

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

*Reserved on 16.10.2025
Pronounced on : 04.11.2025
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Case:- **WP(C) No. 2790/2025**

1. Kehar Singh age 55
S/o Bela Singh
R/o Dev Coloney Mishriwala, Kangarial,
Proprietorship K.S.Traders.
2. Rahul Singh age 35 years
S/o Sh. Rajinder Singh
R/o Mishriwala Raipur, Domana, Jammu
3. Malkeet Kour age 39 years
w/o Pawan Pal Singh
R/o Mishriwala Balwal, Jammu
4. Kapil Singla age 50 years
s/o Subash R/o A.P.Satha Dhora Nud Road
Mansar Samba
5. Rita Devi age 33 years
w/o Sukhvinder Singh Choudhary
R/o Satah Samba
6. Deepak Choudhary age 33 years
S/o Girdhari Lal, R/o Chak Banan Samba
7. Jatinder Kumar age 55 years
S/o Puran Chand R/o near Sworn Palace
Maralian Road, Krishna Nagar Jammu
8. Ramneek Singh age 50 years
S/o Jagat Singh R/o Singhpora Maralian, Miran
Sahib, Jammu

9. Shubam Singh Choudhary age 24 years
S/o Vijay Choudhary R/o Vijaypur Samba
10. Kanhaya Sharma age 25 years
S/o Shri Jeet Kumar R/o Rathian, Tehsil and
Distt.
Udhampur.

Petitioner (s)

Through: Mr. Vikram Sharma, Sr. Adv. with
Mr. Sachin Dev Singh, Adv.
Mr. Sanpreet Singh, Adv.

vs

1. Union Territory of J&K through its Chief Secretary
Govt. of J&K, Civil Secretariat, Jammu
2. Commissioner/Secretary to Govt. Department of
Geology and Mining, Civil Secretariat, Jammu
3. Inspector General of Police, Jammu
4. Divisional Commissioner, Jammu
5. Commissioner State Taxes Department, Rail Head
Complex, Jammu.
6. Director Consumer Affairs and Public Distribution
Department Jammu.
7. The Controller Legal Metrology Department, Jammu
8. Deputy Commissioner, Jammu
9. Deputy Commissioner, Kathua
10. Deputy Commissioner, Samba.

..... Respondent(s)

Through: Ms. Monika Kohli, Sr. AAG with
Mr. Adarsh Bhagat, GA
Mr. Dewakar Sharma, Dy.AG

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

BRIEF FACTS

01. The present writ petition has been filed by the petitioners under Article 226 of the Constitution of India challenging the orders issued by the District Magistrates of Kathua and Samba directing seizure of vehicles transporting bricks imported from outside the Union Territory of Jammu and Kashmir and imposing penalties under the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010 and the the Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017.
02. The petitioners, who are dealers and not manufacturers of bricks contended that the said Act and Rules apply only to brick kiln owners engaged in manufacturing within the Union Territory, and not to dealers dealing in finished bricks imported from other States. They allege that the impugned orders are arbitrary, without jurisdiction, and violative of their fundamental right to trade and commerce under Article 19(1)(g) of the Constitution.
03. The respondents, however, justify the action on the ground that the regulatory framework under the Act covers the entire brick trade, including sale, storage, and transportation, and that the impugned orders were passed to curb illegal and unlicensed trade activities in accordance with law.

SUBMISSIONS ON BEHALF OF PETITIONERS

04. Mr. Vikram Sharma, learned senior counsel appearing for the petitioners, submitted that the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010 has been enacted only to regulate and control the establishment of brick kilns in the Union Territory of Jammu and Kashmir and not to regulate the business of trading or transportation of bricks. He contended that the licensing requirement envisaged under Sections 4 to 7 of the Act read with Rule 3 of the Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017 applies only to manufacturers of bricks, not dealers who merely purchase and sell bricks.
05. Learned counsel submitted that the impugned orders passed by the Deputy Commissioners of Kathua and Samba, which directed seizure of vehicles transporting bricks from outside the Union Territory, confiscation of consignments, and initiation of prosecution under Section 21 of the Act, if any person or entity was found contravening the impugned orders, have been issued without authority of law and by misinterpreting Rule 3. According to him, Rule 3 only prohibits **“manufacture, sale or storage of bricks except by holding a valid licence”** in the context of brick kiln operations, and cannot be extended to dealers who are not engaged in manufacture.
06. Learned senior counsel argued that the Deputy Commissioners have enlarged the scope of the Act and Rules by applying licensing

