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021 (Pat.) (SN)

Patna High Court

*Hon'ble Judges : Sanjay Karol, CJ ; Partha  
Sarthy, J*

Anmol Kumar v. State Of Bihar

Civil Writ Jurisdiction Case No. 4395 Of 2020

04.02.2023

Constitution Of India, 1950, Article 14, Article 21 - Air (Prevention and Control of Pollution) Act, 1981, Section 17, Section 19, Section 31A - Environment (Protection) Act, 1986, Section 7

Environment law – Principles enunciated -  
Brick kiln –

(i) The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty.

(ii) Enterprises engaged in hazardous and inherently dangerous industry owe and absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of such activity being taken. Such enterprise is liable to compensate any harm irrespective of the reasonable care taken by it.

(iii) Economic development should not be allowed at the cost of ecology or by causing wide spread environmental destruction and at the same time such necessity of preservation should not hamper economic development unreasonably.

(iv) Courts when dealing with environment related issues must see that enforcement agencies, be it the State itself or any other authority, take steps for effective enforcement of laws.

(v) Certain resources like the air, the sea, waters and forest are of collective importance to

the people as a whole and to make them subject of private ownership is wholly unjustified.

(vi) A duty is enjoined upon the State to protect the resources for the enjoyment of general public.

(vii) The polluter pays principle means that the producer of goods or other item should be responsible for the cost of preventing and dealing with any pollution that is result of such process of production. It does not mean that a polluter can pollute and then simply pay for it.

(viii) The Stockholm declaration is the **'Magna Carta' of our environment. The objective** of all laws on environment should be to create harmony between economic and social need on one hand and environmental consideration on the other since neither can be sacrificed at the altar of the others. The required standard to judge the risk of harm to the environment or to human health is to be decided in public interest, per the reasonable person test.

(ix) Health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution of India. Proper structures for environmental decision making form part of the guarantee under Article 14 of fair treatment and protection against arbitrary action.

Advocate : Rajeev Kumar Singh, Shilpi Kesari,  
Sarvesh Kumar Singh, Ratnesh Kumar, Naresh  
Dixit, Parijat Saurabh

### Judgement

1. The present petition in the nature of public interest litigation is filed on 25.02.2020, in a nutshell seeking the following reliefs:-

(i) An enquiry against scams being perpetrated in brick kilns in Bihar;

(ii) Production of record by the authorities with respect to how many brick kilns have converted to cleaner technology within the two

years' time period according to the Notification of Ministry of Environment, Forest and Climate Change (for short, MoEFCC).

(iii) For direction to implement the above mentioned Notification and for an enquiry against those who have not followed the mandate of the Notification and for the name of the defaulters to be disclosed.

2. Subsequent to the Notification of the MoEFCC, the Bihar State Pollution Control Board issued a Notification 11.10.2017 granting time for brick-kilns within the State of Bihar to adapt cleaner technology by 31.08.2018. The methodology adopted by the Board was that those failing to adapt cleaner technology by 31.08.2018, their licence shall not be renewed. A number of the units had given affidavits that they would shift to the cleaner technology by the above said date, and those who had not done so, i.e. submitted such affidavit, the time to undertake to such a switch was extended to 31.08.2019.

3. Vide CWJC No.15962 of 2018 titled as Suman Kumar Jha v. The State of Bihar and other connected matters disposed off on 12.04.2018 (Annexure-1, Page-11), a Bench of this Court noted that the cutoff date, that is between those who had submitted an affidavit (undertaking to shift cleaner technology) and those who had not (giving premier to those who sought to delay such a shift), could not be different. In other words, two separate groups among those who were operating pre-existing units, were arbitrary and unsustainable. The operative portion of the order reads thus:-

