

ITEM NO.30

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL Diary No(s). 18213/2021

(Arising out of impugned final judgment and order dated 17-02-2021
in OA No. 1016/2019 passed by the National Green Tribunal)

NCR BRICK KILN ASSOCIATION

Petitioner(s)

VERSUS

CENTRAL POLLUTION CONTROL BOARD & ORS.

Respondent(s)

WITH

Diary No(s). 20331/2021 (XVII)

Diary No(s). 7535/2021 (XVII)

Diary No(s). 7667/2021 (XVII)

Diary No(s). 7670/2021 (XVII)

Diary No(s). 23486/2021 (XVII)

Diary No(s). 11747/2022 (XVII)

(With IA No.68237/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.68236/2022-EX-PARTE STAY and IA No.68235/2022-
PERMISSION TO FILE APPEAL)

Date : 13-05-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.M. JOSEPH

HON'BLE MR. JUSTICE HRISHIKESH ROY

For parties

Mr. Parmanand Gaur, AOR

Mr. Neeraj Kumar Jain, Sr. Adv.

Mr. Aniket Jain, Adv.

Mr. Subodh Gupta, Adv.

Mr. Deepak Gupta, Adv.

Mr. Umang Shankar, AOR

Mr. Nidhesh Gupta, Sr. Adv.

Ms. Pallavi Singh, Adv.

Ms. Nidhi Gupta, Adv.

Ms. Vriti Gujral, Adv.
Mr. Sanjeev Chaudhary, Adv.
Mr. G. Balaji, AOR

Mr. S. P. Singh, Sr. Adv.
Mr. Raunak Parekh, Adv.
Mr. Omvir Singh Bhati, Adv.
Mr. C. Kannan, Adv.
Ms. Divya Singhvi, Adv.
Ms. Kajal Rani, Adv.
Mr. Mukesh Kumar Singh, Adv.

M/s. Mukesh Kumar Singh and Co., AOR

Mrs. Swarupama Chaturvedi, AOR
Ms. Saumya Kapoor, Adv.
Ms. Himanshi Goel, Adv.

Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Manoj Kumar Sharma, Adv.

Mr. Anil Grover, Sr. Adv.
Ms. Noopur Singhal, Adv.
Mr. Rahul Khurana, Adv.
Mr. Satish Kumar, Adv.
Ms. Ritu Rastogi, Adv.
Mr. Sanjay Kumar Visen, AOR
Mr. Suresh Kumar Bhan, Adv.

Mr. Rohan Thawani, Adv.
Ms. Pooja Dhar, AOR
Mr. Pratul Pratap Singh, Adv.

Mr. Y. D. Sharma, Sr. Adv.
Ms. Pushpa Kumari Mishra, Adv.
Mr. Amitabh Poddar, Adv.
Mr. Kumar Gaurav, Adv.
Ms. Sweety Dubey, Adv.
Mr. Rajnish Kumar Jha, AOR
Ms. Deepika Sharma, Adv.

Mr. Varinder Kumar Sharma, AOR
Mr. P. K. Singh, Adv.
Mr. Shantanu Sharma, Adv.
Mr. Vijay Pal, Adv.

Mr. Mahesh Kasana, Adv.
Ms. Aparna Rohatgi Jain, Adv.
Dr. S. K. Verma, Adv.

Mr. Pallav Shishodia, Sr. Adv.
Mr. Shashank Bajpai, Adv.
Mr. Somesh Tiwari, Adv.
Ms. Shakun Sudha Shukla, Adv.
Ms. Vidula Mehrotra, Adv.
Mr. Utsav Saxena, Adv.
Mr. Shubhankar Singh, Adv.
Mr. Dhananjay Tewari, Adv.
Ms. Manisha Ambwani, AOR

UPON hearing the counsel the Court made the following
O R D E R

Read order dated 06th May, 2022.

Today when the matter came up, we have heard the learned counsel appearing for the parties.

Compliance affidavit has been filed on behalf of the Central Pollution Control Board (CPCB), UP Pollution Control Board and Haryana State Pollution Control Board.

