

32B. PROVISION REGARDING BRICK FIELDS

THE CALCUTTA GAZETTE, EXTRAORDINARY, MAY 1, 1964.

FORM 33

(Rule 178)

Application for licence for carrying on a trade or business declared by State Government
by notification as offensive or dangerous.

To
The Chief Executive Officer – Anchalik Parishad

District

Block

I hereby apply for licence for use of the place covered by cadastral plot Nos. _____ of Mouza _____ in the J.L. No. _____ in P.S. _____ in the district of _____ boundaries of which are given below for carrying on the trade or business of _____ which has been declared by the State Government as offensive or dangerous by Notification No. _____ dated _____. I shall be bound to deposit the prescribed licence fee and observe the conditions of the licence, if granted.

Boundaries

East:

West:

North :

South:

Signature

Address:

Dated the

●
THE CALCUTTA GAZETTE, EXTRAORDINARY, MAY 1, 1964.

FORM 34

(Rules 178)

Form of licence for carrying on offensive or dangerous trades.

COUNTERFOIL

Licence for carrying on a trade or business declared by State Government as offensive or dangerous by Notification.

Anchalik Parishad
P.S.
District

FOIL

Licence for carrying on a trade or business declared by State Government as offensive or dangerous by Notification.

Anchalik Parishad
P.S.
District

Licence under section 72 of the West Bengal Zilla Parishads Act, 1963.
Licence No.
Year

Name of Licensee
Address
Description of trade or business
Number and date of Government Notification by which the trade or business has been declared as offensive or dangerous.

Boundaries of the place of trade or business
East

West

North

South

Comprising cadastral plot No. _____
Mouza No. _____, J.L. No.
Fee Rs.
Office of the Anchalik Parishad
Chief Executive Officer
Dated the

Licence under section 72 of the West Bengal Zilla Parishads Act, 1963
Licence No.
Year

The Anchalik Parishad hereby grant to _____ of _____ this licence under section 72 of the West Bengal Zilla Parishads Act, 1963, for the use of place covered by cadastral plot No. _____ of mouza _____ J.L. No. _____ in P.S. _____ the boundaries of which are given below, for carrying on trade or business of _____ which has been declared as offensive or dangerous by Government Notification No. _____ dated _____ subject to the terms and conditions noted on the reverse and acknowledge to have received in consideration thereof the sum of Rs. _____ being the licence fee for the year _____

Boundaries

East

West

North

South

Office of the Anchalik Parishad

Chief Executive Officer

Dated the

Conditions of Licence for carrying on offensive or dangerous trades

1. The place may be inspected at any reasonable time by the District Magistrate, the Subdivisional Magistrate, the Chief Executive Officer of the Anchalik Parishad, Officers of the Public Health Department and the President of the Anchalik Parishad.
2. The premises shall not cause or shall be maintained in a manner so as not to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing of persons residing in the neighbourhood.
3. This licence only relates to such trade or business as is specified in it.
4. This licence only relates to such place as is specified in it.
5. There shall be satisfactory drainage arrangement to prevent nuisance in the place and its neighbourhood.
6. The licence is liable to be cancelled in the event of contravention of any of these conditions.

From The West Bengal Panchayat Act, 1973

**(Part III. Panchayat Samiti, Chapter IX, Powers and duties of Panchayat Samiti –
Sections 116 – 117).**

- Powers to prohibit certain offensive and dangerous trades without licence and to levy fee.
- 116.** (1) No place within a Block shall [on conviction by a Magistrate] be used for any trade or business declared by the State Government, by notification, to be offensive or dangerous, without a licence, which shall be renewable annually, granted by the Panchayat Samiti, subject to such terms and conditions as the Panchayat Samiti may think fit to impose.
- (2) The Panchayat Samiti may levy in respect of any licence granted by it under sub-section (1) a fee subject to the maximum rate prescribed by the State Government under sub-section (1) of section 133.
- (3) Whoever uses without a licence any place for the purpose of any trade or business declared under sub-section (1) to be offensive or dangerous, or fails to comply with any condition in respect of such licence, shall be punished with a fine, which may extend to one hundred rupees, and to a further fine, which may extend to twenty-five rupees for each day after conviction during which he continues to do so.
- (4) The Panchayat Samiti may, upon the conviction of any person for failure to comply with any condition of a licence granted under sub-section (1), suspend or cancel the licence granted in favour of such person.
- Power of Panchayat Samiti to grant licence for hut or market.
- 117.** A Panchayat Samiti may require the owner or the lessee of a hat or market or an owner or a lessee of land intending to establish a hat or market thereon, to obtain a licence in this behalf from the Panchayat Samiti on such terms and conditions as may be prescribed and subject to the provisions of section 133, on payment of a fee for such licence.

