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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
ORIGINAL APPLICATION NO. 184/2023/EZ

In The Matter of:

Prakash Ghosh

... Applicant

Versus

State of West Bengal & Ors.

... Respondents



AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENT NUMBER 04, PRINCIPAL SECRETARY, WEST BENGAL HEALTH AND FAMILY WELFARE DEPARTMENT.

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Filed by  
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SL. NO. 426 20 24



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH, KOLKATA

ORIGINAL APPLICATION NO. 184/2023/EZ

In The Matter of:

Prakash Ghosh

... Applicant

Versus

State of West Bengal & Ors.

... Respondents

BEFORE THE NOTARY PUBLIC  
AT BIDHANNAGAR  
DIST.-NORTH 24 PARGANAS

AFFIDAVIT-IN-OPPOSITION ON BEHALF OF THE RESPONDENT NUMBER 04, PRINCIPAL SECRETARY, WEST BENGAL HEALTH AND FAMILY WELFARE DEPARTMENT.

I, Narayan Swaroop Nigam. son of Shri Vishnu Swaroop Nigam, aged about 50 years, by faith Hindu by Occupation- Service, and presently posted as Principal Secretary of the Department of Health and Family Welfare, Government of West Bengal and having office at Department of Health and Family Welfare, Government of West Bengal, Swasthya Bhaban, GN-29, Sector-V, Salt Lake City, Kolkata - 700091, and residing at. Circuit House, 9/1, Hungerford Street, P.S.- Shakespeare Sarani, District- Kolkata, PIN- 700017 do hereby solemnly affirm and declare as follows :-

13 FEB 2024



1. That I am the Principal Secretary of the Department of Health and Family Welfare under Government of West Bengal, situated at Swasthya Bhaban, GN-29, Sector-V, Salt Lake City, Kolkata – 700091, being impleaded as respondent number 4 above-named. I, on behalf myself and the aforesaid Department, am competent to swear and affirm this affidavit for and on behalf of myself and the Department.

2. That I am swearing this affidavit in compliance to the Solemn Order dated 16<sup>th</sup> January, 2024 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in connection with Original Application No. 184 of 2023/EZ (hereinafter to be referred to as 'said Original Application') in the matter of Prakash Ghosh -Vs.- The State of West Bengal and Others.

3. That save and except those which are matters of record and which are specifically admitted by me herein below, each and every allegation, and/or contention, and/or submission, contained in the said Original Application, is denied and disputed as if the same is set out in seriatim herein and specifically traversed.

4. That without prejudice to the above, I beg to deal with the paragraphs in the said Original Application ad seriatim.

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5. That at the outset it is submitted that the instant original application relates to operation of a brick kiln, alleged to be operated illegally in violation of the statutory norms. It is pertinent to state that in case of brick kilns, the concerned statutory authorities, from which various permissions are required, are District Environment Impact Assessment Authority (DEIAA), Deputy Director of Agriculture, Public Works Department, Gram Panchayat/Zilla Parishad, Irrigation & Waterways, Land Reforms & Refuge Rehabilitation department, Government of West Bengal, West Bengal Pollution Control Board (WBPCB) and the District Land & Land Reforms Officer (D. L. & L. R.O) of the concerned district, in which the Health and Family Welfare department has no role or bearing.

6. That in reference to the statements made in Paragraph No. 1 of the above numbered Original Application; I humbly submit that, it is a matter of record.

7. That in reference to the statements made in Paragraph Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 of the said Original Application, I humbly submit that, they are matter of records, wherein neither I, nor my Department, nor any of its directorate, and/or unit, and/or agency, and/or office, and/or official, and/or any staff is any way involved in or connected with or is responsible for the matters stated therein.

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8. That in reference to the statements made in paragraph 12, 13, 15, & 16, of the original application it is stated that the Ministry of Environment, Forest & Climate Change, Government of India vide its notification Memo G.S.R 143 (E) dated 22.02.2022 has published the modified guidelines with regard to the existing brick kilns, in which interalia the use of Zig Zag technology by the brick kilns has been made compulsory.