***" 6. Having considered the facts and circumstances of the case, the Court, before coming on the merits, would indicate that in principle, there cannot be any exception to the decision of the Board and the authorities for ensuring that to protect the environment such measure was required as brick kiln units are a cause of major concern towards all the atmospheric pollution. Thus, the Court finds the decision of the Board with regard to the requirement to shifting to Cleaner Technology to be correct, fair and in fact both required and justified.***

*7. However, coming to the main issue involved in the present writ applications with regard to cut off date, the Court finds that in view of the decision taken by the Board itself, as contained in the notification no. 33 dated 15.10.2018, copy of which has been brought in the counter affidavits filed on behalf of the respondents, creation of two groups among the pre-existing units is arbitrary and unsustainable. The said distinction relates to not issuing of a C.T.O to such pre-existing units which have given an undertaking/affidavit that by 31.08.2018 they would be shifting to Cleaner Technology, whereas, with regard to pre-existing units, which had not given such undertaking/affidavit, the cut off date is 31.08.2019. The Court finds that the units which had fallen in line and which had given such undertaking/affidavit have in fact been made into a separate class, and have been visited with penal consequences as compared to the group which had not given any undertaking/affidavit, in whose case, they have been given a premium of further one year to convert to Cleaner Technology. This, in the considered opinion of the Court is not sustainable, being both discriminatory and without any sound rationale. Had the Board not taken a decision to give the benefit beyond 31.8.2019, in case of all pre-existing units, the Court would not have had any occasion to interfere. However, as has been indicated above, giving premium to pre-existing units who have chosen not to give undertaking for shifting to Cleaner Technology beyond 31.08.2018, by giving them further one year time till 31.08.2019, has to be interfered with as there has to be one single category/ group for all pre-existing units. As the Board itself has taken a decision to grant time till 31.08.2019, which the Court also feels is reasonable, the direction not to issue C.T.O. to pre-existing units, which have given undertaking/affidavit that they shall shift to Cleaner Technology by 31.08.2018, stands quashed. All preexisting units, uniformly without any distinction, shall be required now to change to Cleaner Technology latest by 31.08.2019. The Court makes it clear that such time is more than sufficient and is basically in public interest and for safeguarding further pollution to the atmosphere. The Court also records*

*that the petitioners have specifically undertaken that they would shift to Cleaner Technology latest by 31.08.2019."*

*(Emphasis supplied)*

4. The Bihar State Pollution Control Board then issued Notification bearing No.37 dated 07.12.2018 (Annexure-R/5A to counter affidavit on behalf of Respondents No.5 to 7, Page-52) by which the date to undertake a switch to cleaner technology was extended, in terms of the above order to 31.09.2019.

5. A complaint portal was then set up by the Board and vide advertisement dated 29.11.2019 (Annexure-R/B to counter affidavit on behalf of Respondents No.5 to 7, Page-52) asked to be informed about Kilns that did convert to cleaner technology. The information received therefrom was with respect to 103 kilns with such status. Subsequently, the Board under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 issued "Direction for Proposed Closure" to the said units on 17.02.2020 and on 25.02.2020 asked for affidavit with photos regarding the shift to cleaner technology. Only one replied satisfactorily and direction for closure was issued to the remaining 102 vide reference no.4979 to 5080 on 24.12.2020.

6. On 12.07.2021, this Court passed the following order:-

*"Mr. Abhimanyu Singh, learned counsel for the Bihar State Pollution Control Board, to ascertain the status with regard to physical closure of 103 brick kilns, as was directed way back on 24.12.2020. Shri Sarvesh Kumar Singh, learned counsel for the State, shall ascertain as to whether bricks manufactured out of fly ash are being utilized for construction of Government buildings or not."*

7. On 20.09.2022, this Court passed the following order:-

*"Shri Shivendra Kishore, learned Senior Counsel appearing on behalf of the Bihar State Pollution Control Board, states that at this point in time, no brick-kilns, other than the one for which permission stands accorded, are operational*

*within the State of Bihar. It is on the basis of physical verification that such statement is being made. All 102 brick-kilns which were functioning unauthorisedly, at this point in time, are not in operation.*

