

Supreme Court of India

M.C. Mehta vs Union Of India (Uoi) And Ors. ... on 26 November, 1996

Equivalent citations: JT 1998 (7) SC 460, (1998) 9 SCC 149

Bench: K Singh, S Kurdukar

ORDER

1. This Court dealt with 246 brick kilns in its order dated 11-9-1996. It was noticed in the said order that public notice and individual notices had been given to 246 brick kilns and the objections filed by them had been considered by the Delhi Pollution Control Committee. This Court, however, in the interest of justice directed that the brick kilns be given one more opportunity to file objections against their categorisation as 'H' Category Industries. It was directed that the brick kilns may file objections within two weeks of the publication of the notice before the Central Pollution Control Board (for short "the Board"). This Court directed the Board to constitute a Committee to consider the objections. Pursuant to the abovesaid order of this Court the Board considered all the objections which were filed before it in response to the public notice published by the Delhi Pollution Control Committee.

2. The Delhi Pollution Control Committee, after considering the objections filed by various brick kilns had come to the conclusion that 246 brick kilns fell in 'H' Category Industries and an affidavit dated 6-9-1996 to that effect was filed by Mr D.S. Negi, Secretary (Environment)-cum-Chairman, Delhi Pollution Control Committee. Para 7 of the affidavit is as under: "The committee seeks to file the third list of 'H' category industries. This list of 290 'H' category industries includes 246 brick kilns, 43 electric furnaces and a forging unit. (Annexed hereto as Annexure C.) The CPCB recommended to the committee for the inclusion of all such industries under category 'H'. The committee, therefore, served individual notices on the said units and included them in the category 'H'."

3. The Board has filed its report dated 18-11-1996. Para 3.1 of the report which relates to the brick kilns is as under:

"Out of 246 notices issued to brick kilns, only 137 have filed the objections. Following are the recommendations of the Committee in this regard:

(i) Moving chimney brick kiln should not be permitted in Delhi as it is highly polluting in nature and hence classified as 'Ha' category.

(ii) In L, N & P areas of U.T. of Delhi and designated areas close to thermal power plants (as and when declared by Delhi Administration), manufacturing of Flash-sand-lime bricks, in which flyash requirement is about 80%, should only be permitted.

(iii) However, only fixed chimney clay brick kilns may be allowed to operate in L, N & P areas for a period to be decided by the Hon'ble Court to switch over to flash- sand-Time bricks manufacturing, which does not require firing, subject to strict compliance of the following conditions...."

4. We have heard learned counsel for the parties. We have also heard Dr B. Sen Gupta, Senior Scientist, Central Pollution Control Board, who is present in Court. Mr Vijay Panjwani, learned counsel for the Board has taken us through Tables 1, 2 and 3 annexed to the report which give details of major technologies for manufacture of fly ash-sand-lime bricks. According to Dr B. Sen Gupta, various technologies have been developed and have been adopted by various industries for making bricks from fly ash-sand-lime mixture. According to Dr Gupta, in the flyash technology, the pollution is almost negligible. According to him, in the said system, there would be no kiln and no firing to cure the bricks. The bricks are only to be steamed with electricity or by the process of autoplates. Various technologies have been suggested by the Board in the report which can be adopted by the brick kiln industry to be environmentally benign.

5. Keeping in view the report of the Delhi Pollution Control Committee and also of the Board, we have no hesitation in holding that the 246 brick kilns operating in the various zones of Union Territory of Delhi are 'H' category industries and as such cannot operate in the said territory. The said brick kilns are listed hereunder:

Editor's Note:

[The list as been temporarily omitted].

6. We, therefore, direct as under:

1. The above-listed 246 brick kilns cannot be permitted to operate and function in the Union Territory of Delhi. These brick kilns may relocate/shift themselves to any other industrial estate in the National Capital Region (NCR). We direct that the 246 brick kilns listed above shall stop functioning and operating in the city of Delhi with effect from 30-6-1997. These brick kilns shall close down and stop functioning with effect from the said date.

