

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

Original Application No. 359/2022

1. Mr. Rafhat Naeem Siddiqui,
S/o Mr. Kasimuddin, Ajupura Rani Village,
Nagina Tchsil, Bijnor, U.P.
Phone No. 9756063508.

...Applicant

Versus

1. State of Uttar Pradesh,
Through Additional Chief Secretary,
Forest and Climate Change,
101, 'B' Block, Lock Bhaawan,
U.P. Secretariat, Lucknow-226001,
Email Address: csup@nic.in.

**2. Ministry of Environment,
Forest and Climate Change,**
H6P9+377, Jor Bagh,
Lodhi Colony, New Delhi-110003,
Email Address:- secy-moef@nic.in.

3. Central Pollution Control Board,
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032,
Email Address: ccb.cpcb@nic.in.
Mscb.cpcb@nic.in.

4. Uttar Pradesh Pollution Control Board,
Building No. TC-12V,
Vibhuti Khand, Gomti Nagar,
Lucknow-226010 U.P.
Email Address: ms@uppcb.in.

5. District Magistrate, Bijnor,
94CP+X9M. Collectorate, Bijnor,
Uttar Pradesh,
Email Address: dmbij@nic.in.

6. M/s. Milansar Brick Works,
(Project PROponet),
Village-Abbul Khairpur,
Teshisl-Nagina, District Bijnor,
Under Proprietorship of Mr. Mohd Akram.

...Respondents

Counsel for Applicant:

None for the applicant.

Counsel for Respondents:

Mr. Gigi. C. George, Advocate for the respondent no. 1-State of UP (Through VC).

Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocate for respondent no. 4-UPPCB (Through VC).

Mr. Rahul Khurana & Ms. Veena Bansal, Advocate for Respondent no. 6-PP.

PRESENT:

**HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Judgment Reserved on:- 08.11.2024

Judgment pronounced on :- 25.02.2025

JUDGMENT

By Hon'ble Mr. Justice Arun Kumar Tyagi, Judicial Member

1. Mr. Rafhat Naeem Siddiqui, Advocate resident of village Ajupura Rani, Block and Tehsil Nagina, District Bijnor has sent present letter petition which has been treated and registered as original application.

2. The applicant has submitted that the applicant and Saira Begum wife of Naimuddin and Nadeem Ahmed, residents of village Ajupura Rani, Block and Tehsil Nagina, District Bijnor are cultivating land comprised in Khasra no. 35 min situated at village Said Alipur, Block and Tehsil Nagina, District Bijnor. Khasra no. 55 situated in village Abbul Khairpur, which shares the boundary with Khasra no. 35 is being cultivated by Rahila Khatoon wife of Anees Ahmed, Maqbool Hussain son of Anees Ahmed residents of village Ajupura Rani, Block and Tehsil Nagina, District Bijnor and Mansubul Hasan son of Anees Ahmed, Mohd. Yaqub, Mohd. Ishaq and A.Sattar and A. Gaffar sons of A. Rashid and

Shiv Charan Singh son of Budh and Arvind son of Bhudev Singh all residents of village Shadipur, Block and Tehsil Nagina, District Bijnor who have given the same to brick-kiln owner Mohd. Akram son of Munne for mining. Mohd. Akram has mined soil upto the depth of 8 feet with JCB. Illegal mining has been done in land measuring 1½ meters wide, 25 meters long and 08 feet deep abutting Khasra no. 35 min on the eastern side. Due to mining beyond permissible limits, land comprised in Khasra no. 35 min has become uncultivable and the applicant is facing difficulties in cultivating paddy and sugarcane crops despite filling of sand to reclaim the same.

3. Vide order dated 23rd May, 2022 this Tribunal constituted a Joint Committee comprising of the Uttar Pradesh Pollution Control Board (UPPCB) and District Magistrate, Bijnor and directed the Joint Committee to look into the grievances of the applicant and take requisite action by following due process of law and file factual and action taken report particularly with reference to loss of top soil from agricultural field, ambient air quality, impact on flora and fauna and compliance with directions in order dated 17th February, 2021 passed by this Tribunal in **O.A. No. 1016/2019 titled as Utkarsh Panwar Vs. Central Pollution Control Board and others** within two months.

4. In compliance thereof, report of the Joint Committee was filed vide email dated 25th August, 2022. The relevant part of the report of the Joint Committee (at Pages 3 to 18 of the paper book) reads as under:-

“X X X X X

2. Action taken by the Joint Committee:

*In compliance of Hon'ble NGT order dated 23/05/2022 a Joint Committee was constituted by District Magistrate, District Bijnor vide office order No.-384/N-43/General-2022 dated 08-07-2022 (annexed as **Annexure-1**), comprising following officers: -*

1. *SDM, Nagina, District-Bijnor.*
2. *Mining Inspector, Bijnor.*
3. *District Agriculture Officer, Bijnor.*
4. *Regional Officer, U.P. Pollution Control Board, Bijnor*

Joint inspection was carried out on dated 23.07.2022 by the Joint Committee in presence of complainer Mr. Rafhat Naeem Siddiqui and Mr. Mohammad Akram, representative of said brick kiln M/s Milansar Brick Works, Village-Abbul Khairpur, Tehsil-Nagina, District-Bijnor. Detailed report is as below:

- *The brick kiln M/s Milansar Brick Works, Village-Abbul Khairpur, Tehsil-Nagina, District-Bijnor presently run by Mr. Mohd Akram is established/operated since 2008. The brick kiln was found non-operational at the time of inspection due to off-season/ rainy season, due to which ambient air quality and stack monitoring of brick kiln could not be done. The air consent issued by UPPCB to the brick kiln was valid up to 31.07.2021. A notice was issued by UPPCB to the brick kiln to obtain the Consent to operate vide letter no.-377A/M-15/Bijnor-2022 dated-02.07.2022, which is enclosed .(As **annexure-2**).*
- *Presently, the said brick kiln has applied online application on dated 25.07.2022 for obtaining consent to operate (CTO) from UPPCB, which is under consideration. The brick kiln is not located within NCR & ten-kilometer radius of non-attainment city.*
- *As per notification dated-22.02.2022 issued by Ministry of Environment, Forest and Climate Change, Government of India, (**Annexure-3**), It is mentioned in notes point no. "2. The existing brick kilns which are not following zig-zag technology or vertical shaft or use Piped Natural Gas as fuel in brick making shall be converted to zig-zag technology or vertical shaft or use Piped Natural Gas as fuel in brick making within a period of (a) one year in case of kilns located within ten-kilometre radius of non-attainment cities as defined by Central Pollution Control Board (b) two years for other areas. Further, in cases where Central Pollution Control Board/State Pollution Control Boards/Pollution Control Committees has separately laid down timelines for conversion, such orders shall prevail."*
- *In the financial year 2021-22, M/s Milansar Brick Works, Village-Abbul Khairpur, Tehsil-Nagina, District-Bijnor has deposited regulation fee of total Rs.1,65,350/- for soil excavation for 20 paya (Challan dated 08-11-2021 enclosed as **Annexure-4**). The Secretary, Environment, Forests and Climate change, UP Govt. vide letter number 446/81-7-2020-39(Parya)/2014 TC-1 dated 01.05.2020 (Letter enclosed as **Annexure-5**), it has been mentioned that- "The process of excavating ordinary soil by hand operation or by hand*

operation for making bricks and pottery shall not come under mining operations, provided that the depth of the pits resulting from such excavation or mining shall not exceed 2 meters."

- *It has been found during joint inspection that soil has been excavated from the side of the land of Mohd. Rafhat Naeem up to 18 meters in length in Gata no.-12, village Abbul Khairpur and 05 meters in length in Gata No.-15 Village-Abbul Khairpur, whose depth is 4.5 feet in both Gata numbers. No excavation was found during inspection in gata no.-35mi village Said Alipur, Tehsil- Nagina, District – Bijnor.*
- *It has been found during joint inspection that the complainant's agriculture land has been affected by mining of about 4.5 feet deep in the agricultural land of other farmers which is located adjacent the agricultural land of the complainant Mr. Rafhat Naeem Siddiqui. (Photograph attached as **Annexure-6**).*

3. Observations of the Joint Committee:

(i) In compliance of notification dated-22.02.2022 issued by Ministry of Environment, Forest and Climate Change, Government of India, the said brick kiln should be converted into zig-zag technology within 02 years from the date of notification.

(ii) Brick kiln should not be operated till it gets the valid consent to operate from UPPCB.

(iii) Ambient and stack Monitoring will be done by UPPCB during operational condition of brick kiln.

(iv) Provision should be made by brick kiln owner to ensure no soil erosion from nearby land, for which permission of soil excavation is not provided. Same may be verify by Revenue department/Mining department/Agriculture department.

Report is being submitted for kind perusal and necessary action."

5. This Tribunal considered the report on 28th September, 2022 and noticed that the grievance of the applicant was regarding excess excavation of soil for brick making and as per the report the Secretary, Environment, Forest and Climate Change, Government of Uttar Pradesh has vide letter number 446/81-7-2020-39(Parya)/2014 TC-1 dated 01st May, 2020 notified that the process of excavating ordinary soil manually for making bricks shall not come under mining operations to require environmental clearance

provided that the depth of the pits resulting from such excavation does not exceed 2 meters and this Tribunal observed that the following questions require due consideration for taking of appropriate measures for protection and improvement of the environment:-

(i) whether excavation of top soil for brick making by the brick kilns amounts to mining and requires environmental clearance in the light of orders of this Tribunal;

(ii) whether the brick kilns be mandatorily required to procure fly ash from coal based industries in the area for brick making; and

(iii) whether measures are required to be taken for conservation of soil for agricultural purposes by prohibiting excavation of top soil for brick making.

6. In view of the averments made in the application, observations made in the report of the Joint Committee and questions involved, this Tribunal, vide order dated 28th September, 2022 impleaded State of Uttar Pradesh through Additional Chief Secretary, Environment, Forest and Climate Change, Government of Uttar Pradesh, Ministry of Environment, Forests & Climate Change (MoEF & CC), Government of India, Central Pollution Control Board (CPCB), UPPCB, District Magistrate, Bijnor, and Project Proponent- M/s. Milansar Brick Works, Village-Abbul Khairpur, Tehsil-Nagina, District-Bijnor under Proprietorship of Mr. Mohd Akram as respondents no. 1 to 6 and ordered issuance of notices to the respondents requiring them to file their response/ reply to the averments made in the application besides their response/objections to the observations made in the report of Joint Committee within two months.

