

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 3289/2023
C/w WP(C) No. 3295/2023

M/s Alamdar Brick Kiln

...Appellant/Petitioner(s)

Through: Mr. M. M. Shah, Advocate

Vs.

UT of J&K and Ors.

...Respondent(s)

Through: Mr. Syed Musaib, Dy. AG

CORAM:

HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE

ORDER

18.12.2023

1. These two writ petitions raise similar issues though listed separately are clubbed together for final adjudication.
2. In these writ petitions, the petitioners have challenged communications dated 09.10.2023, 21.08.2023 and 16.09.2023, issued by respondent no.6, vide which, their applications for consent to operate CTO(F) have been rejected on the directions of National Green Tribunal dated 14.07.2013 (for short NGT).
3. With the consensus of learned counsel for the parties, both the writ petitions are taken up for final disposal.
4. The petitioners submits that they have set up and put in operation their Brick Kilns with due directions required under law at the time of establishment of their Brick Kilns. Thereafter, they have adopted all changing technologies to combat pollution as advised by the regulatory bodies especially J&K PCB now PCC, i.e., from movable chimney to fixed chimney and from bulls trench to High draft zig zag

Technology. The petitioners applied for consent to operate, which remained pending and undecided with JKPCB/PCC, as some developments in the legal sphere took place, firstly by the enactment of J&K Brick Kiln Act, 2010 and secondly by issuance of direction by the NGT. In terms of J&K Brick Kiln Act, 2010, it is mandatory for the owners of Brick Kilns to obtain licences from the competent authority to be notified under the Act for which a Brick Kiln owners have been made bound to apply to the competent authority with NOC's from different departments as mentioned in Section 6(ii) of the Act. The petitioners have applied before the competent authority for issuance of consent to operate, but they have not decided their applications within the period of four months. Therefore, in terms of Section 25(7) and Section 21(4) of Water (P&CP) Act 1974 and Air (P&CP) Act 1981 respectively, the respondents are bound to decide the applications for grant of consent within four months.

5. Mr. Syed Musaib, learned Dy. AG, submits that petitioners have applied for consent to establish/operate Brick Kilns before respondent-Board//Committee. The applications of the petitioners were processed and as a matter of procedure, the proposed sites of the petitioners were inspected by the District Officer concerned and while the application of the petitioners were under consideration, the National Green Tribunal, Principal Bench, New Delhi, in a petition - OA No. 594/2022 titled *Syed Riyaz v. UT of J& and Ors*, has directed to take action in accordance with rules and ensure that brick kilns, which are in operation without the consent of J&K Pollution Control Board, must be taken serious and action be initiated and no new brick kiln be permitted to operate.

6. The National Green Tribunal (GGT) in its order dated 14.07.2023, while considering the grievance with regard to unauthorized operation of near about 200 Brick Kilns in District Budgam, who are operational without NOC/renewal of licence, has directed as under:-

“4. The conclusion of the report is that the kilns are operative without consent order from the State PCB. It is reported that some of the brick kilns have been closed but still are in operation but steps have been taken by the State PCB in accordance with rules.

5. State PCB is directed to take action in accordance with rules and ensure that brick kilns must be brought within the ambit of the consent conditions and brick kiln which are in operation without the consent of State Pollution Control Board, must be taken seriously and action be initiated in accordance with the law. However, orders of the High Court be complied with as applicable. We also direct that, no new brick kiln or expansion of existing unit be permitted till J&K PCB ensures compliance and availability of carrying capacity to maintain ambient air quality norms.”

7. Though the petitioners claim that their Brick Kilns are in operation, but there is nothing on record to show the consent to establish or operate in their favour. The respondents have rightly considered the case of the petitioners under New Brick Kiln Rules/Regulations and rejected the same as per the order of National Green Tribunal.
8. In view of directions of NGT, the respondents have rightly refused to allow operation of Brick Kilns on the ground that the Brick Kilns are a new establishment and did not exist prior to the order. Even licences for running the Brick Kilns are not on record. Therefore, petitioners' argument that their Brick kilns are not a new establishment, is rejected.
9. In view of aforesaid facts and circumstances of the case, I find that it would be appropriate for the petitioners to approach National Green

Tribunal for clarification/modification, if they desire so. These petitions are, accordingly, **disposed of**.

10. Registry to place copy of this order in each file.

(SINDHU SHARMA)
JUDGE

SRINAGAR

18.12.2023

Manzoor

