

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

<u>Item No.</u>	<u>M.A. No.</u>	<u>Name of B/F & Res. No.</u>
9	M.A. No. 562/2015/EZ	M/S. Sujapur Brick Field (R.111)
10	M.A. No. 577/2015/EZ	M/S Sabbir Brick Field (R.205)
11	M.A. No. 585/2015/EZ	M/S Lucky Brick Field (R.304)
12	M.A. No. 586/2015/EZ	M/S Mahatpur Brick Field (R.127)
13	M.A. No. 587/2015/EZ	M/S Olympic Brick Field (R.38)
14	M.A. No. 588/2015/EZ	M/S Nawab Brick Field (R.17)
15	M.A. No. 589/2015/EZ	M/S Nishan Brick Field (R.272)
16	M.A. No. 590/2015/EZ	M/S Jalaluddin & Others Brick Field (R.297)
17	M.A. No. 595/2015/EZ	M/S Bhai Bhai Brick Field (280)
18	M.A. No. 596/2015/EZ	M/S Asma Brick Field (47)
21	M.A. No. 599/2015/EZ	M/S Joy Brick Field (R.35)
22	M.A. No. 601/2015/EZ	M/S Ahmed Bricks (R.23)
23	M.A. No. 602/2015/EZ	M/S India Brick Field (R.1640)
24	M.A. No. 603/2015/EZ	M/S Raja Brick Field (R.46)
25	M.A. No. 604/2015/EZ	M/S Dimond Brick Field (R.330)
26	M.A. No. 607/2015/EZ	M/S Smart Brick Field (R.327)
27	M.A. No. 608/2015/EZ	M/S Sony Brick Field (R.236)
28	M.A. No. 609/2015/EZ	M/S National Brick Field (R.106)
29	M.A. No. 610/2015/EZ	M/S Tiger Brick Field (R.339)
30	M.A. No. 618/2015/EZ	M/S Samrat Brick Field (R.221)
31	M.A. No. 619/2015/EZ	M/S Titan Brick Field (R.67)
32	M.A. No. 620/2015/EZ	M/S P.N.Paul Brick Field Unit-II (R.167)
33	M.A. No. 621/2015/EZ	M/S Asha Brick Field (R.348)
34	M.A. No. 622/2015/EZ	M/S Nirma Brick Field (R.298)

35	M.A. No. 623/2015/EZ	M/S Rima Brick Field (R.96)
36	M.A. No. 624/2015/EZ	M/S Nirman Brick Field (R.258)
37	M.A. No. 625/2015/EZ	M/S Rolex Brick Field (R.62)
38	M.A. No. 626/2015/EZ	M/S 3 Star Brick Field (R.288)
39	M.A. No. 627/2015/EZ	M/S New United Brick Field (R.365)
40	M.A. No. 628/2015/EZ	M/S Halim Brick Field (R.152)
41	M.A. No. 629/2015/EZ	M/S Golden Brick Field (R.95)

In
Original Application No. 39/2014/EZ **Vs.**
Joydeep Mukherjee & Ors.

CORAM: **Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member**
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member

PRESENT: **Applicant : None**
Applicants of MAs : Ms. Poushali Banerjee, Advocate
Mr. Saroj Kumar Ghosh, Advocate
Respondent No. 1 : None
Respondents 2 to 9 : Mr. Bikas Kar Gupta, Advocate

Date & Remarks	Orders of the Tribunal
Item Nos. 9 to 18 & 21 to 41 29th February, 2016.	<p>Mrs. Poushali Banerjee, Id. adv. along with Mr. Saroj Kr. Ghosh, Id. Adv. appearing for the applicants of all the MAs submits that the applicants are willing to pay the penalty as may decided by the Tribunal for operating their respective units without obtaining consent to operate certificate from the PCB. She has also submitted written undertaking in that regard by the applicants themselves. Mr. Bikas Kargupta, Id. adv. for the State respondents has no objection.</p> <p>In view of such submission made by the Id. adv. for the applicants/respondents we have examined the records of the above-noted respondents. We find that there are two categories of cases – (1) those brick fields who obtained consent to operate certificate earlier but after expiry of the validity period, no fresh consent certificate</p>

was obtained and the brick fields have been operating without valid consent certificate, or in whose case, consent was granted with retrospective effect which is illegal. These brick fields fall in **category-C** in terms of our earlier decisions and (2) those brick fields who had never taken any consent to establish or consent to operate certificate from the PCB and have been continuing to operate their respective brick fields illegally and thereby polluting the environment and degrading the soil of the locality. These brick fields **fall in category D** in terms of our earlier decisions. Both these categories of brick fields have violated the statutory provisions of Air Act, 1981 and Water Act, 1974 and therefore, they are liable to pay penalty for such act of environment pollution.

Following our earlier decisions on the subject, we impose of a penalty of **Rs. 1.00 lakh for the C category** and **Rs. 1.5. lakh for the D category** upon each of the applicants of these MAs, who are respondents in the OA. The penalty amount is to be deposited with the PCB within four weeks.

