



क्षेत्रीय कार्यालय, उत्तर प्रदेश प्रदूषण नियंत्रण बोर्ड
REGIONAL OFFICE, U. P. POLLUTION CONTROL BOARD

आवास विकास परिषद कालोनी, रोक्टर-10, योजना संख्या-3, झूंसी, प्रयागराज - 221506
Avas Vikas Parishad Colony, Sector-10, Scheme No. 3, Jhansi, Prayagraj.

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संदर्भ सं०... १०१२१३/०.०.०.०- 593/2022

दिनांक 10/02/2023

To,

E-Mail/Registered Post

The Registrar,
The National Green Tribunal
Principal Bench,
New Delhi
E-Mail:- judicial-ngt@gov.in

Subject:- Compliance of direction issued by Hon'ble National Green Tribunal in O.A No. 593/2022 Piyush Kumar Singh Vs. State of U. P. & Ors. in order dated 09-01-2023

Sir,

With reference to the subject mentioned above, this is to inform you that in compliance of order issued on dated 09-01-2023 by Hon'ble National Green Tribunal in O.A No. 593/2022 Piyush Kumar Singh Vs. State of U. P. & Ors., the compliance report is submitted for your kind perusal and necessary action please.

Encl:-As Above.

Your Sincerely

(R. K. Singh)
Regional Officer

Copy to:-

1. Member Secretary, U.P. Pollution Control Board Lucknow for information.
2. District Magistrate, Fatehpur for information.
3. Chief Environmental Officer (Circle-2), U.P. Pollution Control Board Lucknow for information.
4. Chief Law Officer, U.P. Pollution Control Board Lucknow for information.
5. Sri Pradeep Misra, Advocate on Record, Hon'ble Supreme Court/NGT, B-235, Sector-19, Noida, for perusal and necessary action please.


Regional Officer

Uttar Pradesh Pollution Control Board response in compliance of order dated 09.01.2023 passed by Hon'ble National Green Tribunal, New Delhi in the matter of O.A. No.- 593/2022, Piyush Kumar Singh Versus State of Uttar Pradesh and others.

1. That it is submitted that grievances of the complainant Shri Piyush Kumar Singh was that the applicant had planted orchard of amla trees in his land adjoining Ajmalpur to Himmatpur road in village Himmatpur about 30 years back. Pehlwan Brick Kiln has been illegally set up near the orchard a few years back. The brick kiln is being run illegally in violation of environmental norms. The pollution caused by the same has damaged the trees in his orchard.
2. That it is submitted that with reference to the complaint by applicant Shri Piyush Kumar Singh, Hon'ble National Green Tribunal passed an order on 19.09.2022. In compliance of the order, joint committee constituted by Hon'ble National Green Tribunal has submitted its report on 03.01.2023.
3. That Hon'ble National Green Tribunal, New Delhi has passed an order dated 09.01.2023 in the matter of O.A. No.- 593/2022, Piyush Kumar Singh Versus State of Uttar Pradesh and others. The relevant part of the order is as follows :

“.....4. We have gone through the report of the Joint Committee. In its report the Joint Committee has mentioned that the Brick Kiln was established in the year 2011, i.e., before enactment of the Uttar Pradesh Brick kiln. (Sitting Criteria For Establishment) Rules, 2012 and was governed by Panchayat Byelaws.....

..... 6. In view of the averments made in the application, observations in the report of the Joint Committee and the questions involved, we consider it appropriate to have response of (1) the State of Uttar Pradesh (U.P.), through Chief Secretary, Government of U.P.; (2) the UPPCB and (3) the District Magistrate- Fatehpur, who stand impleaded as Respondents No. 1 to 3. The Registry is directed to prepare and attach memo of parties to the application.....”

4. That with most respectfully in pursuance to the order dated 09.01.2023 the response of the UPPCB is as under;

- i. That it is submitted that as per the Joint Committee report, M/s Pahalwan Brick Field, Ajmatpur, Bindki, Fatehpur was inspected by the Joint Committee on 24.12.2022. As per the report, the Brick Kiln had been established in the year 2011, which is prior to the Uttar Pradesh Brick Kiln (Site Criteria for establishment) Rules 2012 dated 27.06.2012. Therefore the District Panchayat byelaw will be applicable on the above brick kiln and the site of the brick kiln is as per the byelaws of the District Panchayat.