*Let an affidavit be filed to such effect. Also, the understanding of the Board of the notification dated 22.02.2022 issued by the Ministry of Environment, Forest & Climate Change, Government of India and the action taken report be placed on record.*

*Needful be done within a period of one week.*

*List on 29.09.2022."*

8. On 10.10.2022, this Court passed the following order:-

*"Mr. Shivendra Kishore, learned Senior Counsel for the respondent, Bihar State Pollution Control Board has placed on record the affidavit dated 27.09.2022 inter alia stating as under:-*

*"5. That the State Board vide its Supplementary Affidavit filed on 30.07.2021, submitted before the Hon'ble Court that the 102 brick-kilns were closed. That pursuant to passing of order dated 20.09.2022, all the Regional Officers of the State Board were directed to inspect the said 102 brick-kilns to ascertain that whether they are in operation or not at this point of time.*

*In this connection, it is humbly submitted that the inspection report from the Regional Officer has not been received and further two weeks time may be granted in order to file affidavit indicating status of the said 102 brick-kilns.*

*6. That with respect to, the understanding of the Board of the notification dated 22.02.2022 issued by Ministry of Environment, Forest & Climate Change, Govt. of India, it is humbly submitted that, the State Board is of the view that the said notification is applicable to 'New Brick Kilns' i.e. the brick-kilns for establishment of which steps will be taken after 22.02.2022/23.03.2022.*

*It is not applicable on existing brick-kilns, i.e. the brick-kilns which already existed before 22.02.2022. On the existing (established before*

22.02.2022) brick-kilns the earlier sitting guidelines is applicable.

In this regard, it is stated that the said notification has come into force from the date of its publication in Official Gazette. The said date is 22.02.2022, as such it is applicable from 22.02.2022 and therefore any person desirous of establishing brick-kiln after 22.02.2022 will be governed by the said notification and will have to adhere to sitting/distance guidelines as stated in the said notification.

That further with respect to conversion into zigzag technology it is stated that, in State of Bihar the cut-off dated for conversion was 31.08.2019, and the State Board since then is not granting consent to brickkilns which have not converted to cleaner technology."

As orally prayed for, three weeks' time is granted to submit the report in terms of our previous order.

List this case on 14th of November, 2022."

9. The affidavit in terms of the above order, on behalf of the Bihar State Pollution Control Board (Respondents no.5 to 7) was filed on 10.11.2022. We have perused the said affidavit. The relevant portions are extracted as under:-

"4. That with respect to present status of the 102 brick-kilns to which 'Direction for Closure' was issued earlier, it is stated that, the inspections of the said brick-kilns were carried by the answering respondent and the findings of the said inspection report is produced below in tabular chart:-

Brick-kilns which have still not converted into cleaner technology and have not obtained consent.	Brick kilns which converted and obtained consent or applied for consent.	Brick kilns which have not obtained consent.
49	35	17

"5. ... That 52 brick-kilns have taken remedial measures and have converted into cleaner technology. Further 49, brick-kilns have not converted

into cleaner technology and have not obtained consent from State Board. Against, such 49 brick-kilns unit further action is being taken and the District Magistrates of the concerned Districts are being sent letter to enforce the 'Direction for Closure' issued by the State Board to the said brick-kilns."

10. The importance of curbing and controlling pollution of all kinds cannot be understated. Scores of studies and investigations are available which unequivocally state that there exists a mismatch in the speeds of pollution and its control. It is essential to underscore the constitutional mandate, list the provisions of the Act and also the various judgments of Hon'ble the Supreme Court concerning not just air pollution and its control but protection of the environment as a whole, because air pollution is one aspect of the environment and each component thereof is inextricably connected with one another.

#### CONSTITUTIONAL PROVISIONS

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, The State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

51A.(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures."