Copy of the Notification published by the Ministry of Environment, Forest & Climate Change, Government of India being Memo G.S.R 143 (E) dated 22.02.2022 is annexed herewith and marked with the letter 'R-1'.

9. That in reference to the statements made in paragraph 14, & 17, of the original application it is stated that the same is not clear until an inspection is carried out by the regional office of the West Bengal Pollution Control Board and the District Land & Land Reforms Officer (D. L. & L.R.O), North (24) Parganas.

10. That in reference to the statements made in paragraph 19 of the original application it is stated that there are specific guidelines for brick kilns and that the same have been stated by the application in paragraph 12 of the original application moreover the Ministry of Environment, Forest & Climate Change, Government of India vide its notification Memo G.S.R 143 (E) dated 22.02.2022 has published the modified guidelines with regard to the existing brick kilns.

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11. That in reference to the statements made in paragraph 20 of the original application it is stated that although the applicant has complained to the concerned authorities, but no application has been made for the purpose of clarifying as to whether the brick kiln in question possess the requisite documents.

12. That I also humbly submit that, although, the Department of Health and Family Welfare, Government of West Bengal, has been impleaded as Respondent No. 4 in the said Original Application, it is a fact that, neither I, being the Principal Secretary of the above mentioned Department, nor any official or personnel working in/under such Department, or any of its Directorate, is officially assigned with or involved in the task of giving permission for running of, and/or regulation of, and/or imposing restriction upon, and/or stopping the functioning and operation of brick kilns.

13. That, therefore, the Department of Health & Family Welfare, its Principal Secretary, or any other official and/or staff working thereunder, do not have any direct connection with, or role or responsibility in the control and mitigation of environmental pollution caused by the alleged illegal operation of brick kilns in residential areas, done in violation of the established norms and regulations, made in this regard.

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14. That the said Original Application has been filed by the applicant without any jurisdictional basis, wherein this Department and its Principal Secretary have been erroneously, incorrectly, inappropriately and vexatiously impleaded as a respondent, i.e. Respondent No. 4, as such, the said Original Application may kindly be dismissed.

15. That in respect of the facts and circumstances stated herein above, I humbly submit that no case has been made out by the applicant against myself and my Department of Health & Family Welfare, Government of West Bengal, for interference, in this Original Application. Therefore, this Hon'ble Tribunal may be pleased to dismiss this Original Application 'IN LIMINE'.

16. That it is most humbly submitted that the name of the respondent number 4, may kindly be deleted from the array of respondents from the cause title of the instant original application.

17. That in the light of facts and circumstances stated above, I humbly submit that this Original Application is not maintainable and the prayers made in the said Original Application should be rejected and the instant Original Application is liable to be dismissed.

18. Save as aforesaid, all other allegations and/or insinuations, which have not been specifically dealt with in the instant Affidavit-in-

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Opposition, shall be deemed to have been denied by this answering respondent.

19. That the statements made in paragraphs 1 to 18 of the foregoing affidavit, are true to my knowledge and belief, and the rest are my respectful submissions before this Hon'ble Tribunal.

*Narayan Swaroop Nigam*

Narayan Swaroop Nigam, I.A.S.  
Principal Secretary  
Dept. of Health & Family Welfare  
Government of West Bengal

Identified by me

*Sibjyoti Chakrabarti*  
Advocate 13.02.2024

Deponent

State of West Bengal

*S. Chaudhuri*  
S. CHAUDHURI  
★ NOTARY ★  
GOVT. OF INDIA  
Regn. No.-6584/08  
Bidhannagar Court  
Dist.-North 24 Pgs

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VERIFICATION:

I, the deponent above named, do hereby verify and declare that the statements made in the aforesaid paragraphs are true and correct to the best of my knowledge and information and as per records available in the office of the West Bengal Health And Family Welfare Department and I believe that nothing material has been concealed there from.

