

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**1. Date of decision : 08.01.2015
Civil Writ Petition No.11864 of 2012**

M/s Jhamman Brick Company

.....Petitioner

versus

State of Haryana and others

.....Respondents

2. Civil Writ Petition No.28143 of 2013

M/s Bajrang Bhatta Company

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

1. To be referred to the Reporters or not?

2. Whether the judgment should be reported in the Digest?

**Present: Mr. Shakti Kaushik, Advocate,
for Mr. Naveen S. Bhardwaj, Advocate,
for the petitioner (in CWP No.11864 of 2012).**

**Mr. Arun Yadav, Advocate,
for the petitioner (in CWP No.28143 of 2013)**

Mr. C.S. Bakhshi, Addl. AG., Haryana.

**Mr. Arun Walia, Advocate,
for respondent No.4.**

RITU BAHRI, J.

**This order shall dispose of Civil Writ Petition Nos. 11864 of
2012 and 28143 of 2013, as common questions of law and facts are**

involved in both the petitions. For reference, facts are taken from Civil Writ Petition No.11864 of 2012.

Challenge in this petition (CWP No.11864 of 2012) is to the order dated 21.03.2012 (Annexure P-8) passed by respondent No.1, whereby the application of the petitioner for regular license for brick kiln has been declined. The petitioner is also challenging the communication dated 28.03.2012 (Annexure P-9), whereby the aforesaid order was communicated to him.

The petitioner made an application to the District Magistrate, Rewari, for grant of license for installing and running a brick kiln in the name and style of M/s Jhamman Brick Kiln Company, village Harchandpur, Tehsil Bawal, District Rewari. The application was accompanied by 'no objection certificate' of Gram Panchayat, Kalrawas, 'no objection' from Gram Panchayat, Harchandpur, 'no objection' from Municipal Committee, Bawal, certificate from the Sub Divisional Officer of D.H.B.V.N.L., Bawal, a certificate from Priya Brick Technology consultation services and 'no objection' from Deputy conservator of Forest, Rewari. Thereafter, the site of the petitioner was inspected and accordingly, a report was sent by the Assistant Food & Supplies Controller, Rewari on 02.08.2007, pointing out that the brick kiln did not meet the minimum distance criteria in terms of Haryana Control of Bricks Supplies Orders, 1972. On the basis of this report, the application of the petitioner was declined by the District Food & Supplies Controller, Rewari. Subsequently, the Financial Commissioner & Principal Secretary to Government of Haryana, vide order dated 15.10.2007 (Annexure P-2), granted exemption under Clause 21 of the Haryana

Control of Bricks Supplies Order, 1972 in the minimum distance parameters of village Abadi, School and public utilities institutions and granted license to the petitioner, subject to the following conditions:-

- (i) That the Bhatta owner will construct gravitational chamber and that the height of the chimney will be more than 100 feet height at site.
- (ii) That the Brick Kiln owner will install Brick Kiln within a period of one year from the date of issue of exemption letter.
- (iii) That implementation of the notifications dated 14.09.1999 and 27.08.2003 issued by the Government of India, Ministry of Environment and Forests regarding use of fly ash be ensured.
- (iv) That initially license on provisional basis be given to the BKO.

After the grant of provisional license, the petitioner fulfilled all the conditions as laid down in the letter (Annexure P-2) and constructed the Gravitational Settling Chamber along with stack of height of more than 100 feet (Chimney). He also got a 'no objection certificate' from the Haryana State Pollution Control Board on 28.12.2007 (Annexure P-3). This permit was valid for a period of two years. Thereafter, vide letter dated 01.01.2008 he apprised the respondents that all the conditions, laid down at the time of grant of provisional license have been complied with. He had also submitted 'no objection certificate' issued by the Haryana Pollution Control Board, quarrying permit and certificate issued by the Priya Brick Technology Consultancy Services, certifying that the