#### STATUTORY PROVISIONS

11. The Central Government has enacted The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981, 29th March, 1981) with the following objective:-



***“An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes ...***

WHEREAS decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution;

AND WHEREAS it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution.”

12. Section 17 which enumerates the functions of the State Pollution Control Board is as under:

***“17. Functions of State Boards.—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be—***

*(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;*

*(b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;*

*(c) to collect and disseminate information relating to air pollution;*

*(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;*

*e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take*

*steps for the prevention, control or abatement of air pollution;*

*(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;*

*(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;*

*(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;*

*...”*

13. Within each State, certain areas which may be sensitive to air pollution or, for instance may be facing certain issues as a result thereof, the State Government may declare such an area as an air pollution control area. Section 19 of the Act reads thus:-

***“ 19. Power to declare air pollution control areas.—(1) The State Government may, after consultation with the State Board, by notification in the Official Gazette declare in such manner as may be prescribed, any area or areas within the State as air pollution control area or areas for the purposes of this Act.***

*(2) The State Government may, after consultation with the State Board, by notification in the Official Gazette,—*

*(a) alter any air pollution control area whether by way of extension or reduction;*

*(b) declare a new air pollution control area in which may be merged one or more existing air pollution control areas or any part or parts thereof. ...”*

14. In carrying out the functions enumerated above, the Act vests such Board with the power to give directions to any person, officer or authority in the following words:-

**“31A. Power to give directions.—** *Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*

*Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*

*(a) the closure, prohibition or regulation of any industry, operation or process; or*

*(b) the stoppage or regulation of supply of electricity, water or any other service.”*

15. It is evident from record that under Section 19 of the Act the entirety of the State has been declared an air pollution control area (Annexure R/5-C, Page-63) which entails seeking permission of the State to operate any industry.

16. The Environment (Protection) Act, 1986 [No. 29 OF 1986] was enacted on 23rd May, 1986 :-

**“to provide for the protection and improvement of environment and for matters connected there with:**

*WHEREAS the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;*

*AND WHEREAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;*

Section 7 reads thus:

**“7. Persons carrying on industry operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards .- No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.”**

**17. Hon’ble the Supreme Court has through** various judgments elucidated the importance of the protection of the environment, the constitutional mandate to do so as also the obligation under International Law.

18. Various principles have been enunciated in **land mark judgments, such as Vellore Citizens’ Welfare Forum vs. Union of India & others, (1996) 5 SCC 647; M.C. Mehta v. Union of India, (1987) 1 SCC 395; Indian Council for Enviro-Legal Action v. Union of India (1996) 5 SCC 281; M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388; M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213; Research Foundation for Science (18) v. Union of India, (2005) 13 SCC 186; Essar Oil Ltd. vs. Halar Utkarsh Samity, (2004) 2 SCC 392; Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371; Lal Bahadur v. State of Uttar Pradesh, (2018) 15 SCC 407; Tirupur Dyeing Factory Owners Assn. Noyyal River Ayacutdars Protection Assn. (2009) 9 SCC 737; Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401.**

19. The same can be summarized as under:-

(i) The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty.

(ii) Enterprises engaged in hazardous and inherently dangerous industry owe and absolute

and non-delegable duty to the community to ensure that no harm results to anyone on account of such activity being taken. Such enterprise is liable to compensate any harm irrespective of the reasonable care taken by it.

(iii) Economic development should not be allowed at the cost of ecology or by causing wide spread environmental destruction and at the same time such necessity of preservation should not hamper economic development unreasonably.

(iv) Courts when dealing with environment related issues must see that enforcement agencies, be it the State itself or any other authority, take steps for effective enforcement of laws.

(v) Certain resources like the air, the sea, waters and forest are of collective importance to the people as a whole and to make them subject of private ownership is wholly unjustified.

(vi) A duty is enjoined upon the State to protect the resources for the enjoyment of general public.