7. Pursuant thereto response dated 09th January, 2023 was filed by respondent no. 3-CPCB. Response dated 10th February, 2023 was filed by respondent no. 4-UPPCB and response dated 14th February, 2023 was filed

by respondent no. 1 through Special Secretary, Environment, Forest & Climate Change, Government of Uttar Pradesh. In compliance of orders passed by this Tribunal reports dated 19th December, 2023, 12th April, 2024 and 06th November, 2024 were filed by respondent no. 4-UPPCB. Reply dated 27th July, 2024 was filed by respondent no. 6-M/s. Milansar Brick Works.

8. For sake of brevity the relevant parts of the responses/replies filed by the abovementioned respondents and reports filed by the UPPCB are not reproduced here and the same will be referred and adumbrated upon in the later parts of this order.

9. It may be mentioned here that during/in the course of proceedings on the application none appeared for the applicant before this Tribunal.

10. We have heard arguments addressed by Mr. Gigi. C. George, learned Counsel for the respondents no. 1-State of Uttar Pradesh, Mr. Pradeep Misra and Mr. Daleep Dhyani, learned Counsel for the respondent no. 4-UPPCB and Mr. Rahul Khurana and Ms. Veena Bansal, learned Counsel for the respondent no. 6 and gone through the relevant record carefully.

11. As mentioned in para no. 5 hereinabove, this Tribunal had set out the environmental questions which required due consideration for taking up remedial steps for protection and improvement of environment and the same may be deliberated upon herein after.

Question No. (i): whether excavation of top soil for brick making by the brick kilns amounts to mining and requires environmental clearance in the light of orders of this Tribunal.

12. In its report dated 25th August, 2022 the Joint Committee and in their respective responses dated 09th January, 2023 and 10th February, 2023 the

CPCB and UPPCB have mentioned that as per the Secretary, Environment, Forest and Climate Change, Government of Uttar Pradesh letter no. 446/81-7-2020-39(Parya)/2014 TC-1 dated 01st May, 2022, the process of excavating ordinary soil manual digging or manual extraction for making bricks and pottery shall not be treated as mining operations, provided that the depth of the pits resulting from such excavation or mining does not exceed 2 meters. In his response dated 14th February, 2023, Special Secretary, Environment, Forest and Climate Change, Government of Uttar Pradesh has referred to Rule 3 of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 which reads as under:-

Rule 3 (1) No person shall undertake any mining operations in any area within the State of any minor mineral to which these rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under these rules;

Provided that nothing shall affect any operations undertaken in accordance with the terms and conditions of mining lease or permit duly granted before the commencement of these rules.

Explanation:- For the purposes of this rule manual digging or manual extraction of ordinary clay, ordinary earth for making bricks and pottery shall not be treated as mining operations: *Provided that pit created by such digging or extraction should not be deeper than two meters.*

(2) No mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these rules. "

13. It may be added here that similar provision was inserted in Rule 3 of the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 by amendment in the year 2014 which was later retained in the Uttar Pradesh Minor Mineral (Concession) Rules, 2021.

14. The abovesaid letter and rule have to be considered with reference to the contextual legal perspective.

15. By its order dated 27th February, 2012 passed in ***Special Leave Petition (C) No.19628-19629 of 2009-IA. Nos.12-13 of 2011 titled as***

Deepak Kumar etc. Vs. State of Haryana and Others Hon'ble Supreme Court while directing all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, **made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease.**

16. The erstwhile MOEF vide Notification No. S.O. 1533 (E) dated 14th September, 2006 issued in exercise of powers under sub section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 made it mandatory to obtain Environmental Clearance (EC) prior to establishment of all new projects or activities listed in the schedule to the above said notification or expansion and modernization of existing projects or activities listed in the above said schedule with addition of capacity beyond the limits specified for the concerned sectors or any change in product mix in an existing manufacturing unit included in the above said schedule. The objective of the said notification is to impose certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts. In view thereof now, EC has to be taken from Central Government in the MOEF&CC for matters falling under Category 'A' in the above said Schedule and from the State Environment Impact Assessment Authority (SEIAA) at the State level for matters falling under Category 'B' in the above said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity.

17. The SEIAA and State level Expert Appraisal Committee (SEAC) have been constituted by the MOEF&CC in State of Uttar Pradesh vide notification

no. S.O 3338(E) dated 16th October, 2017 and subsequently reconstituted through notification no. S.O. 2276(E) dated 11th June, 2021. The SEIAA is required to base its decision on the recommendations of SEAC.

18. Notification No. S.O. 1533 (E) dated 14th September, 2006 was amended vide notification no. S.O. 141 (E) dated 15th January, 2016 whereby clause 7 B and Appendix-IX were added. Appendix-IX reads as under:-

“EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require prior environmental clearance, namely:-

- 1. Extraction of ordinary clay or sand, manually, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
- 2. Extraction of ordinary clay or sand, manually, by earthen tile makers who prepare earthen tiles.*
- 3. Removal of sand deposits on agricultural field after flood by farmers.*
- 4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
- 5. Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatama Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts.*
- 6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management.*
- 7. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/ MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.*
- 8. Digging of well for irrigation or drinking water.*
- 9. Digging of foundation for buildings not requiring prior environmental clearance.*
- 10. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nala, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate.*
- 11. Activities declared by State Government under legislations or rules as non-mining activity with concurrence of the Ministry of Environment, Forest and Climate Change, Government of India.”*

19. Further amendment was made vide Notification No. S.O. 1224 (E) dated 28th March, 2020 whereby Appendix-IX was substituted which reads as under:-

“EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

- 1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.*
- 2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.*
- 3. Removal of sand deposits on agricultural field after flood by farmers.*
- 4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.*
- 5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.*
- 6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.*
- 7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.*
- 8. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.*
- 9. Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.*
- 10. Digging of wells for irrigation or drinking water purpose.*
- 11. Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.*
- 12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.*
- 13. Activities declared by the State Government under legislations or rules as non-mining activity.”*

20. Item 6 in Appendix-IX of notification dated 28th March, 2020 was challenged before this Tribunal by filing ***O.A. No. 190/2020 titled as Noble M. Paikada Vs. Union of India and others*** which was allowed vide order

dated 28th October, 2020 holding that blanket exemption must be balanced by sustainable development concept and needs to be hedged by appropriate safeguards such as the process of excavation and quantum and MoEF & CC was directed to revisit the impugned notification in the light of the observations made within three months. Review Application No. 55/2020 filed for review of above said order was dismissed vide order dated 24th December, 2020.

21. *Civil Appeal No. 1628 of 2021 titled as Noble M. Paikada Vs. Union of India* and *Civil Appeal No. 1629 of 2021* were filed before Hon'ble Supreme Court. During pendency of the above said appeals, O.M dated 08th August, 2022 and O.M dated 21st August, 2023 were issued and notification dated 14th September, 2006 was amended vide notification dated 30th August, 2023 by MoEF & CC. Hon'ble Supreme Court held inclusion of item 6 of the substituted Appendix-IX to be illegal on the grounds of invocation of Rule 5 (4) of the EP Rules, 1986 for dispensing with requirement of prior publication of notice not being proper and item 6 being arbitrary and violative of Article 14 of the Constitution of India due to grant of completely unguided and blanket exemption and there being no specification about the quantum of ordinary earth which can be extracted; no specification of the area which can be used to extract ordinary earth; exemption not being restricted to quantity required to implement the linear projects; there being no definition of linear projects and the process to be adopted for excavation not having been specified. Hon'ble Supreme Court held that even amended notification suffered from arbitrariness and O.Ms. issued were of no consequence and that safeguards had not been provided in compliance of directions given by this Tribunal in para 8 read with para 9 of order dated 28th October, 2020. Accordingly, Hon'ble Supreme Court quashed item 6 of notification dated 28th March, 2020 and 30th August, 2023.

22. It may be observed here that Clause 11 of Appendix IX inserted by Amendment Notification No. S.O. 141 (E) dated 15th January, 2016 exempted from requirement of prior EC ***“activities declared by State Government under legislations or rules as non-mining activities with concurrence of MoEF & CC”***. Amendment Notification No. S.O. 1224 (E) dated 28th March, 2020 substituted Appendix IX and Clause 13 of substituted Appendix IX exempted from requirement of prior EC ***“activities declared by State Government under legislations or rules as non-mining activity”***.

23. **Civil Writ Jurisdiction Case No. 11181/2021 titled as Abhay Kumar Vs. Union of India and others** was filed before Hon’ble High Court of Judicature at Patna challenging Clause 13 of Amendment Notification No. S.O. 1224 (E) dated 28th March, 2020 and amendment to Rule 38 (3) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 whereby quarrying for the purpose of brick kiln was deemed to be a non-mining activity for the purpose of environmental clearance and also required that such clearance would be imperative only if the depth of quarry is not more than one and a half meters from the adjoining ground level. Hon’ble High Court of Judicature at Patna quashed Clause 13 and amendment to Rule 38 (3) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 on the principles of *ejusdem generis* and *delegatus non potest delegare* (*delegate cannot further delegate*). The relevant part of the order reads as under:-

“20. We have to specifically notice at this juncture that earlier such notifications or legislations required the concurrence of the MoEF&CC, Government of India which has been taken away, providing carta blanche insofar as the State being conferred with the power of exempting mining activities. This would inherently be a further delegation of the power conferred by the Parliament on the Central Government by the Union Legislation. We have already noticed the rule making power of the Central

Government, which is aimed at preserving and protecting the environment for which appropriate measures could be taken. While taking such appropriate measures, the Central Government, as we found, is quite competent to reckon the activities (i) carried out traditionally, (ii) for development; confined to roads, pipelines etc.; which are public utility services, (iii) protection of the masses from natural calamities, and (iv) provision of basic necessities of life, like drinking water and irrigation. Brick manufacturing does not come under any of the exempted categories as specified from the various exemptions granted under Appendix-IX or from the power sourced to the Environment Protection Act. The 'other activity', which is capable of being exempted, referred to in Clause-13 of Appendix-IX has to be akin to and take its colour and texture from the other activities mentioned under Appendix-IX as exempted activities, going by the principle of ejusdem generis.