As per the report Amla, Orchard of Shri Piyush Kumar Singh was also inspected by the Joint Team and it was found that the first row of trees of Amla, Orchard (recorded in the name of Shri Krishnapal Singh, S/o Jagmohan Singh) was located at Gata No. 132 at a distance of about 85 meters in the west direction from the chimney of M/s Pahalwan Brick Field (Brick Kiln), whose total area is 0.87 hectares (about 2.0 Acres). At the time inspection, Amla trees were found to be green and sufficient quantity of fruits were also found on the trees.

- ii. That it is submitted that M/s Pahalwan Brick Field has been issued consent to operate for air and water vide letter dated 18.04.2022 having validity till

31.07.2024. Copy of the order is enclosed herewith and marked as Annexure No. -1

- iii. That it is submitted that by Notification No. 921/55-parya./12-94 (parya.)-11 dated 27.6.2012, sub-section (1) of section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Act No. 14 of 1981) and sub-section (2) of the said section (b) in exercise of the power under sub-section (1) of section 54 read, to regulate the site parameters for the establishment of new brick kilns in the State of Uttar Pradesh after consultation with the Governor, Uttar Pradesh Pollution Control Board and after considering the objections and suggestions received from the concerned persons; Uttar Pradesh Brick Kiln (Site Criteria for Establishment) Rules, 2012 are in force from the date of its publication in the Gazette i.e. 27.6.2012.

In the provision to rule-7 of the said rules, there is a provision that any brick kiln which was established/in operation earlier but was not in operation in the last session, wants to operate or change the name/ownership and has Air (Pollution Prevention) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974, may operate the same, if he informs the State Board in writing but he shall be bound to comply with all the conditions, subject to which Permission was granted.

- iv. That it is submitted that Shri Ashok Kumar Verma, Advocate Senior Panel Counsel of U.P. Pollution Control Board has provided his opinion on applicability of the Notification No. 921/55-parya./12-94 (parya.)-11 dated 27.6.2012 as such as regard the provisions of Rule-2 of Rules 2012 (distance from residential area/population/sensitive area/mango or fruit orchard), are concerned these are prospective in nature but in case there is any old brick kiln establish and running prior to the date of enforcement of rules 2012 in accordance with law, but having no valid consent to operate,

the provisions of the rules 2012, will apply retroactively. The copy of the same is enclosed herewith for reference as Annexure No.-2

Therefore, the Uttar Pradesh Brick Kiln (Site Criteria for Establishment) Rules-2012 dated 27.06.2012 will not be applicable on the above brick kiln and it will be governed by District Panchayat Byelaws.

- v. That the UPPCB has relied upon the observations and recommendations of the Joint Committee Report.

Therefore, the response of the UPPCB is being filed for the kind perusal and consideration of this Hon'ble Tribunal.

Lucknow

Yours' Sincerely

Dated :



(Ramesh Kumar Singh)

Regional Officer

Uttar Pradesh Pollution Control Board,
Prayagraj



154153/UPPCB/Allahabad(UPPCBRO)/CTO/both/FATEHPUR/2022 Date: 18/04/2022

To,

M/s

PAHELWAN BRICK FIELD

AJMATPUR BINDKI, Fatehpur, Uttar Pradesh, 212661,FATEHPUR,212661

Consolidated Consent to Operate and Authorisation hereinafter referred to as the CCA (Consolidated Consent & authorization) (Fresh) under Section-25 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section-21 of the Air (Prevention & Control of Pollution) Act, 1981

Consent No-15762318 Date-18/04/2022
--

CCA is hereby granted to PAHELWAN BRICK FIELD located at AJMATPUR BINDKI, Fatehpur, Uttar Pradesh, 212661,FATEHPUR,212661. subject to the provisions of the Water Act, Air Act and the orders that may be made further and subject to following terms and conditions :-