Verified at Kolkata on the .....<sup>13<sup>th</sup></sup>..... Day of February, 2024. <sup>13/2/24</sup>

Identified by me

*Narayan Swaroop Nigam*

Narayan Swaroop Nigam, I.A.S.  
Principal Secretary  
Dept. of Health & Family Welfare  
Government of West Bengal

Deponent

*Sibojyoti Chakrabarti*  
13.02.2024  
Advocate

State of West Bengal

*S. Chaudhuri*  
S. CHAUDHURI  
\* NOTARY \*  
GOVT. OF INDIA  
Regn. No.-6584/08  
Bidhannagar Court  
Dist.-North 24 Pgs

13 FEB 2024



# भारत का राजपत्र

## The Gazette of India

सी.जी.-डी.एल.-अ.-22022022-233662  
CG-DL-E-22022022-233662

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)  
PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY



सं. 140]  
No. 140]

नई दिल्ली, मंगलवार, फरवरी 22, 2022/फाल्गुन 3, 1943  
NEW DELHI, TUESDAY, FEBRUARY 22, 2022/PHALGUNA 3, 1943

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 22 फरवरी, 2022

सा.का.नि. 143(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 6 और धारा 25 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, पर्यावरण (संरक्षण) अधिनियम, 1986 का और संशोधन करते हुए निम्नलिखित नियम बनाती है; अर्थात्:-

- संक्षिप्त नाम और प्रारंभ :
  - इन नियमों का संक्षिप्त नाम पर्यावरण (संरक्षण) संशोधन नियम, 2022 है।
  - वे राजपत्र में उनके अंतिम प्रकाशन की तारीख से लागू होंगे।
- पर्यावरण (संरक्षण) नियम, 1986 में, अनुसूची-1 में, क्रम सं. 74 पर प्रविष्टि के स्थान पर निम्नलिखित प्रविष्टि को रखा जाएगा, अर्थात्: -

74"	ईट भट्टे	चिमनी से उत्सर्जन में विविक्त पदार्थ	250 मिलीग्राम/एनएम3
		चिमनी की न्यूनतम ऊंचाई (भट्टों की वर्टिकल साफ्ट)	14 मीटर (लोडिंग प्लेटफॉर्म से कम से कम 7.5 मीटर)
		- भट्टा क्षमता 30,000 ईट प्रतिदिन से कम	16 मीटर (लोडिंग प्लेटफॉर्म से कम से कम 8.5 मीटर)
		- भट्टा क्षमता 30,000 ईट प्रति दिन के बराबर या अधिक	

चिमनी की न्यूनतम ऊंचाई (भट्टों की वर्टिकल शाफ्ट के अलावा)

- भट्टा क्षमता 30,000 ईट प्रतिदिन से कम	24 मीटर
- भट्टा क्षमता 30,000 ईट प्रति दिन के बराबर या अधिक	27 मीटर

टिप्पणियां :

