

ITEM NO.42

COURT NO.10

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No. 18213/2021

(Arising out of impugned final judgment and order dated 17-02-2021
in OA No. 1016/2019 passed by the National Green Tribunal)

NCR BRICK KILN ASSOCIATION

Petitioner(s)

VERSUS

CENTRAL POLLUTION CONTROL BOARD & ORS.

Respondent(s)

WITH

Diary No(s). 20331/2021 (XVII)

Diary No(s). 7535/2021 (XVII)

Diary No(s). 7667/2021 (XVII)

Diary No(s). 7670/2021 (XVII)

Diary No(s). 23486/2021 (XVII)

Date : 08-04-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)

Mr. Sanjay Rathi, Adv.
Mr. Ekansh Bansal, Adv.
Mr. Vibhav Mishra, Adv.
Mr. Parmanand Gaur, AOR

Mr. Neeraj Kumar Jain, Sr. Adv.
Mr. Sanjay Singh, Adv.
Mr. Aniket Jain, Adv.
Mr. Umang Shankar, AOR
Mr. Subodh Gupta, Adv.
Mr. Deepak Gupta, Adv.

Mr. G. Balaji, AOR

CA Diary No. 18213/2021 etc.

Mr. S. P. Singh, Sr. Adv.
Mr. Omveer Bhati, Adv.
Mr. Mukesh Kumar Singh, Adv.
M/S. Mukesh Kumar Singh and Co., AOR

For Respondent(s)

Mrs. Swarupama Chaturvedi, AOR
Ms. Saumya Yapoor, Adv.
Ms. Himanshi Goel, Adv.

Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.
Mr. Manoj Kr. Sharma, Adv.
Mr. Bhuwan Chandra, Adv.

Mr. Sanjay Kumar Visen, AOR

Ms. Pooja Dhar, AOR

Mr. Varinder Kumar Sharma, AOR

Mr. Rohan Thawani, Adv.
Ms. Pooja Dhar, Adv.
Ms. Gunjan Ahuja, Adv.
Mr. Pratul Pratap Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

After hearing the learned counsel on behalf of the parties which includes Shri Rohan, learned counsel, we are of the view that the following order is required to be passed keeping in view, undoubtedly, the interest of the environment, and factoring in both the interests of the persons who are running the brick kiln industry and the employees who would be working therein.

We bear in mind the averments in the affidavit dated 25.03.2022 filed by the Central Pollution Control Board.

Therein, in para 7, it is stated that 2164 units, which are located in Uttar Pradesh and Haryana, have been on inspection found to have *zig zag* technology in place. But Shri Rohan, learned counsel for the applicant before the National Green Tribunal, would point out that about 115 out of them did not have the consent to operate. We further take into consideration again what is pointed out by Shri Rohan that out of 2164 units, about 221 units have not admittedly declared their production capacity.

Therefore, those units which have the consent to operate and have also declared the production capacity out of the 2164, are permitted to operate subject to the following conditions. In other words, we make it clear that those out of 2164 units, which have not obtained consent to operate and those units which have not declared their production capacity, shall not be permitted to operate.

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/Nm ³
		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	27 m

		or more than 30,000 bricks per day	
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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 non-attainment 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% C02as below:
$$PM \text{ (normalized)} = (PM \text{ (measured)} \times 4\%) / (\% \text{ of } C02\text{measured in stack}),$$
 no normalization in case $C02\text{measured} \geq 4\%$. Stack height (in metre) shall also be calculated by formula $H=14Q^{0.3}$ (where Q is S02emission 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

CA Diary No. 18213/2021 etc.

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

CA Diary No. 18213/2021 etc.

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.

List the matters on 06th May, 2022.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER