

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, DELHI
ORIGINAL APPLICATION NO. 833/2024**

In the matter of: -

Vipin Kumar

Applicant

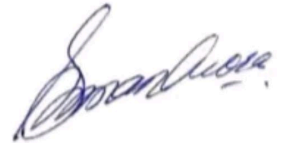
Versus

Uttarakhand Pollution Control Board & Ors.

Respondent(s)

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1.	Reply on behalf of the Respondent No.2 Central Pollution Control Board (CPCB) in compliance to Hon'ble NGT order in OA No. 833/2024 in compliance to Hon'ble NGT order dated 25.07.2024.	
2.	Annexure- IA copy of Hon'ble NGT order dated 25.07.2024 in O.A No. 833/2024.	



**Filed by Adv. Suman Arora
On behalf of Central Pollution Control Board**

Place: Delhi

Dated: 15.10.2024

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 833 / 2024

Vipin Kumar

Applicant

Versus

Uttrakhand Pollution Control Board & Ors.

Respondent(s)

Reply on behalf of Central Pollution Control Board (CPCB) i.e, Respondent No. 2.

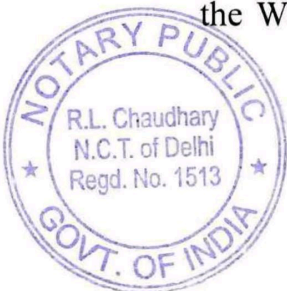
1. That, the Hon'ble National Green Tribunal, Principal Bench (hereinafter referred to as "Hon'ble NGT") vide its order dated 25.07.2024 and vide Notice dated 02.08.2024 in Original Application (hereinafter referred to as "OA") No. 833/2024 has sought the reply of CPCB in the instant matter. Thereby, the reply is made in succeeding paragraphs.
2. That at the outset, the Answering Respondent denies all claims, contentions, allegations and averments against the answering Respondent i.e CPCB in the above OA contrary to anything stated or submitted expressly in this reply. Nothing in the OA may be deemed to have been accepted or admitted by the Answering Respondent for want of a specific denial, save and except any averment which has been expressly admitted hereinafter.
3. That, CPCB is a statutory Board constituted under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as "Water Act, 1974"). It performs the functions under the Water Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as "Air Act, 1981") and The Environment (Protection) Act, 1986 (hereinafter referred to as "E (P) Act, 1986").



4. That, the prayer of the applicant in the present OA is regarding quashing of Consolidated Consent to Operate & Authorization (hereinafter referred to as "CCA") dated 07.06.2024 granted by Uttarakhand Pollution Control Board (hereinafter referred to as "UKPCB") to Respondent No. 5 i.e "Jai Mata Brick Field" and Respondent No. 6, i.e "Gagan Brick Field". The applicant alleges that the said CCAs have been allegedly granted in derogation of the siting criteria for brick kilns set out by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as "MoEF&CC") vide Notification GSR 143 (E), dated 22.02.2022, Judgement of the Hon'ble NGT order dated 12.10.2023 in OA No. 341 of 2023 and orders passed by the Hon'ble Supreme Court of India in Civil Appeals No. 5596-5597 of 2024 and 6565 of 2024.

PARA WISE REPLY: -

1. That, no comments are offered over the averments made in Paras 1 to 3 of the OA, being introductory in nature.
2. That, no comments are offered over the averments made in Para 4 of the OA regarding MoEF&CC Notification issued vide GSR 143 (E), dated 22.02.2022 for brick kilns, being matter of record.
3. That, no comments are offered over the averments made in Para 5 of the OA regarding the Hon'ble Supreme Court Order dated 08.04.2022 passed in Civil Appeal Diary No. 18213/2021 for brick kilns, being matter of record.
4. That, averments made in Paras 6 & 7 of the OA are regarding issuance of CCA to Respondents No. 5 & 6. In this regard, it is humbly submitted that as per the modified direction dated 07/03/2016 issued by CPCB under section 18(1)(b) of the Water Act, 1974 and the Air Act, 1981 to all the State Pollution Control



Boards/Pollution Control Committees (hereinafter referred to as "SPCBs/PCCs") regarding harmonization of classification of Industrial Sectors under Red/Orange/Green/White Categories, "Brick fields" are categorized under "Orange Category" and they are required to obtain Consent to Establish (hereinafter referred to as "CTE") and Consent to Operate (hereinafter referred to as "CTO") from the concerned "SPCB/PCCs".

