

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

CORAM:

**Hon'ble Mr. Justice Pratap Kumar Ray, Judicial Member
Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member**

<u>Item No.</u>	<u>M.A. No.</u>	<u>Name of Party & Resp No.</u>
1.	M.A. 392/2015/EZ	B.K.ROY(P) LTD (R 98)
2.	M.A. 393/2015/EZ	M/S LAKSHMI BRICK FIELD (R 209)
8.	M.A. 399/2015/EZ	MA TARA BRICK FIELD (R 95)
9.	M.A. 439/2015/EZ	BENGAL BRICK FIELD (R 110)
10.	M.A. 440/2015/EZ	ROY BROTHERS (R 130)
11.	M.A. 301/2015/EZ	NEW MAHESH BRICK FIELD (R 146)

IN

VS

OA 42/2014/EZ

JOYDEEP MUKHERJEE &
ORS

PRESENT:

Applicant : None
Applicant of MAs : Mr. Gautam Lahiri, Advocate
Respondent No. 1 : Ms. Arpita Chowdhury, Advocate
Respondents 2 to 9 : Mr. Bikas Kar Gupta, Advocate
Respondents 10 to 12 : None

Date & Remarks	Orders of the Tribunal
Item Nos. 1,2,8 to 11 3rd December, 2015.	<p>These six MAs are taken up together for consideration since facts and reliefs prayed are more or less similar.</p> <p>Heard Mr Gautam Lahiri, Id. adv. for the applicants of all these 6 MAs and Mr. Bikas Kargupta, Id. adv. for State respondents and Ms. Arpita Chowdhury, Id. adv. for PCB.</p> <p>It appears from the records that the out of these six MAs, owners of four brick fields i.e. applicants of MA 392, 393, 440 and 301/2015/EZ</p>

have obtained consent to operate from the State PCB to run their brick fields which have since expired. So far as MA 392/2015/EZ is concerned, the consent to operate was valid from 28.4.2011 to 31.12.2014. In the case of MA 393/2015/EZ, the consent was valid for the period from 17.5.2011 to 31.12.2014. As regards MA 440/2015/EZ, the consent was valid for the period from 7.1.13 to 30.6.2015 while in respect of MA 301/2015/EZ, such consent was for the period from 20.1.11 to 31.1.2015. All these owners have subsequently applied for fresh consent on diverse dates before the DL & LRO but the same are pending.

As per our previous decisions, such brick fields owners are not liable to pay any penalty because they are not at default. They have been operating their brick fields with valid consent to operate from the PCB and they filed their renewal application immediately after expiry of the existing consent period.

Under such circumstances, we direct the DL & LRO concerned to dispose of the pending applications of these applicants within two weeks in accordance with rules keeping in view the conditions stipulated in the Govt. of West Bengal Memo No. 1250 dated 29.5.2015.

So far as other two MAs i.e. MA 399/2015/EZ and MA 439/2015/EZ are concerned, it appears from the record that the owners have never obtained any consent to establish or consent to operate from the PCB and they have been operating their brick fields illegally all through and thus have violated the pollution norms and

degraded the environment of the locality and are liable to pay compensation/penalty on the “polluters pay principle”. They were issued with show cause notice to explain why penalty/compensation of Rs. 2.00 lakhs will not be imposed upon them for polluting the environment and causing land degradation. In response to such show cause notice they have filed the MAs.

These two applicants/respondents have breached the environmental law in terms of Air Act 1981, the Water Act 1974 and have contributed to environmental pollution and environmental degradation. Moreover, there is no mention about the income, expenditure and stock in hand, payment due etc. and economic status of the individual respondents. Earlier in such type of cases, we imposed a sum of Rs. 1.5 lakh as penalty. Following the precedent, in this case also we impose a penalty of Rs. 1.5 lakh on each of the applicants of the MAs which shall be deposited by the respective respondents with the State Pollution control Board within four weeks. Immediately on making payment, the PCB will intimate the concerned DL & LRO who will proceed to consider the pending applications seeking consent to operate filed by the respective applicants in accordance with rules keeping in view the conditions stipulated in Govt. of West Bengal memo No. 1250 dt. 29.5.2015.

We have fixed the penalty for the respective applicants by applying ‘polluter pay’ principle and having regard to judgement of the Apex Court passed in the case of **Resources Foundation for Science (18) –vs- UOI & Ors** reported in 2005 (13) SCC 186 (para 30), as they are liable

to pay penalty/compensation for polluting the locality by illegally operating the brick field without consent to establish or consent to operate.

The penalty amount so collected be kept in a separate account which will be utilised for upgradation of environment of the locality concerned in the manner to be decided later.

As and when the consent to operate is granted, the DL & LRO concerned will inform the local police authorities and the Electricity authority to restore the electric connection so that the units may run without any hindrance.

All the MAs stand disposed of accordingly.

Justice Pratap Kumar Ray, JM

Prof. (Dr.) P. C. Mishra, EM

