

GAHC010282512023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7299/2023

M/S N PLUS R BRICK INDUSTRY AND ANR
REPRESENTED BY ITS MANAGING PARTNER,
VILLAGE- RAIDONGIA BAGARIGUR,
P/O- AIBHETI, MOUZA- HATICHUNG,
P/S- JAJORI, DIST.- NAGAON, ASSAM,
HAVING ITS PRINCIPLE PLACE OF BUSINESS AT DHING ROAD,
RAIDONGIA,
BAGARIGURI PATHAR, DIST.- NAGAON, ASSAM.

2: NASIR UDDIN @ MD. NASIR UDDIN
S/O- ALI HUSSAIN

MANAGING PARTNER OF M/S N PLUS R BRICK INDUSTRY

R/O- VILLAGE- NORAMARI

P/O- SHILLONGANI

MOUZA- KACHAMARI

P/S- SADAR

DIST- NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM AND 23 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
REVENUE DEPARTMENT, DISPUR, GUWAHATI-781006.

2: THE DISTRICT COMMISSIONER
NAGAON

DISTRICT- NAGAON
ASSAM
PIN- 782001.

3:THE MEMBER SECRETAR
POLLUTION CONTROL BOARD
ASSAM
BAMUNIMADAM
GUWAHATI-21.

4:THE ADDITIONAL DISTRICT COMMISSIONER (REVENUE)
NAGAON
DIST.- NAGAON
ASSAM
PIN- 782001.

5:THE CIRCLE OFFICER
NAGAON SADAR REVENUE CIRCLE
NAGAON
DIST.- NAGAON
ASSAM

PIN- 782001.

6:THE EXECUTIVE ENGINEER
NAGAON POLLUTION CONTROL BOARD
NAGAON
DISTRICT- NAGAON
ASSAM.

7:THE GAONBURAH OF RAIDONGIA
GOROIMARI
BAGARIGURI KISHAM

MOUZA- HATIHCHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

8:RITA MONI BHUYAN
W/O- SURAT BHUYAN

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

9:HIMANTA BARUAH
S/O- LT. RATNA BARUAH

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

10:BHASKAR BHUYAN
S/O- SARAT BHUYAN

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

11:DHAN HAZAIRIKA
S/O- LAKHI HAZARIKA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

12:TARUN SAIKIA
S/O- MADARAM SAIKIA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

13:BHARAT SAIKIA
S/O- LT. BIHURAM SAIKIA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

14:AJIT BYUYAN
S/O- LT. RUDRA BHUYAN

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

15:CHINCU MONI BORA
S/O- LT. MONIRAM BORA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

16:PRAFULLA RAJKHOWA
S/O- TANURAM BHUYAN

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

17:ANANTA HAZARIKA
S/O- KALYAN HAZARIKA

WARD MEMBNER OF RAIDONMGIA GAONPANCHAYAT

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

18:DIGANTA SAIKIA
S/O- JOYRAM SAIKIA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

19:DIPJYOTI BORA
S/O- MINARAM BORA

WARD MEMBNER OF RAIDONMGIA GAONPANCHAYAT

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

20:PRASANNA SAIKIA
S/O- NILA SAIKIA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

21:BINUD KALITA
S/O- GANAKANTA KALITA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

22:HEMANTA SAIKIA
S/O-JOYRAM SAIKIA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

23:BANTI SAIKIA
W/O- SUREN HAZARIKA

ANGANWADI WORKER

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002.

24:KANMAI SAIKIA
W/O- LT. JOYRAM SAIKIA

VILLAGE- RAIDONGIA

MOUZA- HATICHANG

P.S.- JAJORI

P.O.- AIVETI

DISTRICT- NAGAON
ASSAM

PIN- 782002

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 24-04-2024

Heard Mr. J. Ahmed, learned counsel for the petitioners. Also heard Ms. P.R. Mahanta, learned standing counsel for the respondent no.1; Ms. S. Baruah, learned Govt. Advocate appearing for the respondent nos.2, 4 and 5; Mr. S. Baruah, learned standing counsel appears for the respondent nos.3 and 6; Mr. S.R. Baruah, learned counsel appears for the respondent nos.8 and 10 to 14 and Mr. AK Purkayastha, learned counsel appears for the respondent nos.15 and 18 to 24.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the order dated 14.09.2023, issued by the District Commissioner, Nagaon, prohibiting the petitioners from setting up of its brick kiln until further orders. The said order was passed under the provisions of section 3(ii) of the Assam Brick Kilns Establishment and Regulation Rules, 2013.

3. In brief the case of the petitioners is that they have set up a brick industry under the name and style of M/S. N+R Brick Industry at village Raidongia Bagarigur Pathar under Jajori Police Station in Nagaon district after obtaining no objection from the concerned authorities including the Pollution Control Board, Assam. Accordingly, the land was developed and chimney was installed and before operations of the brick industry could commence, the Addl. Deputy Commissioner (Revenue), vide letter dated 16.11.2022, directed the Circle Officer, Nagaon Sadar Revenue Circle to conduct a public hearing regarding the brick industry of the petitioners by directing the meeting to be videographed and to be held after giving wide publicity.

4. It is projected that a public hearing took place on 01.12.2022 and the proceedings was submitted to the District Commissioner, Nagaon vide letter dated 09.12.2022. As nothing happened, the petitioners had approached this

Court by filing WP(C) 1938/2023. In view of the consent of the parties, this Court, by order dated 04.04.2023, disposed of the writ petition by directing the Deputy Commissioner (Revenue) Branch, Nagaon to take a decision with regard to public hearing held on 01.12.2022 and to communicate the same to the petitioners within one month by further providing that prior to taking of the decision, the authorities will give an opportunity of hearing to the petitioners if they were not heard during public hearing.

5. Thereafter by order dated 14.09.2023, the District Commissioner, Nagaon, based on the report of the public hearing held on 01.12.2022, prohibited the setting up of the brick kiln of the petitioners under the name and style of M/S. N+R Brick Kiln until further orders. The said order was purportedly passed under section 3(ii) of the Assam Brick Kilns Establishment and Regulation Rules, 2013 (in short '2013 Rules').

6. The respondent nos.8 and 10 to 14 have filed their affidavit-in-opposition and it is stated that the petitioners have obtained Land Utilization Certificate from the District Agricultural Officer but not from the concerned Circle Officer of the concerned Revenue Circle, which is in violation of 2013 Rules. It is also stated that the local public were not informed about drafting of the NOC by the Secretary, Raidongia Gaon Panchayat and therefore, complaints were made and subsequently the said NOC by the Raidongia Gaon Panchayat was cancelled, which was intimated to the Office of the District Commissioner on 13.09.2021 as well as to the Inspector of Factories, Nagaon vide letter dated 06.04.2022.

7. It is also stated that in the periphery of area there are residents within 200 metre aerial distance from the brick industry and a school and a place of

worship were also situated within 400m aerial distance of the said industry and a national academy is also situated within 1 km and further more 2 schools are located within 1 and one more school is located within 1.2 km aerial distance from the said brick industry. Accordingly, it is stated that in the public meeting objections of the people were recorded. It is also stated that although the Consent to Establish was issued on 12.04.2022 and 16.10.2022 by the Pollution Control Board, but the operation of the said brick industry was commenced prior to that.

8. The learned counsel for the respondents has submitted that there are agricultural lands adjoining to the brick industry and there is every likelihood that once the operation of the brick industry starts or commences, the agricultural land in the vicinity of the said brick industry would be rendered useless for agricultural purpose.