21. It has also to be emphasized that the State has not been conferred with any such power of exemption by the statute; neither the MMDR Act nor the Environment Protection Act. In that circumstance the power delegated to the Union Government cannot further be delegated to the State Government on the principle of "deligatus non protest delegare".

22. Hence, both on the principle of ejusdem generis and more so on the principle of a delegate being prevented from further delegation, Annexure-2 notification of the State Government has to be interfered with. The amendment to Rule-38(3) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 has to be set aside. We do so. The EIA Notification of 2006 to the extent it delegates the power to exempt, to the State by Clause-13 of Appendix-IX also is bad and the same stands set aside. The writ petition stands allowed."

24. The MoEF & CC circulated Judgment dated 07th March, 2024 of Hon'ble High Court of adjudicature at Patna by issuing O.M. dated 09th August, 2024. The relevant part of the O.M. reads under:-

"Sub:- Circulation of the Judgement dated 07.03.2024 of Hon'ble High Court of Patna in C.W.J.C No. 11181 of 2021 in the matter titled Abhay Kumar vs. Union of India & Ors. — reg.

The Ministry, issued a Notification dated 15.01.2016 which was subsequently amended vide notification dated 28.03.2020. The amended notification inter-alia under clause 13 of Appendix IX provides an exemption from the requirement of obtaining

Environmental Clearance to such category of cases that are specifically declared by the State Government under legislation or rules as non-mining activity.

2. The Hon'ble High Court of Patna, vide its judgment dated 07.03.2024, in C.W.J.C No. 11181 of 2021 in the matter titled Abhay Kumar vs. Union of India & Ors., has set aside clause 13 of Appendix IX in the Environmental Impact Assessment Notification, 2006.

3. The copy of the order which is self-explanatory is enclosed herewith for compliance.

4. This is issued with the approval of the Competent Authority.”

25. When examined with reference to above referred legal perspective, Rule 3 of the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 (as amended in the year 2014) and Rule 3 of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021, which granted exemption to manual digging or manual extraction of ordinary clay, ordinary earth for making bricks and pottery by providing that the same shall not be treated as mining operations subject to the condition that pit created by such digging or extraction should not be deeper than two meters, also conferred blanket and unregulated exemption to the extent that it did not specify the quantum of ordinary earth which could be extracted and the area which can be used to extract ordinary earth and did not contain any provision for reclamation/restoration of land used for mining and suffers from arbitrariness and offends Article 14 of the Constitution of India to that extent.

26. Further, Rule 3 of the Uttar Pradesh Minor Mineral (Concession) Rules, 1963 (as amended in the year 2014) and Rule 3 of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 merely excluded manual digging or manual extraction of ordinary clay, ordinary earth for making bricks and pottery, by providing that the same shall not be treated as mining operations if the pit created by such digging or extraction is not deeper than two meters, for the purposes of the Mines and Minerals Act, 1954 and Rules made thereunder

and did not exclude the same from the purview of the Environment (Protection) Act, 1986 and the EIA Notification, 2006 issued thereunder and said exemption is not protected by Clause 11 of Appendix IX of Amendment Notification dated 15th January, 2016 and Clause 13 of Appendix IX of Amendment Notifications dated 28th March, 2020 and 30th August, 2023.

27. In view of this prevalent legal perspective UPPCB has issued letter dated 30th September, 2024 to Director, Geology and Mining, Member Secretary, SEIAA, Additional Chief Secretary, Environment, Forest and Climate, Uttar Pradesh, Principal Secretary, Geology and Mining, Chief Environment Officers and Chief Legal Advisor and all Regional Officers for compliance with Judgment dated 07th March, 2024 passed in above mentioned case and O.M dated 09th August, 2024 issued by MOEF & CC.

28. In view of the above, Question No. (i) is answered in the affirmative that now excavation of soil for brick making by the brick kilns amounts to mining under entry 1A of the Schedule of the EIA Notification dated 14th September, 2006 and requires prior environmental clearance.

29. However, it may be observed here that setting up of brick kiln and primary/main activity of making of bricks does not find mention in the schedule to the EIA Notification dated 14th September, 2006 and does not require prior environmental clearance but the secondary/related activity of excavation of soil, meant for procuring raw material for making of bricks, falls in the categorization of mining so as to require prior environmental clearance. It may be observed here that such excavation of soil is not the main activity of the brick kilns and such excavation of soil is also limited to meeting of their requirements for making of bricks to the extent of their permitted capacity and also restricted to the period of their operation. The matter of grant of EC in respect of the same also necessitates clarification of related aspects

particularly the aspects as to whether in view thereof setting up of brick kiln will require EC or merely excavation of soil will require EC, whether excavation of soil for making of bricks will be an independent mining activity catering to number of brick kilns or captive mining activity restricted to the brick kiln in question and mere issuance of O.M. dated 09th August, 2024 by MOEF & CC and letter dated 30th September, 2024 by UPPCB merely mandating compliance with Judgment dated 07th March, 2024 of Hon'ble High Court of adjudicature at Patna is not sufficient and MoEF & CC is required to clarify all such aspects related to grant of EC for excavation of soil for making of bricks.

Question No. (ii): whether the brick kilns be mandatorily required to procure fly ash from coal-based industries in the area for brick making; and

30. So far as this question is concerned in its response dated 09th January, 2023 the CPCB has referred to the Fly Ash Utilization Notification, 2021, as amended on 30th December, 2022 which reads as under:-

"A. Responsibilities of thermal power plants to dispose fly ash and bottom ash.—

(1) Every coal or lignite based thermal power plant (including captive or co-generating stations or both) shall be primarily responsible to ensure 100 percent utilisation of ash (fly ash, and bottom ash) generated by it in an eco-friendly manner as given in sub paragraph (2):

(2) the ash generated from coal or lignite based thermal power plants shall be utilised only for the following eco-friendly purposes, namely: -

i. Fly ash based products viz. bricks, blocks, tiles, fibre cement sheets, pipes, boards, panels;

(ii) Cement manufacturing, ready mix concrete;

(iii) Construction of road and fly over embankment, Ash and Geo-polymer based construction material;

- (iv) *Construction of dam;*
- (v) *Filling up of low lying area;*
- (vi) *Filling of mine voids;*
- (vii) *Manufacturing of sintered or cold bonded ash aggregate;*
- (viii) *Agriculture in a controlled manner based on soil testing;*
- (ix) *Construction of shoreline protection structures in coastal districts;*
- (x) *Export of ash to other countries."*

31. The CPCB has further submitted that sub sections A(2)(i) applies to fly ash based brick unit.

32. In its response dated 10th February, 2023 the UPPCB has also referred to **Ministry of Environment and Forests, Government of India S.O.763(E)dated14-09-1999** and **Ministry of Environment and Forests, Government of India S.O. 2804 (E)dated03-11-2009** and the relevant part of the response reads as under:-

<p>According to notification of Ministry of Environment and Forests, Government of India S.O.763(E)dated14-09-1999</p>	<p>According to notification of Ministry of Environment and Forests, Government of India S.O. 2804 (E)dated03-11-2009</p>
<p>1. Use of fly ash, bottom ash or pond ash in the manufacture of bricks and other construction activities:- 1) No person shall within a radius of 1{one hundred kilometers} from coal or lignite based thermal power plants, manufacture clay brick or tiles or blocks for use in construction activities without mixing at least 25 per cent of ash (fly ash, bottom ash or pond ash) with soil on weight to weight basis. (i) use of fly ash based products in construction activities];</p>	<p>AMENDMENTS- In the said notifications in paragraph 1,-for sub paragraph (1), the following shall be substituted namely:- (i) use of fly ash based products in construction activities;</p>

In view of above amendments it is not mandatorily required to procure fly ash from coal based industries by the said brick kiln.

33. It may be observed that in Notification No. S.O. 763 (E) dated 14th September, 1999 issued by erstwhile MoEF necessity of restricting the excavation of top soil for manufacturing of bricks and promoting the utilization of fly ash in the manufacture of building materials and in construction activity from coal or lignite based thermal power plants was acknowledged and provision was made for use of fly ash, bottom ash or pond ash in the manufacture of bricks and other construction activities but said notification was superseded by Notification No. S.O. 5481 (E) dated 31st December, 2021. The later notification was also amended vide Notification No. S.O. 6169 (E) dated 30th December, 2022 and Notification No. S.O. 05 (E) dated 01st January, 2024. The above said notifications do not contain any provision mandatorily requiring brick kilns to use fly ash from thermal power plants.

34. It is evident from the material placed on record that at present it is not mandatory for the brick kilns to procure fly ash from thermal power plants situated within radius of 300 Kms or coal-based industries in the area for brick making.

35. It may be added here that now under MoEF & CC Notification No. G.S.R. 143 (E) dated 22nd February, 2022 which notified the Environment (Protection) Amendment Rules, 2022, the ash generated in the brick kilns has to be fully utilized in-house in brick making.

36. For restricting the excavation of top soil for manufacturing of bricks and protection and improvement of environment and also for proper utilization of fly ash generated by thermal power plants or ash generated by other industries, we consider it essential that the brick kilns be mandatorily

required to utilize ash generated by the respective brick kilns and also fly ash generated by thermal power plants and ash generating industries in the area situated within a radius of 15-25 Kms as per availability and permissibility of usage of fly ash/ash with soil for manufacturing of bricks.

37. This Tribunal noticed in cases before it that many of the industries are unscientifically disposing of ash generated by them by filling in low lying areas or agricultural land but we consider it to be appropriate that ash generated by these industries be supplied, free of cost and also by bearing the cost of transportation by them, to the brick kilns which will help in restricting the excavation of soil for brick making.

38. In view of the above, question No. (ii) is answered in the negative that at present the brick kilns are not mandatorily required to procure fly ash from thermal power plants or coal-based industries in the area for brick making but the matter needs to be examined and appropriate directions are required to be issued for utilization of fly ash generated by thermal power plants or ash generated by other industries by the brick kilns for brick making as directed above.