- सभी नए ईट भट्टों को केवल ज़िग-ज़ैग तकनीक या वर्टिकल शाफ्ट के साथ होने की या ईट बनाने में ईंधन के रूप में पाइपड प्राकृतिक गैस के उपयोग की अनुमति दी जाएगी और इस अधिमूचना में निर्धारित मानकों का पालन करना होगा।
- विद्यमान ईट भट्टे जो ज़िग-ज़ैग तकनीक या वर्टिकल शाफ्ट या ईट बनाने में ईंधन के रूप में पाइपड प्राकृतिक गैस (पीएनजी) के उपयोग का पालन नहीं कर रहे हैं, उन्हें (क) गैर-प्राप्ति शहरों के 10 किमी के दायरे में स्थित भट्टों के मामले में एक वर्ष (जैसा कि केंद्रीय प्रदूषण नियंत्रण बोर्ड द्वारा यथापरिभाषित) (ख) अन्य क्षेत्रों के लिए दो वर्ष की अवधि के भीतर ज़िग-ज़ैग तकनीक या वर्टिकल शाफ्ट में परिवर्तित किया जाएगा या पीएनजी का उपयोग ईट बनाने में ईंधन के रूप में किया जाएगा। इसके अतिरिक्त, ऐसे मामलों में जहां केंद्रीय प्रदूषण नियंत्रण बोर्ड/राज्य प्रदूषण नियंत्रण बोर्ड/प्रदूषण नियंत्रण समितियां ने रूपांतरण के लिए अलग से समय-सीमाएं निर्धारित की हैं, वहां ऐसे आदेश प्रभावी होंगे।
- सभी ईट भट्टे केवल अनुमोदित ईंधन जैसे कि पाइपड प्राकृतिक गैस, कोयला, ईंधन लकड़ी और/या कृषि अपशिष्टों का उपयोग करेंगे। पेट कोक, टायरों/प्लास्टिक/खतरनाक अपशिष्टों के उपयोग की अनुमति ईट भट्टों को नहीं दी जाएगी।
- उत्सर्जन की निगरानी के लिए केंद्रीय प्रदूषण नियंत्रण बोर्ड द्वारा निर्धारित मापदंडों/रूपरेखा के अनुसार ईट-भट्टे स्थायी सुविधा (पोर्ट होल और प्लेटफार्म) का निर्माण करेंगे।
- विविक्त सामग्रियों (पीएम) के निष्कर्ष 4% CO<sub>2</sub> पर प्रसामान्य किए जाएंगे जो निम्नलिखित हैं:  
पीएम (सामान्य) = (पीएम(मापित) X 4%)/(चिमनी में मापित CO<sub>2</sub> का %, मापित CO<sub>2</sub> के मामले में ≥ 4% कोई प्रसामान्यीकरण नहीं। चिमनी की ऊंचाई (मीटर में) भी H= 14 Q<sup>0.3</sup> सूत्र (जहां Q kg/hr में SO<sub>2</sub> उत्सर्जन दर है) द्वारा परिकलित की जाएगी, और अधिकतम दो को काम में ले सकेंगे।
- ईट भट्टों को आवासों और फलों के बागों से 0.8 कि.मी. की न्यूनतम दूरी पर स्थापित किया जाना चाहिए। राज्य प्रदूषण नियंत्रण बोर्ड/प्रदूषण नियंत्रण समितियां आवास, जनसंख्या घनत्व, जल निकायों, संवेदनशील रिसेप्टर्स इत्यादि की निकटता का ध्यान रखते हुए स्थापित मापदंडों को सख्त बना सकते हैं।
- किमी क्षेत्र में भट्टों की अधिक संख्या से बचने के लिए मौजूदा ईट भट्टों से कम से कम एक किलोमीटर की दूरी पर ईट भट्टों को स्थापित किया जाना चाहिए।
- ईट भट्टों को संबंधित राज्य प्रदूषण नियंत्रण बोर्ड/प्रदूषण नियंत्रण समितियां द्वारा निर्धारित उत्सर्जन प्रक्रिया/पलायक धूल उत्सर्जन नियंत्रण दिशा-निर्देशों का पालन करना होगा।
- ईट भट्टों से निकलने वाली राख को ईट बनाने में उसी परिसर के अंदर ही इस्तेमाल किया जाएगा।
- ईट भट्टे में ईट बनाने के लिए उपयोग की जाने वाली मिट्टी को निकालने के लिए संबंधित राज्य/संघ राज्य क्षेत्र के खनन विभाग सहित संबंधित प्राधिकरणों से सभी आवश्यक अनुमोदन प्राप्त किए जाएंगे।
- ईट भट्टा मालिक यह सुनिश्चित करेंगे कि कच्चे माल/ईटों के परिवहन के लिए उपयोग की जाने वाली सड़के पक्की सड़कें हैं।
- कच्चे माल/ईटों के परिवहन के दौरान वाहनों को ढका जाएगा।"

[फा. सं. क्यू-15017/35/2007-सीपीडब्ल्यू]

नरेश पाल गंगवार, अपर सचिव



टिप्पण : मूल नियम भारत के राजपत्र, असाधारण, भाग II, खण्ड 3, उप-खण्ड (i) में तारीख 19 नवंबर, 1986 के का.आ. 844 (अ) द्वारा प्रकाशित किए गए थे और 04 अक्टूबर, 2021 की अधिसूचना सा.का.नि. 724 (अ) द्वारा अंतिम बार संशोधित किए थे।

## MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

### NOTIFICATION

New Delhi, the 22nd February, 2022

**G.S.R. 143(E).**—In exercise of the powers conferred by sections 6 and 25 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby makes the following rules further to amend the Environment (Protection) Rules, 1986, namely:—

1. Short Title and commencement: -

- (1) These rules may be called the Environment (Protection) Amendment Rules, 2022.
- (2) They shall come into force on the date of their publication in the Official Gazette.