9. It is also submitted that as per the terms and conditions of the Consent to Establish dated 12.04.2022 issued by the Pollution Control Board, Assam, the said Consent to Establish is subject to modification or suspension, either in whole or in part, and is also capable of being withdrawn by the Pollution Control Board for violation of any terms and conditions of this Consent to Establish, for obtaining the consent by misrepresentation or failure to disclose fully all relevant facts or in case of any genuine complaint received. In that regard, it is submitted that the petitioners have violated the terms and conditions of the Consent to Establish as they have obtained the said consent by misrepresentation by obtaining NOC from the District Agricultural Officer instead of the concerned Circle Officer. Accordingly, it is submitted that even otherwise on a genuine complaint been received, the Consent to Establish can be still

revoked.

10. The learned counsel for the respondent nos.15 and 18 to 24 has submitted in favour of the petitioners and it is submitted that the persons who are objecting to the setting up of a brick industry do not reside within the periphery of the said brick industry and therefore they are ranked outsiders and do not have a *locus-standi* to raise any objections.

11. The learned Govt. Advocate has produced a copy of the instructions dated 18.04.2024 provided by the District Commissioner, Nagaon wherein it is disclosed that a direction was issued to the Circle Officer to stop the operation of the brick kiln to avoid untoward incident and it was done through the powers vested under section 144 Cr.P.C., although not mentioned explicitly and it is projected that the exercise of power under section 144 Cr.P.C. was implied. It is also submitted that public complaints were received from the President/Secretary of Raidongia Anchalik Students' Union (Regional), Aibheti along with complaint from Sarat Chandra Bhuyan and 16 others and also from one Prafulla Rajkhowa, resident of Bor Raidongia against setting up of a brick kiln.

12. In respect of the said 2013 Rules, Mr. S. Baruah, learned standing counsel for the Pollution Control Board, who is also the learned Govt. Advocate, has submitted that as per his instructions the 2013 Rules have not been notified in the official gazette. However, the said rules are being followed by accepting it as a guideline.

13. At the outset, it may be stated that nothing is produced before the Court that under the provision of the Air (Prevention and Control of Pollution) Act, 1981 the District Commissioner, who is also the concerned District Magistrate in the State of Assam is empowered to stop operation of an industry

which has been set up on the strength of Consent to Establish and Consent to Operate certificates issued by the Pollution Control Board, Assam.

14. The provision of section 144 Cr.P.C. also does not contain any provision from which it can be gathered that an industry which is set up on the strength of the requisite permissions, licences and no-objection certificates can be prohibited from functioning by the District Commissioner under the powers vested under section 144 Cr.P.C. The order dated 14.09.2023 does not disclose that the District Commissioner, Nagaon had recorded his satisfaction that the said industry was a danger to human life or it is otherwise unsafe or that its operation could cause disturbance to peace and tranquility. Therefore, the conditions precedent for exercise of jurisdiction under section 144 Cr.P.C. is not found present in the impugned order. It is not open to the District Commissioner, Nagaon to explain his order by any subsequent communication in form of instructions to the learned Govt. Advocate. Therefore, the Court is inclined to hold that the order dated 14.09.2023, under Memo no. NRP.18/2015, issued by the District Commissioner, Nagaon is unsustainable on facts and in law.

15. The issues raised by the learned counsel for the respondent nos.8 and 10 to 14 are basically issues which are to be visited only by the Pollution Control Board, Assam to examine if the Consent to Operate was obtained in a deceitful manner. The said authority was never called upon to revisit its Consent to Establish and Consent to Operate Certificates issued in respect of the brick kiln of the petitioners. The power vested in the Pollution Control Board, Assam could not have been exercised by the District Commissioner, Nagaon to cause an inquiry to be made as to the said two documents issued by the Pollution Control

Board, Assam. The District Commissioner has no mechanism available with him to determine whether the brick industry in question was a polluting industry, and that the pollutants were above the permissible limit. Therefore, if anyone has a genuine grievance against the setting up of the petitioner's industry, inquiry if any, can only be made by the Pollution Control Board, Assam and no other authority unless such authority is expressly vested on such power and authority by any provisions of law. No authority can assume its power which is not vested with it. Therefore, the District Commissioner, Nagaon, having not being vested with any expressed or implied authority to inquire into pollution by any industry, cannot be permitted to venture to make such an inquiry. Such an inquiry, if any, must be left only to the wisdom of the Pollution Control Board, Assam in so far as the State of Assam is concerned.

