

Item No. 08

Court No. 2

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

Original Application No.585/2023

Arif Kidwai

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 11.12.2023

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Gaurav Kumar Bansal, Adv. for Applicant (Through VC)

Respondent(s): Mr. Bhanwar Pal Singh Jadon & Mr. Rovin Solanki, Adv. for the State of UP
Ms. Priyanka Swami, Adv. for SEIAA, UP
Ms. Soni Singh, Adv. for CPCB (Through VC)

ORDER

1. In this Original Application, the applicant has questioned the circular dated 01.05.2020 issued by Secretary, Government of Uttar Pradesh giving exemption from Environmental Clearance to the brick kilns and the activities of handmade earthen pots requiring mining upto the depth of 2 mtrs. only.

2. The matter was heard by Tribunal on 04.10.2023 when the submissions advanced on behalf of the applicant were considered. Tribunal observed as under:-

“2. Learned Counsel for the applicant has referred to paragraph 29 of the judgment of the Hon'ble Supreme Court in the matter of Deepak Kumar & Ors. vs. State of Haryana & Ors. reported in (2012) Vol 4 SCC 629 wherein there was a direction to all the States/Union Territories that all leases of minor minerals including their renewal for an area of less than 5 hectares could be granted only after getting Environment Impact Assessment (EIA) Clearance from

MoEF&CC, Government of India. He has also referred to the Notification dated 15.01.2016 issued under the provision of Environmental Protection Act, 1986 amending EIA Notification 2006 issued vide number SO 1533 (E) dated 14.09.2006 in light of judgment of the Hon'ble Supreme Court in the case of Deepak Kumar (Supra) and inserting the following clause therein:

“(iv) The B2 Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectare shall require prior environmental clearance from DEIAA The DEIA A Shall base its decision on the recommendations of DEAC, as constituted for this notification”

3. He has also submitted that certain representations were received by the Ministry of Environment, Forest and Climate Changes with the prayer of waiver of requirement of prior Environment Clearance for borrowing of ordinary earth for roads, and manual extraction of lime shells (dead shells), shrines etc. within inter tidal zone by the traditional community and the notification dated 28.03.2020 was issued and by the said Notification exemption to 13 category of cases was granted from Requirement of Environmental Clearance. He submits that under Clause 13, “the activities declared by the State Government under the legislations or rules as non-mining activity” are exempted but that is only for a limited purpose. He submits that on the basis of Notification dated 28.03.2020, Environmental Clearance is not required for those Brick Kilns unit which are manufacturing bricks manually through extraction of ordinary clay up to 2 meters. He further submits that by issuing the letter dated 01.05.2020, the Secretary of the State of UP has acted contrary to the judgment of the Hon'ble Supreme Court in the case of Deepak Kumar as also the Notification dated 15.01.2016 issued in pursuance to the said judgment.

3. Finding that a substantial question relating to environment has been raised, Tribunal issued notices to respondents and directed them to file response, particularly respondent no. 3 in respect of circular dated 01.05.2023.

4. Today, we do not find that any document has been filed by any of the respondents within the time permitted by Tribunal's Office order dated 02.08.2023 i.e. by 12 noon on the working day prior to the date of hearing.

5. We, therefore, direct respondents either to file reply by 15.12.2203 or to appear in person to explain as to why order dated 04.10.2023 has not been complied with.

6. List/put up this matter on 15.12.2023.

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

December 11, 2023
Original Application No.585/2023
SN