1. This CCA PAHELWAN BRICK FIELD granted for the period from 18/04/2022 to 31/07/2024 and valid for manufacturing of following products with Capital Investment/Net Assets Values 49.50 Lakhs

S No	Product	Quantity	Unit
1	BRICK/DAY	15000	Metric Tonnes/Day

2. Specific Conditions under Water Act :-

(i) The daily quantity of effluent discharge (KLD) :-

Kind of Effluent	Quantity(KLD)	Treatment facility and discharge point
Domestic	3	Septic Tank

(ii) Trade Effluent Treatment and Disposal :-The applicant shall operate Effluent Treatment Plant consisting of primary/secondary and tertiary treatment as is required with reference to influent quantity and quality.

In case of stoppage of functioning of ETP, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately.

(iii) The treated effluent shall be recycled to the maximum extent and should be reused within the premise for gardening etc. Quality of the treated effluent shall meet to the following general and specific standards as prescribed under Environment (Protection) Rules, 1986 and applicable to the unit from time-to-time :-

Industrial Effluent Quality Standard

S.No.	Parameter	Standard
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(iv) Sewage Treatment and Disposal :- The applicant shall provide comprehensive STP as is required with reference to influent quantity and quality. In case of stoppage of functioning of STP, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately.

(v) The treated sewage shall be reused in gardening and the same shall be maintained continuously so as to achieve the quality of the treated effluent to the following standards.

S No.	Parameters	Standards
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3. Conditions under Air Act :-

i) The applicant shall use following fuel and install a comprehensive control system consisting of control equipment as is required with reference to generation of emissions and operate and maintain the same continuously so as to achieve the level of pollutants to the following standards

S No.	Air Pollution Source	Type of fuel	Stack no	Control Device	Height of Stack
1	BRICK STACK	COAL	01	Particulate Matter	30 METER FROM G.L.

S No.	Stack no	Parameters	Standards
1	1	Particulate Matter	30 METER FROM G.L.

In case of stoppage of functioning of air pollution control equipment, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately

ii) Noise from the D.G. Set and other source(s) should be controlled by providing an acoustic enclosure as is required for meeting the ambient noise standards for night and day time as prescribed for respective areas/zones (Industrial, Commercial, Residential, Silence) which are as follows :-

Day time : from 6.00 a.m. to 10.00 p.m., Night time: from 10.00 p.m. to 6.00 a.m.

(iii) The unit will not use any type of restricted fuel.

Standards for Noise level in db(A) Leq	Industrial Area		Commercial Area		Residential Area		Silence Zone	
	Day Time	Night Time	Day Time	Night Time	Day Time	Night Time	Day Time	Night Time
	75	70	65	55	55	45	50	40

6. Compulsory documents to be submitted by the Industry/Unit :-

(i) Annual return in Form-4 and Waste Disposal Manifest in Form-10 under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and Third Party Audit Report.

(ii) Environment Statement in Form-V of Environment (Protection) Rules, 1986.

(iii) Quarterly compliance report of the CCA, photograph of ETP/APCs/Waste Storage Area.

7. Unit has to apply for renewal of CCA well in advance of 60 days of expiry of this CCA.

8. Competent Authority reserves the right to change/modify/add any time any condition of this CCA.

9. Unit has to comply with the other general conditions as annexed herewith. Non compliance of any provision of this CCA and provisions of the Water Act, Air Act and Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 will results in legal action under the aforesaid Acts and Rules.

10. In compliance to the G.O dated 1011/81-7-2021-09 (Writ)/2016 dt.13.10.2021 issued by Department of Environment, Forest and Climate Change, Uttar Pradesh. You are directed to develop Miyawaki Forest as per the SOP available at URL:-<http://www.upecp.in/TrainingSession.aspx> for ensuring timely compliance of this direction, you are hereby directed to submit a bank guarantee with minimum validity of one year of the amount equivalent to the sum of initial consent fees (Air and Water) or Rs. 50,000/- (Rs. Fifty Thousand Only) whichever is more, within 30 days from the date of issuance of this certificate. In case of non-compliance of this direction, your consent shall be revoked by the Board.