requirements to dealers, which amounts to legislative overreach and is contrary to the object of the statute. He emphasized that there is no separate license prescribed either under the Act or Rules for trading, import, or storage of bricks by dealers. The only license contemplated under Section 6 is for the establishment and operation of brick kilns.

07. He further referred to Form 'A' and Form 'B' appended to the Rules to show that the license format is specific to brick kiln owners covering establishment, operation, or recommencement of brick kilns and does not cover dealers. Thus, by no stretch of interpretation Rule 3 or Section 6 of the Act can be made applicable to dealers, who are merely importing or selling bricks.
08. Mr. Sharma further contends that Rule 3 of the 2017 Rules contradicts Section 15 of the Act because under Section 15, the only restriction placed on a dealer engaged in the sale of bricks is that, they must not sell or otherwise dispose of bricks at a price exceeding the maximum fixed under Section 15 of the Act. Since the Act does not impose any requirement for dealers selling bricks to obtain a license, therefore, Rule 3 of the 2017 Rules is inconsistent with and contrary to the provisions of the parent Act.
09. Mr. Sharma also argued that the petitioners are registered Goods and Services Tax (GST) payers and their trade in bricks is duly regulated under the Goods and Services Tax Act, hence, the imposition of an additional licensing requirement under the Brick Kiln Act would amount to double regulation and violation of Article 19(1)(g) of the Constitution. The impugned orders, therefore, are ultra vires, arbitrary, and deserve to

be quashed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

10. Per contra, learned Sr. AAG Mrs. Monika Kohli, appearing on behalf of the respondents, at the very outset, referred to paragraph 2 of the petition, wherein the petitioners have specifically admitted that they are dealers operating in various parts of the Union Territory of Jammu and Kashmir and have been engaged in the trade of procurement and sale of building materials, such as iron, construction material, and bricks for several years. In view of this categorical admission, it does not lie in the mouth of the petitioners to contend that they are merely dealers and, therefore, outside the ambit of Rule 3 of the 2017 Rules.
11. She has further drawn the attention of the Court to Section 2(e) of the definition clause of the J&K Brick Kiln (Regulation) Act, 2010, which defines a dealer as a person carrying on the business of selling bricks. Accordingly, any person engaged in the business of selling bricks falls within the scope of this definition and is, therefore, required to obtain a license under Rule 3 of the Brick Kilns (Regulation) Rules, 2017, which govern the manufacture, sale, and storage of bricks.
12. Learned Senior AAG further emphasized the object and purpose underlying the Jammu and Kashmir Brick Kilns (Regulation) Act, 2010, a perusal whereof reveals that the same has been enacted with the intent to regulate and control the establishment and functioning of brick kilns

within the Union Territory, and to provide for matters *connected therewith or incidental thereto*. In furtherance of this objective, the legislature has incorporated provisions under Sections 12, 13, 14, and 15 of the Act.

13. Adverting to Section 12(iii), learned counsel submitted that it expressly empowers the Licensing Authority, or any person duly authorized by the Government in this behalf, to stop and inspect any vehicle or cart in which bricks are being transported for purposes of sale, supply, storage, or otherwise. Moreover, Section 12(iv) authorizes the Licensing Authority to seize any bricks found in the premises of any person or in any vehicle or cart, where there exists reason to believe that a contravention of the provisions of the Act or the Rules framed thereunder has been, is being, or is about to be committed.
14. Placing reliance upon these statutory provisions, Mrs. Kohli contended that the impugned orders have been issued by the concerned Deputy Commissioner strictly in exercise of powers conferred under the Act and in furtherance of its regulatory object. It is submitted that the issuance of such orders, is intended solely to ensure effective supervision and control over the operation of brick kilns in the Union Territory. Accordingly, the impugned action, being in consonance with the statutory framework and aimed at advancing the object of the legislation, cannot be challenged on any legal ground.
15. Ms. Monika Kohli has further drawn the attention of this Court to Rule 3 of the Jammu and Kashmir Brick Kilns (Regulation) Rules, 2017. The said Rule, she submits, comprehensively encompasses three distinct