Question No. (iii):- whether measures are required to be taken for conservation of soil for agricultural purposes by prohibiting excavation of top soil for brick making.

39. Sustainable Sand Mining Management Guidelines (SSMG), 2016 (at page 60) and Enforcement and Monitoring Guidelines for Sand Mining (EMGSM), 2020 (at pages 46-47) noticed the practice of mining of sand from agricultural field. SSMG, 2016 noticed that in Haryana, where the practice of mining sand in agricultural land is prevalent, the top layer of soil varying between 1 and 2 meters is removed and stacked separately and thereafter the sand deposit which may be 10-15 meter deep is mined. After removing the

sand layer up to a maximum depth of 09 meters, the top soil stacked is spread out on the field and the same is brought under the cultivation though the level of mined out area is lowered to the depth of the excavation. SSMG, 2016 and EMGSM, 2020 also made recommendations regarding such mining including the recommendation that adequate gap minimum 10 feet be left from adjacent agricultural field to avoid erosion and scouring.

40. In its response dated 14th February, 2023 UPPCB has mentioned that Department of Mining, Government of Uttar Pradesh vide letter dated 23rd January, 2023 has submitted that the soil excavated from the upper layer which contains remains of flora is to be stored by the excavator. It is recommended by the Mining Department that the first layer after excavation should be used for reclamation of soil for better agriculture.

41. Copy of letter dated 23rd January, 2023 has been annexed as Annexure No. 3 and the relevant part thereof (at page no. 89 of the paper book) is reproduced as under:-

विषय: माननीय राष्ट्रीय हररत अविकरण विल्ली में विचारािीन ओ० ए० सं० 359/2022 रफत नईम वसद्दी बनाम स्टेट ऑफ यू० पी० में पाररत आेश विनाक 28.09.2022 के अनुपालन के सम्बन्ध में

कृपया उपयुक्त विषयक अपर मुख्य सवचि / प्रमुख सवचि, कृष/भूतत्व एिं खवनकमु / राजस्व विभाग, उ० प्र० शासन को सम्बोवित अपने पत्र सांख्या- जी39945/सी-7/ओ०ए० नां0-359/22/2023 विनाक 12.01 2023. वजसकी प्रवत ई मेल के माध्यम से इस वनिशालय को प्रेषत की गयी है, का सन्दभु ग्रहण करने का कष्ट कर, उक्त पत्र के माध्यम से माननीय राष्ट्रीय हररत अधिकरण नई धिल्ली में विचारािीन ओ०ए० सं० 359/2022 रफत नईम वसद्दी बनाम स्टेट ऑफ यूपी में पाररत आेश विनाक 28.09.2022 के अनुपालन में धनम्र धिन्िु पर विभाग का अधभमत उपलब्ध कराि जाने का अनुराि धकया गया है

धबन्िु सं 4 (iii) *whether measures are required to be taken for conservation of soil for agricultural purposes by prohibiting excavation of top soil for brick making require due consideration for taking of appropriate measures for protection and improvement of the environment.*

इस सम्बन्धि में अिगत कराना है धक प्रिश में धनमाण कार्यों में भराई के साथ साथ ईटा धनमाण में धमट्टी का प्रयोग हाता है। इट धमट्टी की धनकासी समान्यत ऊपरी सतह से 4-5 फीट तक की गहराई तक का जाता है। उल्लेखनीय है धक उ०प्र० उपखधनज

(पररहार) धनयमाली, 2021 के धनयम-3 के प्राधिानों के अनुसार 02 मी० की गहराई तक हस्तचालन धिधि से इंट धमट्टी /साारण धमट्टी धनकालने की प्रधिया खनन सधिया के अन्तगात नही आती है अतएि ईंट धमट्टी की धनकासी हतु उक्त धनयमाली के प्राधिानों के अन्तगात पररहार प्राप्त करन की अधनियाता नही है। ईंट धमट्टी की धनकासी के िौरान कुछ क्षेत्रों में ऊपरी सतह पर लगभग 20 समी की गहराई में उपलब्ध धमट्टी को हटाने के उपरान्त उपलब्ध धमट्टी से इंटों का धनमाण धकया जाता है।

ऊपरी सतह से हटाई गई धमट्टी, धजसे एकधत्रत कर रखा जाना होता है। में पड़े पौो के अिशषे धिद्यमान रहते है। ईंट धनमाण के उपरान्त ऐसी धमट्टी को धनकासी धकये गये क्षेत्र में पुन फैलाया नही जाता है। कृधष योग्य भूधम के सरक्षण हतुे आश्यक है धक इंट धमट्टी की धनकासी के उपरान्त क्षेत्र की पुनाभराि (Reclamation) कराये जाने हतुे ऊपरी सतह की एकत्र धमट्टी को ईंट धमट्टी की धनकासी के उपरान्त उसी क्षेत्र में फैला धिया जाना उधचत होगा।

अत उपरोक्तानुसार भूत्व एि खधनकमा धिभाग की आख्या /अधभमत आश्यक कायािाही हतुे प्रधेषत है।”

42. In view of the above question No. (iii) is answered in the affirmative that measures are required to be taken for conservation of soil for agricultural purposes by prohibiting excavation of top soil for brick making and prescribing utilization of the top soil for restoration/reclamation of the land, subjected to mining for brick making, for cultivation/other agricultural activities.

(i) In view of the above determinations of the environmental questions involved, (i) MoEF & CC is directed to issue O.M. for clarifying the legal position with respect to grant of EC for mining of soil by brick kilns for the purpose of brick making and clarify applicability of the provisions of EIA Notification, 2006 and order passed by Hon'ble High Court of adjudicature at Patna. MoEF & CC will also specify its agency that will approve and monitor such mining by/for brick kilns; (ii) CPCB is directed to issue requisite guidelines for adoption of requisite measures for conservation of top soil and restoration/reclamation of land subjected to mining of soil for brick making; The Guidelines shall also indicate the fly ash disposal mechanism, green cover, metalling of the roads that carry soil/brick etc, water sprinkling for dust mitigation,

restoration of mined areas, usage of ground water. **(iii) CPCB is directed to examine the issue of utilization of ash by brickkilns by constituting a Committee of Experts or otherwise as considered appropriate and issue requisite directions for incorporation of requisite conditions at the time of grant of CTE/CTO by SPCB/PCCs to the brick kilns.**

43. So far as the present original application is concerned the grievance of the applicant in the present application is regarding difficulties faced in cultivation of his agricultural land due to excess mining in adjacent land to the extent of 1 ½ meters wide X 25 meters long and 08 feet deep and environmental damage thereby caused.

44. As per report of the Joint Committee filed vide email dated 25th August, 2022, the Joint Committee found excavation on the side of the land of the applicant and noticed its adverse impact on land of the applicant. The relevant part of the report of the Joint Committee (at pages no. 6-7 of the paper book) is, at the cost of repetition, reproduced here:-

- *“It has been found during joint inspection that soil has been excavated from the side of the land of Mohd. Rafhat Naeem up to 18 meters in length in Gata no.-12, village Abbul Khairpur and 05 meters in length in Gata No.-15 Village-Abbul Khairpur, whose depth is 4.5 feet in both Gata numbers. No excavation was found during inspection in gata no.-35mi village Said Alipur, Tehsil- Nagina, District – Bijnor.*
- *It has been found during joint inspection that the complainant's agriculture land has been affected by mining of about 4.5 feet deep in the agricultural land of other farmers which is located adjacent the agricultural land of the complainant Mr. Rafhat Naeem Siddiqui. (Photograph attached as **Annexure-6**).”*

45. It may be observed here that the Joint Committee did not mention in its report as to when and by whom the excavation had been done.

46. In its reports filed vide emails dated 10th February, 2023 and 19th December, 2023 UPPCB did not submit any response regarding excavation from land adjacent to the agricultural land of the applicant and its adverse impact on cultivation of his agricultural land by the applicant.

47. Subsequently, Regional Officer, UPPCB, Bijnor forwarded copy of letter no. 1046/Khanij Anubhag-2024 dated 10th April, 2024 sent by the District Mining Officer, Bijnor to him, report dated 04th April, 2024 submitted by Team comprising officials from Revenue and Mining Departments headed by SDM, Nagina alongwith statements of Ompal Singh and replies dated 11th March, 2024 and 13th March, 2024 submitted by Mohd. Akram proprietor of M/s. Milansar Brick Works and reference dated 04th April, 2024 made by Additional District Magistrate, (F & R)/Officer In-charge of Mining, Bijnor.

48. The relevant part of the reference dated 04th April, 2024 made by Additional District Magistrate, (F & R)/Officer In-charge of Mining, Bijnor (at page 145 of the paper book) reads as under:-

‘विषय कन्सलटेन्ट (न्यायक) मा० राष्ट्रीय हररत अविकरण, नई वि० द्वारा पाररत आिेश विनाक 28.09.2022 ि 12.02.2024 के अनुपालन में सलग्न प्रार्थना पत्र में उल्लिखित कर्न की सत्यना ही जांच कर आख्या उपलब्ध कराये जाने विषयक।

1. उपवजलाविकारी नगीना।
2. तहसीलार नगीना।
3. िान अविकारी विजनौर।

कृपया उपरोक्त विषयक कन्सलटेन्ट (न्यायक) मा० राष्ट्रीय हररत अविकरण, नई वि० द्वारा प्रवेपत ई-मले पत्रांक NGT/judicial/OA/359-2022 विनांक 14.10.2022 का सन्दर्भ ग्रहण करे, वजसमें मा० राष्ट्रीय हररत अविकरण, नई वि० द्वारा ओ०ए० नां० 359/2022 रफअत नईम वसदकी िनाम उ०प्र० सरकार में पररत आिेश विनांक 28.09.2022 ि 12.02 2024 के अनुपालन में अनुपालन आख्या से अिगत कराये जाने हेतु वनिवेशत वकया गया है।

प्रकरण में प्रार्ी मो० अकरम प्रो० म०े वमलनसार विक िर्क्य ग्राम अिल िरैपुर तहसील नगीना वजला विजनौर द्वारा अपने पृर्क-पृर्क प्रार्थना पत्र विनांक 11.03.2024 ि