gravitational settling chamber along with the stack of height more than 100 feet had been constructed at the brick kiln of the petitioner. The application for grant of regular license was not considered and was kept pending by the respondents. Thereafter, the petitioner wrote letters dated 21.10.2011 and 19.12.2011 (Annexures P-5 and P-6) to the concerned authorities. The petitioner was also sanctioned a loan of ₹19.85 lacs by Haryana State Khadi & Gramudyog Board vide letter dated 06.11.2007 (Annexure P-7), which could not be disbursed on account of non-regularization of license of Brick Kiln, thereby causing loss to the petitioner. Eventually, vide order dated 21.03.2012 (Annexure P-8), which was communicated to the petitioner on 28.03.2012 (Annexure P-9), the application for regularization and renewal of the license for brick kiln was declined.

While passing the order dated 21.03.2012 (Annexure P-8), it has been observed that the Government had given relaxation on 15.10.2007 for distances from different objects and the petitioner-brick kiln could not fulfill the necessary formalities in time. Subsequently, necessary notification in this regard was issued on 15.09.2008 under Section 4 (III) and 21 after making amendments. The Government issued a new policy/order regarding Urbanizable Zone on 21.12.2010. The brick kiln of the petitioner was located in Urbanizable Zone. Since the petitioner failed to fulfill the conditions, mentioned in Government letter dated 15.10.2007, his case was rejected, as it was not covered by the Government policy dated 21.12.2010.

Learned counsel for the petitioner has argued that pursuant to the letter dated 15.10.2007 (Annexure P-2), the petitioner had

complied with all the conditions. He has constructed the Gravitational Settling Chamber and the height of the Chimney was more than 100 feet. He has installed the brick kiln within a period of one year from the date of issuing of the provisional license. He has also obtained necessary 'no objection certificate' from Haryana Pollution Control Board. Information in this regard had been given to the respondents along with the relevant documents. He has further argued that without examining the details of this letter, the case of the petitioner has been rejected vide impugned order dated 21.03.2012 (Annexure P-8) by making reference to the notification/policy dated 21.12.2010, vide which new licenses were not to be issued within the radius of 2 kilometers with respect to urbanizable zone of 'A' class cities and within the radius of 1 kilometer of the urbanizable zone of other town and cities. This policy could not be made applicable to the petitioner, as he had been granted exemption on 15.10.2007 when the policy dated 21.12.2010 was not in existence. After making compliance of all the conditions, the petitioner made an application for regularization of his license on 01.01.2008, which was well in time. Moreover, the brick kiln had been set up by making huge investment and after taking 'no objection' from Gram Panchayat of village Harchandpur as well as adjoining villages. The petitioner had taken sales tax number and had been regularly paying VAT with the department of Sales Tax w.e.f. 01.01.2008 to 30.06.2011. The petitioner is having requisite receipts with regard to deposit of the sales tax in his record. The petitioner had been given a license by District Town Planner for setting up a brick kiln under the provisions of Section 8 of the Punjab Scheduled Roads and Control Areas (Restricts

of un-regularized developments) Act, 1963. The District Town Planner, after the notification dated 21.12.2010 had granted this license, which was valid up to 31.03.2012, with the condition that it was to be renewed annually. The sanction had been granted despite the notification dated 21.12.2010. The petitioner, after complying with all the conditions, started the brick kiln on 21.08.2008 and has regularly paid the sale tax to the department. The case of the petitioner, thus, has to be considered with regard to the provisions as were applicable on the date of relaxation i.e. 15.10.2007 (Annexure P-2). The amended notification dated 21.12.2010 would be applicable prospectively on the fresh applications for setting up a brick kiln in urbanizable zone.

Upon notice, written statement on behalf of respondent Nos. 1, 2, 3 and 5 has been filed by the District Food & Supplies Controller, Rewari, wherein it has been stated that the petitioner was granted relaxation/exemption only in distance parameter of village Abadi, School, Public Utility institutions vide letter dated 15.10.2007 under Clause 21 of the Haryana Control of Bricks Supplies Order, 1972 and its amendment notifications dated 31.12.1976 and 01.06.1992, subject to fulfilment of condition that he would install the brick kiln within a period of one year from the date of issue of the exemption letter. The petitioner constructed the chimney and vessel without the prior permission of District Magistrate in violation of the said Control Orders. However, he did not submit the license of controlled area of the Town and Country Planning Department within the stipulated period. As per report of the Assistant Food & Supplies Officer, the distance of the brick kiln site is 488 meters of village Abadi, 549 meters to the school, 427 meters to the Harijan

Choupal and 558 meters to the Mandir, whereas that should not be less than one kilometre each as per the provisions of the Haryana Control of Bricks Supplies Order, 1972 and its amendment notification dated 01.06.1992 (Annexure R-1). The application of the petitioner was rejected vide order/letter dated 06.08.2007 (Annexure R-2). Thereafter, the petitioner approached the State Government requesting for relaxation of the distance parameters, which was granted, vide letter dated 15.10.2007 (Annexure P-2). Pursuant to the letter (Annexure P-2), a direction was given to the District Magistrate, Rewari that the petitioner would construct gravitational chamber and that the height of the chimney would be more than 100 feet at the proposed site. After giving necessary relaxation vide letter dated 15.10.2007 (Annexure P-2), the Haryana Control of Bricks Supplies Order, 1972 was amended vide notification dated 15.09.2008 (Annexure R-6), wherein the distance parameter was changed. Later on, Government of Haryana made a policy dated 21.12.2010 (Annexure R-7) regarding brick kiln situated in urbanizable zone. The petitioner is not eligible for the brick kiln licence on the proposed site.

Another ground for rejection of the application for issuance of license is that the petitioner, even before the grant of relaxation on 15.10.2007, had started construction of the gravitational chamber and chimney, as was evident from the letter dated 22.05.2007 (Annexure P-1). The respondents have made reference to the instructions dated 24.08.1988 (Annexure R-4) and the provisions of Haryana Control of Bricks Supplies Order, 1972 (Annexure R-5), which require that without seeking permission from the District Magistrate, the petitioner cannot dig

out the vessel and install chimney. It has been further stated that without following the procedure as set out vide Annexures R-4 and R-5, the petitioner went ahead and constructed the chimney and vessel without seeking prior permission from the District Magistrate, Rewari and did not produce the licence of controlled area of Town and Country Planning as required vide instructions dated 24.08.1988 (Annexure R-4). The petitioner has violated the conditions of instructions dated 24.08.1988 and relevant clause of Haryana Control of Bricks Supplies Order, 1972 (Annexure R-5) and went ahead for construction of chimney and vessel. Hence, he has no case for issuance of the licence. The license given by the Town and Country Planner, Rewari vide letter dated 06.07.2011 (Annexure P-10) is not in consonance of with the policy dated 21.12.2010.

Stand taken by respondent No.6 in the written statement is that the petitioner was granted exemption vide letter dated 15.10.2007 (Annexure P-2). Vide letter dated 24.10.2007 (Annexure R-II), the petitioner had informed the District Town Planner, Rewari with regard to exemption granted by the Department of Food & Civil Supplies and deposited a sum of Rs.4500/- through demand draft in favour of STP, Gurgaon, for granting the licence for three years. It was also informed that the petitioner would start the brick kiln from April, 2008. Vide this letter, a request was made for grant of licence for three years, so that he could apply for NOC from the pollution department and licence from the Food and Supply department. The relevant letter granting exemption is annexed as Annexure R-III. The application (Annexure R-II) made by the

petitioner was forwarded to the Senior Town Planner, Gurgaon, vide letters dated 30.01.2008 and 08.01.2008. The said application was not considered because the brick kiln did not fulfil the minimum distance from urbanizable limite as per letter dated 01.02.2008 (Annexure R-IV). At the same time, the application dated 10.01.2011 made by the petitioner was considered under the new policy dated 21.10.2010 and licence was granted under the provisions of Sections 7 and 8 of the Punjab Scheduled Road and Controlled Area (Act No.41 of 1963) vide order dated 06.07.2011.

