32B-A PROVISION REGARDING BRICK FIELDS

From the Land Reforms Commissioner, West Bengal

D.O. No.6100(18) M&M Date : Calcutta, the 25th July, 1986.

Please refer to Board's Circular No.4840(16)-M&M dated the 20th June, 1986, regarding grant of quarry permit in respect of agricultural lands.

2. I have already made it clear to all Collectors that mining operation on agricultural land has been prohibited by an amendment to the West Bengal Minor Minerals Rules, 1973. It has, however, been reported to the Board that brick fields and sand quarries are being allowed to operate on agricultural lands after change of classification of lands recorded as agricultural. Both the Board of Revenue and the Department of Environment have taken a serious view of the matter.

I would therefore request you to look into the matter personally and not to allow any conversion of agricultural land unless the purpose is specifically stated viz. for homestead or similar other use.

Any conversion for starting a brick field or operating sand quarry on agricultural land should not be allowed under any circumstances without the approval of the Board of Revenue.

To Collector ________________

S.P. Mallick
Land Reforms Commissioner,
West Bengal

From the Land Reforms Commissioner, West Bengal

Memo No.9503(16) M&M Dated : Calcutta, the 30th October, 1986

Subject : Grant of quarry permits in respect of agricultural lands.

Reference : Board's Memo No.4840(16) M&M dated 20.06.1986 and D.O. No.1600(18)-M&M dtd. 25.07.1986.

After issue of Commerce & Industries Department's Notification No.5955-CI/Mines; dated 27.07.1985 amending rule 4 of the West Bengal Minor Minerals Rules, 1973 extraction of minor minerals has been prohibited in any land classified in revenue records as agricultural land, orchard or forest. Now a question has been raised as to whether agricultural land in respect of which quarry permit has already been granted by the Collector for the purpose of extraction of minor minerals before issue of Commerce & Industries Department's Notification No.5955-CI/Mines; dated 27.07.1985 shall come under the purview of amended Rule 4 of the West Bengal Minor Minerals Rules, 1973.

2. The matter has been duly considered by the Board of Revenue in consultation with the Commerce & Industries Department of this Government and it has been decided that agricultural lands in respect of which valid quarry permit has already been granted by the Collector before 27.07.85 i.e. the date on which amended Rule 4 of the West Bengal Minor Minerals Rules, 1973 came into force shall not come under the purview of the Rule as the classification of the subject land has virtually been changed by non-agricultural use. In cases of old brick fields and sand quarries on agricultural lands as stated above which have existing sanction of the Collector may issue quarry permits after conversion of such land in accordance with the provisions of Rule 4C of the W.B.L.R. (Amendment) Act, 1981; and after due observance of the conditions as laid down in Rules 24, 26 and 31 of the West Bengal Minor Minerals Rules 1973.

3. It is however, clarified that new quarry permits shall not be issued in respect of lands classified in revenue records as agricultural land, forest and orchard as laid down in amended rule 4 of West Bengal Minor Minerals Rules, 1973.

To collectors ____________

S.P. Mallick
Land Reforms Commissioner,
West Bengal

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Government of West Bengal
Office of the Board of Revenue, West Bengal
Section-A-II : Branch-M&M

Memo No. 835-M&M / 4/94 Dated, Calcutta, the 31st January, 1994

To
The District Land and Land Reforms Officer,
Howrah.

Sub : Regularisation of occupation of Govt. Land by Brick field operators.

This undersigned is directed to refer to his Memo No.2673/LR dt.09.12.93 on the above subject and to say that the Mines and Minerals (Regulation and Development) Act, 1957 regulates leases and licences in respect of Brick-fields. But this does not take away the right of the property owner to regulate the use of its own property. In this case, Government is the owner of the property. Therefore, the provisions of the Land and Land Reforms Manual as well as Sec.10(6) of the West Bengal Estates Acquisition Act, would operate parallelly with the Mines and Minerals (Regulation and Development) Act in these cases. In other words, damage fees, and if the case so demands, rent and Selami should be realisable in addition to the royalty.

All this of course would arise only if the brick-field is authorised. Otherwise penal action should be taken.

K.P. Sandilya
Secretary,
Board of Revenue, West Bengal.

Memo No.835/1(36)-M&M

Copy with a copy of the Memo No.2673/LR dt.09.012.93 from D.L.&L.R.O., Howrah, forwarded for information and necessary action to the :-

1. Director of land Records and Surveys, West Bengal.
2. Collector, ...
3. District Land & Land Reforms Officer,..................

K.P. Sandilya
Secretary,
Board of Revenue, West Bengal.

Government of West Bengal
Office of the District Land & Land Reforms Officer
Howrah.

Memo No. 2673/L.R. Dated : 09.12.1993.

To
The Secretary,
Board of Revenue,
Writers' Buildings,
Calcutta-700001.

Sub : Regularisation of occupation of Govt. land by brick field operators.

Quite a number of Brick field operators are operating on Govt. land.

The question therefore arises as to whether they should be asked to take out Mining lease from the authority at the Commerce and Industries Department or in addition to realisation of royalty, cesses etc. for use of minor menerals they should be asked to take short term lease of the Govt. land in accordance with the provision of the W.B. Land and Land Reforms Manual 1991 in relaxation of Rule 228 ibid as some of the fields are situated within the C.M.D.A. area.

Instruction may also be given as to whether damage as per direction of Sec.10(6) of the W.B.E.A. Act 1953 is to be lavyed from unauthorised use of Govt. Land in previous years.

An early instruction is requested.

Sd/-Illegible
District Land and Land Reforms Officer,
Howrah.

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Government of West Bengal
Office of the Director of Land Records & Surveys
and Joint Land Records Commissioner, West Bengal
35, Gopalnagar Road, Alipur, Kolkata-700027
Tel : 2479-5727/5991/7355
Fax : 2479-8804/7361

No. 1271/141/1-16/CS/06 Dated, Alipore, the 25th January, 2010.

To
The District Land and Land Reforms Officer,

Sub : F.M.A. No.420 of 2004
M.A.T. No.495 of 1998

In the matter of
The State of W.B.
-vs-
Birbhum Brick Field Owners Association and others.

Please refer to the above subject.

A xerox copy of certified copy of the solemn Order dated 17.02.2009 passed by the Hon'ble Division Bench of Calcutta High Court in FMA No.420/2004 & MAT No.495 of 1998 in the matter of State of W.B. –Vs- Birbhm Brick Field Owners Association & Other is sent herewith for guidance and taking necessary action from his end.

Enclo : As stated.

D.C. Das
for Director of Land Records and Surveys
and Jt. Land Reforms Commissioner,
West Bengal.

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Dated The 17th February, 2009

Present : The Hon'ble Justice Debiprasad Sengupta
And
The Hon'ble Justice Debasish Kar Gupta
Mandamus Appeal
F.M.A. No.420 of 2004

M.A.T. No.495 of 1998

Appeal against Judgement and order dated September, 2, 1998 passed by His Lordship the Hon'ble Mr. Justice Kalyan Jyoti Sengupta in Civil Order No.6895(W) of 1990 (Birbhum Brick Field Owners Association and other –Vs- The State of West Bengal and others).

In the matter of : 1) The State of West Bengal, notice to be served through the Secretary to the Government of West Bengal, Department of Commerce and Industries, Writers' Building, Calcutta-700001 and others.

...Respondents/Appellants.

-Versus-

1) Birbhum Brick Field Owners Association, society registered under the Society Registration Act S/64137/89-90 through the President and others.

...Writ Petitioner/Respondents.

F.M.A. No. 420 of 2004
With
C.A.N. 9885 of 2008 with C.O.T. 4270 of 1999

http://wbllroa.in

For Appellants	:	Mr. Amal Baran Chatterjee, Mr. Prafulla Kr. Ghosh, Mr. S.N. Hossain.
For Respondents	:	Mr. Asok Kumar Chakraborty, Mr. Pinaki Ranjan Chakraborti, Mr. Sakya Maity.
Judgement on	:	17.02.2009.

Debasish Kar Gupta, J :

This appeal is filed assailing the judgement and order dated September 2, 1998 passed in civil order No.6895(W) of 1990.

By virtue of the above judgment and order though the provisions of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 were declared intra vires the constitution, the notification fixing of royalty at a particular rate, in this case @Rs.20/- per 100 cubic feet, for all regions of the State of West Bengal was declared ultra vires the Mines and Minerals (Regulation and Development) Act, 1957. Direction was given to the State of West Bengal to fix royalty in exercise of its statutory power on extraction of brick earth placewise and regionwise having due regard to the market price of the brick earth of all the places where bricks were manufactured.

In the writ petition under reference, the writ petitioners/ respondent nos.1 to 8 brought the following facts and circumstances on record.:-

The mines and Minerals (Regulation and Development) Act, 1957, (hereinafter referred to as the said Act, 1957) came into force with effect from December 20, 1957 to provide for regulation of mines and development of minerals under the control Union.

In accordance with the provisions of sub-section(e) of the said Act 1957, the ordinary clay and other than sand used for prescribed purposes and any other minerals which Central Government might be, by notification in the official gazette, included in the definition of minor Minerals amongst others.

The Central Government published notification time and again in accordance with the provisions of sub-section(e) of Section 3 of the said Act, 1957 declaring brick earth as minor mineral.

Sub-section (1) of Section 15 of the said Act, 1957 empowered the State Government to make rules for regulating the grant of quarry leases, or other mineral concessions in respect of minor minerals and for purposes connected therewith provided the State Government should not enhance the rate of royalty in respect of any minor minerals for more than ones during any period of four years.

The West Bengal Minor Minerals Rules, 1973 (hereinafter referred to as the said rules) were framed by the Government of West Bengal in exercise of powers conferred by sub-section (1) of Section 15 of the said Act, 1957, which was applicable only to the territories of West Bengal. The said Rules 1973 came into force within the State of West Bengal on and from January 13, 1974 by virtue of publishing the said Rules 1973 in the official Gazette on the above date.

Clause (1) of sub-rule 1 of Rule 18 of the said Rules, 1973 provided that the holder of mining lease or any other mineral concession granted on or after the commencement of the said rules, 1973 should pay royalty in respect of minerals removed or consumed by him or by his agent, manager, employee or contractor at the rate prescribed in Schedule (1) to the said Rules 1973, Provided that the State Government should not enhance the rate of royalty for more than once during any period of four years.

By a notification June 30, 1987, published in the official gazette on July 2, 1987, Schedule 1 to the said Rules, 1973 was amended fixing the rate of royalty for brick-earth @Rs.20/- per 100 cubic feet.

The writ application under reference being C.O. No.6895(W) 1990 was filed by the writ petitioners/respondent Nos. 1 to 8 challenging the aforesaid notification dated June 30, 1987. Prayers were made for declaration of Schedule I to the said Rules ultra vires the provisions of Article 14, 246, 265 of the constitution of India, Section 9, 15 of the said Act, 1957, and Rule 2 of the said Rules 1973. The above writ application was disposed of by judgement and order dated September 2, 1998. It was held that the State Government was competent to impose the royalty on minor minerals in exercise of powers conferred by Section 15 of the said Act, 1957. But it was further held by the impugned judgment and order that the uniform fixation of royalty on a particular rate without making any

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classification as to places and regions of different parts of West Bengal having regard to the market price of earth of those places, was unreasonable. Direction was given to the State of West Bengal to fix the royalty in exercise of statutory power for extraction of earth clay for manufacturing bricks areawise and regionwise having regard to the market price of the earth clay of all places where the bricks were manufactured.

After filing of the instant appeal, the respondent Nos. 1 to 8 filed a cross-objection bearing No. C.O.T.4270 of 1999.

This appeal and the above cross-objection are taken up for analogous hearing.

During pendency of the appeal and the above cross-objection, Shri Purna Lakshmi Mukherjee and Bengal Brick Field Owners Association were made party respondent Nos. 9 and 10 to this appeal by orders dated January 13, 2003 and February 4, 2004 respectively.

It is submitted on behalf of the appellants/state respondents that royalty, as mentioned in the said Act, 1957 read with Rules, 1973 was a tax. No legislative policy was laid down in the said Act, 1957 or in the said Rule, 1973 to determine the rate of royalty. Sub-section (1) of Section 15 of the said Act, 1957 empowered the State Government to make Rules for the purposes mentioned therein. In exercise of that statutory power, the Government of West Bengal made the said Rule, 1973; Rule 18 of the said Rule, 1973 provided that the royalty could be levied in terms of Schedule-I to the above Rule. According to the appellants, there was only one condition that the rate of such royalty should not be enhanced for more than once during any period of four years. The Government of West Bengal while enhancing the rate of royalty by virtue of notification dated June 30, 1987, followed such restriction. Therefore, the notification dated June 30, 1987 was valid in the eye of law.