13.03.2024 कायाथलय में प्रस्तुत कर अिगत कराया गया है वक प्रार्ी का ईट टटा वमलनसार विक िक्थ ग्राम अिल रैपुर तहसील नगीना जनपि विजनौर में ललित है। प्रार्ी के समीपिती ग्राम अजुपुरा रानी वनिासी रफत नईम वसदकी द्वारा राष्ट्र ीय हररत अविकरण विWी में आििन नम्बर 359/2022 रफत नईम वसदकी िनाम उत्तर प्रिश सरकार प्रस्तुत कर कर्न वकया गया वक 2021/2022 में उनकी रूवम सैअलीपुर के िसरा नम्बर 35वग ि अिल रैपुर के िसरा नम्बर 55 में 8 वफट गहरा अििे िनन वकया गया है। उक्त वशकायत गलत तथ्ोां पर आाररत है। जिवक प्रार्ी द्वारा अिल रैपुर के िसरा नम्बर 13 में ि 14, 16,17 के कुछ र्ाग में वनयमानुसार 5 वफट गहरायी से कम िनन वकया गया है। प्रार्ी द्वारा

2021/2022 में वकये गये िनन की परवमशन प्रार्थना पत्र के सार् सलग्न है। उक्त सन्दर्ध में श्रीमान के कायाथलय द्वारा पूथि में जाँच कराकर राष्ट्र ीय हररत अविकरण को प्रवेषत की गयी र्ी। वलवपकीय त्रुवटिश से 5 वफट के िान पर 5 मीटर ि िसरा नांिर 12, 15 वलिा गया है तर्ा उपरोक्त िसरा नां 35 वम. 55 ि 12, 15 में प्रार्ी द्वारा िनन नहीं कराया गया है। प्रार्ी के पास प्रिषण वनयन्त्रण िोर्थ से विनांक 31.07.2027 तक एन०ओ०सी प्राप्त है। प्रार्थना पत्र के अन्त में उपवजलाविकारी महोिय नगीना द्वारा ग्राम अिल रैपुर के लैपाल य कानूनगो द्वारा पुनः मौके की सही जाँच कराकर अवतशीघ्र राष्ट्र ीय हररत अविकरण को प्रवेषत वकये जाने का अनुरोि वकया गया है।

अतः कन्सलटेन्ट (न्यावयक) मा० राष्ट्र ीय हररत अविकरण, नई विWी द्वारा प्रवेषत ई- मले पत्रांक NGT/judicial/OA/359-2022 विनांक 14.10.2022 के अनुपालन में प्रार्ी मौ० अकरम प्रो० म०ै वमलनसार विक िक्थ ग्राम अिल रैपुर तहसील नगीना वजला विजनौर के पृर्क-पृर्क प्रार्थना पत्र विनांक 11.03.2024 ि 13.03.2024 मय सलग्नक आपको इस वनिशे के सार् प्रवेषत वक आप मा० राष्ट्र ीय हररत अविकरण, नई विWी द्वारा पाररत आेश विनांक 12.02.2024 के अनुपालन में ि उपरोक्त प्रार्थना पत्र में उल्लवलित कर्न की सत्यता की सांयुक्त जाँच कर जाँच आख्या से तत्काल क्षत्रीय अविकारी प्रिषण वनयन्त्रण िोर्थ विजनौर को उपलब्ध कराना सुवनवित करे तावक उनके द्वारा अनुपालन आख्या से मा० राष्ट्र ीय हररत अविकरण, नई विWी को अिगत कराया जा सके।”

49. The relevant part of the report dated 04th April, 2024 submitted by the Team comprising officials from Revenue and Mining Departments headed by SDM, Nagina (at page 138 of paper book) reads as under:-

“कृपया सांलग्न सन्दर्ध कायाथल वजलाविकारी विजनौर पत्रांक 1007/ िवनज अनुराग-24 विनांक 04.04.2024 में कन्सलटेन्ट न्यावयक, मा० राष्ट्र ीय हररत अविकरण, नई विWी द्वारा पाररत आेश विनांक 28.09.2022 ि 12.02.2024 के अनुपालन में पररयोजना प्रस्तािक श्री मौ० अकरम पुत्र श्री मुन्ने को प्रवेषत नोवटस के क्रम में उनके द्वारा प्रस्तुत प्रवतउत्तर विनांक 11/ 13.03.2024 के द्वारा विये गये प्रार्थना पत्र जो सांलग्न है, में उल्लवलित कर्न ि श्री रफत नईम वसदकी के प्रार्थना पत्र विनांक 21.03.2022 में उल्लवलित कर्न की सत्यता की जाँच चाही गयी है. वजसकी जाँच आख्या वनम्नित है :-

उक्त के सम्बन्ध में अिगत कराना है वक आज विनांक 04.04.2024 को राजस्व विर्ाग ि िनन विर्ाग की सांयुक्त टीम द्वारा मौके पर उपल्लित होकर प्रकरण की जाँच की गयी, वजसमे सलग्न कायाथलय पत्रांक 1007/ िवनज अनुराग-24 विनांक 04.04.2024 के सार् सांलग्न प्रार्थना पत्र मे प्रार्ी मौ० अकरम पुत्र श्री मुन्ने वनिासी ग्राम शािीपुर परगना ि तहसील नगीना वजला विजनौर द्वारा ईट टटा वमलनसार विक िक्थ ग्राम अिलिरैपुर परगना ि तहसील नगीना के मावलक है. ने मा० राष्ट्र ीय हररत अविकरण, नई विWी में आििन

सां० 359/2022 रफत नईम वसदकी िनाम उ०प्र० सरकार में रफत नईम वसदकी द्वारा विनांक 21.03.2022 को विये गये प्रार्थना पत्र, वजसमें ग्राम सैअलीपुर के िसरा सांख्या 35 की मढे पर ग्राम अिलु िरैपुर में ललित िसरा सां० 55 के काशतकार रावहला िातून पली अनीस अहमि, मौ० याकूि पुत्र मौ० इशाक, अब्दुल सत्तार, अब्दुल गफफार पुत्रगण अ० रशीि वनिासीगण शािीपुर द्वारा अपनी कृवष रूवम अििे िनन के वलए टटा मावलक मौ० अकरम पुत्र मुन्ने को िे रि है। वजसमें ईट टटा मावलक ने 8 वफट गहरा िनन वकये जाने की वशकायत की है। आज विनांक 04.04.2024 को मौके पर सांयुक्त वनरीक्षण में जॉच में पाया गया वक वशकायतकताथ रफत नईम वसदकी आवि काशतकारो के गाटा सांख्या 35 रकिा

9.270 हे० ललित ग्राम सैअलीपुर से ग्राम अिलुरैपुर का गाटा सां० 55 रकिा 0.562 हे० वमला हुआ नहीं है। मा० राष्ट्र ीय हररत अविकरण, नई विWी को रफत नईग वसदकी द्वारा गाटा सां० 55 ललित ग्राम अिलु िरैपुर के जो सहिताितार वशकायत में उल्लविलित वकये गये हैं, िह असत्य िं वनरािार है। ग्राम अिलुरैपुर के गाटा सां० 55 पर राजस्व ररकार्थ अनुसार ओमपाल वसहां, राजपाल वसांह, रामचरन वसहां ि मिन वसहां पुत्रगण शांकर वसहां वनिासीगण शािीपुर के नाम िज्थ अवलिं हऱैं उक्त गाटा सां० 55 ग्राम अिलुरैपुर, ग्राम सैअलीपुर के गाटा सां० 35 से लगर्ग 01 वकलोमीटर िूर ललित है, वजसमे कोई र्ी िनन कर्ी र्ी नहीं वकया गया है। िलीय जांच में गाटा सांख्या 35 ललित ग्राम सैअलीपुर पर र्ी वकसी वल्लक्त द्वारा कोई िनन नहीं वकया जाना पाया गया। इस प्रकार वशकायतकताथ श्री रफत नईम वसदकी द्वारा मा० राष्ट्र ीय हररत अविकरण में की गयी वशकायत वनरािार ि असत्य पायी गयी। इांट टटा स्वामी मौ० अकरम पुत्र मुन्ने वनिासी ग्राम शािीपुर के द्वारा ग्राम अजुपुरा रानी के गाटा सांख्या 231 ि ग्राम अिलु िरैपुर के गाटा सां० 13 क्ष० 0.680 हे०, 14 क्ष० 1.607 हे०, 16 क्ष० 0.338 हे० ि 17 क्ष० 0.339 हे० से वमटटी की वनकासी 4 से 4.5 वफट की गयी है। "

50. The relevant part of letter no. 1046/Khanij Anubhag-2024 dated 10th April, 2024 sent by the District Mining Officer, Bijnor to the Regional Officer, UPPCB, Bijnor (at page 137 of the paper book) reads as under:-

कायाथलय वजलाविकारी, विजनौर।

विषय: मा० राष्ट्र ीय हररत अविकरण, नई विWी द्वारा ओ०ए० सांख्या 359/2022 रफत नईम वसदकी िनाम स्टेट ऑफ यू०पी० में पाररत अिेश विनांक 12.02.2024 के सम्बन्ध मांे

क्षत्रीय अविकारी,

उत्तर प्रिश प्रिषण वनयन्तण िोर्थ,

विजनौर।

कृपया उपरोक्त विषयक अपने कायाथलय पत्रांक 1361/एन-43/जनरल-2024 विनांक 26.02.2024 का सन्दर्भ ग्रहण करे, वजसके सार् मा० अविकरण द्वारा पाररत अिेश विनांक 12.02.2024 की छायाप्रवत सांलग्न करते हुए उक्त ओ०ए० में प्रश्रगत ईट टटा मसैसथ वमलनसार विक िर्क्य ग्राम अिलु िरैपुर तहसील नगीना वजला विजनौर द्वारा वकये गये वमटटी के िनन कायथ के सांिंि में ररपोटथ चाही गयी है, का अिलोकन कर अवग्रम आिशयक कायथािी वकये जाने की अपक्षा की गयी है।

उक्त के अवतररक्त यह र्ी अिलोकनीय है वक कन्सलटेन्ट (न्यावयक) मा० राष्ट्र ीय हररत अविकरण, नई विWी द्वारा प्रवेषत ई-मले पत्रांक NGT/judicial/OA/359-2022 विनांक 14.10.2022. जो कायाथलय में 28.02.2024 को प्राप्त हुआ है, वजसमें मा० राष्ट्र ीय हररत अविकरण, नई विWी द्वारा ओ०ए० नां० 359/2022 रफत नईम वसदकी िनाम उ०प्र०