Bengali Matter

<http://wblroa.in>

**Government of West Bengal
Office of the Board of Revenue, West Bengal**

No.9109 - M & M

From : Sri D. Goswami,
Deputy Secretary,
Board of Revenue,
West Bengal.

To
Shri N. Das, I.A.S.,
Collector,
Hooghly.

Dated Cal. The 13th September, 1984.

**Subject : Panelty imposed on brick fields by District
Magistrate, Hooghly.**

In continuation of Board's memo No.404 M&M dt. 12/17.1.84 on the subject noted above the undersigned is directed to say that it has been decided by the Board of Revenue in consultation with Commerce & Industries Deptt. that the price of brick earth per 100 cft. may be taken as Rs.15/- for the year 1971 and thereafter it shall be increased by 10% i.e. by Rs.1.5 each year taking 1971 as the base year. In that event the price shall be Rs.30.00 in the year 1981 as fixed by the Director of Mines.

2. Another point which has been raised as a corollary is whether the rise of Rs. 1.5 per year shall be taken into account even after 1981. It is clarified that the rise of price by Rs.1.5 each year has been agreed to by the Director of Mines. As such for the years 1982 and 1983 the rise of price of brick earth per 100 cft shall be increased at the rate of Rs.1.5 per annum till a new price is fixed by the Director of Mines for the year 1984.

D. Goswami
Deputy secretary,
Board of Revenue, West Bengal.

Memo No.9109/1(2)-M&M

Copy forwarded for information and necessary action to :-

1. Commissioner, Burdwan Division
2. Deputy Secretary, Commerce & Industries Deptt.

D. Goswami
Deputy Secretary,
Board & Revenue, West Bengal.

Calcutta
The 13th September, 1984

**Govt. of West Bengal
Land & Land Reforms Department
Writers' Buildings
Land Reforms Branch**

No.2739(18)-L. Ref.

Dated, Calcutta the 29th Sept., 2000.

From:
The Joint Secretary to the Govt. of West Bengal.

To
The District Land & Land Reforms Officer,

Sub: Matters pertaining to regularisation of unauthorised brick fields.

The problem of operation of unauthorised brickfields has been engaging the attention of the Government over the last several years. In the past, the problem led this Department to issue a number of circulars prohibiting operation of brickfields on agricultural land. But despite all provisions in the relevant Rules and executive instructions preventing unauthorised brickfields from being established, such brickfields are found to have come up and many of them continue to operate. Such brickfields frequently destroy the top soil of agricultural land irretrievably. As a matter of fact, some of such brickfields that have been in operation for a considerable period and thereby have already damaged the top soil to such an extent that the concerned parcels of land are no longer useable for agricultural purpose, unless great efforts are made to render them fit for agriculture again. The State Government has been considering the pros and cons of various ways and means of protecting the overall interests of the State while simultaneously balancing the broad environmental considerations vis-à-vis operation of the brickfields described above.

2. After giving careful consideration to all aspects of the matter, the undersigned is directed by order of the Governor to state that the Governor has been pleased to decide to regularise the following two types of brickfields that have remained unauthorised so far –

(1) the brickfields which have been operating since 1985 and afterwards and which are all located on agricultural land but due to continuous mining of earth and fixing of kiln and chulla on such lands, such land are no longer useable for agriculture and can not be reclaimed for agricultural use in foreseeable future and

(2) the brickfields which have been operating on low grade agricultural land like Danga, Baluchar, etc.

3. The undersigned is further directed to state that before any such brickfield is regularised the following conditions must be first satisfied :-

(1) If the brickfield is located on any land that is marked as agricultural land in the ROR, the prime requirement for possible regularization is to establish the usability of the land for the purpose of agriculture through a field inspection. This stipulation holds good irrespective of the exact classification of the agricultural land as might be mentioned in the RORs (i.e. Shali / Baid/ Kanali etc.)