11. The industry will have to obtain No objection certificate for abstraction of ground water. It will be the responsibility of the industry to comply with the various conditions of the NOC obtained from the competent authority and submit to the Board, within 3 months time failing which CTO shall be revoked.

R.O., UPPCB PRAYAGRAJ.

Copy to:

CEO-2, UPPCB LUCKNOW.

RAMESH
KUMAR SINGH

Digitally signed by
RAMESH KUMAR SINGH
Date: 2022.04.18
23:15:57 +05'30'

R.O., UPPCB PRAYAGRAJ.

Annexure

Specific Conditions

10. Unit is directed to use coal pieces maximum up to 20 mm size to minimize Air Pollution.

11. Unit shall submit Stack Monitoring Report in every season from approved laboratory.

12. Unit is directed to make provision of sampling Platform, Porthole & Ladder in the Chimney at appropriate height for the stack monitoring within two months.

13. Unit will maintain Ambient Air Quality in the Brick Kiln by making arrangement of dust suppression which generates during movement of vehicles loading and unloading by sprinkling water at regular interval.

14. Unit will maintain proper Green Belt Area as per norms.

15. Brick Kiln is directed to submit the certificate regarding establishment of Gravitational Settling Chamber with 03 months from approved agency.

16. Brick Kiln is directed to use minimum 20% Bio briquettes as a fuel with coal.

17. Brick Kiln is directed to use minimum 25% Fly Ash in Brick manufacturing.

18. U.P. Pollution Control Board reserves its right to alter, add or delete any condition depending on the circumstance.

19. Brick kiln is directed to switch over from Bull trench loading to Zig-Zag loading of Bricks as a cleaner technology with better fuel efficiency.

20. All the moving area around the main Brick Kiln should be paved with the bricks to minimize the fugitive dust emission from the Brick Kilns operation within 02 month.

21. Unit is directed to make provision of Rain Water Harvesting & Ground Water Recharging.

22. Unit is directed to PUCCA arrangement for workers regarding water supply and provide hygienic sanitation facility ensuring ODF.

23. Unit will develop green belt all around the campus of Brick kiln.

24. Proper water supply arrangement will be made by the unit to the workers for domestic activities.

25. Proper record regarding water consumption for suppression of dust around the Brick Kiln will be maintained by the unit.

26. If any adverse order issued from Hon'ble Court or Head Office Regarding suitability of site. Then the operation of brick kiln should be closed.

27. Condition S. No. 2-9 not be applicable for this consent but the specific condition S. No. 10-16 will be strictly complied by the Brick Kiln.

General Conditions:-

The applicant shall get analysed the samples of effluent/emission/hazardous wastes at least once in a three month from the laboratory recognized by the MoEF and shall report to the UEPPCB.

