

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

Original Application No. 1016/2019
(I.A. No. 750/2019, I.A. No.752/2019, I.A. No. 753/2019, I.A. No.
754/2019, I.A. No. 764/2019, I.A. No. 765/2019, I.A. No.
766/2019, I.A. No. 767/2019, I.A. No. 21/2020, I.A. No. 22/2020,
I.A. No. 37/2020, I.A. No. 60/2020& I.A. No. 61/2020 I.A. No.
113/2020 I.A. No. 115/2020 I.A. No. 121/2020)

WITH

Execution Application No. 07/2020
In
Original Application No. 1016/2019

(With report dated 04.03.2020)

Utkarsh Panwar

Applicant(s)

Versus

Central Pollution Control Board & Ors.

Respondent(s)

With

Utkarsh Panwar

Applicant(s)

Versus

Rahul Sharma, Deputy Commissioner
Rohtak & Ors.

Respondent(s)

Date of hearing: 05.03.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Ms. Pooja Dhar, Advocate

For Respondent(s): Mr. Rajkumar, Advocate for CPCB
Mr. Pradeep Misra, Mr. Daleep Dhyani,
Advocates for UPPCB
Mr. Sanjay Upadhyay, Mr. Salik Shafique,
Advocates in I.A NO. 115/2020 and I.A No.
763 to 766/2019
Mr. S.P Singh, Sr. Advocate with Mr.
Raunak Parekh, Advocate in I.A No. 372020
Mr. Rohit Sharma, Advocate in I.A No.
113/2020

Mr. Neeraj Kumar Jain with Mr. Aniket Jain, Advocates in I.A No. 60/2020
Mr. Sumit Gehlawat, Advocate in I.A NO. 750/2019 and I.A No. 754/2019
Mr. Rahul Khurana, Advocate for HSPCB

ORDER

1. Question for consideration is permissibility of brick kilns run by 'Zig-Zag' technology in NCR till level of air pollution becomes normal. Other brick kilns are already prohibited by the order of the Environment Pollution (Prevention and Control) Authority (EPCA) vide order dated 01.11.2019. According to the applicant, even brick kilns run by 'Zig-Zag' technology add to PM 2.5 and contribute about 10% of the air pollution in the NCR. Since the air pollution level in the NCR was beyond norms, such brick kilns were required to be prohibited till the air quality improves.
2. Vide order dated 15.11.2019, a report was sought from CPCB about the impact of running of brick kilns in NCR, including those run by 'Zig-Zag' technology. The report filed on 13.12.2019 furnished by the CPCB was considered by this Tribunal on 18.12.2019 to the effect that even the brick kilns operated by the 'Zig-Zag' technology had adverse impact on air quality, including fugitive dust emissions. The Tribunal, vide order dated 18.12.2019, directed as follows:

*“4. In view of the above, while CPCB may conduct further study for assessment of different types of brick kilns with reference to source emissions from different types of fuels, having regard to the conclusion that average fugitive SPM values are almost same in FCBTK and Zig-Zag brick kilns, the interim order directing closure of brick kilns in NCR will continue till the next date. **Thereafter, brick kilns in NCR may be allowed only consistent with the carrying capacity and siting criteria, subject to***

GRAP, consent conditions and background concentration of ambient air quality.”

3. The matter was last considered on 06.02.2020 in the light of report of the CPCB dated 28.01.2020. It was observed:

*“3. Since brick kilns can be permitted only after ascertaining the carrying capacity as above, **let a report about carrying capacity of the NCR region in above terms be furnished by CPCB before the next date by e-mail at judicial-ngt@gov.in.**”*

4. In view of the above, a report has been filed by the CPCB on 04.03.2020 as follows:

*“As per information provided by SPCBs, there are total 3278, 2854 and 19003 brick kilns in Haryana, Punjab and Uttar Pradesh respectively, out of which 1918, 701 and 1343 brick kilns have been converted to Zig-Zag technology. With regard to NCR regions, out of 2187, 2216 and 251 brick kilns in Haryana, Uttar Pradesh and Rajasthan respectively, **1504, 1032 and 127 brick kilns have been converted to Zig-Zag technology.**”*

Brick Kilns based on Zig-Zag technology using agro-residues are located only in NCR districts.