A combined list of brick fields with respondent Nos. falling in both categories is given below :-

Name of Brick field	Respondent No.	Category
M/S. Sujapur Brick Field	111	D
M/S Sabbir Brick Field	205	C*
M/S Lucky Brick Field	304	C
M/S Mahatpur Brick Field	127	C
M/S Olympic Brick Field	38	C
M/S Nawab Brick Field	17	C
M/S Nishan Brick Field)	272	C
M/S Jalaluddin & Others Brick Field	297	C
M/S Bhai Bhai Brick Field	280	C
M/S Asma Brick Field	47	C

M/S Joy Brick Field	35	C
M/S Ahmed Bricks	23	C
M/S India Brick Field	1640	D
M/S Raja Brick Field	46	D
M/S Dimond Brick Field	330	D
M/S Smart Brick Field	327	D
M/S Sony Brick Field	236	D
M/S National Brick Field	106	D
M/S Tiger Brick Field	339	D
M/S Samrat Brick Field	221	D
M/S Titan Brick Field	67	D
M/S P.N.Paul Brick Field Unit-II	167	D
M/S Asha Brick Field	348	D
M/S Nirma Brick Field	298	D
M/S Rima Brick Field	96	D
M/S Nirman Brick Field.	258	D
M/S Rolex Brick Field	62	D
M/S 3 Star Brick Field	288	D
M/S New United Brick Field	365	D
M/S Halim Brick Field	152	D
M/S Golden Brick Field	95	D

- It appears that in respect of **respondent No. 205 (N/s Sabbir Brick Field)**, consent to operate was granted on 7.7.2015 but it was given retrospective effect from 1.7.13 to 20.6.18. This is obviously illegal as no retrospective effect can be given to the consent certificate. Accordingly, the DL & LRO concerned is directed to recall the said consent order and to issue a fresh order in accordance with rules.

Immediately after the deposit of penalty amount by these respondents, the PCB will intimate the concerned DL & LRO so that the DL & LRO may proceed to consider the applications of respective respondents seeking consent to operate in accordance with rules after being satisfied with the conditions stipulated in Govt. of West Bengal Memo No. 1250 dt. 29.5.2015 and/or Memo No. 1251 dated 29.5.2015, as the case may be.

We have fixed the penalty for the respective applicants by applying 'polluter pay' principle and having regard to judgements of the Apex Court passed in the case of **Research Foundation For Science (18) –vs- UOI & Ors (18)** reported in 2005 (13) SCC 186 (para 30), **Indian Council for Enviro-Legal Action –vs- Union of India** (1996) 3 SCC 212, **Karnataka Industrial Area Development Board –vs- C. Kenchappa** (2006) 6 SCC 371, **M.C.Mehta –vs- Union of India** (2006) 3 SCC 399 and **Hindustan Coca Cola Beverages Pvt. Ltd.-vs- West Bengal Pollution Control Board** vide judgement dt. 19.3.2012. In **Monoj Mishra –vs- Union of India**, the Principal Bench of NGT in their judgement dt. 22.7.2013 passed an order for application of 'polluter pays' principle for dumping the debris and construction wastes on the bank of the river Yamuna. Therefore, they are liable to pay penalty/compensation for polluting the locality by illegally operating the brick field without consent to establish or consent to operate.

We have also taken into consideration the fact that assailing the judgement and order dt. 8.4.2015 passed by this Tribunal in OA 41/2014/EZ, M/s Tapas Brick Works moved an appeal (being Civil Appeal No. 5718/2015) to the Hon'ble Supreme Court of India. The appeal and the MA for stay were taken up for hearing on 14.8.15 by the Bench comprising Hon'ble Chief Justice of India, Hon'ble Mr. Justice Arun Mishra and Hon'ble Mr. Justice Amitava Roy and upon hearing the Apex Court dismissed the appeal and the connected application.

The penalty amount so collected be kept in a separate account

which will be utilised for upgradation of environment of the locality concerned in the manner to be decided later.

As and when the consent to operate is granted, the DL & LRO concerned will inform the local police authorities and the Electricity authority to restore the electric connection so that the units may run without any hindrance.

In the meantime, the Superintendent of Police, Murshidabad is directed to make physical verification of these brick fields in question and submit a report on the issue whether the units are closed or are operating without consent from PCB, despite closure order, and if they are operating without consent, the number of bricks manufactured and number of unsold bricks lying in the respective brick fields areas and if they are closed the dates from when they are closed. Such report be filed within two weeks. However, if in the report already filed in terms of our earlier direction, the names of these brick fields are there, then no such report is required to be filed.

Registry to communicate this order to the Superintendent of Police of Murshidabad immediately. Mr. Kargupta, Id. adv. is also directed to communicate this order to the SP, Murshidabad.

All the MAs stand disposed of accordingly. There will be no order as to costs.

.....
Justice Pratap Kumar Ray, JM

.....
Prof. (Dr.) P. C. Mishra, EM