सरकार में पाररत आिेश विनांक 28.09.2022 के अनुपालन में पररयोजना प्रस्तािक को नोवटस वनगथत करते हुए अनुपालन आख्या से अिगत कराये जाने हेतु वनिवेशत वकया गया।

उक्त वनिशे के अनुपालन में पररयोजना प्रस्तािक / टर्टा स्वामी मंै वमलनसार विक िर्थ ग्राम अिल िरैपुर तहसील नगीना प्रो० मौ० अकरम पुत्र मुत्रे वनिसी ग्राम शािीपुर तहसील नगीना वजला विजनौर को अपना पक्ष/स्पष्टीकरण 03 विसि के रीतर कायाथलय को उपलब्ध कराये जाने हेतु सम्बोवित कायाथलय पत्रांक 926/ विनज अनुराग-24 विनांक 12.03.2024 प्रवेषत वकया गया (छायाप्रवत सालग्रक)। वजसके क्रम में पररयोजना प्रस्तािक मौ० अकरम द्वारा अपने पृर्क-पृर्क प्रार्थना पत्र विनांक 11.03.2024 ि 13.03.2024 प्रस्तुत करते हुए अनुरोि वकया गया वक प्रार्ी द्वारा गाटा सां० 55 से कर्ी वमटटी की वनकासी नहीं की गयी है। उक्त गाटा सां० 55 के काशतकारों द्वारा वमटटी वनकासी न वकये जाने के सम्बन्ध में शपर् पत्र प्रस्तुत वकया गया है, छायाप्रवत सालग्र है। इस प्रकार रफत नईम वसदकी द्वारा मा० न्यायालय में की गयी वशकायत वनरािार िं असत्य है। प्रार्थना पत्र के अन्त में उपरोक्त तथोां को दृवष्टगत रिते हुए प्रकरण में पुनः उपवजलाविकारी नगीना, प्रिषण वनयन्त्रण िोर्थ ि िनन विराग की सांयुक्त टीम से मौके की जाँच कराकर प्रार्ी के विरूद्ध उक्त कायथिाही को वनरस्त कराये जाने का अनुरोि वकया गया। तत्क्रम में मा० राष्ट्र िय हररत अविकरण, नई विWी द्वारा पाररत आिेश विनांक 12.02.2024 के अनुपालन ि उपरोक्त प्रार्थना पत्र में वकये गये अनुरोि के क्रम में उपरोक्त प्रार्थना पत्र में उल्लवल्लित कर्न की सत्यता की सांयुक्त जाँच कर जाँच आख्या से तत्काल क्षत्रीय अविकारी प्रिषण वनयन्त्रण िार्थ विजनौर को उपलब्ध कराये जाने हेतु उपवजलाविकारी नगीना, तहसीलार नगीना ि िान अविकारी विजनौर को सम्बोवित िं आपको पृष्ठावकत काययाथलय पत्रांक 1007/ विनज अनुराग-24 विनांक 04.04.2024 प्रवेषत वकया गया, वजसमें आपको सम्बल्लन्धत से समन्वय िावपत कर जाँच आख्या ि अनुपालन आख्या समयान्तगथत मा० राष्ट्र िय हररत अविकरण नई विWी को वजिये जाने हेतु वनिवेशत वकया गया।

उक्त वनिशे के अनुपालन में उपवजलाविकारी नगीना, तहसीलार नगीना ि िान अविकारी विजनौर द्वारा अपनी सांयुक्त जाँच आख्या विनांक 04.04.2024 कायाथलय में उपलब्ध कराते हुए अिगत कराया गया है वक वशकायतकताथ रफत नईम वसदकी आवि काशतकारो के गाटा सांख्या 35 रकिा 9.270 हे० ल्लित ग्राम सैअलीपुर से ग्राम अिलरैपुर का गाटा सां० 55 रकिा 0.562 हे० वमला हुआ नहीं है। मा० राष्ट्र िय हररत अविकरण, नई विWी को रफत नईम वसदकी द्वारा गाटा सां० 55 ल्लित ग्राम अिल िरैपुर के जो सहाितार वशकायत में उल्लवल्लित वकये गये हैं, िह असत्य िं वनरािार है। ग्राम अिलरैपुर के गाटा सां० 55 पर राजस्व ररकार्थ अनुसार ओमपाल वसहां, राजपाल वसहां, रामचरन वसहां ि मिन वसहां पुत्रगण शांकर वसहां वनिसीगण शािीपुर के नाम ञ्चि अवर्लि है। उक्त गाटा सां० 55 ग्राम अिलरैपुर, ग्राम सैअलीपुर के गाटा सां० 35 से लगर्ग 01 वकलोमीटर िूर ल्लित है, वजसमें कोई री िनन कर्ी री नहीं वकया गया है। िलीय जाँच में गाटा सांख्या 35 ल्लित ग्राम सैअलीपुर पर री वकसी व्यल्लक्त द्वारा कोई िनन नहीं वकया जाना पाया गया। इस प्रकार वशकायतकताथ श्री रफत नईम वसदकी द्वारा मा० राष्ट्र िय हररत अविकरण में की गयी वशकायत वनरािार ि असत्य पायी गयी। ईट टर्टा स्वामी मौ० अकरम पुत्र मुत्रे वनिसी ग्राम शािीपुर के द्वारा ग्राम अजुपुरा रानी के गाटा सांख्या 231 ि ग्राम अिल िरैपुर के गाटा सां० 13 क्ष० 0.680 हे०, 14 क्ष० 1.607 हे०, 16 क्ष० 0.338 हे० ि 17 क्ष० 0.339 हे० से वमटटी की वनकासी 4 से 4.5 वफट की गयी है। (छायाप्रवत सालग्रक)

अतः मा० राष्ट्र िय हररत अविकरण, नई विWी द्वारा ओ०ए० सांख्या 359/2022 रफत नईम वसदकी िनाम स्टेट ऑफ यू०पी० में पाररत आिेश विनांक 12.02.2024 के अनुपालन में प्रकरण में करायी गयी सांयुक्त जाँच आख्या विनांक 04.04.2024 सालग्र कर इस अनुरोि के सार् प्रवेषत वक आप अनुपालन आख्या समयान्तगथत मा० राष्ट्र िय हररत अविकरण, नई विWी को प्राप्त कराते हुए कृत कायथिाही से इस कायाथलय को अिगत कराये जाने का कष्ट करे तावक कृत कायथिाही से वजलाविकारी महोिय को अिगत कराया जा सके।।”

51. We find that the reports submitted in the present case by the Joint Committee and the concerned administrative authorities have been casually

prepared on the basis of incomplete record and without due application of mind.

52. The applicant mentioned the number of his agricultural land as Khasra No. 35 and alleged excess excavation in land comprised in Khasra No. 55 although **the applicant also specifically mentioned that such excavation had been carried out from/in land adjacent to his land on the eastern side.** As per map attached with report dated 04th April, 2024 (at page no.141 of the paper book) land comprised in Khasra Nos. 12, 13, 14, 15, 16 and 17 is situated adjacent to land comprised in Khasra No. 35. In its report dated 25th August, 2022 the Joint Committee reported about excavation of sand from land comprised in Khasra Nos. 12 and 15 but the Joint Committee did not mention about excavation from land comprised in Khasra Nos. 13, 14, 16 and 17.

53. The Team comprising officials from Revenue and Mining Departments headed by SDM, Nagina reported, vide report dated 04th April, 2024, that Khasra No. 55 was not situated adjacent to Khasra No. 35 and was at the distance of 1 KM from the same and no excavation had been done in Khasra Nos. 35 and 55 while excavation of sand within permissible limits had been done from Khasra Nos. 13, 14, 16 and 17. The above said Team did not report about excavation in Khasra Nos. 12 and 15. The District Mining Officer, Bijnor also made similar report vide letter no. 2 dated 10th April, 2024. The above said Team and the District Mining Officer, Bijnor mentioned the complaint to be false by relying on the fact that Khasra No. 55 was situated 1 KM away from the land of the applicant and no excavation had been done in Khasra Nos. 35 and 55 without taking into consideration that the applicant did not make any allegation regarding excavation from Khasra No. 35 and had made allegations regarding excessive excavation in land situated adjacent to his land comprised in Khasra No. 35 in the eastern side which

falls in Khasra Nos. 12, 13, 14, 15, 16 and 17 as per the map attached with report dated 04th April, 2024.

54. In reference letter no. 1007 Khanij Anubhag-2024 dated 04th April, 2024 Additional District Magistrate, (F & R)/Officer In-charge of Mining, Bijnor had mentioned that Mohd. Akram had submitted replies dated 11th March, 2024 and 13th March, 2024 stating that no excavation had been done by him from land comprised in Khasra Nos. 12 and 15 and he had excavated sand from Khasra Nos. 13, 14, 16 and 17 to the depth of 05 feet and but in the report forwarded by the District Magistrate, Bijnor to this Tribunal due to inadvertent clerical mistake Khasra Nos. 12 and 15 were wrongly written and depth was wrongly written as 05 meters instead of 05 feet and he sought correction thereof. As per the reports made by Additional District Magistrate, (F & R)/Officer In-charge of Mining, Bijnor and Team comprising officials from Revenue and Mining Departments headed by SDM, Nagina and District Mining Officer, Bijnor there was no excavation of sand from Khasra Nos. 12 and 15.

55. We find it very strange as to how the Joint Committee did not notice excavation of sand from Khasra Nos. 13, 14, 16 and 17 and how Additional District Magistrate, (F & R)/Officer In-charge of Mining, Bijnor and Team comprising officials from Revenue and Mining Departments headed by SDM, Nagina and District Mining Officer, Bijnor did not notice excavation of sand from Khasra Nos. 12 and 15.