In a separate reply filed by respondent No.4, it has been stated that vide letter dated 28.12.2007 respondent No.4 had granted permission to the petitioner to establish a brick kiln.

After hearing learned counsel for the parties and going through the facts and circumstance of the case, the objection of respondents in denying licence to the petitioner is based on the following grounds:-

(i) That the petitioner without getting permission from the District Magistrate and licence from the Town and Country Planner, which was mandatory as per Annexures R-4 and R-5, could not construct the gravitational chamber along with chimney and start his brick kiln.

(ii) The brick kiln of the petitioner is falling in the controlled area and it was mandatory for him to obtain a licence of

the controlled area under the provisions of Punjab Scheduled Road and Controlled Areas Restriction of Unregulated Development Act, 1963. The requisite licence was not issued up to 15.06.2008 and the petitioner had illegally constructed the vessel and chimney on the proposed site.

Sub clause (i) of instructions dated 24.08.1988 (Annexure R-4) issued by the Director, Food & Supplies Department, Haryana, with regard to grant/renewal of brick kiln license in the controlled areas, is reproduced as under:-

“(i) In case of fresh licenses to be issued by the Food & Supplies Department to the BKO's for brick kilns being set-up in the notified controlled area, 'No Objection Certificate' will be obtained by the Food & Supplies Department from the Town & Country Planning Department before grant of license. The Town & Country Planning Department will either grant or refuse the 'No Objection Certificate' within fifteen days of the reference made by Food & Supplies Department. In case no reply is received from the Town & Country Planning Department, it will be presumed that Town & Country Planning Department has no objection and the license will be granted to B.K.O. by the Food & Supplies Department.”

The above provision has to be examined in the backdrop of

the letter written by the petitioner to the District Town and Country Planner, Rewari (Annexure P-2). This was the information, which was sent by the petitioner to the District Town Planner for grant of licence w.e.f. 01.04.2008 to 31.03.2011. The petitioner had deposited a draft of Rs.4500/- in favour of STP, Gurgaon, for the said purpose. This letter had been written after grant of necessary exemption from the Food & Supply Department, Govt. of Haryana, vide memo dated 28.09.2007. Hence, the petitioner had followed the correct procedure for seeking license from the District Town Planner, Rewari vide letter dated 24.10.2007 (Annexure R-II). Moreover, this letter was written immediately after the permission of relaxation was granted. Hence, there was no delay on the part of the petitioner to get the licence. Furthermore, as per the relevant condition of the instructions dated 24.08.1988 (Annexure R-4), reproduced above, in case no reply was received from the Town and Country Planning Department, it was to be presumed that they have no objection to the licence granted by the Food & Supply Department. Hence, after a lapse of 15 days from 28.09.2007, a presumption could be drawn that the Town and Country Planner had granted necessary licence for three years. On this ground, the first objection is liable to be rejected.

The second objection of the respondents is that the necessary permission from the District Magistrate, Rewari was not taken by the petitioner as per instructions dated 20.09.1996 (Annexure R-5). Now this condition is to be read along with the conditions imposed at the time of granting relaxations vide letter dated 15.10.2007 (Annexure P-2).

A perusal of letter dated 15.10.2007 (Annexure P-2) shows that after giving relaxation, the petitioner was to construct the necessary gravitational chamber and the height of the chimney would be more than 100 feet. The brick kiln was to be installed within a period of one year. It was further stated that implementation of the notification dated 14.09.1999 and 27.08.2003 issued by the Government of India, Ministry of Environment and Forests regarding use of fly ash was to be ensured and initially the license was to be given to the brick kiln owner on provisional basis.