According to the appellants, the notification was issued to enhance the rate of royalty which was nothing but tax. Such notification was issued in exercise of statutory power, and well within the scope and ambit of such statutory power and adhering to the restriction imposed by the proviso to Rule 18 of the said Rule, 1973. As a result the scope of judicial review in respect of enhancing the rate of royalty as a policy matter in exercise of statutory power was limited. It was open for the learned Single Judge to examine whether the irrelevant grounds were taken into consideration by the statutory authority in enhancing the rate of royalty or such authority failed to take into consideration the relevant factors. But the learned Single Judge overstepped the scope of such judicial review in directing the Government of West Bengal to fix the rate of royalty.

It is also submitted on behalf of the appellants that the learned Single Judge directed the statutory authority to fix the rate of royalty taking into consideration the market price of the brick earth regionwise or areawise on the garb of removing the deficiency of the statutory provision. According to the appellants there was no statutory provision to fix the royalty in the aforesaid manner either in the Section 16 of the said Act, 1957 or in Schedule I to Rule 18 of the said Rules, 1973. It is also submitted on behalf of the appellants that Section 14 of the said Act, 1957 provided that the provisions of Section 4 to Section 13 (inclusive) should not apply to quarry leases, mining leases or mineral concessions in respect of minor minerals.

Reliance is placed on the decision of India Cement Ltd. Vs. State of Tamilnadu reported in AIR 1990 85 and on the decision of Government of Quarry Owners Association Vs. State of Bihar reported in AIR 2000 SC 2870 to admit that the royalty is a tax. Reliance is placed on the decision of D.K. Trivade & Sons Vs. State of Gujarat reported in AIR 1986 SC 1323 to submit that in view of the above decision the only restriction on the power of the State Government in imposing royalty on minor minerals is the first proviso to sub-section 3 of Section 15 of the said Rules 1973. Reliance is further placed on the decision of Government of Andhra Pradesh Vs. P. Lakshmi Debi, reported in AIR 2008 SC 1640 to submit that economic matters are extremely complicated and as such the State must be left with wide latitude in adopting fiscal or regulatory measures and the court should not unless compelled by the statute or by the constitution, encroach upon into this field or invalid such law.

On the other hand it is submitted on behalf of the writ petitioners/respondent nos. 1 to 8 that Entry 54, List 1, Seventh Schedule of the constitution of India provided for regulation of mines and minerals development to the extent to which such regulation and development under the control of the union is declared by Parliament to be expedient in public interest. Article 265 of the constitution of India provided that no tax could be lavied or collected except by the authority of law. The said Act, 1957 was entacted in exercise of the above powers conferred upon the parliament by the constitution of India. Section 2 of the said Act, 1957 declared that it was expedient in the public interest that the

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union should take under its control, the regulation of mines and development of minerals to be provided in the said Act, 1957. It is submitted that the State of West Bengal framed the said Rules 1973 in exercise of power conferred by the provisions of Section 15 to the said Act, 1957. Rule 2 of the said Rule, 1973 prescribed a limitation that nothing in the said Rules should affect the provisions of any Central Act or Regulations or Rules for the purpose of regulation and development of mines and minerals.

It is further submitted on behalf of the respondent Nos.1 to 8 that the royalty on brick earth was a rent and not a tax.

According to the respondent nos. 1 to 8 though sub-section (1) of Section 15 empowers the State Government to make rules to impose such rent by way of fixing the rate of royalty and to enhance such royalty from time to time following the guidelines, no guideline was prescribed in the said rules, 1973 for imposing royalty. However, according to the respondent no. 1 to 8 in absence of any prescribed procedure in the said rules 1973, the provisions of Section 4 to 12 were to be followed because the above sections prescribed the procedure.

Drawing the attention of this court towards the provisions of sub-section (1) of Section 9 it is submitted on behalf of the respondent nos. 1 to 8 that the holder of a mining lease should pay royalty in respect of any mineral removed or consumed by him or by his agent, Manager, Employee, Contractor or sub-lease at the rate specified in the second Schedule, in respect of that mineral.

Drawing further attention of this Court towards the provision of Entry 43 of the Schedule II to the said Rule, 1973 prescribed that the rate of royalty on minerals not mentioned in any of the entires therein should be levied @ 10% of the sale price at Pit's head. Therefore, the Government of West Bengal was under obligation to impose the royalty by issuing notification for amendment of Schedule I to Rule 48 of the said Rules, 1973 adhering to the provisions of Entry 43 of the second schedule to sub-section 1 of Sections 9 of the said Act, 1957. Drawing the attention of this court towards the impugned notification dated June 30, 1987 it is submitted on behalf of the respondent nos. 1 to 8 that the notification was issued in violation of the above provisions of the said Act 1957 read with the aforesaid provisions of the said Rules, 1973.

It is submitted on behalf of the respondent nos. 1 to 8 that the learned Single Judge after declaring the provisions of Section 15 of the said Act, 1957 intra Vires the constitution of India, examined as to whether the impugned Notification dated June 30, 1987 was adhering to the provisions of the said Act, 1957 read with the provisions of the said Rule 1973. After examining the decision making process as also the enhanced royalty @ Rs.20 per 100 cubic feet on brick earth as stated in the above notification, the learned Single Judge came to a conclusion that fixation of the royalty on brick earth at the aforesaid rate was imposed debars the statutory provision of the said Act, 1957 read with provision of the said Rule 1973 as discussed hereinabove. It is further submitted that the decision making process of the Government of West Bengal in enhancing the rate of royalty by way of amendment of Schedule I to Rule 18 of the said Rules by introducing the notification dated June 30, 1987 was under challenge in the writ application. But the enhanced rate was not under challenge.

Therefore, it is submitted that, it was well with the scope of judicial review stating in writ application to review the decision making process of the Government of West Bengal in fixing such rate and not the quantum of royalty imposed by virtue of the impugned notification dated June 30, 1987.

