

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

<u>Item No.</u>	<u>M.A. No.</u>	<u>Name of B/F &amp; Respondent No.</u>
3.	M.A. No. 691/2015/EZ	M/S Hero Brick Field (R.41)
4	M.A. No. 692/2015/EZ	M/S Jardar Brick Field (R.234)
5	M.A. No. 693/2015/EZ	M/S 5 Star Brick Field (R.354)
6	M.A. No. 694/2015/EZ	M/S Bengal Brick Field (R.92)
7	M.A. No. 695/2015/EZ	M/S Gouranga Brick Field (R.235)
8	M.A. No. 696/2015/EZ	M/S Star Brick Field (R.102)
9	M.A. No. 697/2015/EZ	M/S Bharat Brick Field (R.346)
10	M.A. No. 698/2015/EZ	M/S Honda Brick Field (R.353)
11	M.A. No. 699/2015/EZ	M/S Friends Brick Field (R.232)
12	M.A. No. 700/2015/EZ	M/S Bharat Brick Field (R.345)
13	M.A. No. 701/2015/EZ	M/S Olympic Brick Field (R.50)
14	M.A. No. 702/2015/EZ	M/S P.B.M Brick Field (R.97)
15	M.A. No. 703/2015/EZ	M/S Delux Brick Field (R.336)
16	M.A. No. 704/2015/EZ	M/S M.B.F Brick Field (R.94)

<b>17</b>	M.A. No. 705/2015/EZ	M/S A & Co. Brick Field/Associated Brick Field (R.349))
<b>18</b>	M.A. No. 706/2015/EZ	M/S Lucky Brick Field (R.312))
<b>19</b>	M.A. No. 707/2015/EZ	M/S Sony Enterprises (R.49)
<b>20</b>	M.A. No. 708/2015/EZ	M/S India Brick Field (R.109)
<b>21</b>	M.A. No. 709/2015/EZ	M/S Prince Brick Field (R.267)
<b>22</b>	M.A. No. 710/2015/EZ	M/S I.M.B Brick Field (R.344)
<b>23</b>	M.A. No. 711/2015/EZ	M/S M.S.D Brick Field (R.358)
<b>24</b>	M.A. No. 712/2015/EZ	M/S Gold Brick Field (R.16)
<b>25</b>	M.A. No. 713/2015/EZ	M/S Luck Brick Field (R.93)
<b>26</b>	M.A. No. 714/2015/EZ	M/S Border Brick Field (R.237)
<b>27</b>	M.A. No. 715/2015/EZ	M/S Sahara Brick Field (R.249)
<b>28</b>	M.A. No. 716/2015/EZ	M/S United Brick Field (R.209)
<b>29</b>	M.A. No. 717/2015/EZ	M/S Jaleka Bibi/Taz Brick Field (R.40)
<b>30</b>	M.A. No. 718/2015/EZ	M/S Proper Brick Field-I/Prodip Bricks (R.165)
<b>31</b>	M.A. No. 719/2015/EZ	M/S Master Brick Field (R.265)
<b>32</b>	M.A. No. 720/2015/EZ	M/S Nanda Kishore Mundra/Radha Brick Field (R.192)
<b>33</b>	M.A. No. 721/2015/EZ	M/S Bazarpara Brick Field (R.14)

34	M.A. No. 722/2015/EZ	M/S Super A Brick Field (R.326)
35	M.A. No. 723/2015/EZ	M/S Bharat Bricks Unit-I (R.194)
36	M.A. No. 724/2015/EZ	M/S Kasem Brick Field (R.284)
37	M.A. No. 725/2015/EZ	M/S Radhika Brick Field (R.193))
38	M.A. No. 726/2015/EZ	M/S Prince Brick Field (R.238)
39	M.A. No. 727/2015/EZ	M/S Niranjana Brick Field (R.206))
40	M.A. No. 728/2015/EZ	M/S 3 Star Brick Field (R.196))
41	M.A. No. 729/2015/EZ	M/S Mundra Bricks (R.207)
42	M.A. No. 730/2015/EZ	M/S Nasib Brick Field (R.303)
43	M.A. No. 731/2015/EZ	M/S Pragati Brick Field (R.217)
44	M.A. No. 732/2015/EZ	M/S R.B.Brick Field (R.116)
45	M.A. No. 733/2015/EZ	M/S Murshidabad District Brick Field Owners' Association (R 368)

**In**  
**O. A. 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**  
**Respondent No. 1 : Ms. Arpita Chowdhury, Advocate**  
**Respondent No. 2 to 8 : Mr. Bikas Kargupta, Advocate**  
**Applicants of MAs : Mrs. Poushali Banerjee, Advocate**

