

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA

O.A. No. 178/2016/EZ

With

O.A. 05/2017/EZ & MA. 27/2017/EZ

O.A. 06/2017/EZ & MA. 28/2017/EZ

O.A. 07/2017/EZ & MA. 29/2017/EZ

O.A. 08/2017/EZ & MA. 30/2017/EZ

O.A. 12/2017/EZ

SRI NARAYAN SINGH
AMITAVA SEN
ARUN KUMAR
M/S G.S. ENTERPRISES
M/S SONA BRICK
M/S DINKAR BRICKS

VS

UNION OF INDIA & ORS

CORAM: Hon'ble Mr. Justice S.P.Wangdi, Judicial Member
Hon'ble Dr. Nagin Nanda, Expert Member

PRESENT: **Applicants** : Mr. Somnath Roy Chowdhury, Advocate
None for the applicant in OA 12/2017/EZ
Respondents No. 1 : Mrs. Chandreyi Alam, Advocate (OA 178/2016)
Respondent No. 1 : Mr. Gora Chand Roy Chowdhury, Advocate
(In other OAs and MAs)
Respondents No. 2 to 5 : Mr. Binod Kumar Gupta, Advocate
Ms. Aishwarya Rajyashree, Advocate
Respondent No. 6 : Mr. Surendra Kumar, Advocate
Respondent No.7 : Mr. Ashok Prasad, Advocate
Respondent No. 1 : Mr. Soumitra Sen, Sr. Advocate
Mr. Binod Kumar Gupta, Advocate
Ms. Aishwarya Rajyashree, Advocate
(in OA 12/2017/EZ)

Date & Remarks	Orders of the Tribunal
Items No. 1 to 6 26 th April, 2018.	In all these cases, common question involved is the validity of the Notification dated 29.3.2012 demarcating the Dalma Eco Sensitive Zone by virtue of

which orders of closure of the brick kilns operated by the present applicants had been issued.

During the course of hearing of the Applications, a question cropped up as to whether the Applicants had valid consents to operate under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and Environmental Clearance under the EIA Notification, 2006.

Except in the case of OA 12/2017/EZ where specific prayer had been made for quashing of the notification, in the others validity of the orders of closure issued by the State PCB have been raised and so far as the notification dated 29.03.2012 is concerned, ostensibly only an interim order of stay of its operation has been sought for.

Considering the facts and circumstances set out in the OAs, the question that would ultimately require of us to determine is the correctness and the validity of the notification itself, the rest being consequential.

So far as the first question is concerned, we had expressed our views earlier on the jurisdiction of the Tribunal to enter into it considering the fact that it would not fall within the various statutes provided under the Schedule I of the NGT Act, 2010 and would involve entering into the validity of a policy decision of the State which can be gone into only by a

constitutional court.

However, since the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 and Environmental Clearance under the EIA Notification, 2006, were involved, we had asked the Ld. Advocate appearing for the Applicants as to whether they were compliant of these statutes or not.

In OA 178/2016/EZ, Mr. Prabal Mukherjee, Ld. Sr. Advocate, who then appeared for the applicant, fairly conceded that they did not possess valid consents to operate but had at some point of time earlier did possess those as was evident from the observations in the judgement of the Hon'ble Jharkhand High Court.

The Applicants were, however, unable to produce any copy of the earlier consents to operate leading us to direct the Jharkhand State PCB to inspect the units of the Applicants and submit a report. It was also directed that if any of the Applicants does apply for consent to operate, the State PCB that shall decide it in accordance with law and pass appropriate orders.

Similar orders were also passed upon the Jharkhand State Environment Impact Assessment Authority (SEIAA) as would appear from our order dated 14.11.2017.

It was further observed that the applicants were liable to pay penalty as condition precedent to be

eligible for being considered for issue of consents to operate in accordance with the direction issued in OA 110/2015/EZ (*Joydeep Mukherjee –vs- State of Jharkhand & Ors*) as ones falling under category 'D' i.e., those who did not possess consent to operate at any point of time. It was, however, submitted by Mr. Mukherjee, Ld. Sr. Counsel that the applicants, in fact, would fall under category 'C' i.e., those brick kilns who possessed consent to operate at some point of time earlier but after the expiry of its validity, no fresh consent had been obtained.

We had thus observed that since these were matters to be sorted out by the State PCB and that the applicants should furnish copies of consents to operate if they had possessed it earlier before the PCB and the PCB should take decisions on the applications on its own merit..

In so far as the matter relating to EC is concerned, it had been submitted by Mr. Mukherjee that the Applicant brick kiln owners were sourcing brick earth from outside the area in question and, therefore, no application had been filed for EC. We had observed in this regard that if the Applicants were sourcing brick earth from outside, even then it would be necessary for the Applicants to produce evidence of the fact that the source from where the brick earth was/is being obtained possesses EC.

Today, we are informed by Mr. Somnath Roy Chowdhury, Ld. Advocate for the Applicants in all the OAs except OA No. 12/2017/EZ, that as the State PCB has not informed the Applicants of the documents required to be furnished by them in accordance with law, they were unable to file applications for consent to operate.

Mr. Surendra Kumar, Ld. Advocate for the State PCB, on the other hand, submits that as the applicants have failed to deposit the penalty which they are liable to pay as condition precedent, no further action could be taken.

Mr. Roy Chowdhury fairly undertakes on behalf of the applicants that they shall comply with all necessary requirements provided that the State PCB furnishes a check list of the requirements by way of a letter.

In the circumstances, we direct the State PCB to issue notices upon all the brick kiln owners, who are applicants before us, directing them to comply with the requirements to be complied with by them by providing them with a check list.

Let such list be furnished within three weeks. After receipt of the same, the applicants shall respond to the requirements of the State PCB within two weeks thereafter. The State PCB shall then decide on the merit of each of case of the applicants without reference to this Tribunal and submit a report on the next date.

We make it abundantly clear that any of our observations or remarks made in this order or any other order or orders issued earlier, shall not be construed as expression of our view on the merits of the claim of the applicants.

Since the larger question pertaining to operation of the brick kilns of the applicants involves the Department of Forest and Environment & Wildlife, Jharkhand, having regard to the permissibility of such activities within the buffer zone of the eco sensitive zone of Dalma Wildlife Sanctuary, copies of the letter furnished to the Applicants as directed above, shall also be forwarded to the Deptt. of Forest and other State authorities for their information.

List on 13.7.2018.

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Justice S.P.Wangdi, JM
26-04-2018

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Dr. Nagin Nanda, EM
26-4-2018