contingencies, namely, the manufacture, sale, and storage of bricks. Thus, the scope of Rule 3 is not confined solely to manufacturers but extends equally to dealers engaged in the process of manufacturing, selling, offering for sale, storing for sale, or possessing bricks for the purpose of sale or disposal, or for consigning the same to any person for sale or storage. Accordingly, the ambit of Rule 3, by necessary implication, applies both to manufacturers and dealers alike.

16. Upon a specific query from this Court as to whether the restrictions imposed under the impugned orders constitute reasonable restrictions under Article 19(1)(g) as per the constitutional mandate or otherwise, Ms. Kohli submitted that the respondents have not imposed a blanket prohibition upon the petitioners preventing them from importing bricks into the Union Territory, selling them to consumers, or stocking them therein. Rather, the respondents have merely required that such activities be undertaken only upon obtaining a valid license from the competent authority. It is submitted that in the absence of such a license the petitioners cannot be permitted to engage in the sale, manufacture, stocking, or holding of bricks within the Union Territory.
17. Mr. Adarsh Bhagat, learned Government Advocate appearing on behalf of the respondents, also drew the attention of this Court to the preamble of the Jammu and Kashmir Brick Kilns (Regulation) Act, 2010, which emphasizes that the said Act was promulgated to regulate and control the establishment of brick kilns in the Union Territory, and to provide for *matters connected therewith or incidental thereto*. According to him, this

preamble encompasses all three contingencies mentioned in Rule 3 of the Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017, which stipulates that no person shall manufacture, sell, or store bricks without holding a valid licence. He further submitted that Rule 3 explicitly governs the manufacture, sale, and storage of bricks, thereby making it mandatory for dealers also to obtain a valid licence under the J&K Brick Kiln (Regulation) Rules, 2017.

18. Mr. Adarsh Bhagat, learned Government Advocate, has further contended that the petitioners have no *locus standi* to file the instant petition, as they have failed to establish any cause of action. In the absence of a cause of action, the present petition, according to him, is not maintainable and is premature. In addition, he submitted that the petitioners approached this Court directly without first filing any representation before the competent authority for redressal of their grievance, and therefore, the writ petition is not maintainable.
19. Lastly, learned counsel submitted that the very object and purpose of promulgating the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010 was with a view to boost local brick kiln industry within the Union Territory of Jammu and Kashmir. He further contended that the said Act is a piece of beneficial legislation, intended to protect and promote the interests of consumers as well as to ensure the orderly and sustainable functioning of brick kiln establishments. It is in the backdrop of these objectives that the said enactment has been framed.

20. Mr. Rahul Pant, learned Senior Counsel, although having filed an application seeking impleadment in the instant petition, he has not yet been impleaded as a party, but in the interest of doing complete justice, this Court has directed Mr. Rahul Pant to render his valuable assistance in the matter.
21. Mr. Rahul Pant, at the very outset has referred to various statutory provisions including Sections 13, 14, 15, 18, 21, and 22 of the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010, which provide a complete mechanism regarding various aspects of regulation, including fixation of the size and quality of bricks, restrictions on the sale of manufacturers and dealers, as well as provisions relating to the issuance of sale bills and maintenance of accounts. He further referred to the penalty provision contained in Section 21 of the said Act.
22. He also referred to Section 22, which provides that no court shall take cognizance of any offence punishable under the Act except upon a written report of facts constituting such offence made by the Licensing Authority or by any other person duly authorised by the Government in that behalf.
23. Lastly, learned Senior Counsel submitted that, in view of the object and regulatory scheme of the Act and the Rules framed thereunder, the petitioners were required to obtain a valid licence before carrying on the said activity. He contended that the very purpose of the Act and the Rules framed thereunder is to regulate and control the establishment and functioning of brick kilns, encompassing all *matters connected therewith*

or incidental thereto.