1. The applicant shall however, not without the prior consent of the Board bring into use any new or altered outlet for the discharge of effluent or gases emission or sewage waste from the unit.
2. Treated waste water and domestic waste water shall be disposed jointly at one disposal point. The applicant shall provide discharge measurement equipment at final disposal point.
3. The applicant shall strictly comply with conditions of this CCA and submit compliance report of stipulated conditions within 30 days of receipt of this CCA. If, at any point of time, it is found that the industry is not complying with stipulated conditions or any further direction/instruction issued by the Board, legal action shall be initiated against the applicant.
4. The applicant shall maintain good house keeping. All valves/pipes/sewer/drains etc. must be leak-proof
5. The industry shall provide uninterrupted entry to the STPs/ETPs inlet and outlet points, Air Pollution Control equipment and stack for smooth sampling/monitoring of efficiency of pollution control measures.
6. The industry shall provide Inspection Book at the time of inspection to the Board's officials.
7. Whenever due to any accident or other unforeseen act or event, such emission occurs or is apprehended to occur in excess of standards laid down, such information shall be reported to the Board's offices and all other concerned offices. In case of failure of pollution control equipment, the production process connected to it shall be stopped with immediate effect.
8. The industry shall operate in a manner so that all emissions be emitted through designated chimney/stack only.
9. In case of any damage to the agriculture productivity, human habitation etc. by the operation of industry, it shall be imperative to stop production in the industry with immediate effect and such information shall be reported to Board's offices. The industry shall be liable to pay compensation also in such cases as decided by the Competent Authority.
10. The applicant shall apply before the 60 days of expiry of CCA or any change in production types/production capacity/manufacturing process/capacity enhancement etc. or any change in effluent discharge point or emission point
11. The Board reserves the right to revoke/add/modify any stipulated condition issued along with CCA, as may be necessary.
12. The person authorized shall not rent, lend, sell, transfer or otherwise transport the hazardous waste without obtaining prior permission of the Board.
13. Any unauthorized change in personnel, equipment as working condition as mentioned in the application by the person authorized shall constitute a breach of his authorization.
14. It is the duty of the authorized person to take prior permission of the Board to close down the facility.
15. The authorization is valid for temporary storage of Hazardous Waste within premises only.
16. The authorized agency shall ensure that on-line data with regard to quantity and nature of hazardous chemicals being used in the plant as well as air emission and waste generated within premises is displayed on Display Board of size 6x4 feet outside the main factory gate within premises
17. It is duty of the authorized person to take prior permission of this Board to close and cleanup the facility for treatment, storage and disposal of hazardous waste.

ASHOK KUMAR VERMA

Advocate
Senior Panel Counsel
Union of India



(Mob) 9335246338.

538 - Ka/1500, Mausam Bagh,
Triveni Nagar, Ph-2,
Near Bright Land School,
Lucknow-226020 (U.P.).

Date:26/02/2022

To,

The Law Officer -- I,
U.P. Pollution Control Board,
Gomti Nagar,
Lucknow.

Sub:-- Legal Opinion in pursuance of Letter dated 24/02/2022.

Sir,

After going through "The Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules 2012, which has been enforced wef. 27/06/2012 it is submitted that as is apparent from Rules, 2012 these rules have been framed by the State Government with a view to regulate the siting criteria for establishment of new brick kilns in the State of Uttar Pradesh. From the perusal of objects of framing the Rules, 2012 it is apparent that the main object was to regulate the siting criteria of new brick kilns in the State of U.P. As such the old brick kilns which were already established by applying siting criteria of establishment of brick kiln according to the prevailing byelaws of Zila Panchayat and were granted no objection/consent to establish by the Uttar Pradesh Pollution Control Board (hereinafter referred as "Board") and were also granted the consent to operate by the Board, as a right vested in them with regard to the establishment of the brick kiln and the right to operate the brick kiln was subject to the conditions contained in the consent order granted by the Board as such in view of Rule 1(2) of the Rules, 2012, the provisions of Rule 2 of Rules, 2012 are prospective in nature and as regards the criteria for the establishment of the Brick Kilns under the aforesaid Rules, 2012 cannot be applied to Old Brick Kilns already established and having valid consent orders to operate. It is relevant to mention here that in view of provisions of The Water (Prevention and Control of Pollution) Act, 1974 & The Air (Prevention and Control of Pollution) Act, 1981 the obtaining of the no objection to establish the Brick Kiln is only one time and there is no provision for its renewal, the aforesaid provisions are prospective in nature and will not be applicable to Old Brick Kilns as referred earlier.

So far as the operation of Rules, 2012 as regards the permission to operate the brick kilns it is submitted that the old brick kilns already lawfully established and having no objection/consent to establish granted by the Board prior to the commencement of Rules, 2012, the consent to run/operate the aforesaid brick kilns already granted and subsisting on the date of commencement of Rules, 2012, the consent was to be continued for the unexpired period but for seeking renewal of the consent to operate after enforcement of Rules, 2012 the other provisions except the provisions relating to the establishment of the new brick kiln are being enforced in respect of considering the renewal of consent to operate by enforcing the Rules, 2012 except the provisions which relate and confined to Rules, 2012 are prospective.