If a field inspection reveals that a plot of land, originally shown as agricultural land in the RORs, has actually been rendered unfit for agriculture, because of, inter alia, continuous operation of a brickfield on that land and further that the same plot cannot be reclaimed for agriculture in the foreseeable future, then the Revenue Officer, having jurisdiction over the land in question and having the requisite legal authority, should

change the classification of the land in question from agricultural to non-agricultural through an appropriate proceeding under the WBLR Act.

(2) No brickfield, under any circumstances whatsoever, should be allowed to operate on orchard or forest land even where such land is not used at any given point of time, as orchard or forest. In other words, no brickfield operating on a piece of land marked as orchard or forest in the RORs, should be regularised, and no change in the classification of land should be brought about by the Revenue Officer to accommodate any brickfield.

(3) The brickfield shall use silt / earth from only specified places, wherever the I&W Department / Zilla Parishad / CPT are in a position to earmark such places. The concerned DLLRO/SDLLRO shall indicate clearly those earmarked places to the brickfield(s).

(4) The brickfield must produce a 'No Objection Certificate' from the West Bengal Pollution Control Board (or any officer in the district who have been authorised by the latter to issue such a certificate after due examination of all environmental – related facts).

(5) The brickfield must produce a certificate from the concerned Panchayat Samiti having jurisdiction over the area to the effect that the surrounding agricultural / irrigation potential will not be adversely affected and the local human habitation will not be unduly disturbed because of existence operation of the brickfield.

(6) The brickfield must produce a certificate from the concerned Public Works Department authorities / I & W Department authorities / Power generating and/or distributing authorities / Zilla Parishad to the effect that the existence / operation of the brickfield will not cause any damage to any public road, particularly any highway or ODR, any bridge or culvert, any embankment or any other public utility where the brickfield is located within a distance of 250 metres from the public road, bridge, culvert, embankment, other public utility.

(7) No brickfield that encroaches into any canal or any channel or any other drainage or irrigation system, either natural or man made, or diverts, or prevents free flow of water from these canals, channels, etc. or causes congestion of water in any way, will be regularized. Whether any brickfield so encroaches upon or diverts or prevents free flow of water or causes congestion in any manner shall be established by spot inspection and wherever necessary, in consultation with the concerned field level authorities in the State Government available in the district.

(8) A feasibility report from the concerned Mining Officer of the Mines and Minerals Directorate under the Commerce & Industries Department of the State Government should be obtained.

(9) The brickfield must pay all arrear price of brick earth / cess / taxes etc. within a cut off date to be indicated by the concerned Revenue Officer.

(10) In terms of Government of India's guidelines issued vide Notification No.S.O.763(E) dated 14.09.1999 under E.P. Act, 1986, the use of 25% fly ash by weight has been advised for manufacturing of bricks within 50 Km radius of coal based Thermal Power Project mainly for environmental reason. Accordingly, it is instructed that no brickfield within 50 Km radius of coal based TPP should be regularized unless the brickfield uses 25% of fly ash by weight for manufacturing bricks.

(11) No brickfield which is operated on tribal land by non-tribal manufacturer with or without Power of Attorney shall be regularized.

4. The undersigned is also directed to state that if a brickfield complies with the necessary requirements, the DL&LRO will send the file to the DLR&S who being satisfied that the requirements as applicable have been met will communicate clearance for issue of quarry permits.

5. The above guidelines will also apply to sand and morrum quarries with the exception that no conversion of land from agri to non-agri will be necessary for such quarries.

6. The undersigned is, therefore, directed to request him to take necessary steps for regularization of unauthorized brickfields in his district in accordance with the above guidelines. Action against the rest which will remain unauthorized, should be taken under the relevant provisions of the Mines and Minerals (Regulation and Development) Act 1957 and the West Bengal Minor Mineral Rules 1973 as amended upto date, unless there is any order from any Court of law which allows the brickfield(s) to continue to operate. In the latter cases, all details of the court cases and the orders in this behalf are to be reported to the Land and Land Reforms Department separately.

P. Banerjee
Joint Secretary to the
Government of West Bengal.

No.2739(18)/1(23)-L.Ref.