56. It may be added here that subsequently UPPCB filed report dated 06th November, 2024 acknowledging that excavation had been done in Khasra nos. 12 and 15 while asserting that **such excavation had been done by M/s Shiv Ent Udyog and Mrs. Himchal Devi**. The relevant part of the report (at pages 176-178 of the paper book) reads as under:-

**“REPORT ON BEHALF OF THE RESPONDENT NO.-4,
UTTAR PRADESH POLLUTION CONTROL BOARD, IN
COMPLIANCE TO THE ORDER DATED 30-07-2024 PASSED
BY THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI**

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6. That UPPCB on 27.08.2024 has sent a letter to the District Mining Officer, Bijnore to provide details of persons to whom license issued at Gata No. 12 and 15 Village Abul Khairpur, Tahsil Nagina, Dist-Bijnore including the area (in cubic meter) in which the mining has been done and for what purpose the mining has been done. A copy of letter dated 27.08.2024 is being annexed herewith as **Annexure No.-R4/4**.

7. That Additional District Magistrate, (F/R)/Incharge (Mining), Bijnore vide letter dated 06.09.2024 has issued directions to SDM, Nagina, Tehsildar, Nagina, Mining Officer, Bijnore to provide information as required by UPPCB mentioned in letter dated 27.08.2024 sent by the UPPCB and also issued direction to visit Gata No. 12 and 15 at Village Abul Khairpur, Tahsil Nagina, District-Bijnore and send report immediately to Regional Office, UPPCB, Bijnore. A copy of the letter dated 06.09.2024 is annexed herewith as **Annexure No.-R4/5**.

8. That UPPCB on 22.10.2024 has sent a reminder letter to the District Mining Officer, Bijnore to provide details of persons to whom license issued at Gata No. 12 and 15 Village Abul Khairpur, Tahsil Nagina, District- Bijnore including the area (in cubic meter) in which the mining has been done and for what purpose the mining has been done. A copy of reminder letter dated 22.10.2024 is annexed herewith as **Annexure No.-R4/6**.

9. That Mining Officer, Bijnore vide letter dated 28.10.2024 has replied to the above mentioned letters dated 27.08.2024 and 22.10.2024 of UPPCB. Mining Officer, Bijnore in its reply dated 28.10.2024 has mentioned that the inspection of the above Gata No. 12 and 15 at village Abul Khairpur, Tahsil Nagina, Dist- Bijnore has been carried on 25.10.2024. In the report dated 25.10.2024 it is mentioned that at Gata No. 12 Village Abul Khairpur, Tahsil Nagina, Dist- Bijnore, mining of 5164.96 cubic meter of soil has been done by M/s Shiv Ent Udyog for which the unit has submitted the royalty before the mining department. Further, the Mining Officer, Bijnore in its reply dated 28.10.2024 has mentioned that as per revenue records Gata No. 15 Village Abul Khairpur, Tahsil Nagina, Dist-Bijnore, is registered in the name of Mrs. Himchal Devi wife of Arvind Kumar village Shadipur. That at Gata No. 15 Village Abul Khairpur, Tahsil Nagina, Dist- Bijnore, illegal mining of 513.75 cubic meter of soil has been done by Mrs. Himchal Devi without prior permission of concerning department for the purpose of construction of house and Kaccha Road. Mining Department, Bijnore vide letter dated 28 10.2024 has issued notice against Mrs. Himchal Devi for illegal mining at Gata No. 15 Village Abul Khairpur, Tahsil Nagina, District- Bijnore. A

*copy of letter dated 28.10.2024 of Mining Officer, Bijnore is annexed herewith as **Annexure No.-R4/7**.*

10. That as per the records of UPPCB and records provided by the Mining Department, Bijnore both the Brick Kilns namely M/s Milansar Brick Works, Village Abul Khairpur, Tehsil Nagina, District Bijnore and M/s. Siv Ent Udyog, Village Shadipur, Hargarnpur, Tehsil Nagina, District-Bijnore in question are having valid Consent to Operate from UPPCB for operation of the brick kilns and permission from mining department form mining of soil. The illegal mining has been done at Gata No. 15 Village Abul Khairpur, Tahsil Nagina, District- Bijnore, by Mrs. Himchal Devi without prior permission of concerning department for which the mining department has issued notice and further action is to be taken by mining department itself.”

57. We also find it very strange that these facts mentioned in additional report dated 06th November, 2024 were not looked into and mentioned in reports dated 10th February, 2023, 19th December, 2023 and 12th April, 2024 submitted by UPPCB and reports submitted by Additional District Magistrate, (F & R)/Officer In-charge of Mining, Bijnor and Team comprising officials from Revenue and Mining Departments headed by SDM, Nagina and District Mining Officer, Bijnor.

58. It may be observed here that in the above said report sand from Khasra No. 12 is stated to have been excavated by the proprietor of M/s. Shiv Ent Udhog who is also stated by the District Mining Officer, Bijnor to have paid royalty for the same. However, the documents for payment of royalty in respect thereof pertain to the Years 2019–2020 much before making of complaint dated 21st March, 2022 by the applicant and are not supported by other documents regarding lease by the owners and grant of permission by the Mining Department for excavation.

59. It may be further observed here that excavation from Khasra No. 15 is stated to have been done by owner Smt. Himchal Devi and show cause notice is stated to have been issued to her by the District Mining Officer, Bijnor on 28th October, 2024 whereas the fact regarding such excavation had been

mentioned by the Joint Committee in its report dated 25th August, 2022. There is no explanation as to why the District Mining Officer, Bijnor did not take any action immediately after submission of its report by the Joint Committee.

60. We restrain ourselves from expressing any opinion as to whether such reports were submitted deliberately to suppress/misrepresent the material facts before this Tribunal to mislead it regarding the exact factual position at the site in question. Yet, we are constrained to express our dissatisfaction regarding casual and unsatisfactory manner in which reports regarding the factual position have been prepared and submitted before this Tribunal and also regarding inaction/negligence on the part of concerned authorities in taking remedial action even after filing of the present application and undue/unreasonable delay in taking of remedial action by the concerned authorities despite orders passed by this Tribunal. The same warrants taking of appropriate action by the higher authorities and they are directed to initiate appropriate disciplinary action against the defaulting officials and to issue appropriate instructions so that such lapses/discrepancies, which have occurred in the present case, do not occur in future.

61. The findings of the Joint Committee regarding excavation of sand from Khasra Nos. 12 and 15 are supported by other material on record and there is no ground to discard said findings and the report of the Joint Committee deserves to be and is accepted in respect thereof. By the report of the Joint Committee and other material on record it is established that sand had been unscientifically excavated from land adjacent to agricultural land of the applicant due to which the applicant faced difficulties in cultivation of the for paddy and sugarcane crops. From the material on record it is established that after excavation of sand no steps for reclamation/restoration of the affected area were taken by M/s. Shiv Ent Udyog and Smt. Himchal Devi

which resulted in environmental damage and consequent loss to the applicant.

62. Sub Section (1) of Section 15 of the National Green Tribunal Act, 2010, which empowers this Tribunal to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I thereof, reads as under:-

“15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

- b. relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);*
- c. for restitution of property damaged;*
- d. for restitution of the environment for such area or areas, as the Tribunal may think fit.”*

63. In **M.C. Mehta vs. Kamal Nath and others (2000) 6 SCC 213**, the Hon’ble Supreme Court observed that: *“...pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. **He has also to pay damages to those who have suffered loss on account of the act of the offender**”*. These observations in respect of civil wrong of pollution apply with equal force to damage caused by violation of environmental norms for the purpose of award of environmental compensation as reiterated by Hon’ble Supreme Court in catena of subsequent decisions.

64. In view of the ‘polluter pays’ principle embodied by Section 20 of the National Green Tribunal Act, 2010, M/s. Shiv Ent Udyog and Smt. Himchal Devi will be liable to pay appropriate environmental compensation for the environmental damage caused by excavating soil without leaving gap of 10

feet from adjacent agricultural field (of the applicant). However, due to M/s. Shiv Ent Udyog and Smt. Himchal Devi not being parties before this Tribunal, no determination of their liability to pay environmental compensation can be made and no order for payment of compensation can be passed by this Tribunal at this stage and taking of further proceedings after their impleadment will cause inconvenience and undue/unreasonable delay in final adjudication of the case which is already pending for more than two years. The question of their liability to pay environmental compensation for environmental damage caused can be determined by UPPCB in the course of proceedings against M/s. Shiv Ent Udyog and Smt. Himchal Devi and in accordance with law governing imposition and realization of environmental compensation on the basis of polluter pays principles as per the provisions of the National Green Tribunal Act, 2010 and the Environment (Protection) Act, 1986 and directions issued by the Hon'ble Supreme Court and this Tribunal and guidelines framed by the CPCB.

65. It may be added here that in the letter petition the applicant has not claimed any compensation. However, the applicant will be at liberty to make appropriate claim for compensation for loss caused to him (if so desired) out of the environmental compensation imposed on and realized from M/s. Shiv Ent Udyog and Smt. Himchal Devi by UPPCB.

66. In view of the above, UPPCB is directed to initiate proceedings against M/s. Shiv Ent Udyog and Smt. Himchal Devi for imposition and realization of environmental compensation in accordance with law.