Relying upon the decision of State of H.P. Vs. Gujarat Ambujya Cement reported in (2005) 6 SCC 498, it is submitted on behalf of the respondent nos. 1 to 8 that royalty paid by holder of mining lease does not attract liability to purchase tax. Reliance is placed on the decision of Tata Iron & Steel Co. Ltd. Vs. State of West Bengal, reported in (2002) 8 SCC 718, to submit that classification in support of areas or regions having a nexus to the object sought to be achieved by the said Act 1957 imposing of royalty taking into consideration the prices of brick earth area wise or region wise has to be done even if the said Act, 1957 is a taxing statute. Relying upon the decisions of D.K. Trivedi Vs. State of Gujarat (supra) and State of West Bengal Vs. Purulia Dist. Contractor's Asson. reported in AIR 2000 Cal 163 it is submitted that the legislative policy framed under the provisions of Sections 4 to 12 are to be complied with in imposing royalty on brick earth. Relying upon the decision of Krishnan Kakkanath Vs. Govt. of Kerala, reported in (1997) 9 SCC 495 it is submitted that when the statute prescribed one particular procedure to be followed, such procedure had to be followed strictly and not in breach. Relying upon the decisions of Comptroller & Auditor General of India Vs. K.S. Jagannathan, reported in AIR 1987 SC 537, Garden Silk Mills Ltd. Vs. Union of India & Ors., reported in AIR 2002 SC 38, G. Gurunadha Reddy Vs. A.P. Road Transport Corporation reported in AIR 1999 AP 179, Sonada Degree

College & Ors. Vs. Dashpad Rai & Ors. Reported in (2004) 2 CHN 221 and State Vs. Samar Dutta & Ors. Reported in (2004) 4 CHM 390 and Jai Mangal Oraon Vs. Rita Sinha reported in AIR SC 2276 it is submitted on behalf of the respondent nos. 1 to 8 that the court exercising writ jurisdiction could direct the authority to follow statute, the provisions of the statute, rules, policy in course of judicial review. Therefore, impugned judgment of the learned Single Judge cannot be challenged on any of the above grounds.

While arguing in favour of the cross objection bearing No. COT 427 of 1999 the learned Counsel appearing for the responding Nos. 1 to 8 submits that the learned Single Judge was in error of law in holding that the provisions of Sections 4 to 12 of the said Act, 1957, were not applicable. According to the respondent Nos. 1 to 8, no methodology was prescribed in the said Rules, 1973 to ascertain the rate of royalty on earth clay. Relying upon the decision of D.K. Trivedi (supra), it is submitted by the learned Counsel that the guidelines and restrictions provided by sections 18 and 4 to 12 of the said Act, 1957, must be followed by the State Government while framing Rules. Once the above submissions are accepted, provisions of sub-section (1) of Section 9 read with entry 43 of the Second Schedule to the said Act, 1957 must be taken into consideration to ascertain the sale price of earth clay at pit's head for the purpose of determining the royalty in respect of mineral removed or consumed by the holder of a mining lease.

While supporting the submissions of the respondent Nos. 1 to 8, it is submitted by the learned Counsel appearing for the added respondents that the unequals were treated equally in the matter of realisation of royalty. According to the added respondents, the Government of West Bengal could realise royalty only in respect of mineral or minerals removed or consumed by the holder of a mining lease. Since the price of earth clay, was not uniform, fixing uniform rate of royalty throughout whole of the State of West Bengal was unreasonable and unrealistic and liable to be set at Knought.

Having heard the learned Counsels appearing for the respective parties and after taking into consideration the facts and circumstances of this appeal and cross objection we find that in the writ application no challenge was thrown as to the vires of Section 15 of the said Act, 1957. Standing on that footing, the learned Single Judge held that the power of the State Government to make Rules under the provisions of section 15 of the said Act was intra-vires the constitution.

The above part of the impugned judgement is not under challenge. Therefore, for the purpose of adjudication of other issues involved in this appeal and cross objection suffice to observe that the said Act, 1957 is a Central Act which was legislated under Entry 54 in List I of Seventh Schedule to the Constitution. And the provisions of Section 15 of the said Act, 1957 empowered the State Government to make Rules by notification in the official Gazette, for realisation of royalty in respect of minor minerals subject to restriction of not enhancing rate of such royalty more than once during any period of four years. The expression "minor minerals" as defined in Section 3(e) of the said Act, 1957, includes "ordinary clay" and "ordinary sand". Earth used for the purpose of making bricks is included in the above expression "minor minerals" within the meaning of "any other minerals". Here we may refer to the relevant portions of the decision of Banarsi Dass Chandha –vs- Ld. Governor, Delhi Administration, reported in (1978) 4 SCC 11 as follows :-

"4. We agree with the learned Counsel that a substance must first be a mineral before it can be notified as a minor mineral pursuant to the power vested in the Central Government under Section 3(e) of the Act. The question there, is whether brick-earth is a mineral. The expression "minor mineral" as defined in Section 3(e) includes "ordinary clay" and "ordinary sand". If the expression "minor mineral" as defined in Section 3(e) of the Act includes "ordinary clay" and "ordinary sand", there is no reason why earth used for the purpose of making bricks should not be comprehended within the meaning of the word "any other mineral" which may be declared as a "minor mineral" by the Government. The word "mineral" is not a term of Article. It is a word of common parlance, capable of a multiplicity of meanings decending upon the context. For example the word is occasionally used in a very wide sense to denote any substance that is neither animal nor vegetable. Some times it is used in a narrow sense to mean no more than precious metals like gold and silver. Again, the word "minerals" is often used to indicate substances obtained from underneath the surface of the earth by digging or quarrying. But this is not always so as pointed out by Chandrachud, J. (as he then was) in Bhagwan Dass v. State of U.P. where the learned Judge said (at p. 874) (SCC p. 789, para 18):

"It was urged that the sand and gravel are deposited on the surface of the land and not under the surface of the soil and therefore they cannot be called minerals and equally so, any operation by which they are collected or gathered cannot properly be called a mining operation. It is in the first place wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals

on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of 'winning' any minor mineral. 'Winning' does not imply a hazardous or perilous activity. The word simply means 'extracting a mineral' and is used generally to indicate any activity by which a mineral is secured. 'Extracting' in turn, means drawing out or obtaining. A tooth is 'extracted' as means as is fruit juice and as much as a mineral. Only that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral".