Dated : 29.9.2000

Copy forwarded for information and necessary action to :

- 1) The Secretary to the Govt. of West Bengal, Commerce and Industries Department.
- 2) The Commissioner, _____ Division,
- 3) The D.L.R. & S., West Bengal,
35, Gopalnagar Road, Alipore, Calcutta - 700 027.
- 4) The District Magistrate & Collector,

P. Banerjee
Joint Secretary to the
Government of West Bengal.

●
**Government of West Bengal
Land & Land Reforms Deptt.
Section - A II, Branch - M&M**

No. 935(18)-M&M
LR/AII/M&M-13/99

Dated, the 2nd / 22nd February, 2001

C O R R I G E N D U M

**To
The District Land & Land Reform Officer,**

In continuation of this Deptt. Memo no. 2739(18)-L.Ref. dt. 29.9.2000, the following changes are to be made as stated below:

- 1) Please insert the line in Sub-para (1) of Para - 2 of the memo "all the brick fields which have come up on or before 1.9.2000" in place of the "the brick fields and after wards".
- 2) Please read as "a distance of 45 meteres from" in Sub para 6 of Para 3 of the memo in place of "..... 250 meteres"

- 3) Please read the line as "with or without power of attorney/ Partnership Deed/ any other instrument registered or unregistered" in Sub-para 11 of Para 3 of the memo in place of "with or without power of attorney".

Sd/- Illegible
Deputy Secretary
Land & Land Reforms Deptt. W. B.

Memo No.935/1(23)-L.Ref

Dated, the 2nd / 22nd February, 2001

Copy forwarded for information and necessary action to :

- 1) The Secretary, C & I Deptt.
- 2) The Commissioner, _____ Divn.
- 3) The Director of Land Records & Surveys & Jt. Land Reforms Commissioner, W.B.,
35, Gopalnagar Road, Alipore, Calcutta – 700 027.
- 4) The District Magistrate & Collector.
- 5) The Secretary, I & W Deptt.
- 6) The Secretary, P.W. D.
- 7) The Secretary, Environment Deptt.
- 8) The Sabhadhipati _____
Zilla Parishad _____

Sd/- Illegible
Deputy Secretary to the
Govt. of West Bengal
Land & Land Reforms Deptt.

●
**West Bengal Pollution Control Board,
Howrah Regional Office,
Bhabani Bhaban, Alipore,
Kolkata -27**

Special Conditions to be given with Consent to establish (NOC):

A) Emission :-

1. Stack height – As per stack height regulation.
2. The stack should be provided with sampling port and step type ladder as per Emission Regulation Part – III of CPCB
3. Diesel Generator (_____ KVA) _____ No. (Stand by)
4. Stack _____ mtr above the roof of the generator room with residential silencer.

Stack to have sampling port, platform ladder as per Emission Regulation Part – III of CPCB.

B) Effluent :-

- 1) Process – Nil
- 2) Domestic – to be discharged through septic tank to Municipal / Panchayet drain/soak pit within the premises of unit.

C) Solid Waste : Nil

D) General :-

- 1) Considering the immediate need to protect the top soil and to find ways for safe disposal / utilization of fly ash, no brick manufacturing unit shall use top soil from any source and all brick manufacturing units within a radius of 50 km from any thermal power plant shall use fly ash at least 25% of their total quantity of raw materials for their manufacturing process.
- 2) Noise Control – Ambient noise and D.G. Set noise level not to exceed the permissible limit.
- 3) The standards / guidelines for control of noise from stationery Diesel Generator sets prescribed under notification of Ministry of Environment & Forest, Govt. of India dated 22.12.1998 namely Environment (Protection) (second amendment) Rules 1998 to be followed.
- 4) No additional machinery equipment can be installed without permission.
- 5) Machineries are to be installed in such a way that noise generating activities do not affect the immediate neighbourhood.
- 6) Good house keeping to be maintained.
- 7) Tree planting saplings in pot / along the periphery of the unit
- 8) This NOC is valid upto _____ for setting up the unit.
- 9) Gross capital investment of the unit not to exceed Rs. _____

Consent to operate application to be accompanied with copy of the following documents duly signed by the applicant.

