

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

Original Application No. 174/2022

(IA No. 880/2023 & IA No. 08/2024)

Dharmendra Kumar Singh

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 14.02.2024
Date of uploading: 04.04.2024

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

Applicant: Mr. Gaurav Kumar Bansal & Ms. Nandita Bansal, Advs.

Respondent: Mr. Daleep Dhyani, Adv. for UPPCB (Through VC)
Mr. Balendu Shekhar & Ms. Tanisha Samanta, Advs. for CPCB (Through VC)
Mr. Utkarsh Singh, Mr. Rajat Singh, Ms. Nikitavir & Mr. Kartik Sharma, Advs. for R - 8 to 10
Mr. Vivek Kumar Tandon & Mr. Darshnik Narang, Advs. for R - 1

ORDER

1. In this Original Application, the applicant has raised the grievance that the Respondent No. 8, M/s. Aakansha Int Bhatta and Respondent No. 9, M/s. Ashok Kumar Sharma Int Bhatta were operating in violation of the norms and in contravention of the Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules, 2012. During the pendency of this OA, a plea was raised that Respondent No. 9, M/s. Ashok Kumar Sharma Int Bhatta was purchased by one Shri Vyas Singh and the name of Respondent No. 9 was changed to M/s. Pragati Brick Kiln, therefore, Tribunal by order dated 21.12.2023 had impleaded M/s. Pragati Brick Kiln as Respondent No. 10 in this OA.

2. The Tribunal vide order dated 07.03.2022 had constituted a joint Committee with a direction to the Committee to undertake the site visit, look into the grievance of the applicant and file factual and action taken report before the Tribunal.

3. The report dated 03.06.2022 was duly considered by the Tribunal in the proceedings dated 12.07.2022 and after noting contradiction in the inspection report dated 10.10.2000 and the joint Committee report dated 03.06.2022 regarding location of respondent no. 9 brick kiln, the Tribunal on 12.07.2022 had constituted second joint Committee with a direction to the Committee to undertake the site visit, verify the factual position regarding compliance with environmental norms in all relevant particulars including siting criteria, MoEF Guidelines, 2022 and other rules/regulations governing establishment of the brick kiln and take remedial action in accordance with law by following the due process. The Tribunal by order dated 12.07.2022 had also passed an interim order as under:-

“10. In the meanwhile, both the brick kilns shall not be allowed to operate and District Magistrate and Superintendent of Police, Balia shall take all requisite steps to ensure that both the brick kilns do not illegally operate in any manner.”

4. The compliance of directions of Tribunal dated 12.07.2022, second joint Committee had submitted the report dated 23.09.2022. Accordingly, the Tribunal on 21.10.2022 had issued notice to unrepresented respondents. Thereafter, due opportunity was given to the parties to file their response.

5. A counter affidavit/amended counter affidavit on behalf of respondent no. 8 has been filed stating that respondent no. 8, M/s. Aakash Int Bhatta (formerly, M/s. Raj Brick Work) was established

since 2000 in the name of M/s. Khan and Ansari Brick Works and was issued No Objection Certificate for establishment on 10.10.2000. Thereafter, respondent no. 8 brick kiln had changed many hands and was lastly purchased by Geeta Singh in 2021 and is now being operated under the name of M/s. Aakansha Brick Kiln. It is also the stand of respondent no. 8 that the brick kiln was given Consent to Operate from 25.02.2022 to 31.07.2025 which was revoked in pursuance to the order of the Tribunal dated 12.07.2022. In para 6 of the amended counter affidavit, the stand of respondent no. 8 is as under:-