The petitioner, after getting relaxation, sought the necessary permission and licence from the Town and Country Planner vide application dated 24.10.2007 (Annexure R-II). As per instructions dated 24.08.1988 (Annexure R-4), in case of no reply, the licence was deemed to have been issued. Hence, once the license was issued to the petitioner, he went ahead for construction of gravitational chamber and chimney in accordance with the relaxations. A 'no objection certificate' dated 28.12.2007 (Annexure P-3) was issued by the Haryana State Pollution Control Board. The provisional licence as per application (Annexure R-II) was valid w.e.f. 01.04.2008 to 21.03.2011. Subsequently, the District Town Planner, Rewari, vide letter dated 06.07.2011 (Annexure R-V) renewed the licence up to 31.03.2012. Hence, all the conditions set out vide Annexure P-2, were duly fulfilled by the petitioner and the objections of the respondents was liable to be rejected. Therefore, the petitioner was having a requisite licence to operate the brick kiln till 31.03.2011 as per Annexure R-II, which was

subsequently renewed vide order dated 06.07.2011 (Annexure R-V).

The final question for consideration is, whether the new distance criteria, which was amended vide notification dated 15.09.2008 (Annexure R-6) and subsequent notification dated 21.12.2010, can be applied against the petitioner or whether these instructions are prospective in nature, as the petitioner was granted exemption on 15.10.2007 (Annexure P-2).

This aspect has been considered by this Court in case **Rajender Singh and another Vs. State of Haryana and another**, 2011 (5) RCR (Civil) 845. In this case, this Court considered the applicability of amendment order of 2008 to the license, which was given in the year 2006. The plaintiffs had challenged the installation of brick kiln on the ground that it was violative of amendment Order of 2008. The suit of the plaintiffs was dismissed by holding that the initial permission had been granted in the year 2006 and the amendment order of 2008 was not retrospective in operation. Even as per the amended order, the necessary exemption/relaxation up to 20% could be given to the brick kiln owners to install their brick kilns. While dismissing the RSA, the Coordinate Bench of this Court observed that once the license was given in the year 2006, the amended order of 2008 was also applicable and as the brick kiln fell within the permissible limit of exemption in the said order.

In the present case, the exemption was granted in the year 2007 and pursuant to that, the petitioner had set up his brick kiln after making huge investment and taking 'no objection' certificate from the

Gram Panchayats of village Harchandpur as well as adjoining villages and also from the Haryana State Pollution Control Board on 28.12.2007 (Annexure P-3). The Town and Country Planner had given him the license w.e.f. 01.04.2008 to 31.03.2011 as per letter dated 24.10.2007 (Annexure R-II). Once, the license had been given in the year 2007, the amended notifications dated 15.09.2008 (Annexure R-6) and 21.12.2010 (Annexure R-7) cannot be read against the petitioner for rejecting his application for regular license.

Another ground for rejection of the application is that the petitioner has not fulfilled all the conditions as mentioned in the letter dated 15.10.2007 (Annexure P-2) within the prescribed time. This ground is liable to be rejected because as per the relevant condition of the instructions dated 24.08.1988 (Annexure R-4), after receiving the application the Town and Country Planning Department was required to grant 'no objection' within 15 days and in case no reply is received from the said department, it was presumed to have been granted. Since the Town and Country Planner did not pass any order within 15 days, the license was deemed to have been issued to the petitioner till March, 2011. Apart from this, the petitioner had got 'no objection' from the Haryana Pollution Board vide Annexure P-3 and thereafter, constructed the gravitational chamber and chimney. Since all the conditions of the letter dated 15.10.2007 (Annexure P-2) stood complied with, the respondents had no ground to reject the application of the petitioner(s). Moreover, the District Town Planner, Rewari had renewed the license up to 31.03.2012 vide order/memo dated 06.07.2011 (Annexure R-V), which

was to be renewed annually.

In the light of the above discussion, this Court is of the view that the operation of the notifications dated 15.09.2008 & 21.12.2010 (Annexures R-6 and R-7) was prospective in nature to be applied while giving new licenses to the new brick kilns, which are not applicable in the case of the petitioner(s).

Resultantly, the impugned order dated 21.03.2012 (in CWP No.11864 of 2012) and order dated 12.10.2012 (in CWP No.28143 of 2013) are set aside.

Both the petitions i.e. Civil Writ Petition Nos.11864 of 2012 and 28143 of 2013 are allowed accordingly.

08.01.2015
ajp

(RITU BAHRI)
JUDGE