1. Trade License
2. Manufacturing process: Flow chart and write up
3. List of machinery
4. Site plan
5. Location map
6. Drawing & details of pollution control device attached to kiln
7. NOC of the State Board. (if established after 1st January, 1997)
8. Previous 'consent to operate' (if applicable)
9. Analysis Report for gaseous and liquid waste discharged (if applicable)
10. Affidavit/Chartered Accountant's certificate / Audit Report for Gross capital investment i.e. investment on Land, building, plant & machinery without depreciation.
11. Rent receipt (if land/building rented)
12. Declaration for use of fly ash
13. If situated beyond a radius of 50 km from thermal power plant then declaration for the same.

Additional Condition to be given along with consent to operate :

1. The stack should be provided with sampling port and step type ladder as per Emission Regulation Part – III of CPCB within the time schedule.

2. Considering the immediate need to protect the top soil and to find ways for safe disposal / utilization of fly ash, it is provided that no brick manufacturing unit shall use top soil from any source and all brick manufacturing units within a radius of 50 km from any thermal power plant shall use fly ash at least 25% of their total quantity of raw materials for their manufacturing process.
3. No brick fields should use top soil and before operating in the agricultural land, all units should take necessary permission from the district authority and agricultural dept. Without such approval units may not be allowed to operate in agricultural land.
4. A drawing of fixed stack is to be submitted.
5. The emission from the stack to be kept within permissible limit.
6. Analysis report of stack emission is to be submitted within 3 months from the date of issue of this consent letter.
7. At least 100 saplings to be planted in and around the premises.

Consent to establish (NOC) application to be accompanied with copy of the following documents duly signed by the applicant :

1. No objection from local authority.
2. Manufacturing process : Flow Chart and write up
3. List of machinery.
4. Site plan.
5. Location map.
6. Drawing & details of pollution control device to be installed with kiln.
7. If situated beyond a radius of 50 Km from thermal power plant then declaration for the same.

Emission Standards :

Size	Kiln Capacity	Maximum limit for the concentration of particulate matter (mg/Nm)
Small	Less than 15000 bricks per day (less than 15 ft. trench width)	1000
Medium	15000 – 30000 bricks per day (15 - 22 ft trench width)	750
Large	More than 30000 bricks per day (more than 22 ft trench width)	750

Stack Height Regulation :

The following stack heights are recommended for optimal dispersion of Sulphur dioxide.

<u>Kiln Capacity</u>	<u>Stack Height</u>
Less than 15000 bricks per day (less than 15 ft trench width)	Minimum stack height of 22 m of induced draught fan operating with minimum draught of 50 mm water gauge with 12 m stack height.
15000-30000 bricks per day (15 - 22 ft. trench width)	Minimum stack height of 27 m with gravitational settling chamber. Or Induced draught fan operating with minimum draught of 50 mm water gauge with 15 m stack height.

More than 30000 bricks per day (more than 22 ft. trench width) Minimum stack height of 30 m with gravitational settling chamber.

Or

Induced draught fan operating with minimum draught of 50 mm water gauge with 17 m stack height.

WEST BENGAL POLLUTION CONTROL BOARD
(Department of Environment, Govt. of West Bengal)

Paribesh Bhawan

Bldg. No.10A, Block 1-A, Sector-III, Salt lake , Calcutta – 700 098

Tel: 335 0731m 335 0261, 335 8217

Fax: (0091) (033) 335-6730/335-2813

No.3240-18/WPB-F(x) '97

Dated. 05.02.2001

ORDER

WHEREAS with the prior approval of the Land & Land Reforms Department, Government of West Bengal, the West Bengal Pollution Control Board (hereinafter referred to as the 'Board') in its 117th meeting held on 19.12.2000 decided to declare and appoint the District Land & Land Reforms Officers of Government of West Bengal as ex-officio Environment Officers of the Board within their respective jurisdiction for the purpose of dealing with the matters relating to prevention and control of pollution from the Brick Manufacturing Units:

AND WHEREAS in exercise of the powers conferred under section 15 of the Air (Prevention and Control of Pollution) Act, 1981 and sub-section (3B) of section 12 of the Water (Prevention and Control of Pollution) Act, 1974, the Board in its 117th meeting decided to delegate its powers and functions under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section 21, 24, 25 & 26 of the Air (Prevention and Control of Pollution) Act, 1981 as amended from time to time to the said District Land & Land Reforms Officers and ex-officio Environment Officers within their respective jurisdiction for the purpose of dealing with the matters relating to grant and refusal of 'Consent to Establish' and 'Consent to Operate' of the Brick Manufacturing Units.