(vii) The polluter pays principle means that the producer of goods or other item should be responsible for the cost of preventing and dealing with any pollution that is result of such process of production. It does not mean that a polluter can pollute and then simply pay for it.

**(viii) The Stockholm declaration is the 'Magna Carta' of our environment.** The objective of all laws on environment should be to create harmony between economic and social need on one hand and environmental consideration on the other since neither can be sacrificed at the altar of the others. The required standard to judge the risk of harm to the environment or to human health is to be decided in public interest, per the reasonable person test.

(ix) Health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution of India. Proper structures for environmental decision making form part of the guarantee under Article 14 of fair treatment and protection against arbitrary action.

### Steps taken by the State

20. The Department of Environment, Forest Climate Change, Government of Bihar has issued letter dated 13.11.2019 that directs Works Department to ensure 100% usage of Fly Ash Bricks in the construction of Government Buildings within 300 KMs radius of Thermal Power Plant within the State (Annexure-R-2/2 of counter affidavit on behalf of the State dated 11.12.2020, Page-43). The said letter forms part of the record but illegible. It is further submitted that due to certain factors, such as quality and availability of Fly Ash Bricks within the State, the manufacturing in the Sector is not picking up pace. The Bihar State Pollution Control Board has issued **"Training Manual for Fly Ash Brick Making"** expecting that this Manual would enhance the production and utilization thereon.

21. As noted earlier, direction for closure was issued against 102 brick kilns within the State of Bihar. Vide affidavit dated 29.07.2021 filed by the Member Secretary, Bihar State Pollution Control Board, it is submitted that these 102 units are located in the following districts- East and West Champaran; Muzaffarpur; Gopalganj; Sitamarhi, Saran; Nalanda; Vaishali; Begusarai; Darbhanga; Samastipur; Supaul; Aurangabad; Gaya; and Kisanganj. Officials inspected these units between 15.07.2021 to 27.07.2021, during which majority of them were found closed due to nature of brick making being seasonal. As also few situated in East Champaran and Samastipur could not be visited due to flood situations.

22. 17 out of the said 102 Kilns have partially complied with the direction of the State Board and a few others (35 in number) have also obtained Consent to Operate. The direction for closure in respect of these units will resultantly be revoked. Those units (49 in number) which have neither converted nor obtained Consent to Operate will be proceeded against and complaint cases shall be filed against them. Letters have been sent to the District Magistrates of Vaishali and Nalanda to enforce the direction for closure. (Annexure-2 to counter affidavit on behalf of respondents 5 to 7 dated 28.09.2022, Page-472).

23. We notice that the counter affidavit filed on behalf of respondent- Central Pollution Control Board dated 29.07.2021 reiterates the statement of the petitioner that the use of top soil for the production of bricks by brick kilns destroys 6000 acres of agriculture land due to production of such red bricks as also that per million bricks produced, 200 tonnes of coal is used and 270 tonnes of CO<sub>2</sub> is produced.

24. An affidavit dated 09.08.2021 (page-461) on behalf of the respondents no.2 to 4 (State) in paras 7 and 8 submits that 3004 brick kilns have been converted to cleaner technology and 171 units now produce fly ash bricks within the State. A list of converted kilns forms part of the record from page 82 to 427.

#### Role of Judges In Cases Concerning Environmental Protection

25. Hon'ble the Supreme Court has noted that there exists no common benchmark or standard being applied by Courts in their analyses of impacts of development related projects which caused uncertainty within the law and also make the principle of sustainable development, which incorporates within itself two ideas, (i) equity between present and future generations and (ii) equity between different sections of society at present; selective. We may quote the solution proposed in *Citizens for Green Doon v. Union of India*, 2021 SCC Online SC 1243, wherein Hon'ble Dr. Justice Chandrachud speaking for the Court said:-

***"40. A cogent remedy to this problem is to adopt the standard of the 'environmental rule of law' to test governance decisions under which developmental projects are approved. In its 2015 Issue Brief titled "Environmental Rule of Law : Critical to Sustainable Development", the United Nations Environment Programme<sup>45</sup> has recommended the adoption of such an approach in the following terms<sup>46</sup>:***