<b>Date &amp; Remarks</b>	<b>Orders of the Tribunal</b>
<p><b>Item No. 3 to 45</b>  <b>19<sup>th</sup> January,</b>  <b>2016.</b></p>	<p>Heard Mrs. Poushali Banerjee, Id. Adv. appearing for the applicants in all these MAs. Id. Advocate submits that they have applied for consent to establish and consent to operate at different times with all particulars but Pollution Control Board is yet to dispose of the applications on the grant of consent to her units. She further submits that there is provision of Deemed consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and as no communication has been received within the statutory period of four months as prescribed in law after receipt of consent applications, the applicants thus enjoy the "deemed to have consent" status to establish and operate their units unconditionally. Therefore, she prays for a direction to grant consent to run the break kiln business of the applicants and for withdrawing illegal and arbitrary notice of show cause in respect of the applicants/respondents.</p> <p>In view of the above submission made by the applicants it becomes pertinent to go through the relevant portion of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.</p> <p>Section 25(1) of the Water Act, 1974 deals with the</p>

requirement of obtaining consent from Pollution Control Board.

It reads asunder :-

“ **25.** - Restrictions of new outlets and new discharges :- (1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, -

(a) Establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage);, or

(b) Bring into use any new or altered outlet for the discharge of sewage; or

(c) Begin to make any new discharge of sewage :

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.....

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Under Consent Management Rules of the Pollution Control Board, a project proponent is bound to take prior consent from the PCB for activities listed under Red, Orange and Green categories before establishment of the unit and for this he has to apply first for consent to establish in prescribed format annexing all required documents as prescribed with deposit of fees for consideration of the Board. The Board after a thorough scrutiny will dispose of the application in accordance with law either granting the consent to establish or refusing the same. If the consent to establish is granted for a project, the project

proponent is asked to fulfill/comply to some conditions prescribed before the application for consent to operate is submitted before the Board. On being satisfied that his unit has complied to the conditions prescribed by the Board in consent to establish certificate, the project proponent makes an application for consent to operate with relevant documents and depositing prescribed fee. On receipt of such application for consent to operate from the unit, the PCB shall undertake inspection of the unit for their satisfaction that the conditions as claimed to have been complied with by the project proponent are actually complied or not. After this exercise only the PCB disposes the application either granting or refusing the consent to operate.

Thus, the application to be filed by the project proponent shall be in two phases. One for consent to establish and other for consent to operate.

Section 25(7) of the Water Act, 1974 provides for deemed consent which reads as follows :-

“ (7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board. ....”

Thus an application complete in all respects shall be disposed of within a period of four months failing which it will be deemed to have been given consent unconditionally. Admittedly, all the respondents of the MAs were operating their brick kiln units illegally for many years without consent to establish and consent to operate and as per rule, all of them ought to have applied for consent to establish in the first instance. However, all of them have applied for consent to establish and consent to operate in one application which is not permissible and cannot be considered as a complete application.

The deemed provision will be applicable only when one has made an application complete in all respects for consent to establish a new industry and the PCB fails to dispose of their application within four months. In such a case, deemed provision will be applicable for consent to establish only. The unit cannot start the operation before the consent to operate is granted for which he has to make application complete in all respects.

The deemed provision still also be applicable to an unit who has a valid consent to establish and consent to operate and before expiry of the consent to operate period, application complete in all respects has been filed before the PCB for consideration. If an unit has a valid consent to establish and subsequently makes an application in prescribed format for the purpose for consent to operate which is complete in all respects and the PCB fails to dispose of the application i.e. either grant or refuse the consent, then the deemed provision will be applicable to those units under section 25(7) of the Water Act, 1974.

Under the provision of the Air Act, 1981, the requirement of previous consent has been provided under section 21 and there is no deemed provision under such Act. However, under section 21(4) it is mandatory for the PCB to grant or refuse the consent within a period of four months after the receipt of the application. We are not now inclined to offer our view whether such provision amounts to the deemed provision or not precisely, due to the fact that all these respondents are non-compliant and illegally operating their units for quite some time and they have applied for both consent to establish and consent to operate in one application which is against the consent management rules framed by the PCB under section 25(2) of the Water Act, 1974 and Sec. 21(2) of the Air Act.

Therefore, we are not inclined to accept the submission of the Id. Advocate Mrs. Poushali Banerjee and reject her prayer on deemed consent.

Thus, the option left for the applicants/respondents is to pay the penalty amount as per the categorization fixed by us in our earlier orders or the units remain permanently closed.

Mrs. Poushali Banerjee, Id. Advocate appearing for the applicants in all these MAs, prays for an adjournment in order to ascertain from her clients whether they are willing to pay the penalty as may be fixed by this Tribunal for illegally operating the brick fields without valid consent to establish and consent to operate from the PCB. Mrs. Chowdhury, Id. Adv. for the PCB and Mr. Kargupta, Id. Adv. for State raise no objection.

**All the MAs stand adjourned to 8.02.2016.**

In the meantime, the Superintendent of Police, Murshidabad district under whose jurisdiction all these brick fields are located, will make a physical verification on the point whether these brick fields are in operation or closed. The report to be submitted on the next date of hearing.

Registry to communicate this order to the Superintendent of Police, Murshidabad district for compliance.

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Justice Pratap Kumar Ray, JM

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