& Another) while considering the matter in respect of Brick Kilns existing since 2010 without consent to establish and without consent to run has been pleased to hold Rules, 2012 to be retroactive in nature so far as such Brick Kilns are concerned, as such to such Brick Kilns which were established prior to enforcement of Rules, 2012 and were having no consent to run, to such Brick Kilns Rules, 2012 will apply. The operative portion of the said order is mentioned as below:

".....It is clear from the records that when the brick kiln was established in 2010, it had taken an NOC from the Zila Parishad but it had not obtained the consent of the UPPCB under Section 21 of the Air Act. The Air Act had been promulgated on 29th March, 1981. In terms of Section 21(6) of the Air Act, no person shall, without the previous consent of the UPPCB, establish or operate any industrial plant in an air pollution control area. Even the units which were operative at the time of commencement of the Act were granted period of three months from the date of commencement of the Air Act, within which they were required to take the consent of the Board. Thus, there was a statutory obligation on the part of the appellant to seek consent of UPPCB for establishing and operationalizing its unit. Admittedly, the appellant did not take consent of the Board till the show cause notice dated 19th January, 2013 was issued to it. It is only after issuance of this show cause notice that the appellant had filed an application for grant of consent which admittedly has been granted on 6th September, 2013. Thus, for the first time when the unit applied for obtaining consent of the UPPCB was in August, 2013, that is, when the Air Act and all the laws framed thereunder, including the Rules of 2012, were in force. The application for grant of consent ought to have been considered by the UPPCB in accordance with the laws in force, when the application was moved and not when the unit claims to have been established or the time since when it was running. Admittedly, the unit of the appellant had come into existence without complying with the laws in force, particularly the environmental legislations. Before the appellant can claim any advantage on the strength of beneficial interpretation of the relevant provisions in order to contend that it being an existing unit and is covered only by the Rules in force in 2010 and not by the Rules of 2012 as these are prospective in nature, the unit must show that it came into existence upon entirely complying with the laws in force at that time and after obtaining the consent of the Board under the provisions of the Air Act. If a unit is established in violation of the laws in force and in an illegal manner, then it would be estopped from claiming any benefit on the ground of the laws being prospective. Such unit cannot be permitted to exist in violation of the laws in existence, i.e. the Rules of 2012 and the prescribed standards under the Air Act. This shall be the position of law, independent of the contention that such procedural laws which are mandatory and only add additional obligation, but does not take away any existing rights, would have to be treated retroactively....."

It is to be noted that from the aforesaid judgment it is apparent that the siting criteria of Rules, 2012 applies to the new brick kilns to be established after its enforcement but in case old brick kilns established prior to the enforcement of Rules, 2012 and having no valid consent on the date of enforcement, to such Brick Kilns the provisions of Rules, 2012 will apply retroactively and cannot claim to have a vested right in them.

Against the aforesaid order dated 07.05.2015 passed in Appeal no. 74/2014 by the Hon'ble National Green Tribunal, Principal Bench at New Delhi, the Uttar Pradesh Pollution

The said Civil Appeal has been dismissed by the Hon'ble Supreme Court vide its order dated 12.10.2015. The operative portion of the said order is reproduced as below:

".....

3. We have heard Shri Pradeep Misra, learned counsel for the appellant and carefully perused the material available on record. In our considered opinion, we do not see any good ground to interfere with the judgment and order passed by the Tribunal.

4. Accordingly, the appeal stands dismissed."

It is further submitted that in the matter of a writ petition no. 10083 (M/B) of 2014 M/s New Swami Brick Field Vs State of U.P. & Others when the matter came before the Hon'ble High Court At Lucknow and the dispute raised was about violation of Article 19 (1) (g) the Hon'ble Court was of the view as below:

".....After respective arguments have been advanced, this Court finds that in exercise of authority conferred under Section 21 read with Section 54 of Air (Prevention and Control of Pollution) Act, 1981, State Government has proceeded to frame rules in respect of establishment of new brick kiln and said rules are known as Uttar Pradesh Int Bhattha (Sthapna hetu Sthal Mapdand) Nlymawall 2012. Said rules in question contains various guidelines that are to be adhered to be for establishment of new brick kiln.