NOW THEREFORE the said District Land & Land Reforms Officers of Government of West Bengal are hereby declared and appointed as ex-officio Environment Officers of the Board within their respective jurisdictions for the purpose of dealing with the matters relating to prevention and control of pollution from the Brick Manufacturing Units; and

In exercise of the powers conferred under section 15 of the Air (Prevention and Control of Pollution) Act, 1981 and sub-section (3B) of section 12 of Water (Prevention and Control of Pollution) Act, 1974 the powers and functions of the Board under section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and under section 21,24,25 & 26 of the Air (Prevention and Control of Pollution) Act, 1981 as amended from time to time for the purpose of dealing with the matters relating to grant or refusal 'Consent to Establish' and 'Consent to Operate' to the Brick Manufacturing units are hereby delegated to the above mentioned District Land & Land Reforms Officers and ex-officio Environment Officers of the West Bengal Pollution Control Board, within their respective jurisdictions:

THIS order is issued for information and necessary action of all concerned including the owners of the Brick Manufacturing Units and District Land & Land Reforms Officers and ex-officio Environment Officers.

THIS order shall take effect on and from 1st of March, 2001.

By order of the Board
K.S. Ramasubham
Member Secretary

In the matter of W.P. No.(Civil) No.247/95, Bengal Brick Field Owners' Association and Another versus the State of West Bengal and Ors. [W.P.(C) No.412/1995].

The Bengal Brick Field Owners' Association, being a representative body of persons engaged in the activity of brick manufacturing and owning brick-fields as one of the brick-field owners, filed a writ petition under Article 32 of the Constitution of India before Hon'ble Supreme Court, laying challenge to the cesses, levied under different acts on the removal of brick-earth.

The grounds of challenge briefly stated are three in numbers.

Firstly, that the brick-earth is a minor mineral through which M and M (Development and Regulation) Act 1957 applies and by virtue of declaration made by Section 2 of the Act by reference to entry 54 in Schedule-1 to the Constitution, the field relating to such minor minerals is entirely covered by Central Legislations and hence State Legislations are not competent to levy the impugned cess.

Secondly, that the levy is on the despatch of minor mineral for sale while the process of manufacturing brick does not involve any despatch of brick-earth is consumed then and there, on the brick earth itself, in the process of manufacturing of bricks, and there being no despatch of brick earth, cess is not leviable.

Thirdly, that the State Government is not empowered to levy any cess on either the extraction of brick-earth is subjected by Central Legislation to payment of royalty which is a tax, and the same quantity of brick-earth is sought to be levied with the cess which is incompetent so far as the State Legislation is concerned.

According to State respondents, the cess sought to be levied by the impugned State Legislation is in the nature of fee and not tax. The purpose of levying fee, as stated in the preamble to the relevant legislation, is rendering different services to the society and for public benefit. The cesses have been levied by the State Government for securing of welfare to the people by the state as is enshrined in Part IV of the Constitution of India by providing employment to the poor living below the poverty line. The impugned legislations levying the cess, do not encroach upon the field covered by the central legislation. The brick-field owners extract the brick-earth as an item of trade. From every 100 cft of brick-earth which weighs 5 metric tones, 1382 bricks are manufactured. The despatch of 1382 bricks means the despatch of 100 cft. Or 5 metric tones of brick earth. A brick field owner performs dual function: firstly, he extracts a quantum of brick-earth from the quarry and secondly, he despatches the same for manufacture of bricks in the same quarry field. The brick field owner is an extractor of brick earth and also a manufacturer of bricks. The element of despatch is kept hidden. That is why the cess is now assessed on annual despatches. Despatches in the context of brick-earth, means removal of brick-earth from one place to another which may be within the same complex and for domestic and captive use or consumption. In any case, the removal of brick-earth involved in the process cannot escape assessment.

In an order dated 08.12.95 Hon'ble Supreme Court was pleased to dismiss the application of petitioners with prayer, inter alia, to pass an order to the effect that operation of the impugned acts be stayed.

Hon'ble Supreme Court was further pleased to direct that the present W.P. be tagged with Civil Appeal No. _____ in the matter of State of West Bengal Versus Kesoram Industries Ltd. and Ors. Be it noted that in an order dated 22.03.93 Hon'ble Supreme Court was pleased to give liberty to levy and collect cess, in question, subject to the condition that if constitutional validity of the Provision of Cess Acts is ultimately not upheld by this Hon'ble Court, State shall refund the amount collected together with interest at the rate of 15% per annum within two months from the date of judgement of Supreme Court.