LEGAL ANALYSIS.

24. Having heard the learned counsel for the parties at length and upon perusal of the material placed on record, this Court is of the considered view that the following issues arise for determination in the present matter.

(i) Whether the licensing requirement under Rule 3 of the Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017 extend to dealers in addition to manufacturers.

(ii) Whether the Deputy Commissioners, as Licensing Authorities under the Act, were legally empowered to issue and enforce the impugned orders.

(iii) Whether registration under the Goods and Services Tax (GST) Act, 2017 exempt the petitioners from the requirement of licensing under the Brick Kiln Act.

(iv) Whether the writ petition is maintainable in view of the availability of an alternative statutory remedy under the Jammu & Kashmir Brick Kiln Act, 2010.

(v) Whether the statutory requirement of obtaining a licence infringe the petitioners' fundamental right to carry on trade or business

under Article 19(1)(g) of the Constitution.

ISSUE 1. *Whether the licensing requirement under Rule 3 of the Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017 extend to dealers in addition to manufacturers.*

- 25.** The core issue that falls for determination is the interpretation of Rule 3 of the Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017, which stipulates that no person shall manufacture, sell, store, or possess bricks for sale without a valid licence. The petitioners contend that the licensing requirement is confined only to manufacturers of bricks and does not extend to dealers. However, the legislative intent, the language employed in the statute, and the overall scheme of the Act indicate, otherwise.
- 26.** The petitioners' argument proceeds on the assumption that the inclusion of the term "dealer" in Rule 3 is inadvertent and that the legislative intent was limited to regulating manufacturers alone. Such contention is misconceived and contrary to both the express text and the underlying purpose of the statute. The Jammu and Kashmir Brick Kiln (Regulation) Act, 2010 (hereinafter referred to as "the Act") is a special legislation enacted with the expressed object, as reflected in its preamble, *"to regulate and control the establishment of brick kilns in the Union Territory of Jammu and Kashmir and to provide for matters connected therewith or incidental thereto."* The provisions of the Act are thus designed to ensure proper regulation of the brick kiln industry, prevent unauthorized operations, and maintain environmental, economic, and

industrial balance.

27. Section 2(e) of the Act defines a “dealer” to mean a person engaged in the business of selling bricks. The very inclusion of this definition indicates that the legislature consciously brought dealers within the ambit of regulation. It reflects the intent that all participants in the brick trade, including dealers, must function under the same regulatory supervision as manufacturers.
28. A reference to Sections 5 and 6 of the Act, which are reproduced below, makes the position clear:

Section 5:

Appointment of Licensing Authority. - The Government may, by notification in the Government Gazette,-

(a) appoint such officers of the Government as it thinks fit to be the licensing authorities for the purposes of this Act; and

(b) define the limits within which such a licensing authority shall exercise the powers conferred on a licensing authority by or under this Act.

Section 6:

Grant of licence. - (1) Any person desiring to establish a brick kiln in an area of the State conforming to the conditions laid in section 4, shall make an application to the licensing authority of the area for grant of licence for the establishment of a new brick kiln and for commencing brick manufacturing operations thereon.

(2) Any owner of a defunct kiln desiring to recommence the brick manufacturing operations shall make a like application to the licensing authority of the area for grant of a licence for recommencing the brick manufacturing operations in such kiln.

(3) An owner of an existing kiln shall within thirty days from the commencement of the Act make an application to the licensing authority of the area for the grant of a licence for continuing brick manufacturing operations in that kiln.

(4) Every application under sub-section (1) and sub-section (2) shall be made in the prescribed form and shall contain the particulars regarding the location of brick kiln, the size and type thereof and such other particulars as may be prescribed . It shall invariably be accompanied by the following documents:- I. site plan and Revenue extract duly attested by concerned Tehsildar indicating the title, location, status and type of land; II no-objection certificates from - (i) Deputy Commissioner concerned; (ii) State Pollution Control Board; (iii) Divisional Forest Officer concerned; (iv) Wildlife Warden concerned; (v) Director, Geology and Mining; (vi) District Agriculture Officer concerned; (vii) Block Medical Officer concerned; (viii) Tehsil Education Officer concerned; (ix) The Executive Engineer (PWD/R&B) concerned; and (x) Tehsildar concerned.