Petitioner is assailing the validity of said rules, not at all on the ground of competence of the State Government to frame said rules that has been so framed in consultation with U.P. Pollution and Control Board, rather challenge has been made that same has the effect of infringing and violating the fundamental right of petitioner guaranteed under Article 19 (1) (g) of the Constitution of India to carry out the business by the petitioner.

Once in statutory exercise of authority, statutory rules have been framed for the purposes of carrying out the object of Act and not dehors of the same and in the said direction for the purposes of establishment of new brick kiln rules have been framed, and therein in the place wherein brick kiln could be established, qua the same parameters have been fixed, in reference of residential area, population, sensitive area, and distance to be maintained from mango grooves and others, and the said restrictions are being assailed that same violates fundamental right of the petitioner under Article 19 (1-g) of the Constitution of India, said challenge cannot be accepted for the reason that State Government is always competent to impose reasonable restriction in carrying out the business.

Article 19 (6) of the Constitution recognises and permits reasonable restriction on the rights guaranteed under Article 19 (1) (g) of Constitution, and said reasonableness of restriction on being assailed has to be determined in an objective manner and from the stand point of interest of general public and not from the stand point of interest of persons upon whom such restrictions would have impact, as restriction can not be said to be unreasonable merely because in a given case, it operates harshly. Apex Court in the case of Union of India Vs. International Trading Company 2003(5) SCC 437 has taken the view that when some decision is taken in purported exercise of statutory power in public interest, acting reasonably and in good faith, then said challenge should receive no interference from Courts. Right to carry on business is guaranteed under Article 19(1)(g) but same is not an unfettered right and the

right to carry on business can always be regulated in public interest and that is the purport of Article 19(6) which recognises and permits reasonable restriction.

On the said parameters, we examine the restriction in question that is being assailed before this Court and we find that all the terms and conditions that have been so imposed, has the tapping and element of public interest, as one of the conditions is that no brick kiln would be established within 200 meters from the railway track, no brick kiln would be opened within a distance of 100 meter from the main road/ PWD road; no brick kiln would be opened within the distance of 300 meter from the National Highway; and no brick kiln would be opened within distance of 800 meter from earlier brick kiln. These norms in question are guided by public interest and has to be dubbed and termed as reasonable restriction.

Learned Counsel for the petitioner next contended that in the present case, rules in question are discriminatory, inasmuch as old brick kiln has been permitted to run and thus person who intend to be in the same business have been discriminated.

Caption of the rules makes it clear that rules are meant for the persons who intend to run and establish new brick kiln business and as far as old brick kiln is concerned, said rules are not at all applicable or attracted and under the said rules in question in reference of old brick kiln that are being or that is being intended to run even they would comply with the terms and conditions on which permission has been accorded to them to run brick kiln.

The Rules in question is clearly prospective in nature and as such 5 persons who have been in business in the past, constitute a class amongst themselves, and claiming parity vis-a-vis them cannot be accepted. Apex Court in the case of John Vallamattom Vs. Union of India 2003 (6) SCC 2902 has taken the view that equality clause enshrined under Article 14 of the Constitution is of wide import, and restriction imposed by reason of statute, however, can be upheld in the event it is held that the person to whom the same applies, forms a separate and distinct class and such a classification is reasonable one based on intelligible differentia having nexus with the object sought to be achieved. Once the object is to regulate establishment of new brick kiln, then claiming parity with incumbent who are already in business, is wholly unreasonable request as they under the scheme of things form a separate and distinct class, and arguments advanced if accepted would frustrate the object sought to be achieved....."

As such as regards the provisions of Rule 2 of Rules, 2012 are concerned these are prospective in nature but in case there is any old brick kiln established and running prior to the date of enforcement of Rules, 2012 in accordance with law but having no valid consents to operate, the provision of the Rules, 2012 will apply retroactively.

Ashok Kumar Verma

(Ashok Kumar Verma)

Advocate.