***"Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connect-***

***ing it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable."***

41. UNEP has further reiterated the importance of the 'environmental rule of law' in its 2019 report titled "Environmental Rule of Law : First Global Report", where it notes:

***"Environmental rule of law is key to achieving the Sustainable Development Goals. Indeed, it lies at the core of Sustainable Development Goal 16, which commits to advancing "rule of law at the national and international levels" in order to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels."***

[...]

*Environmental law and institutions have grown dramatically in the last few decades, but they are still maturing. Environmental laws have taken root around the globe as countries increasingly understand the vital linkages between environment, economic growth, public health, social cohesion, and security. Countries have adopted many implementing regulations and have started to enforce the laws. Too often, though, there remains an implementation gap.*

*Environmental rule of law seeks to address this gap and align actual practice with the environmental goals and laws on the books. To ensure that environmental law is effective in providing an enabling environment for sustainable development, environmental rule of law needs to be nurtured in a manner that builds strong institutions that engage the public, ensures access to information and justice, protects human rights, and advances true accountability for all environmental actors and decision makers..."*

26. In *H.P. Bus Stand Management and Development Authority v. Central Empowered Com-*



mittee, (2021) 4 SCC 309, Hon'ble Apex Court observed :-

*"54. In an article in Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio [ Arnold Kreilhuber and Angela Kariuki, "Environmental Rule of Law in the Context of Sustainable Development", 32 Georgetown Environmental Law Review 591 (2020).] :*

*"One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made."*

*The point, therefore, is simply this — the environmental rule of law calls on us, as Judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding."*

27. With our own roles, being thus emphasized and the manner in which such cases are to be adjudicated, laid down as best possible, the following conclusions and directions can be arrived at.

#### Conclusion

28. It is the duty of the Government as also the Court to protect and preserve the environment as emphasized by Hon'ble the Supreme Court in Lal Bahadur v. State of Uttar Pradesh, (2018) 15 SCC 407. Although with the cutoff date to adopt cleaner technology having been clarified

by a Bench of this Court, at present, the State of Bihar should have been well on its way to a more environmentally conscious way of production of bricks. Be that as it may, it is heartening to see that the State is now taking expedient steps in that direction and more than 3000 brick kilns have shifted to cleaner technology. Not only this, all other steps must be taken, across all branches of Government to promote and foster sustainable development, that is meeting today's need without compromising that of tomorrow. The following directions are issued in this spirit:-

(i) The remaining units, 49 in number, as per the latest affidavit dated 10.11.2022, must at once be closed.

(ii) The learned District Magistrates, Vaishali and Nalanda to take immediate steps in terms of letter dated 04.11.2022 of Member Secretary, Bihar State Pollution Control Board to enforce the direction of closure notices issued for the brick kilns in their jurisdiction.

(iii) Awareness programmes with respect to air pollution in general as also the shift to use of Fly Ash Bricks be conducted by the concerned authorities all across the State to emphasize the importance of the same.

(iv) The authorities of the State to consider all mechanism, conventional and innovative to improve the ambient air quality within the State of Bihar.

(v) The State to ensure strictest possible compliance with norms in regards to environmental protection, including the curbing of pollution by all units of business, public, private etc.

(vi) It shall open for any public spirited person to agitate the same or any subsequent cause of action in respect of brick kilns and their regulation, should the need be so felt.

(vii) Registry to communicate this order to the District Magistrate(s), Vaishali and Nalanda for needful action.

29. We place on record our appreciation for the petitioner who brought this important issue to the attention of the Court as also Ms. Shilpi

Kesari, learned amicus curiae for the assistance rendered to the Court.

30. The petition stands disposed of in the above terms.

31. Interlocutory application, if any, shall stand disposed of.

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