(5) If, on receipt of an application for grant of licence, the licensing authority is of the opinion that it is necessary so to do for ensuring adequate supply of bricks, it may, subject to the provisions of sub-section (6),- (a) grant the licence specifying therein the period within which the kiln is to be established or, as the case may be, the kiln is to recommence brick manufacturing operations; (b) in the case of the existing kiln grant of licence for continuous brick manufacturing operations in that kiln, on such conditions (including such conditions as to the improvements to existing machinery, replacement of existing machinery and use of such improved methods of brick manufacturing as may be necessary to eliminate air and water pollution) as may be prescribed.

(6) Before granting licence under sub-section (5), the licencing

authority shall make or shall cause to be made a full and complete investigation in the prescribed manner in respect of the application having due regard to the following, namely:- (a) the suitability of the locality wherein the proposed kiln is to be established; (b) the number of kilns operating in the area; (c) whether such kiln is not detrimental to the health of general public, habitations, water resources, fauna and flora in close proximity; (d) whether such kiln is proposed to be set up on land which is or was put to agricultural use, save as that the existing brick kilns, if set up on such land, though categorized as "Banjar Kadim", should be relocated within a period of [seven years] and punitive action shall be taken for non-compliance as per the rules to be framed under this Act; (e) the setting up of brick kilns should be allowed on the areas considered suitable for the purpose without any detrimental effect to the agricultural/productive land; and (f) such other particulars conditions as may be prescribed.

(7) A licence granted under this section shall be valid for a period of two years from the date of its issue and may be renewed for a period of two years at a time subject to obtaining of Royalty Clearance Certificate from the Geology and Mining Department.

(8) In granting licence under this section the licensing authority shall give preference to a defunct kiln over anew brick kiln provided it fulfills the criteria laid down under the Act and the rules made thereunder.”

29. Sections 5 and 6 of the Act empower the Government to implement a licensing system governing the establishment and operation of brick kilns. While Section 6 predominantly focuses on licensing for establishment and operation, it does not exclude dealers from the regulatory purview. Furthermore, Section 23 authorizes licensing authorities to inspect, seize,

and take appropriate action against unauthorized persons operating in contravention of the Act.

30. The Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017 (hereinafter “the Rules”), framed under Section 26 of the Act, elaborate the procedural framework for licensing. Rule 3 explicitly provides that ***“No manufacturer or dealer shall manufacture, sell, or store bricks except by holding a valid licence issued under these Rules.”*** The express inclusion of both manufacturers and dealers in this Rule leaves no scope for doubt that the licensing requirement applies equally to both.
31. This Court relies upon the observation made by Hon’ble Apex Court in a case titled as ***J. Jayalalitha v. Union of India***, reported as (1999) 5 SCC in which the Court, wherein the Court, held as follows:

“The dictionary meaning of the word “or” is “a particle used to connect words, phrases, or classes representing alternatives”. The word “or”, which is a conjunction, is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing but at times to mean “and” also. Alternatives need not always be mutually exclusive. Moreover, the word “or” does not stand in isolation and, therefore, it will not be proper to ascribe to it the meaning which is not consistent with the context of Section 3. It is a matter of common knowledge that the word “or” is at times used to join terms when either one or the other or both are indicated. Section 3 is an empowering section and depending upon the necessity the Government has to appoint Special Judges for an area or areas or case or group of cases. Even in the same area where a Special Judge has already been appointed, a necessity may arise for appointing one more Special Judge for dealing with a particular case or group of cases because of some special features of that case or cases or for some other special reasons. We see no good reason to restrict the power of the Government in this behalf by giving a restricted meaning to the word “or”. In our opinion, the word “or” as

used in Section 3 would mean that the Government has the power to do either or both the things. Therefore, the first contention raised on behalf of the appellants has to be rejected.”

32. The regulatory framework is therefore designed to cover the entire chain from manufacture to sale to safeguard public interest, maintain quality standards, and prevent environmental degradation. The licensing system operates as a substantive regulatory instrument rather than a mere procedural formality, ensuring fair competition and economic stability in the local brick industry.
33. For facility of reference, it would be apt to reproduce Section 15 of the Act which reads as follows:

Section 15:

Restrictions on sale by manufacturer and dealers. —(1) No manufacturer or dealer shall sell or offer for sale or otherwise dispose off, to any person bricks for a price or at a rate exceeding the maximum fixed under section 13. (2) Where bricks are sold, offered for sale or otherwise disposed off in contravention of sub-section (1), by a manufacturer or dealer or through any person employed by him or acting on his behalf, such person and also unless they prove that they exercised due diligence to prevent such contravention, the manufacturer or dealer, as the case may be, and any person having the charge on behalf of the manufacturer or dealer of the place where such contravention occurred, shall be liable to punishment provided by section 21, whether or not they were present when the contravention occurred.

34. Upon a close examination of Section 15 of the Act and Rule 3 of the 2017 Rules, it becomes evident that the alleged inconsistency between the two provisions is illusory. Section 15 uses the expression “no manufacturer or dealer shall sell or offer for sale,” thereby signifying that both categories are subjected to identical statutory obligations. The legislative intent is thus clear both manufacturers and dealers are bound by the same regulatory framework, encompassing not only price restrictions under

Section 15 but also the licensing requirements under Rule 3 of the Rules. Accordingly, the argument that Rule 3 imposes an unauthorized or excessive burden on dealers is devoid of merit.

35. Furthermore, it is a well-settled principle of law that, in order to give effect to the intention of the legislature, it is sometimes necessary to interpret the conjunctions “and” and “or” as interchangeable. This principle finds affirmation in the judgment of Hon’ble Supreme Court in ***Ishwar Singh Bindra v. State of U.P.*, 1968 SCC OnLine SC 98, wherein the Hon’ble Court observed as under:**

“In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that “and” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as “or”. Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that “to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions ‘or’ and ‘and’ one for the other”.

36. It was further contended by the petitioners that the Form ‘A’ and Form ‘B’ appended to the Rules to show that the license format is specific to brick kiln owners covering establishment, operation, or recommencement of brick kilns and does not cover dealers. In view of the same, Rule 3 or Section 6 cannot be applied to dealers who are merely importing or selling bricks.
37. Perusal of Forms reveal that there are four forms, i.e., Form ‘A’, Form ‘B’, Form ‘C’, and Form ‘D’ appended to the Jammu and Kashmir Brick

Kiln (Regulation) Act, 2010 . While Form ‘A’ pertains to the license for the establishment of a brick kiln, Form ‘B’ relates to the license for manufacture, sale, and supply of bricks. Therefore, Form ‘B’ would also encompass dealers, as it does not merely employ the term ‘manufacture’ but expressly includes ‘sale and supply’. Since dealers are engaged in the sale of bricks, they would necessarily fall within the ambit of Form ‘B’.

38. A conjoint reading of the Act and the Rules demonstrates that the licensing requirement serves important public and economic objectives. It ensures that the brick trade operates within legal and environmental parameters, curbs the sale of substandard or illegally manufactured bricks, prevents tax evasion, and promotes transparency in the trade. The unchecked import and sale of bricks from outside the Union Territory without such licensing control would lead to hoarding, black marketing, and price manipulation, ultimately destabilizing the local market and harming licensed manufacturers who operate lawfully under environmental and fiscal obligations
39. This court is of the considered view that legislative intent behind the Brick Kiln (Regulation) Rules, 2017 is to ensure effective control over the *entire brick trade chain* from manufacture to sale, storage, and distribution. The licensing system serves as a regulatory safeguard to maintain transparency in trade, prevent hoarding and illegal operations, protect the interests of lawful brick producers, and preserve the stability of the local economy. If unregulated import of bricks were to be permitted, it would open avenues for speculative hoarding, black marketing, and dumping of cheap or

substandard material from outside the Union Territory, thereby eroding consumer protection and adversely affecting local employment and revenue generation. Therefore, every person engaged in the manufacture, sale, storage, or transportation of bricks is required to obtain a valid licence under Rule . Thus, it can be safely concluded that in addition to manufactures, Rule 3 extends to dealers as well.

