	333	316	7	0	10	17	17	6
39		Lakheempur	226	197	3	0	26	29	29	11
40	Raibareilly	Raibareilly	386	288	17	0	81	98	98	0
41		Sultanpur	256	63	9	0	184	193	193	9
42		Amethi	233	100	14	0	119	133	133	4
43		Pratapgarh	355	129	23	0	203	226	226	0
44	Unnao	Unnao	260	216	15	0	29	44	44	4
45		Hardoi	374	300	24	0	50	74	74	7
46	Gorakhpur	Gorakhpur	448	160	0	0	288	288	288	2
47		Kushinagar	282	38	0	0	244	244	244	2
48		Maharajganj	338	177	0	0	161	161	161	2
49		Deoria	352	55	0	0	297	297	297	0
50	Basti	Basti	241	83	0	0	158	158	158	19
51		Santkabir Nagar	167	82	0	0	85	85	85	7
52		Siddharth Nagar	215	127	0	0	88	88	88	0
53		Balrampur	211	131	0	0	80	80	80	1
54	Azamgarh	Azamgarh	672	146	526	0	0	526	526	6
55		Mau	382	69	313	0	0	313	313	4

56		Baliya	370	83	287	0	0	287	287	0
57	Varanasi	Varanasi	424	154	0	0	270	270	270	3
58		Jaunpur	556	194	0	0	362	362	362	2
59		Gazipur	452	153	0	0	299	299	299	0
60		Chandauli	203	102	0	0	101	101	101	0
61		Bhadohi	209	41	0	0	168	168	168	0
62	Ayodhya	Ayodhya	191	144	0	0	47	47	47	0
63		Ambedkar Nagar	275	128	0	0	147	147	147	0
64		Gonda	224	128	0	0	96	96	96	7
65		Behraich	300	161	0	0	139	139	139	2
66		Shravasti	103	25	0	0	78	78	78	0
67	Bijnor	Bijnor	337	157	0	0	180	180	180	5
68		Amroha	239	65	0	0	174	174	174	11
69	Moradabad	Moradabad	392	170	13	0	209	222	222	23
70		Rampur	197	137	16	0	44	60	60	1
71		Sambhal	423	175	20	0	228	248	248	3
72	Bareilly	Bareilly	315	219	0	0	96	96	96	3
73		Pilibheet	202	165	0	0	37	37	37	1
74		Badayu	249	190	0	1	58	58	58	0
75		Sahjhanpur	268	198	0	0	70	70	70	0
Total			19395	10390	1403	14	7588	8991	8991	327

9. We have considered the matter. Categories of air quality and its adverse health effect can be noticed from following tables extracted from the judgment of the Hon'ble Supreme Court in *Arjun Gopal & Ors. v. UOI & Ors.*¹:

10. Table 1

<i>AQI</i>	<i>Associated Health Impacts</i>
<i>Good</i>	<i>Minimal impact.</i>
<i>Satisfactor y</i>	<i>May cause minor breathing discomfort to sensitive people.</i>
<i>Moderately polluted</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</i>	<i>May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.</i>
<i>Very Poor</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>

12. Table 2

<i>AQI Category, Pollutants and Health Breakpoints</i>								
<i>AQI category (Range)</i>	<i>PM₁₀²⁴ hr</i>	<i>PM_{2.5} 24-hr</i>	<i>NO₂ 24-hr</i>	<i>O₃ 8-hr</i>	<i>CO 8-hr (mg/m³)</i>	<i>SO₂ 24-hr</i>	<i>NH₃ 24-hr</i>	<i>Pb 24-hr</i>
<i>Good (0-50)</i>	<i>0-50</i>	<i>0-30</i>	<i>0-40</i>	<i>0-50</i>	<i>0-1.0</i>	<i>0-40</i>	<i>0-200</i>	<i>0-0.5</i>
<i>Satisfactory (51-100)</i>	<i>51-100</i>	<i>31-60</i>	<i>41-80</i>	<i>51-100</i>	<i>1.1-2.0</i>	<i>41-80</i>	<i>201-400</i>	<i>0.5-1.0</i>
<i>Moderately polluted (101-200)</i>	<i>101-250</i>	<i>61-90</i>	<i>81-180</i>	<i>101-168</i>	<i>2.1-10</i>	<i>81-380</i>	<i>401-800</i>	<i>1.1-2.0</i>
<i>Poor (201-300)</i>	<i>251-350</i>	<i>91-120</i>	<i>181-280</i>	<i>169-208</i>	<i>10-17</i>	<i>381-800</i>	<i>801-1200</i>	<i>2.1-3.0</i>
<i>Very poor (301-400)</i>	<i>351-430</i>	<i>121-250</i>	<i>281-400</i>	<i>209-748*</i>	<i>17-34</i>	<i>801-1600</i>	<i>1200-1800</i>	<i>3.1-3.5</i>
<i>Severe (401-500)</i>	<i>430+</i>	<i>250+</i>	<i>400+</i>	<i>748+*</i>	<i>34+</i>	<i>1600+</i>	<i>1800+</i>	<i>3.5+</i>

13. The table of status of brick kilns shows that out of 1254 brick kilns operating in seven districts in question, the PCB has issued closure order to 647 units for not having CTO but status of compliance of emission standards is not given.

14. In view of acknowledged adverse impact of air pollution on health and environment, stringent compliance of norms cannot be wished away.

15. Thus, to ascertain the current compliance status and remedial action taken, we constitute a joint Committee to be headed by the ACS (Environment) UP, CPCB, State PCB, nominee of Director, U.P. Ground Water Department, District Magistrates and SSPs/SPs of the seven Districts - Kasganj, Hathras, Etah, Firozabad, Agra, Etawah, and Mainpuri, and the Commissioner, Agra Division. The nodal agency for coordination and compliance will be the Member Secretary, State PCB. Meeting may be held within two weeks from today to take cognizance of problem and remedial action plan may be prepared within one month. The verification process may be conducted in an appropriate manner, including the digital mode, simultaneously for all the Districts and also with reference to the record. Services of jurisdictional Regional Officers of the State PCB and/or other relevant public authorities may be used. Consented brick kilns must comply with the GRAP (existing AQI) and the Supreme Court's directions referred to earlier. The action plan may include closure of non-compliant units, till compliance is achieved including making available requisite platform and portholes for monitoring, recovery of compensation for past violations, prosecution wherever warranted. The action plan may be executed thereafter within next one month.

16. An action taken report of compliance status as on 31.01.2023 may be filed before this Tribunal 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 on or before 15.02.2023. A copy of the action taken report may be placed on the website of the State PCB and the State PCB may inform the brick kilns violating the norms of proceedings before this Tribunal by e-mail so that if they wish to respond to the report before this Tribunal, they may do so within two weeks thereafter by e-mail

at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF. The ACS (Environment) UP, Commissioner, Agra Division and Member Secretary, State PCB may remain present in person by V.C. on the next date.

List for further consideration on 13.03.2023.

A copy of this order be forwarded to ACS (Environment) UP, CPCB, State PCB, Director, U.P. Ground Water Department, Commissioner, Agra Division and District Magistrates and SSPs/SPs Kasganj, Hathras, Etah, Firozabad, Agra, Etawah, and Mainpuri, U.P by email for compliance.

Adarsh Kumar Goel, CP

Arun Kumar Tyagi, JM

Prof. A. SenthilVel, EM

Dr. Afroz Ahmad, EM

November 21, 2022
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AB