5. That, averments made in Para 8 of the OA is regarding grant of CCA to Respondents Nos. 5 & 6 brick kilns in violation of the siting criteria laid down in MoEF&CC Notification dated 22.02.2022. In this regard, it is humbly submitted that Brick kilns should operate only after obtaining requisite CTE and CTO from the concerned SPCB/PCC and should also comply with the conditions stipulated therein. The concerned SPCB/PCC shall ensure compliance of the prescribed siting norms and conditions stipulated under CTE & CTO.
6. That, no comments are offered over the averments made in Paras 9 to 17 of the OA, being matter of records.
7. That, the averments made in Para 18 of the OA is related to representations addressed by applicant to UKPCB regarding violation of the siting criteria laid down in MoEF&CC Notification dated 22.02.2022. It is humbly submitted that, this may suitably be replied by Respondent no.1 i.e UKPCB and hence, need no reply from this Answering Respondent.
8. That, no comments are offered over the averments made in Paras 19 to 27 of the OA, being matter of records.
9. That, the averments made in Para 28 of the OA are related to the RTI reply received from UKPCB along with the copies of the fresh CCA's granted to the Respondents No. 5 and 6 brick Kilns. It is humbly submitted that, this may



suitably be replied by the Respondent no.1 i.e UKPCB and hence, need no reply from this Answering Respondent.

10. That the averments made under Paras 29 (A-M) refer to the grounds for filing this application. It is humbly submitted that submissions made in above paras may please be considered and are not repeated herein for the sake of brevity.
11. That, the answering Respondent herein craves leave of the Hon'ble NGT to file additional reply, in future, if required.
12. That, in view of the submissions made in preceding paragraphs, the answering respondent i.e. CPCB shall abide by the orders/directions passed by the Hon'ble NGT in the instant matter.



A handwritten signature in blue ink, appearing to read "Anamika Sagar".

(Anamika Sagar)
Scientist- ' E '
Central Pollution Control Board,

A handwritten signature in blue ink, appearing to read "Suman Arora".

Filed by Adv. Suman Arora
On behalf of Central Pollution Control Board

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 833 / 2024

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Respondent(s)

AFFIDAVIT

I, Anamika Sagar, working as Scientist 'E' in Central Pollution Control Board, Parivesh Bhawan, East Arjun Nagar, Delhi, Respondent No. 2 in the above matter, do hereby solemnly affirm, declare on oath and state as under: -

1. That I, the deponent herein is authorized representative to represent the Respondent CPCB in the present case, and as such, I am well conversant with the facts and circumstances of the present case on the basis of the information derived from the official records, and hence, I am competent and authorized to verify, sign and swear this affidavit on behalf of the Respondent CPCB.
2. That the accompanying reply may be read part and parcel of the present affidavit.
3. That the accompanying reply has been drafted and filed under my instructions and authority the contents thereof are true and correct on the basis of the record maintained during ordinary course of business of CPCB and available records and documents and the contents of the same are read over and explained to me and are not repeated herein for the sake of brevity.




DEPONENT

अनामिका सागर / Anamika Sagar
वैज्ञानिक 'ई' / Scientist 'E'
केंद्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
(पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार)
(M/o Environment, Forest & Climate Change, Govt. of India)
परिवेश भवन, पूर्वी अर्जुन नगर, दिल्ली-110032
Parivesh Bhawan, East Arjun Nagar, Delhi-110032


VERIFICATION

Verified at New Delhi on this day of 14 OCT 2024 2024 that the contents of the above reply are correct and true on the basis of the record of the cases as mentioned in the day to day affairs of the CPCB. Nothing has been concealed therefrom or mis-stated.



ATTESTED

NOTARY PUBLIC
GOVT. OF INDIA
14 OCT 2024


DEPONENT

अनामिका सागर / Anamika Sagar
वैज्ञानिक 'ई' / Scientist 'E'
केंद्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
(पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार)
(M/o Environment, Forest & Climate Change, Govt. of India)
परिवेश भवन, पूर्वी अर्जुन नगर, दिल्ली-110032
Parivesh Bhawan, East Arjun Nagar, Delhi-110032

Item No. 03

Court No. 1

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

Original Application No. 833/2024

Vipin Kumar

Applicant

Versus

Uttarakhand Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 25.07.2024

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

Applicant: Mr. Rohan Thawani & Ms. Aakriti Vikas, Advs. for Applicant

ORDER

1. In this original application the applicant has challenged the Consolidated Consent to Operate and Authorization (CCA) dated 07.06.2024 issued to the Respondent No. 5 and 6 brick kilns.

2. The grievance to the applicant is that CCA have been issued in violation of the Siting Criteria specified in the notification dated 22.02.2022.

3. Learned Counsel for the applicant has submitted that earlier applicant had filed O.A. No.341/2023 with a prayer to shut down respondent no. 5 & 6 brick kiln on the ground that they were operating illegally in violation of the notification dated 22.02.2022.

4. He has drawn the attention of the Tribunal to paragraph 18 to 20 & 29 of the order of the Tribunal dated 12.10.2023 passed in O.A. No. 341/2023 wherein after considering the Joint Committee report the

Tribunal had reached to the following conclusion and passed following directions:

“18. So far as the issue of fulfilling the citation criteria as prescribed by the notification dated 22.02.2022 by Respondent Nos. 5 ad 6, the reports filed before the Tribunal indicate that these units do not fulfill the requisite siting criteria. The report of joint committee in pursuance to the order of the Tribunal dated 19.05.2023 clearly mentions that from Respondent No.5, Jai Mata Brick Field, Khasra No. 208, nearest brick kiln M/s. Balaji Brick Field is at the distance of 650 mtrs and Chaudhary Bharat Singh Junior High School at the distance of 228 mtrs. Similarly, Respondent No.6, Gagan Brick Field located at Khasra No. 138 & 139 is located at a distance of 500 mtrs from M/s. Bharat Brick Field, 555 mtrs from Sarkari Aam Ka Bagh, 750 mtrs from the school and village. Thus, Respondent Nos. 5 and 6 do not fulfill the siting criteria prescribed in the notification dated 22.02.2022.