It appears that in an order dated 15.01.2004, Hon'ble Supreme Court was pleased to dismiss the writ petition in view of majority of opinion delivered by Hon'ble Mr. Justice P. C. Lahoti, on behalf of himself and Hon'ble Mr. Chief Justice, Hon'ble Mr. Justice B. N. Agrawal and Hon'ble Dr. Justice A. R. Lakshman.

Disenting opinion was, however, passed by Hon'ble Mr. Justice S. B. Sinha.

Salient Points of majority decisions

- (1) Royalty is not a tax. The impugned cess by no stretch of imagination can be called a tax on tax. The impugned levy also does not have effect on increasing royalty.
- (2) The cess is a levy on mineral rights with impact on the land and quantified by reference to quantum of mineral produced. This distinction, though fine, yet exists and is perceptible.
- (3) The term 'Cess' is commonly employed to connote a tax with a purpose or a tax allocated to the particular thing. It also means an assessment of levy depending on the context and purpose of levy, 'Cess' may not be a tax.

Depending on the context the purpose of levy, cess may not be a tax, it may be a fee.

There is no particular charm about the challenge developed by the writ petitioner laying emphasis on the meaning of the word "Despatched" the gist and substance of what the legislature taking into account is a brick-earth actually removed. "Despatched" has the effect of taking into account, the brick-earth "removed" and not simply "moved" and left behind. The average quantity of brick-earth used in making bricks whether on the brick-field itself or on a place nearby, does involve removal and consequently despatch of the brick-earth from the place where it was to the place where it is captively consumed in making bricks.

D. K. Chaudhuri
Director of Land Records & Surveys
& Jt. Land Reforms Commissioner, W.B.

Memo No.698/670-99/CS/95

Dated, Alipur, the 29th March, 2004.

Copy forwarded to :-

1. The District Land & Land Reforms Officer,

Sd/- Illegible
For Director of Land Records & Surveys
& Jt. Land Reforms Commissioner, W.B.

●
**GOVERNMENT OF WEST BENGAL
LAND & LAND REFORMS DEPARTMENT
WEST BENGAL
WRITERS' BUILDINGS, KOLKATA - 700 001**

Section - AII : Branch : L.R.I. (M & M)

No.275(38)-M&M
LR/A-II/M&M-1/2006

Dated Kolkata, the 13th January, 2006.

From : Joint Secretary to the
Government of West Bengal.

To
The District Magistrate & Collector,
The District Land & Land Reforms Officer,.....

**Sub: Realisation of revenue for the lands
belonging to brick fields in West Bengal.**

Ref: Petition No.BBFOA/2/117/2005-06 dt. 4.1.06
of the President, Bengal Brick Field Owners' Association.

The undersigned is directed to say that land revenue in respect of lands of brick fields shall be levied at the following rates :-

(A) In non-municipal areas :

In terms of clause (f) of sub-section (1) of Section 23 of the W.B.L.R. Act, 1955 as amended upto-date.

(B) In municipal areas other than those falling under K.M.D.A.

- (a) For the space used for Kiln, Stack, Office – in terms of clause (c) of Sub-Section 2 of Section 23 of the W.B.L.R. Act, 1955 as amended.
- (b) For other space – in terms of clause (d) of Sub-Section (2) of Section 23 of the W.B.L.R. Act, 1955 (as amended upto-date).

(C) In municipal areas within K.M.D.A.

- (a) for the space used for Kiln, Stack, Office – at the commercial rates prescribed in the Kolkata Land Revenue Act, 2003 applicable for the concerned municipality.
- (b) For other space – at non-commercial rate prescribed in the Kolkata Land Revenue Act, 2003, applicable for the concerned municipality.

The undersigned is, therefore, to request him to take necessary action for realisation of revenue from brick fields accordingly.

S. Banerjee
Joint Secretary to the
Government of West Bengal.

No. 275/1(4) – M & M

Dated Kolkata, the 13th January, 2006

Copy forwarded for information and necessary action to :-

- 1) The Commissioner, _____ Division.
- 2) The Director of Land Records and Surveys & Joint Land Reforms Commissioner, West Bengal.