16. The Court has not been shown any provision of law which permits public participation in an inquiry to be made by the Pollution Control Board. Therefore, it *ex facie* appears that although complaints can be made by anybody concerned against an industry, but in the absence of rules permitting public to participate in the inquiry, the authority in the Pollution Control Board, Assam, unless allowed by provision of law cannot be directed to hold an inquiry in participation from public. This observation is made as no provision of law has been shown to the Court permitting public participation in such inquiry to be made by the Pollution Control Board, Assam. Therefore, it is clarified that if there is any law permitting public participation in the inquiry, the said legal provision shall be followed.

17. Be that as it may, from the impugned order dated 14.09.2023 it appears that the District Commissioner, Nagaon had invoked the provisions of

section 3(ii) of the 2013 Rules. A typed copy of the said regulation has been produced by Mr. J. Ahmed, learned counsel for the petitioners. Rule 3 of the said 2013 Rules is extracted below:

3. Restrictions on setting up of Brick Kilns:

(i) The brick kiln shall be allowed only on such land which is certified as Non Agricultural Land by the concerned Circle Officer of Revenue Departments of the Government.

(ii) For establishment of a new brick kiln, public hearing shall be conducted in the concerned Gaon Panchayat for assessing the acceptability of the unit by local people and without "No Objection" from Gaon Panchayat no new brick kiln shall be allowed.

(iii) The clay collection/excavation area for the brick kiln shall not be an area falling within the restriction limits prescribed under Rule 7 of Assam Minor Mineral Concession Rules, 2013. The brick industry must have valid source for raw materials supply. An affidavit to this effect shall be submitted by the project proponent.

18. The said rules do not envisage any inquiry by the District Commissioner, Nagaon, rather under the said Rule 3(ii), public hearing is required to be conducted in the concerned Gaon Panchayat. The District Commissioner, Nagaon is not found empowered to initiate such public hearing.

19. On the query of the Court, the counsel appearing for the respective parties could not show any provision of law in the Assam Panchayat Act, 1994 which makes the District Commissioner of a district empowered to act on behalf of the Panchayat. Therefore, *ex-facie* it appears that the District Commissioner of a district in the State of Assam cannot be said to be empowered to take any decision within the scope of Rule 3(ii) of the 2013 Rules.

20. It appears that to overcome the bar created by Rule 3(ii) of the 2013 Rules, the District Commissioner, Nagaon, in the instructions dated 18.04.2024

provided to the learned Addl. Senior Govt. Advocate has altered its stand by stating that exercise of power under section 144 of Cr.P.C. can be presumed. The District Commissioner, Nagaon cannot be permitted to oscillate and to change a stand which is contrary to the contents of the impugned order dated 14.09.2023. Although no adverse steps is being ordered, but it ex-facie appears that a false stand is sought to be taken by the District Commissioner, Nagaon which amounts to interference with the administration of justice by this Court.

21. Though we take an exception to the change of stand taken in the communication dated 18.04.2024, but we stop at that. The said instructions dated 18.04.2024 addressed to the learned Addl. Senior Govt. Advocate by the District Commissioner, Nagaon is retained as a part of record.

22. Therefore the District Commissioner, Nagaon cannot be said to have been vested with any power of authority either under section 144 Cr.P.C. or under Rule 3(ii) of the 2013 Rules to exercise jurisdiction to stop the operation of the brick industry of the petitioners. Therefore, in view of the discussions above this writ petition stands allowed. The impugned order passed by the District Commissioner, Nagaon under Memo no.NRP.18/2015 dated 14.09.2023 is set aside and quashed being without jurisdiction.

23. The disposal of the writ petition shall not be a bar for the Pollution Control Board, Assam to make any inquiry as may be deemed fit and proper in respect of the brick industry sought to be established by the petitioners under the name and style of M/S. N+R Brick Industry.

JUDGE

Comparing Assistant