“6. That it respectfully submitted that the respondent brick kiln no-8 i.e. M/s. Aakansha Int Bhatta has submitted affidavit to the committee formed in compliance of order dated 12.07.2022 of this Hon’ble Tribunal during the site inspection on 30.07.2022 by the way of its representative Mr. Dilip Singh that brick kiln is not operational and will not be operated in future due to bad financial conditions of the business and unavailability of quality soil for production of bricks therefore owner directs the entity towards voluntarily closure of the respondent brick kiln apart from this, respondent brick kiln’s representative Mr. Dalip Singh agreed to demolish the chimney of the brick kiln in presence members of pollution control board therefore noting remains in respect of respondent no-8 i.e. (M/s. Aakansha Int Bhatta) in present case and it is most respectfully prayed from this Hon’ble Tribunal to discharge respondent no-8 brick kiln from the present Original Application no- 174 of 2022 titled as “Dharmendra Kumar Singh vs. Union of India & Ors.”

6. Respondent no. 9 has filed the counter affidavit taking the stand that the Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules, 2011 notified on 27.06.2012 applied for installation of new brick kiln but since respondent no. 9 has been functioning since 2000, therefore, the distance criteria not applicable to it. Respondent no. 9 has also taken the stand that it was granted No Objection Certificate on 10.10.2010 and respondent no. 9 brick kiln had changed many hands and was lastly purchased by Shri Vyas Singh in 2021 and is now being operated under the name of M/s. Pragati Brick Kiln and that brick kiln was given Consent to Operate on 19.05.2022 which was revoked

pursuance to the order dated 12.07.2022 passed by the NGT. It is also the stand of respondent no. 9 that brick kiln was established in the year 2000 when there was no school or dwelling house near it. Supplementary affidavit dated 24.11.2022 has been filed by the respondent no. 9, taking the stand that it has complied with recommendations of the joint Committee and is compliant with all the norms.

7. Submission of the learned counsel for the applicant is that he is not pressing the OA as against the respondent no. 8, as the said brick kiln has now been closed down. He has pressed the OA as against respondent nos. 9 and 10. Learned counsel for the applicant submits that the said respondents are not complying with the siting criteria. He further submits that the respondent no. 9 is having a borewell but no permission has been taken and that action is required to be taken against respondent nos. 9 and 10 for past violation.

8. Submission of the counsel for the respondent nos. 9 and 10 is that siting criteria prescribed in the Rules of 2012 is not applicable to the respondent nos. 9 and 10 and that they are compliant with all the norms.

9. Learned counsel for the respondent UPPCB has referred to various conditions which are incorporated in the Consolidated Consent to Operate and Authorization (CCA) dated 19.05.2022 issued to the respondent no. 10 and has submitted that the respondent no. 10 is required to comply with all the conditions of CCA.

10. We have heard learned counsel for the parties and perused the records.

11. So far as the respondent no. 8, is concerned, in the counter affidavit dated 24.11.2022, specific stand is taken in para 6 is that the

brick kiln was not in operation and it will not be operated in future due to bad financial condition of the business and unavailability of quality of soil for production of bricks and that the respondent no. 8 agrees to demolish the chimney of the brick kiln in the presence of the member of the Pollution Control Board.

12. The joint Committee in its report dated 23.09.2022 has made following recommendation for respondent no. 8:-

“5.2 M/s Aakansha Int Bhatta, Sarni, Koth, Sikandarpur, Ballia, UP

As informed by Brick Kiln representative, he will not operate Brick Kiln in future and will demolish Kiln. The Brick Kiln representative may demolish Brick Kiln in presence of District Administration and SPCB at the earliest.”

13. In the said background, the applicant has not pressed his OA against respondent no. 8. The UPPCB is directed to ensure a due compliance of the above affidavit/stand of the respondent no. 8 and submit a compliance report of the Registrar General of the Tribunal within three months.