(emphasis supplied)

That takes us to the nature delegation of powers to the State Government under Section 15 of the said Act, 1957. In order to adjudicate this point, the provisions of Section 15 of the said Act, 1957, are quoted below :-

"15. Power of State Governments to make rules in respect of minor minerals : (1) The State Government may by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(2) Until rules are made under sub-section (1) any rules made by a State Government regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals :

Provided that the State Government shall not enhance the rate of royalty in respect of any minor mineral for more than once during any period of four years".

It is evident from the provisions of Sub-section (3) of Section 15 of the said Act, 1957 that the power to prescribe the rate of royalty is delegated to the State Government by framing Rules in respect of minor minerals removed or consumed by the holder of a mining lease or his agent, menager, employee, contractor or sub-lessee.

The said Act, 1957 is subordinate legislation which is conditional in nature so far as the realisation of royalty by the State Government was concerned. The condition is the delegation of powers to the State Government to realise the royalty by framing Rules in respect of the minor minerals removed or consumed. So the said Act, 1957, was full and complete when it left the legislative chamber, meaning thereby the Parliament framing the legislative policy of realisation of royalty in respect of the minor minerals removed or consumed. But operation of the law is made dependent upon the fulfilment of a condition of realisation of royalty only in respect of minor minerals removed or consumed and what is delegated to the State Government is the authority to determine, by exercise of its own judgment, whether or not the condition had been fulfiled.

The relevant portions of the observations of the Hon'ble Justice Mukherjee, as His Lordship then was sitting in a constitution bench of the Hon'ble Supreme Court, in respect of a reference made by the President of India under Article 143 of the constitution of India, in the matter of In Re : DELHI LAW ACT, 1912, AJMER-MERWARA (EXTENSION OF LAWS) ACT, 1947 AND – PART "C" STATES (LAWS) ACT, 1950 reported in AIR 1951 SC 332 are quoted below :

"302. In a conditional legislation, the law is full and complete when it leaves the legislative chamber, not the operation of the law is made dependent upon the fulfillment of condition and what is delegated to an outside body is the authority to determine, by the exercise of its own judgment, whether or not the condition has been fulfilled. "The aim of all legislation" said C' Copper, J. in Baxter v. Ah Way 119" is to project their minds as far as possible into the future and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases and therefore legislation from the very earliest time and particularly in more modern times, has taken the form of conditional legislation leaving it to some specified authority to determine the circumstances in which the law shall be applied or to what its operation shall be extended, or the particular class of persons or goods or things to which it shall be applied". In spite of the doctrine of separation of powers, this form of legislation is well recognised in the legislative practice

of America and is not considered as an encroachment upon the anti-delegation rule at all. As stated in a leading Pensylvania case 32, “the legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action. To deny this would be to stop the wheels of Government. There are many things upon which wise and useful legislation that depend, which cannot be known to the law-making power and must therefore be a subject of inquiry and determination outside the halls of legislation”.

(Emphasis supplied).

Therefore, on the basis of the above discussion, the conclusion is that the learned Single Judge was correct in holding that the State Government was competent to frame the Rules for realisation of Royalty on minor minerals, in this case brick earth.

Before entering into the issue of the validity of the said Rules 1973 and the impugned notification, let us resolve the controversy as to whether royalty is a tax or fee? In this regard the settled principles of law as decided by the majority view of a Constitution bench of the Hon’ble Supreme Court in the matter of State of West Bengal –vs- Kesorem Industries Ltd., reported in (2004) 10 SCC 201 are quoted below :-

“56. We would like to avail this opportunity in pointing out an error, attributable either to the stenographic devil or to sheer inadvertence having crept into the majority judgement in India Cement Ltd. Case. The error is apparent and only needs a careful reading to detect. We feel constrained – rather is bound to say so, lest a reading of the judgment containing such an error – just an error of one word – should continue to cause the likely embarrassment and have adverse effect on the subsequent judicial pronouncements which would follow India Cement Ltd. case, feeling bound and rightly, by the said judgment having the force of pronouncement by a seven-judge Bench, Para 34 of the Report reads as under : (SCC p.80)

“34. In the aforesaid view of the matter, we are of the opinion that royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature because Section 9 of the Central Act covers the field and the State Legislature is of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II is being a tax on land. Royalty on mineral rights is not a tax of land but a payment for the user of land”. (underlining by us).

57. In the first sentence the word “royalty” occurring in the expression “royalty is a tax” is clearly an error. What the majority wished to say, and has in fact said is “cess on royalty is a tax”. The correct words to be printed in the judgment should have been “cess on royalty” in place of “royalty” only. The words “cess on” appear to have been inadvertently or erroneously omitted while typing the text of the judgment. This is clear from reading the judgment in its entirety, Vide paras 22 and 31, which precede para 34 aforesaid. Their Lordships have held that “royalty on mineral rights is not a tax. Even the last-line of para 34 records “royalty on mineral rights is not a tax on land but a payment for the user of land”. The very first sentence of the para records in quid succession “… as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature”… What Their Lordships have intended to record is “…that cess on royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State Legislature…” That makes correct and sensible reading. A doubtful expression occurring in a judgment, apparently by mistake or inadvertence ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self inconsistent or incorporate passages repugnant to each other. Vide para 22. Their Lordship have clearly held that there is no entry in list II which enables the State was incompetent to impose such a tax (cess). The cess which has an incidence of an additional charge on royalty and not a tax on land, cannot apparently be justified as falling under Entry 49 in List II”.

(Emphasis supplied)

Therefore, it is now settled principles of law that “royalty” is not a tax.

While examining the validity of the said Rules, 1973, we must bear in mind the provision of Section 14 the said Act, 1957 and the above provisions are quoted below :-

“14. Sections 4 to 13 not to apply to minor minerals :- The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.”

On a plain reading of the above provisions we find that the learned Single Judge was right in holding that the State Government while exercising powers under Section 15 of the said Act, 1957 could proceed without adhering to the guidelines of Section 9 of the said Act, 1957. In this regard the relevant portions of the decision of D.K. Trivedi & Sons –vs- State of Gujarat, reported in AIR 1986 SC 1323 are quoted below :-

“33. A provision similar to sub-section (2) of Section 13, however, does not find place in Section 15. In our opinion, this makes no difference. What sub-section (2) of Section 13 does is to give illustrations of the matters in respect of which the Central Government can make rules for “regulating the grant of prospecting licenses and mining leases in respect of minerals and for purposes connected therewith”. The opening clause of sub-section (2) of Section 13, namely, “In particular, and without prejudice to the generality of the foregoing power”, makes it clear that the copies set out in that sub-section are already included in the general power conferred by sub-section (2) but are being listed to particularize them and to focus attention on them. The particular matters in respect of which the Central Government can make rules under sub-section (2) of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Governments can make rule for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.” When Section 14 directs that “The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals”, what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule making power as a delegates of the Central Government. Sections 4 to 12 form a group of sections under the heading “General restrictions on undertaking prospecting and mining operations”. The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government. Sections 13, 14 and 15 fall in the group of sections which is headed “Rules for regulating the grant of prospecting licences and mining leases”. These three sections have to be read together. In providing that Section 15 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by Section 15(1) upon the State Governments. The ambit of the power under Section 13 and under Section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals. Sub-section (2) of Section 13 which is illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under Section 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 to 12 while framing their own rules under Section 15(1)”.

(Emphasis supplied).

The relevant portions of the decision of Quarry Owners’ Association –Vs.- State of Bihar, reported to (2000) 8 SCC 655 are quoted below :-

23. In other words, Sections 4 to 12, not being applicable to the minor minerals, the figurative restrictions that are contained there could not be made applicable, but of course they are available as a guideline to the State Government to take note of in other respects, while framing its rules. So, they are available not as restrictive or limiting guidelines but are available otherwise for its consideration and adoption, wherever it is necessary. If submission for the appellants is accepted it would militate against the express mandate of Parliament as contained in Section 14 when excluded Sections 4 to 12 from their application to minor minerals.

We further find that it was open for a writ Court to examine the decision making process of issuing the impugned notification dated June 30, 1987 Because, by virtue of sub-section (3) of Section 15 of the said Act, 1957 read with the proviso to Section 15 of the said Act, 1957, the Parliament laid down the legislative policy. Consequent thereupon the State Government was under obligation to realise royalty on brick-earth subject to fulfilment of the conditions of the subordinate legislation that (I) the holder of mining lease should pay royalty in respect of minor minerals removed or consumed, (ii) enhancement in the rate of such royalty should not be done for more than once during any period of four years. In the instant case no methodology was disclosed before the learned Single Judge to show that the condition prescribed in sub-section (3) of Section 15 had been fulfilled in determining the uniform rate of royalty @ Rs.20/- per 100 cubic feet. No document was placed before the learned single Judge to show that the price of brick earth removed or consumed is uniform throughout the State of West Bengal. Needless to mention that fixation of the rate of royalty for brick-earth removed or consumed had a reasonable nexus to the price of brick-earth. Therefore, we are not inclined to interfere with that part of the impugned judgment by which the notification dated June 30, 1987 was declared ultra-vires the provisions of Section 15 of the said Act, 1957.

With regard to the directions given in the judgment to fix the royalty placewise or regionwise, we are of the opinion that though the price of the brick earth has a nexus to the fixation of royalty on such brick-earth removed or consumed, it required opinion of the experts to ascertain as to whether such price varied from area to area or region to region. A Writ Court must not subscribe its view in this regard without having such technical expertise. In the other words once it was found that the notification under reference was issued *dehars* the provisions of sub-section (3) of Section 15 of the said Act, 1957, the writ court, after declaring the above notification ultra-vires the provisions of the said Act, 1957 as also setting aside the same, should not have proceeded further to direct the State Government to fix the rate of royalty following a particular methodology. In this regard, the settling principle of law as decided in the matter of Tata Iron & Steel Co. Ltd. –Vs.- Union of India, reported in (1996) 8 SCC 709 are quoted below :-

"68. At this juncture, we think it fit to make a few observations about our general approach to the entire case. This is a case of the type where legal issues are intertwined with those involving determination of policy and a plethora of technical issues. In such a situation, courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy-making, unless the policy is inconsistent with the Constitution and the laws. In the present matter, in its impugned judgement, the High Court had directed the Central Government to set up a Committee to analyse the entire gamut of issues thrown up by the present controversy. The Central Government had consequently constituted a Committee comprising high-level functionaries drawn from various governmental/institutional agencies who were equipped to deal with the entire range of technical and long-term considerations involved. This Committee in reaching its decision, consulted a number of policy document and approached the issue from a holistic perspective. We have sought to give our opinion on the legal issues that arise for our consideration. From the scheme of the Act it is clear that the Central Government is vested with discretion to determine the policy regarding the grant or renewal of leases. On matters affecting policy and those that require technical expertise, we have shown deference to, and followed the recommendations of the Committee which is more qualified to address these issues."

In view of the above, the directions given in the impugned judgement dated September 2, 1998 to fix the rate of royalty on brick-earth area wise or region wise are liable to be quashed and set aside and the directions are quashed and set-aside.

In view of the above discussions, we do not find force in the submissions made on behalf of the appellants that the decisions of D.K. Trivedi (supra) and quarry owners Association (supra) come in aid to protecting the notification under reference. We do not find that the decision of Government of A.P. –vs- P. Laxmi Devi (supra) helps the appellants to act on the basis of the notification under reference because as discussed hereinabove, the same was issued in violation of the legislative policy laid down in sub-section (3) of Section 15 of the said Act, 1957. Since, we have already discussed herein above as to whether Royalty on minor minerals is a "Tax" or "Fee" taking into consideration the decisions of India Cement Ltd. (supra) and State of West Bengal –Vs.- Kesoram Industries, we have no hesitation in holding that the former decision does not support the case of the appellants.

We, however, find on the basis of observations made hereinabove, that the decisions of M/s. Banarsi Dass Chadha (supra) and D.K. Trivedi (supra) do not help the respondent nos. 1 to 8 to submit that provisions of Sections 4 to 13 are applicable in this case. With regard to the decisions of Krishnan

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Kakkanth (supra), The Comptroller and Auditor General of India (supra), Roshan Deen (supra), Sonada degree College (Supra), State Vs.- Samar Dutta (Supra), Secretary, Bedruka College of Commerce (supra), State of West Bengal –vs- Purulia Dist. Contractors Association (supra) and Jai Mangal Oraon (supra) we find that the above decisions support the submissions made on behalf of the respondent nos. 1 to 8 upto the extent that the scope of judicial review in writ jurisdiction permits the court to examine the decision making process in this case on the basis of the legislative policy framed under the statute.

In view of the above, the appeal is allowed partially to the extent of setting aside and quashing the directions given in the impugned judgment and order upon the Government of West Bengal to fix the royalty are wise or region wise. We, however, make it clear that in fixing the rate of royalty on brick-earth, the Government of West Bengal must follow the legislative policy laid down by the Parliament in sub-section (3) of Section 15 of the said Act, 1957, read with the proviso to Section 15 thereto.

The appeal is thus disposed of.

The cross objection fails on the basis of the observations and discussions made hereinabove.

There will be no order as to cost.

Urgent xerox certified copy of this judgement, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

I agree.

Debi Prasad Sengupta – J. Debasish Kar Gupta – J

All communication to State Board should be addressed With Number, Date and Subject

WEST BENGAL POLLUTION CONTROL BOARD
Paribesh Bhawan, 10A, Block-LA, Sector-III,
Salt Lake City, Kolkata-700098,
Ph. : (033) 2335-8212, Fax : (033) 2335-8073
Website : www.wbpcb.gov.in

Memo No./90/71L/WPB/2004/(Part-II) Dated : 16.01.2012

STATUTORY CIRCULAR

Re : Restriction on the operation of Brick Fields/Brick Manufacturing units.

WHEREAS, Hon'ble High Court, Calcutta, considering the records, reports and also upon hearing, was pleasd to pass an order on 12.10.2001 in connection with Writ Petition No.7255(W) of 2000 [Badal Chandra Mondal, Petitioner –VS- The State of West Bengal and others, Respondents] directing that no brick manufacturing unit or a Brick Field, located within a vicinity of 1.6 K.M. of any mango orchard will be allowed to operate between the months of February to May each year, within the State of West Bengal.

AND WHEREAS, the said order was confirmed by the Hon'ble Supreme Court of India vide Order dated 04.04.2003 in Civil Appeal No.2735 of 2003 arising out of SLP (C) No. 4260 of 2002 [Bijay Krishna Bera & Others, Appellants –VS- Badal Chandra Mondal & Others, Respondents].

NOW THEREFORE, in obedience and conformity of the orders passed by the Hon'ble Courts, as mentioned above, and also as per provisions laid down under the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986 and Rules made thereunder the superintendent of Police of all the Districts of West Bengal and the Additional District Magistrate and District Land and Land Reforms Officer of all the Districts of West Bengal are hereby requested again, to issue necessary instructions to the concerned police stations, offices under their respective jurisdictions and all other stake holders, not to allow any such Brick Manufacturing unit or a Brick Field, located within a vicinity of 1.6 K.M. from any mango orchard, to undertake any manufacturing activity or to operate between the months of February to May each year and also to take necessary steps in case of any violation is noticed or reported. Such steps and action taken reports may be forwarded to the West Bengal Pollution Control Board.

Sd/- Illegible
Member Secretary
West Bengal Pollution Control Board

http://wbllroa.in

Memo No./90/71L/WPB/2004/(Part-II) Dated : 16.01.2012

Copy forwarded to :

1. The Superintendent of Police – Hooghly, Howrah, South 24-Parganas, North 24-Parganas, Burdwan, Bankura, Birbhum, Nadia, Purba Medinipore, Paschim Medinipore, Purulia, Murshidabad, Malda, Coochbehar, Dakshin Dinajpur, Uttar Dinajpur, Jalpaiguri, Darjeeling District, West Bengal.
2. The Additional District Magistrate and District Land and Land Reforms Officer – Hooghly, Howrah, South 24-Parganas, North 24-Parganas, Burdwan, Bankura, Birbhum, Nadia, Purba Medinipore, Paschim Mednipore, Purulia, Murshidabad, Malda, Coochbehar, Dakshin Dinajpur, Uttar Dinajpur, Jalpaiguri, Darjeeling District, West Bengal.
3. The Environmental Engineer – Siliguri / Malda / Haldia / Barrackpore / Howrah / Hooghly / Durgapur / Alipore / Salt Lake / Camac Street, Regional Office, WBPCB.
4. The Environmental Engineer, PG & A Cell, WBPCB.
5. The Assistant Environmental Engineer – Asansol Sub-Regional Office, WBPCB. (They are requested to keep vigil through their good offices for ascertaining the compliance of the orders of the Hon'ble Courts and take necessary steps).
6. The Chief Engineer, Planing, WBPCB.
7. The Project Manager, O & E, WBPCB.
8. The Chief Engineer, Siliguri Regional Office, WBPCB.
9. The Chief Scientist, Central Laboratory, WBPCB.
10. Chief Scientist, PG & A Cell, WBPCB.
11. The Senior Environmental Engineer, Camac Street Circle Office, WBPCB.
12. The Senior Environmental Engineer, Kankinara Circle Office, WBPCB.
13. The Senior Environmental Engineer, W.M. Cell, WBPCB.
14. The Senior Environmental Engineer, Planing, WBPCB.
15. The Law Officer-I, WBPCB.
16. The Environment Officer (Communication), WBPCB, [for Float File].
17. P.A. To Chairman, WBPCB.
18. P.A. To Member Secretary, WBPCB.

Sd/- Illegible
Senior Law Officer
West Bengal Pollution Control Board

———— ● ————

Government of West Bengal
Department of Environment
Writers' Buildings, Block-'G', 2nd Floor, Kolkata-700001.