Compliance with recommendations of the Joint Committee by respondent no. 6-M/s. Milansar Brick Works

67. In its report dated 25th August, 2022 (at page no. 7 of the paper book) the Joint Committee has made the following observations for compliance by respondent no. 6-M/s. Milansar Brick Works:-

(i) *In compliance of notification dated-22.02.2022 issued by Ministry of Environment, Forest and Climate Change, Government of India, the said brick kiln should be converted into zig-zag technology within 02 years from the date of notification.*

(ii) *Brick kiln should not be operated till it gets the valid consent to operate from UPPCB.*

(iii) *Ambient and stack Monitoring will be done by UPPCB during operational condition of brick kiln.*

(iv) *Provision should be made by brick kiln owner to ensure no soil erosion from nearby land, for which permission of soil excavation is not provided. Same may be verify by Revenue department/Mining department/Agriculture department.*

68. In its report dated 10th February, 2023 UPPCB has mentioned the status of compliance by respondent no. 6-M/s. Milansar Brick Works with the observations made by the Joint Committee in tabular format (at pages no. 57-61 of the paper book) which is reproduced as under:-

S.N.	Observations of joint committee	Response
I	<i>In compliance of notification dated- 22.02.2022 issued by Ministry of Environment, Forest and Climate Change, Government of India, the said brick kiln should be converted into zig-zag technology within 02 years from the date of notification.</i>	<i>The brick kiln has submitted a letter dated 07.01.2023 for conversion of brick kiln in to zig-zag technology up to November, 2023. Letter enclosed as Annexure-No. 4. In consolidated consent to operate (CTO) issued to the brick kiln by UPPCB on 09.12.2022 which is valid upto 31.07.2027, condition has been imposed for conversion of brick kiln into zig-zag technology as per the notification of MOEF Govt of India.</i>
II	<i>Brick kiln should not be operated till it gets the valid consent to operate from UPPCB.</i>	<i>Brick kiln has obtained consent to operate (CTO) from UPPCB, which is valid up to 31-07-2027. Copy of CTO enclosed as Annexure-5.</i>

III	Ambient and stack Monitoring will be done by UPPCB during operational condition of brick kiln.	Brick kiln was not found in operation at the time of inspection dated 09.01.2023 done by UPPCB. Photographs of brick kiln enclosed as Annexure-6. A letter dated 07.01.2023 submitted by the unit in which mentioned that the brick kiln will be operational since February, 2023.
IV.	Provision should be made by brick kiln owner to ensure no soil erosion from nearby land, for which permission of soil excavation is not provided. Same may be verify by Revenue department/Mining department/Agriculture department.	Verification can be carried out when brick kiln would be operational.

69. UPPCB filed report dated 19th December, 2023 vide email dated 19th December, 2023. The relevant part of the report (at pages no. 100-101 of the paper book) is reproduced below:-

“Report in compliance of direction issued by Hon'ble NGT vide order dated 28.09.2022 and 6.10.2023 in OA number 359/2022, Rafhat Naeem Siddiqui Vs State of U.P.

X X X X

5. That in compliance of order dated 06-10-2023 of Hon'ble Tribunal in the above matter latest inspection of the brick kiln M/s Milansar Brick Works, Vill-Abul Khairpur, Tehsil-Nagina, Dist-Bijnore has been conducted on 08-12-2023 by officials of Regional Office, UPPCB, Bijnore. As per inspection report the brick kiln has been established in the year 2008 for production of 20,000 bricks per day. The brick kiln has installed gravitational settling chamber and 30 meter high stack for control of process emission. The brick kiln is having valid Consent to Operate up to 31-07-2027. During inspection dated 08-12-2023 the brick kiln was found not operational due to own reason. The brick kiln has submitted affidavit on 22-11-2023 in which the unit has declared that the operation of the brick kiln would not be conducted in the year, 2023 -24. Copy of inspection report dated 08-12-2023 signed on 11-12-2023 and copy of affidavit dated 22-11-2023 is annexed as Annexure No. 2 and Annexure No. 3.”

70. Reply has been filed by M/s Milansar Brick Works vide email dated 29th July, 2024. The relevant part of the reply (at pages 155-170 of the paper book) is reproduced below:-

“REPLY ON BEHALF OF THE RESPONDENT NO.6 M/S MILANSAR BRICK WORKS

X X X X

FACTUAL ASPECTS OF THE CASE

X X X X

5. *That the Answering Respondent herein submits the following facts/submissions with respect to the allegation made in its letter by the Applicant and the observation of the Joint Committee dated 25.08.2022.*

a) *That the Applicant has made blatantly false and incorrect statement that his land falling under Gata no. 35 mi village ‘Said Alipur’ and adjoining land falling under Gata no.55 of village Abul Khairpur have been subjected to illegal mining by the Answering Respondent.*

b) *That only Gata no. 35 mi village Said Alipur belong to the Applicant where no mining has been found by the Joint Committee vide report dated 25.08.2022. So, the allegation that the land at Gata no. 35 mi has been subjected to illegal mining is incorrect and false.*

c) *That the Joint Committee vide its report dated 25.08.2022 has observed that:*

“that soil has been excavated from the side of the land of Mohd. Rafhat Naeem up to 18 meters in length in Gata no.-12, village Abbul Khairpur and 05 meters in length in Gata No.-15 Village-Abbul Khairpur, whose depth is 4.5 feet in both Gata numbers.”

d) *With respect to this observation, it is submitted that the Gata no. 12 and Gata no.15 village Abul Khairpur neither belong to the Applicant nor to answering respondent. Furthermore, the report dated 25.08.2022 has nowhere named the Answering Respondent as responsible for the said excavation of soil.*

6. *It is further submitted that the Answering Respondent got knowledge of the present Case from the District Magistrate Bijnor vide its letter dated 12.03.2024.*

7. *That in this regard the Answering Complainant replied to the communication dated 12.03.2024 sent by the District Magistrate by giving a reply dated 13.03.2024 wherein the Answering Respondent pointed out the fact that Gata no. 55 village Abul Khairpur is owned by Ompal Singh, Madan Singh, Rajpal Singh, Ram Charan Singh as per the revenue records. And this Gata is not recorded in name of Raahila, Maqbool, Mansool*

Hasan, Mohd Yakub, Sattar, Shivcharan Singh, Arvind, as alleged by the Applicant.

8. That the UPPCB filed report dated 12.04.2024 on the basis of the report of the District Mining Department, Bijnor depicting clear picture of revenue record and actual status on ground including distance of applicant's land at gata no.35, min of village 'said ALipur' to Gata no.55 of village Abul Khaipur. The said report is at running page no. 137 wherein it is correctly stated that Gata no. 55 of village Abul Khaipur is at distance of 1 km from the gata no. 35 mi of the applicant. And the report further states that said Gata no. 55 has not witnessed any mining.

9. That the conjoint reading of report dated 25.08.2022 by Joint Committee and the recent report dated 12.04.2024 by UPPCB establish that Applicant had made a false and fabricated complaint by showing the Gata no. 55 village Abul Khaipur as lying adjacent to his Gata no. 35 mi 'said ALipur'. Whereas the truth is that the gata no. 55 is at 1 km. It is also evident from conjoint reading of these two reports that no mining caused in either of Gata No.s i.e. gata no.35 min of village said Alipur and Gata no.55 of village Abul Khaipur

10. That the Respondent no.6 has not undertaken any illegal mining or illegal excavation of Earth. It is further submitted that Answering Respondent excavated the ordinary earth as per the permissions granted by the authorities.

11. That another aspect of the current proceedings is related to the status of brick kiln of Answering Respondent. In this regard UPPCB submitted report dated 19.12.2023 wherein the inspection was conducted on 08.12.2023. During the inspection it was found that the brick kiln is having gravitational settling chamber and 30 metre high stack for control of process emission. And kiln is having consent till 31.07.2027. It was also found that brick kiln has submitted an affidavit dated 22.11.2023 in which the unit has declared that the operation of brick kiln would not be conducted in the year 2023-2024.

12. That the aforesaid affidavit dated 22.11.2023 was given on account of prevalent economic circumstances of the Answering Respondent as the Answering Respondent was going through financial difficulties and thus decided not to run the brick kiln in the year 2023-2024. However, at present the Answering Respondent is supported by his relatives in his business and has hired labour with advance payment for preparatory work from Oct, 2024. The Answering Respondent wishes to run the Brick Kiln in the session 2024-2025 with all prior permissions.

13. In this regard it is submitted that the Answering Respondent has valid CTO upto 31.07.2027. The copy of the CTO is annexed as ANNEXURE R/1.

14. As regards the other statutory compliance regarding the conversion of brick kiln into Zig Zag Technology, it is submitted that the as per the Joint Committee report dated 25.08.2022, the

73. In view thereof the District Magistrate and the Superintendent of Police Bijnor and Regional Officer, UPPCB, Bijnor and are directed to ensure that no brick kiln operate without compliance with environmental norms and grant of CTO by UPPCB.

74. Accordingly, the present original application is disposed of with following directions:-

(i) MoEF & CC is directed to issue O.M. for clarifying the legal position with respect to grant of EC for mining of soil by brick kilns for the purpose of brick making and clarify applicability of the provisions of EIA Notification, 2006 and order passed by Hon'ble High Court of adjudication at Patna. MoEF & CC will also specify its agency that will approve and monitor such mining by/for brick kilns;

(ii) CPCB is directed to issue requisite guidelines for adoption of requisite measures for conservation of top soil and restoration/reclamation of land subjected to mining of soil for brick making; The Guidelines shall also indicate the fly ash disposal mechanism, green cover, metalling of the roads that carry soil/brick etc., water sprinkling for dust mitigation, restoration of mined areas, usage of ground water.

(iii) CPCB to consider and issue appropriate direction that every brick kiln shall display a notice board at a prominent visible place within its premises with the following details:-

- a) Name of the Brick Kiln with geo-coordinates, Phone Number
- b) Type of design of the Brick Kiln-zig-zag/trench/etc
- c) Place of soil mining with geo-coordinates and quantity mined in a Year
- d) Total area of brick kiln and brick production/year
- e) Green Belt area

- f) Groundwater permission
- g) Date of issuance of CTE/CTO by PCB
- h) Incharge RO of PCB
- i) Date of last stack monitoring

(iv) CPCB is directed to examine the issue of utilization of ash by brickkilns by constituting a Committee of Experts or otherwise as considered appropriate and issue requisite directions for incorporation of requisite conditions at the time of grant of CTE/CTO by SPCB/PCCs to the brick kilns;

(v) UPPCB is directed to initiate proceedings against M/s. Shiv Ent Udyog and Smt. Himchal Devi for imposition and realization of environmental compensation in accordance with law; and

(vi) The District Magistrate and the Superintendent of Police Bijnor and Regional Officer, UPPCB, Bijnor are directed to ensure that no brick kiln operate without compliance with environmental norms and grant of CTO by UPPCB.

75. However, as mentioned hereinabove the applicant will be at liberty to make appropriate claim for compensation for loss caused to him (if so desired) out of the environmental compensation imposed on and realized from M/s. Shiv Ent Udyog and Smt. Himchal Devi by UPPCB.

76. A copy of this order be sent to the Member Secretary, CPCB, Member Secretary, UPPCB, the District Magistrate and the Superintendent of Police Bijnor by email for requisite compliance.

Prakash Shrivastava, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

February, 25th 2025
O.A. No. 359/2022
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