19. It is undisputed before the Tribunal that Respondent Nos. 5 and 6 were operating since 2020 and 2021 without obtaining Consent to Operate (CTO) and Consent to Establish (CTE) or Consolidated Consent and Authorization (CCA). Hence, undisputedly, Respondent Nos. 5 and 6 were set up in 2020 and 2021 illegally and were also operating illegally till they had obtained the CCA vide orders dated 13.01.2023 and 30.01.2023. Therefore, these units cannot be given the benefit of their illegal operation at the stage of consideration of their application for CCA. Such an illegal operation has no recognition in law.

20. That apart, Respondent Nos. 5 and 6 had no vested right to obtain the CCA, therefore, the law which was prevailing on the date of consideration of their applications for CCA will be attracted. It is not open to the Respondent Nos. 5 and 6 to contend that the law which was prevailing on the date they had illegally set up the brick kiln should be applied for consideration of their applications whereas their applications were considered much after coming into force of the amended environment protection rules in terms of the notification dated 22.02.2022. Hence, we do not find any merit in the argument of Counsel for Respondent Nos. 5 and 6 that notification dated 22.02.2022 is being attracted retrospectively. In fact, the notification effective on the date of consideration of their applications in 2023 will apply as that was the law prevailing on that date.

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29. Having regard to the aforesaid, we are of the considered opinion that the CCA dated 13.01.2023 and 30.01.2023 have been issued to the Respondent Nos. 5 and 6 without considering the siting criteria prescribed in the notification dated 22.02.2022, therefore, the CCA dated 13.01.2023 and 30.01.2023 cannot be sustained and are hereby set aside with a direction to the competent authority to reconsider the application for grant of CCA filed by the Respondent Nos. 5 and 6 after duly considering the siting criteria prescribed in the notification dated 22.02.2022.”

5. He has further submitted that the said order of the Tribunal was subject matter challenge at the instance of private respondents in Civil Appeal No. 5596 -5597/2024 and Hon'ble Supreme Court vide order dated 29.04.2024 had disposed of the Civil Appeal without interfering with the order of the Tribunal but directing the authority to reconsider the application of brick kiln owners on merit and independently without being influenced by any of the observations made by the Tribunal in order dated 12.10.2023. The Hon'ble Supreme Court on 29.04.2024 has passed following order in Civil Appeal No. 5596-5597/2024:

"2. Heard Mr. Manoj Swarup, learned Senior Counsel appearing for the Appellant. The original applicant before the NGT is on caveat and is represented by Mr. Rohan Thawani, learned counsel.

3. Without raising any contention on the merit of the impugned decision of the NGT, Mr. Swarup, learned Senior Counsel refers to Paragraph 29 in the impugned order dated 12.10.2023 of the NGT to point out that in reference to the siting criteria specified in Clause 6 and 7 of the Notification dated 22.02.2022 of the Ministry of Environment, Forest & Climate Change (MOEF&CC), the NGT has directed the Competent Authority to re-consider the application for grant of Consolidated Consent to Operate & Authorization (CCA). The Appellant - brick kilns is not aggrieved by the said opportunity being granted, but the concern raised by Mr. Swarup is whether the Competent Authority would be swayed by the observation made in the impugned decision of the NGT.

4. We have considered the above submission and also the submission made by Mr. Thawani, learned counsel. Since the Competent Authority is directed to reconsider the application for grant of CCAs, instead of entertaining the appeals, we deem it appropriate to direct the said authority to reconsider the application of the brick kiln owner (Jai Mata Brick Field) on merit and independently, without being influenced by any of the observation in the impugned order dated 12.10.2023 in the OA No.341/2023. It is ordered accordingly.

5. With the above order, the Civil Appeals are disposed of. Pending application(s), if any, stand closed."

6. He has also pointed out that Respondent No. 6 has filed a separate appeal being Civil Appeal No. 6565/2024 which was disposed of vide order dated 17.05.2024 directing the order dated 29.04.2024 passed in Civil Appeal No. 5596-5597/2024 will govern the said respondent also.

7. Further submission for the learned counsel for the applicant is that the UKPCB has mechanically granted the CCA dated 07.06.2024 Annexure A-1 and A-2 to the Respondent No. 5 & 6 without examining the issue of the Siting Criteria. He submits that Respondent No. 5 & 6 are still violating the Siting Criteria and are illegally operating.

8. O.A. raises substantial issue relating to compliance of the environmental norms.

9. Issue notice to the respondents. Applicant is directed to serve the respondents and file affidavit of service at least one week before the next date of hearing.

10. List on 21.10.2024.

Prakash Shrivastava, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

July 25, 2024
O.A. No. 833/2024
HB