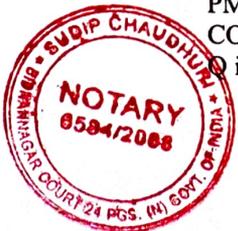
2. In the Environment (Protection) Rules, 1986, in the SCHEDULE-I, for entry at Sl. No. 74, the following entry shall be substituted, namely: -

"74	Brick Kilns	Particulate matter in stack emission	250 mg/Nm <sup>3</sup>
		Minimum stack height (Vertical Shaft Brick Kilns)	
		- Kiln capacity less than 30,000 bricks per day	14 m (at least 7.5m from loading platform)
		- Kiln capacity equal or more than 30,000 bricks per day	16 m (at least 8.5m from loading platform)
		Minimum stack height (Other than Vertical Shaft Brick Kilns)	
		- Kiln capacity less than 30,000 bricks per day	24 m
		- Kiln capacity equal or more than 30,000 bricks per day	27 m

**Notes :**

1. All new brick kilns shall be allowed only with zig-zag technology or vertical shaft or use of Piped Natural Gas as fuel in brick making and shall comply to these standards as stipulated in this notification.
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.
3. All brick kilns shall use only approved fuel such as Piped Natural Gas, coal, fire wood and/or agricultural residues. Use of pet coke, tyres, plastic, hazardous waste shall not be allowed in brick kilns.
4. Brick kilns shall construct permanent facility (port hole and platform) as per the norms or design laid down by the Central Pollution Control Board for monitoring of emissions.
5. Particulate Matter (PM) results shall be normalized at 4% CO<sub>2</sub> as below:

PM (normalized) = (PM (measured) x 4%) / (% of CO<sub>2</sub> measured in stack), no normalization in case CO<sub>2</sub> measured  $\geq$  4%. Stack height (in metre) shall also be calculated by formula  $H=14Q^{0.3}$  (where Q is SO<sub>2</sub> emission rate in kg/hr), and the maximum of two shall apply.



6. Brick kilns should be established at a minimum distance of 0.8 kilometre from habitation and fruit orchards. State Pollution Control Boards/Pollution Control Committees may make siting criteria stringent considering proximity to habitation, population density, water bodies, sensitive receptors, etc.
7. Brick kilns should be established at a minimum distance of one kilometre from an existing brick kiln to avoid clustering of kilns in an area.
8. Brick kilns shall follow process emission/fugitive dust emission control guidelines as prescribed by concerned State Pollution Control Boards/Pollution Control Committees.
9. The ash generated in the brick kilns shall be fully utilized in-house in brick making.
10. All necessary approvals from the concerned authorities including mining department of the concerned State or Union Territory shall be obtained for extracting the soil to be used for brick making in the brick kiln.
11. The brick kiln owners shall ensure that the road utilized for transporting raw materials or bricks are paved roads.
12. Vehicles shall be covered during transportation of raw material/bricks".

[F. No. Q-15017/35/2007-CPW]

NARESH PAL GANGAWAR, Addl. Secy.

**Note :** The principle rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number S.O. 844(E), dated the 19th November, 1986 and lastly amended *vide* number G.S.R. 724(E), dated the 04<sup>th</sup> October, 2021.



BEFORE THE HON'BLE NATIONAL  
GREEN TRIBUNAL EASTERN ZONE  
BENCH, KOLKATA

O. A. NO. 184/2023/EZ

In The Matter of:

Prakash Ghosh

... APPLICANT



VERSUS

The State of West Bengal & Ors.

... RESPONDENT(S)

AFFIDAVIT-IN-OPPOSITION ON  
BEHALF OF THE RESPONDENT  
NUMBER 04, PRINCIPAL  
SECRETARY, WEST BENGAL  
HEALTH AND FAMILY WELFARE  
DEPARTMENT

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