14. So far as the respondent nos. 9 and 10, are concerned, joint Committee in the report on 23.09.2022 had found as under:-

“4.1. M/s Pragati Brick Kiln, Phulpur, Koth, Sikandarpur, Ballia, UP

1. *M/s Pragati Brick Kiln, (formerly M/s G.B.S. Brick Kiln Industry), Arajī no. 1712, Phulpur, Koth, Sikandarpur, Distt. - Ballia established since 2000 accordance with the prevailing Zilla Parishad's guide line. The State Pollution Control Board has issued No Objection Certificate (NOC) for establishment on dated 10.10.2000 (Annexure-1).*
2. *The Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules, 2012 was notified on 27.06.2012. Earlier, Zilla Parishad's guide line were followed for siting of Brick Kiln by the State.*
3. *That the said Brick Kiln was operated from 2000 to 24.03.2010 in the name of M/s GBS Brick Kiln Udyog, Phulpur, Koth, Sikandarpur, District-Ballia. Further, the said*

Brick Kiln was sold and changed its name as M/s Ashok Kumar Int Bhattha and operated during 25.03.2010 to 03.12.2021. The said Brick Kiln again sold to Shri Vyas Singh, Dugauli, Sikandarpur, Ballia 03.12.2021 and changed its name as M/s Pragati Brick Kiln, Phulpur, Koth, Sikandarpur, District-Ballia.

4. *The Brick Kiln was operated without consent to operate from UPPCB till 18.05.2022. The Brick Kiln was applied for consent air & water to operate on 06.05.2022 and consent air & water were granted on 19.05.2022. Who is presently revoked vide letter dt. 13.07.2022 in compliance of order passed by Hon'ble NGT dated 12.07.2022 in O.A. No 174/2022 (Dharmendra Kumar Singh v/s Union of India & Ors.) (Annexure-2).*
5. *During inspection, the Brick Kiln was not operational. It is informed by the representative (Shri Dilip Singh) that the unit is not in operation since 15.06.2022 due to rainy season.*
6. *The consented production capacity of brick kiln is 15, 000 bricks per day. The Brick Kiln is based on natural draft using coal (approx. 02 TPD) as fuel (as reported).*
7. *The emission from Brick Kiln is emitted from stack of height approx. 30 m. The Brick Kiln has provided monitoring platform and port hole on stack, which is not as per the CPCB guidelines.*
8. *The Brick Kiln has installed a borewell to meet its fresh water requirement. No flow meters installed at borewell.*
9. *The Brick Kiln has not maintained adequate green belt.*
10. *It is reported, ash generated in the Brick Kiln is utilized inhouse.*
11. *During visit, Lekhpal and Kanungo measured the distance of Road, Population, School, Hospital etc. through digitally. Copy of the report is annexed as **Annexure-3**. As per report, details are as below:*

S. No.	Siting Criteria	Distance (approx.) as per Lekhpal and Kanungo report	Direction from Brick Kiln
1.	Distance from Residential area	01 m-Village Uchwar 740-Village Kalyani 1.1 Km-Village Sarni 730 m-Phulpur, Koth 560 m- 03 houses 640 m- 01 house	East North South West West West
2.	Distance from Hospital	1160 m	North-West
3.	Distance from School	810 m	North-West

4.	Distance from PWD Road	51 m	East
5.	Distance from nearby Brick Kiln	870 m (at Village Koth) 1110 m (at Village- Sarni)	North-West South-East

”

15. The joint Committee has made following recommendations in respect of respondents no. 9 & 10:-

“5. Recommendations:

5.1 M/s Pragati Brick Kiln, Phulpur, Koth, Sikandarpur, Ballia, UP

- a. The Brick Kiln may be imposed environmental compensation by SPCB for operation without consent to Operate.
- b. The Brick Kiln should install flow meter at borewell and maintain log book of fresh water consumption.
- c. The Brick Kiln should provide proper monitoring Platform, ladder and Port Hole at the stack as per CPCB guidelines.
- d. The Brick Kiln should provide adequate green belt for fugitive emission control. Till Such time, brick wall of height approx. 3 meter may be constructed around brick kiln as per The Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules, 2012.
- e. The brick kiln should submit action plan to UPPCB for conversion into Zig-Zag technology or vertical shaft as per MoEF&CC, Govt. of India notification G.S.R. 143(E), dated 22.02.2022.”