It is pointed out that the test conducted based on the order dated 06.05.2022 has yielded results in regard to Baghpat and Jhajjar. With regard to Ghaziabad, test could not be completed and will be completed within a few days from 16.05.2022. We record the submission of Ms. Swarupama Chaturvedi, learned counsel appearing for CPCB, in this regard.

Regarding the high level pollution depicted from the unit which was inspected at Jhajjar, there is some debate. It is contended on behalf of Shri Nidhesh Gupta, learned senior counsel appearing on behalf of the appellant, that it may not be correct.

Whereas, Shri Rohan, learned counsel appearing for the

applicant in NGT, would paint an alarmist position. One of the submissions was that there must be reduction in the capacity. Another suggestion made was that units must be permitted to operate on a staggered basis.

It is further pointed out by Ms. Swarupama Chaturvedi, learned counsel, that CPCB is working on the modalities in coordination with IIT Delhi for the purpose of monitoring the units through satellite. This project will be put in place within a period of two weeks from today in at least a few grids. We order that Jhajjar will be one of them where the surveillance through satellite will be done within two weeks from today and that all the units will be brought under the satellite recognizance within two months.

Learned counsel for the CPCB would point out that in regard to 26 units in Gautam Budh Nagar, affidavit has been filed indicating that the State Pollution Control Board has informed the CPCB of the production capacity. In regard to another set of 29 falling in Hapur, CPCB has received information about the production capacity from the UP State Pollution Control Board. In synchronization with this submission, Shri Pallav Shishodia, learned senior counsel appearing on behalf of the persons who are running these units, would pray that they may be also permitted to operate subject to the same conditions as others have been permitted to operate.

We are inclined to accept the request in regard to the

26+29 units as aforesaid subject to what we will indicate.

Though the larger question relating to these units operating on a staggered basis and by reducing the capacity has to be dealt with, we feel that since we are inclined to allow the operation of the units only till 30th June, 2022, for the time being, we need not place these restrictions on the units which we are permitting to operate. In regard to these aspects, CPCB and the State Pollution Control Boards as also the appellants besides and no doubt, the applicant before the NGT, will make available their valuable inputs when the matter is taken up for considering the question of operation of these units in future.

Another aspect which has been brought out is that many units are using agricultural residue as fuel for running the brick kilns. It is pointed out that in regard to Bhagpat where the test was conducted, surprisingly low level of pollution in comparison with the unit at Jhajjar has emerged. It is sought to be pointed out that this could be due to the use of agricultural residue also along with the coal.

We record the submission of Shri Nidhesh Gupta, learned senior counsel, that, in fact, 95 per cent of the units are making use of agricultural residue also. We would expect that in view of the rather encouraging results revealed from the test conducted at Baghpat, the units will make every attempt to make use of maximum amount of agricultural residue along with coal so that the prospect of the threat to

environmental pollution is reduced to the minimum possible.

We further make it clear that the units are permitted to operate only till 30th June, 2022, subject to all the conditions imposed in earlier orders.

We add two conditions for the units to be allowed to operate:

(1) All units will provide platforms for conducting the monitoring of the pollution having minimum dimension of 4 feet by 6 feet.

(2) The diameter of the portholes in all the units shall be not less than 4-5 inches diameter.

We further direct that in all the units portholes must be of the size we have indicated. Surprise inspections as envisaged in the earlier orders are to be continuously conducted with utmost vigour and action in terms of the inspections conducted shall be taken by the appropriate authority.

The platform and the portholes of the size we have indicated shall be put in place, if not already put in place within a period of maximum 10 days from today.

In Diary No. 11747/2022, issue notice. Ms. Swarupama Chaturvedi, learned counsel, takes notice on behalf of CPCB and Mr. Rohan, learned counsel takes notice on behalf the applicant before the NGT. Counter affidavit may be filed in the said case.

Counter affidavit may also be filed in Diary No. 23486/2021.

List the matter on 25th July, 2022.

Learned counsel appearing on behalf of the UP State Pollution Control Board, on instructions, submits that the UP State Pollution Control Board has already conducted 524 surprise inspections and action has also been taken as per law and 299 units have been closed down.

(NIDHI AHUJA)
AR-cum-PS

(RENU KAPOOR)
BRANCH OFFICER