*Different types of activities with potential of air pollution, including operation of brick kilns in Delhi-NCR are regulated through a Graded Response Action Plan (GRAP) by Environmental Pollution Control Authority. **As per GRAP, Brick kilns in NCR are required to be shut under severe conditions i.e. when $PM_{2.5}$ and/or PM_{10} concentration goes beyond $250 \mu g/m^3$ and/or $430 \mu g/m^3$ respectively.**”*

*In view of the expected higher concentration of PM emissions during winter months, brick kilns in the NCR regions were kept closed during this period as per directions of EPCA. **However, now, looking into the forecast of favourable meteorological conditions and expected improvement in the air quality, Environmental Pollution Control Authority (EPCA) has directed that operation of those brick kilns in NCR districts, which have converted to Zig-zag technology, be allowed, vide letter No. EPCA-R/2020/L-09 dated February 14, 2020 (Copy enclosed as Annexure-I).**”*

Further, air quality data of 2019 in NCR, was examined. Analysis indicated that **PM_{2.5}** concentration in summer months (March-June) is lower (**Average 80 µg /m³**) in comparison to winter months (Average 173 µg /m³). Similarly, **PM₁₀** concentration in summer months (March-June) is lower (**Average 219 µg /m³**) in comparison to winter months (Average 283 µg /m³).

The past data of 2019 w.r.t. PM₁₀ & PM_{2.5} concentration in Delhi, is summarized in **Table 1:**

Table 1 : Monthly data of CAAQMs w.r.t. PM Concentration for 2019, in Delhi

Month	PM _{2.5} , µg/m ³	PM ₁₀ , µg/m ³
January	203	322
February	122	215
March	83	184
April	83	236
May	89	247
June	63	209
July	47	143
August	35	85
September	40	98
October	128	247
November	202	312
December	209	316

Therefore, in view of submission that 65 Nos brick kilns are proposed to be monitored in both NCR and Non-NCR regions, involving total 585 stack emissions' samples, in compliance of the directions of Hon'ble NGT in the matter of O.A. No. 1016/2019 and O.A. No. 1088/2018, it is humbly prayed as under:

- I. Brick Kilns based on Zig-Zag technology using agro-residues are located only in NCR districts and if these are to be monitored to assess the performance of brick kilns operating on agro-residues, under comparable situations, the Zig-Zag type brick kilns in NCR regions, which are presently dosed, may have to be made operational, to facilitate monitoring.
- II. Atleast 04 months' time period may be granted to CPCB, for Monitoring of 65 brick kilns in NCR and Non-NCR regions and submission of report covering **i) Impact of brick kilns operation on loss/degradation of top soil, ii) study involving Carrying Capacity Assessment of brick kilns with adequate samples in terms of number of brick kilns and days for which monitoring be conducted, iii) Evaluation of the performance of brick kilns against the background concentration and carrying capacity of the area and iv) Impact on Brick Kilns operation on ambient air, in the matters of O.A. No. 1016/2019 and O.A. No. 1088/2018, after commencement of operation of brick kilns in NCR regions."**

5. We have heard learned Counsel for the CPCB and for the brick kilns, including those who have filed applications for being implead as party in pursuance of order of Hon'ble Supreme Court dated 20.02.2020 in C.A. No. 1733-35/2020.
6. Learned Counsel for the CPCB submitted that having regard to the data of air quality, even though as per GRAP brick kilns are to be mandatorily shut throughout NCR only under 'severe conditions', no polluting activity, including brick kilns, can be permitted beyond 'carrying capacity' and air quality norms under the Air (Prevention and Control of Pollution) Act, 1981. On the other hand, the stand of the brick kilns is that unless the conditions are 'severe' to attract GRAP and unless prohibited by EPCA, 'Zig-Zag' technology brick kilns have right to operate irrespective of the air quality norms. Reliance has also been placed on norms for brick kilns under Schedule-I, Sr. No. 74 of Environment (Protection), Rules 1986. Alternatively, it is submitted that at such locations where air quality is within norms, brick kilns may be allowed. By way of example, it is stated that the ambient air quality data at Alwar, as on 18.02.2020, is within norms.
7. We do not find any merit in the contention that only in 'severe' conditions brick kilns can be prohibited even if the air quality is beyond permissible norms and the area has no assimilative or supportive capacity. Emission norms of individual brick kilns is not a conclusive factor for dealing with the issue, if the carrying capacity of the area does not allow the brick kilns in question. However, we do need to consider the submission that where air

quality is within the norms and there is carrying capacity, brick kiln can be allowed.

8. In view of the above, it is necessary to look at the relevant data at different locations '24 hourly' and 'monthly average' during the relevant months. Since such data is maintained by the CPCB/PCBs, the CPCB may collect such data for corresponding months of March, April, May and June in the year 2019 and furnish the same before the next date. The break-up of location of the brick kilns District-wise may also be furnished to consider as to which of the brick kilns can be allowed after verification that such brick kilns are actually working on 'Zig-Zag' technology, pending further assessment of the carrying capacity by the CPCB, as already directed earlier vide order dated 06.02.2020.

List for further consideration on 17.03.2020.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

March 05, 2020
Original Application No. 1016/2019
and other connected matters
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