16. In the supplementary affidavit dated 24.11.2022, the respondent nos. 9 and 10 have taken following stand relating to compliance of the above recommendations:-

- “4. That the observation (b) has been complied and the respondent brick kiln has installed the flow meter on the respondent brick kiln's site and has also applied for new bore well at respondent's brick kiln. Photographs of the flow meter installed and the application for bore well along with the payment receipt of the bore well application is marked and annexed herein as Annexure- A1 for the kind perusal of this Hon'ble Tribunal.
5. That the observation (c) also has been complied and the respondent brick kiln has upgraded the monitoring platform, ladder and Port Hole at the stack as per CPCB guidelines and the photographs of the amended modification as per the CPCB guidelines and the photographs of the upgrades are marked and annexed herein as Annexure- A2 for kind perusal of the Hon'ble Tribunal.

6. *That the observation (d) related to maintenance of the adequate green belt around the brick kiln has also been complied and the respondent brick kiln has planted more than 100 trees to prevent the fugitive emission. Photos of planted trees are marked and annexed herein as Annexure- A3 for the kind perusal of the Hon'ble Tribunal.*
7. *That the observation (e) related to submitting an action plan for conversion into Zig Zag technology has also been complied and the respondent brick kiln has also submitted the requisite action plan with Uttar Pradesh Pollution Control Board for conversion brick kiln into Zig Zag technology. Conversion and proposed action plan approved by UPPCB along with application for conversion has been marked and annexed herein as Annexure A-4 for the kind perusal of this Hon'ble Tribunal.”*

17. In para 8, the respondent no. 9 has given the distance from other villages, school, nearby brick kiln, P.W.D. Road, hospital, residential houses etc. from respondent no. 9/10 and has taken the stand that the brick kiln is being operated in compliance of all the rules and regulations.

18. In view of the above stand of the respondent no. 9/10, now, it is required to be verified by the respondent UPPCB if the respondent nos. 9/10 is complying with the requisite norms and, therefore, permit it to operate, if found to be complying. The records reflects that earlier respondent no. 9/10 has operated in violation of the environmental norms, therefore, respondent UPPCB is required to ascertain the extent of violation by the respondent 9/10 during the past period and levy/recover environment compensation for the past violation.

19. So far as the applicability of the siting criteria, is concerned, the applicant has relied upon the order of the Tribunal dated 13.08.2019 in OA No. 550/2019 in the matter of **Rajbeer Singh vs. State of Uttar Pradesh**, wherein the Tribunal had taken note of earlier order dated 10.07.2019 in RA No. 34/2019 in **Bhag Singh vs. Union of India** holding that the siting criteria shall be invoked for future while renewing the Consent to Operate and that no vested right is created by mere

establishment. He has also relied upon the order dated 12.10.2023 passed in OA No. 341/2023 in the matter of **Vipin Kumar vs. Uttarakhand Pollution Control Board & Ors.** reported in 2023 SCC Online NGT 365, wherein the Tribunal took the view that prior illegal operation of the brick kiln does not confer any vested right to obtain the CCA and, therefore, the law which was prevailing on the date of consideration of the application for CCA will be attracted. Hence, the respondent UPPCB while taking fresh action will duly keep in mind the above order of the Tribunal and any other binding judgment of the Court.

20. Hence, it is directed that Regional Officer, MoEF&CC, Lucknow will carry out the fresh inspection of the respondent no. 9/10 and forward a copy of the report to the Member Secretary, UPPCB and on the basis of the report of the RO, the UPPCB will ascertain the compliance/violation by the respondent 9/10 and take appropriate action by complying the principles of natural justice.

21. The respondent UPPCB, in compliance of the above directions, is directed to submit action taken report before the Registrar General, National Green Tribunal within three months and if found necessary the matter will be listed before the bench for consideration.

22. OA and pending IAs are accordingly disposed of.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

April 04, 2024

OA No. 174/2022 (IA No. 880/2023 & IA No. 08/2024)

AVT