NOTIFICATION

No. EN/202/3C-01/2013 Dated, Kolkata the 21st January, 2013

WHEREAS in W.P. No.6079 (W) of 2012 (MD. Fashihuddin –Vs- State of West Bengal & Ors.) Hon'ble Chief Justice J.N. Patel and Hon'ble Justice Joymalya Bagchi of Calcutta High Court passed order on 14.09.2012 and clubbed group of petitions pertaining to different establishments and conducting the business of brick manufacturing throughout the State of West Bengal as Public Interest Litigation;

AND WHEREAS Hon'ble High Court directed the State Government to constitute a Screening and Scrutiny Committee at the District Level (hereinafter referred to as the said Committee) consisting of District Land and Land Reforms Officer of the concerned District and the Regional Officer of the West Bengal Pollution Control Board of the concerned District, to examine all issues raised in the group of

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writ petitions, to deal with the illegalities and irregularities in the conduct of such business to the detriment of environment, as well as to deal with any complaint made to the Committee pertaining to conduct of business of brick manufacturing throughout the State of West Bengal;

AND WHEREAS Hon'ble High Court directed that the said Committee will deal with complaints/grievances of citizens regarding the brick kilns to be established by the manufacturers of the brick field and also the existing brick fields before they approach the Hon'ble High Court;

AND WHEREAS Hon'ble High Court directed that the said Committee shall give an opportunity of hearing to all the concerned parties before taking any decision and will look into the matter and after examining the same shall pass a reasoned order and the said decision shall be communicated to the affected person;

AND WHEREAS Hon'ble High Court directed that the said Committee will also have a right to impose costs on false, frivolous complaints and to proceed ex parte in case the party does not appear before it without seeking any adjournment for good and sufficient grounds and shall act as a quasi judicial authority;

AND WHEREAS Hon'ble High Court directed that in future all grievances and complaint relating to breach/violation of Environment Laws/other statutory provisions by persons/legal entities in operation of brick kiln/fields shall be referred to the said Committee before such matter is brought before the Court;

AND WHEREAS Hon'ble High Court directed that the said Committee shall take steps to implement its orders or previous orders, if any, passed by the competent authority in the matter such as District Land & Land Reforms Officer of the Concerned District or Regional Officer of the West Bengal Pollution Control Board;

AND WHEREAS Hon'ble High Court directed that all State functionaries including Police Authorities shall render assistance to the Screening and Scrutiny Committee in implementing and executing the order of the Committee;

NOW, THEREFORE, the Governor is pleased hereby to constitute the Screening and Scrutiny Committee at the District Level for each District in West Bengal, consisting of the District Land and Land Reforms Officer of the concerned District and the Regional Officer of the West Bengal Pollution Control Board of the concerned District;

The Governor is further pleased to direct that henceforth all applications relating to Consent to Establish, Consent to operate and all environmental matters relating to brick field shall be disposed of by such Screening and Scrutiny Committee at the District Level. The West Bengal Pollution Control Board and the Department of Environment, Government of West Bengal shall forward all application/complain/grievance relating to brick field to the Screening and Scrutiny Committee of the concerned District for consideration on merit and disposal;

The Governor is also pleased to direct that the District Land and Land Reforms Officer of the concerned District shall in consultation with Regional Officer of the West Bengal Pollution Control Board of the concerned District fix / decide suitable and convenient date, time and place for consideration and disposal of application / complain / grievance relating to brick fields;

The Governor is also pleased to direct that the Screening and Scrutiny Committee of each District shall –

(a) examine all issues raised in the writ petitions relating to the concerned District;

(b) to deal with the illegalities and irregularities in the conduct of such business to the detriment of environment, relating to concerned District;

(c) any complaint made to the Committee pertaining to conduct of business of brick manufacturing of the concerned District;

(d) deal with complains/grievances of citizens relating to the concerned District before they approach the Hon'ble High Court;

(e) give an opportunity of hearing to all the concerned parties before taking any decision;

(f) impose costs on false, frivolous complaints and to proceed ex parte in case the party does not appear before it without seeking any adjournment for good and sufficient grounds and shall act as a quasi judicial authority;

(g) pass a reasoned order after hearing and the said decision shall be communicated to the affected person;

(h) dispose of the complaints/grievances within a period of three months from the date of its receipt;

(i) take into consideration directions/orders of the West Bengal Pollution Control Board and that of Department of Environment, Government of West Bengal issued relating to brick fields;

(j) entertain grievances and complaints relating to breach/violation of Environment Laws/other statutory provisions by persons/legal entities in operation of brick kiln/fields, concerning the District before such matter is brought before the Court in a Public interest Litigation or otherwise;

(k) take steps to implement its orders or previous orders, if any, passed by the competent authority in the matter such as District Land & Land Reforms Officer of the Concerned District or Regional Officer of the West Bengal Pollution Control Board;

(l) issue necessary direction to the State functionaries including Police Authorities for executing the order of the Committee and they shall render necessary assistance in implementation of the direction issued by the Committee.

By order of the Governor,

Trilochan Singh
Addl. Chief Secy. to the Govt. of West Bengal.

Copy forwarded for information and necessary action to –

1. The Chairman, West Bengal Pollution Control Board;
2. The Member-Secretary, West Bengal Pollution Control Board;
3. The District Magistrate .... District;
4. District Land & Land Reforms Officer .... District;
5. Salt Lake Regional Office of the West Bengal Pollution Control Board;
6. Camac Street Regional Office of the West Bengal Pollution Control Board;
7. Alipore Regional Office of the West Bengal Pollution Control Board;
8. Howrah Regional Office of the West Bengal Pollution Control Board;
9. Durgapur Regional Office of the West Bengal Pollution Control Board;
10. Barrackpore Regional Office of the West Bengal Pollution Control Board;
11. Haldia Regional Office of the West Bengal Pollution Control Board;
12. Siliguri Street Regional Office of the West Bengal Pollution Control Board;
13. Hooghly Regional Offices of the West Bengal Pollution Control Board;
14. Maldah Regional Office of the West Bengal Pollution Control Board;

Subodh Sharma
Law Officer

http://wbllroa.in

Government of West Bengal
Land & Land Reforms Department
'Nabanna'
325, Sarat Chatterjee Road
P.S.- Shibpur, Howrah-711102

No. 1163(36)-M&M/8/2014 Date : 19.05.2014

From : A.K. Singh, IAS
LRC & ACS
Land & Land Reforms Department

To : 1) The District Magistrate
....
2) The ADM & DL & LRO
....

Sir,

In view of the West Bengal Minor Minerals Rules, 2002, the provisions as laid down in the G.O. No. 9109-M&M dt. 13.09.1984 have become redundant. Hence, the G.O. No. 9109-M&M dt.13.09.84 is hereby quashed.

2. Henceforth, the provisions as laid down in Rule 33 of the West Bengal Minor Minerals Rules, 2002, shall be followed for imposition of penalty in respect of extracting any mineral or minerals without a proper lease or permit granted under the Rules.

Yours faithfully,

A.K. Singh
LRC & ACS

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