S. Banerjee
Joint Secretary to the
Government of West Bengal.

No.275/2(1)-M & M

Dated, Kolkata, the 13th January, 2006.

Copy forwarded to the President, Bengal Brick Field Owners' Association, 23-A, Netaji Subhas Road (3rd Floor), Kolkata – 700 001.

S. Banerjee
Joint Secretary to the
Government of West Bengal.

**GOVERNMENT OF WEST BENGAL
LAND AND LAND REFORMS DEPARTMENT
Section - A II : Branch LR I (M & M)
WRITERS' BUILDINGS, KOLKATA - 700 001.**

No.1299(38) - M&M
LR/AII/M&M - 1/2006

Dated Kolkata, the 1st March, 2006.

From:
Joint Secretary to the Govt. of West Bengal
Land & Land Reforms Department.

To

- (1) The District Magistrate & Collector,**
(2) The Dist. Land & Land Reforms Officer,

Sub : Realisation of revenue for the lands belonging to brick fields in West Bengal.

Ref : Memo No.134/650/C/2005 dt. 14.2.06 of the D.L.R. & S. and Jt. L.R.C., West Bengal.

The undersigned is directed to say that in para A of this Department's Memo No.275(38) - M & M, dt. 13.01.06, the expression "Clause (f)" should be read as "Clause (i)" as occurred due to typographical mistake.

The undersigned is, therefore, directed to request him to realise land revenue from brick fields in accordance with the above.

Sd/- Illegible
Joint Secretary to the
Government of West Bengal
Land & Land Reforms Department.

No. 1299/1(4)-M & M

Dated Kolkata, the 1st March, 2006

Copy forwarded for information and necessary action to :-

- 1) The Commissioner,
- 2) The Director of Land Records & Surveys and
Joint Land Reforms Commissioner, West Bengal,
35, Gopal Nagar Road, Alipore, Kolkata - 700 027.

Sd/- Illegible
Joint Secretary to the
Government of West Bengal
Land & Land Reforms Department.

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**GOVERNMENT OF WEST BENGAL
OFFICE OF THE ADDITIONAL DISTRICT MAGISTRATE
& DISTRICT LAND & LAND REFORMS OFFICER,
NORTH 24-PARGANAS, BARASAT.**

Memo No.1169(4)/L&LR(N)/

Date : 22.03.2006

To

The S.D.L & L.R.O. _____
The B.L. & L.R.O.,
North 24-Parganas.

Sub: Land Revenue per Satak for different uses of Lands in Brick Field.

Ref: Memo No.275(38)-M & M
 LR/A-II/M & M – 1/2006 Dated – Kolkata, the 13th January, 2006 of
 the Joint Secretary, Govt. of W.B., Land & Land Reforms Department.

In response to the Memo No., as under Ref. Land Revenue and Cesses for different uses of Lands in Brick Fields be realized as per following Chart.

Areas	Rate	
	Commercial	Non-Commercial
1. For Brick Field situated in KMDA areas and 19 Municipalities excepting Kolkata, Howrah & Bidhananagar	Rs. 175/-	Rs.35/-
2. For Brick Fields situated in Kolkata, Howrah & Bidhannagar.	Rs.200/-	Rs.45/-
3. Other Municipalities	Category: A – Rs. 150/- B – Rs. 100/- C – Rs. 75/- D – Rs. 50/- E – Rs. 25/-	Rs. 25/- Rs. 20/- Rs. 15/- Rs. 10/- Rs. 5/-
4. Panchayet Area	Rs.10/- + 15% surcharge + Cess = 8.60 total Rs. 18.60 per Satak	

Categories form A to E for lands under municipalities be treated as beyond & Vide the Kolkata Gazette, Extra ordinary, Nov. 11, 2005.

Category	Description
A	Municipal areas having population more than 2,15,000.
B	Having population above 1,70,000 but not exceeding 2,15,000
C	Having population above 85,000 but not exceeding 1,70,000
D	Having population above 35,000 but not exceeding 85,000
E	Having population not exceeding 35,000

This is for information and compliance accordingly.

It may also be noted that the proposal of the consent to operate should be furnished without any lose of time.

Sd/- Illegible
 Additional District Magistrate &
 District Land & Land Reforms Officer,
 North 24-Parganas, Barasat.

<http://wbllroa.in>