2. The Deputy Commissioner of Police concerned shall, as directed by us, effect the closure of the above brick kilns with effect from 30-6-1997 and file compliance report in this Court within 15 days thereafter.

3. The National Capital Region Planning Board shall render all assistance to the brick kilns in the process of relocation. This direction shall go to the Board through its Secretary. The National Capital Territory, Delhi Administration, through its Chief Secretary and Secretary, Industries; State of Haryana through its Chief Secretary and Secretary, Industries; State of Rajasthan through its Chief Secretary and Secretary, Industries; and the State of Uttar Pradesh through its Chief Secretary and Secretary, Industries shall provide all assistance, help and necessary facilities to the brick kilns which intend to relocate themselves in the industrial estates situated in their respective territories.

4. The allotment of plots, construction of factory, buildings, etc., and issuance of any licensees/permission etc. shall be expedited and granted on priority basis.

5. In order to facilitate shifting of brick kilns from Delhi, all the four States constituting the NCR shall set up unified single agency consisting of all the participating States to act as a nodal agency to sort out all the problems of such brick kilns. The single window facility shall be set up by the four States within one month from today. This direction to the four States is through the Chief Secretaries of the States concerned. The Registry shall convey this direction separately to the Chief Secretaries along with a copy of this judgment. We have no doubt that single window facility has already been provided in terms of this Court's earlier order.

6. The use of the land which would become available on account of shifting/relocation of the brick kilns shall be permitted in terms of the orders of this Court dated 10-5-1996 in M.C. Mehta v. Union of India, .

7. The shifting brick kilns on their relocation in the new industrial estates shall be given incentives in terms of the provisions of the Master Plan and also the incentives which are normally extended to new brick kilns in new industrial estates.

8. The closure order with effect from 30-6-1997 shall be unconditional. Even if the relocation of brick kilns is not complete they shall stop functioning in Delhi with effect from 30-6-1997.

9. The workmen employed in the above-mentioned 246 brick kilns shall be entitled to the rights and benefits as indicated hereunder:

(a) The workmen shall have continuity of employment at the new town and place where the brick kiln is shifted. The terms and conditions of their employment shall not be altered to their detriment;

(b) The period between the closure of the brick kilns in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of service.

(c) All those workmen who agree to shift with the brick kilns shall be given one year's wages as "shifting bonus" to help them settle at the new location;

(d) The workmen employed in the brick kilns which fail to relocate and the workmen who are not willing to shift along with the relocated brick kilns, shall be deemed to have been retrenched with effect from 30-6-1997 provided they have been in continuous service (as defined in Section 25-B of the Industrial Disputes Act, 1947) for not less than one year in the brick kilns concerned before the said date. They shall be paid compensation in terms of Section 25-F(b) of the Industrial Disputes Act, 1947. These workmen shall also be paid, in addition, one year's wages as additional compensation;

(e) The "shifting bonus" and the compensation payable to the workmen in terms of this judgment shall be paid by the management before 30-6-1997.

(f) The gratuity amount payable to any workman shall be paid in addition.

7. As directed above, all the brick kilns shall stop operating in the Territory of Delhi so far as their existing method of manufacturing bricks is concerned with effect from 30-6-1997. We give liberty to the brick kiln owners to indicate before 31-1-1997 in writing to the NCT, Delhi Administration, through Secretary, Environment and also to the Delhi Pollution Control Committee through its Secretary that the brick kiln concerned intends to shift to the new technology of manufacturing bricks by Flash-sand-lime technology. The Delhi Pollution Control Committee shall monitor the setting up of the new project by the brick kiln concerned. After obtaining the consent and no objection certificate from the Delhi Pollution Control Committee and also by the Central Pollution Control Board, the brick kiln concerned be permitted to operate at the same site, if it is permitted under law. We direct the NCT, Delhi Administration to render all possible assistance to the brick kiln owners to change over to the new technology and in the setting up of the modern plants with Flash-sand-lime technology.