40. Issue No.1 is answered accordingly.

ii) Whether the Deputy Commissioners, as Licensing Authorities under the Act, were legally empowered to issue and enforce the impugned order?

41. Upon careful consideration of the statutory scheme of the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010 (hereinafter referred to as “the Act”), this Court finds no substance in the contention advanced on behalf of the petitioners that the impugned orders could have been issued only by the Government and not by the Deputy Commissioners.

42. Rule 4 of the *Jammu and Kashmir Brick Kiln (Regulation) Rules, 2017* expressly provides that *“for the purpose of section 5 of the Act, the Deputy Commissioner of the concerned District shall exercise the powers of Licensing Authority within their respective territorial jurisdiction.”*

43. Section 5 of the Act specifically empowers the Government to appoint such officers as it deems fit to act as the Licensing Authority for the purposes of the Act. In exercise of this power, the Government has duly

notified the Deputy Commissioners of the respective districts as Licensing Authorities. Once such delegation stands validly made, the Deputy Commissioners are vested with all statutory powers that the Act confers upon the Licensing Authority, including those under Sections 6 and 12 of the Act. For the facility of reference, section 12 of the Act is reproduced hereunder:

“12. Power of inspection. - The licensing authority or, any other person authorized by the Government in this behalf shall have the right,- (i) to enter and inspect any brick kiln; (ii) to seize or order the production of any document, books, register or records in the possession of owner or any person having control of or employed in connection with any brick kiln if he has reason to believe that contravention of the provisions of this Act or the rules made thereunder has been or is being or is about to be committed; (iii) to stop and inspect any vehicle or cart in which bricks are being carried for sale, supply or storage or for any other purpose; and (iv) to seize bricks found in the premises of any person or any vehicle or cart in respect of which he has reasons to believe that contravention of the provisions of this Act or the rules made thereunder has been or is being or is about to be, committed.”

44. These powers are wide and coercive in nature, but they are integral to the regulatory and enforcement mechanism envisaged under the statute to ensure lawful operation of brick kilns and to prevent illegal trade in

construction materials. The exercise of such powers must comply with the settled principles of fairness, reasonableness, and proportionality, as enshrined under Article 14 of the Constitution of India.

45. In the present case, the material on record reveals that the Deputy Commissioners of Kathua and Samba, acting in their statutory capacity as Licensing Authorities, issued orders directing seizure of vehicles and consignments found engaged in transportation and sale of bricks without valid licences. The petitioners have not placed any material to demonstrate that such seizures were either actuated by mala fides or effected without adherence to the statutory safeguards. On the contrary, the impugned orders show that the action was taken to curb unlicensed trading activity within the territorial jurisdiction of the concerned districts, thereby ensuring compliance with the Act and the Rules of 2017.
46. It further appears that the Deputy Commissioners, acting as Licensing Authority or through their authorised officers, issued the impugned prohibitory orders restraining the any person or entity from manufacturing, selling, storing, or transporting bricks without valid licences, and issued directions to seize the vehicles and materials found to be in violation of the Act. Such actions are expressly sanctioned under Section 12 of the Act and are regulatory in nature, aimed at preventing unlawful operations and ensuring adherence to the statutory framework.
47. This Court finds that the action of the Deputy Commissioners, being in consonance with Section 12 of the Act and supported by statutory authority, cannot be termed arbitrary or illegal. The impugned directions

of the statutory authority of seizure of vehicles and confiscation of bricks besides imposing penalties are, therefore, upheld as lawful measures taken in furtherance of the regulatory object of the Act.

48. Issue 2 is accordingly answered.

ISSUE 3. *Whether registration under the Goods and Services Tax (GST) Act, 2017 exempt the petitioners from the requirement of licensing under the Brick Kiln Act;*

49. The petitioners have sought to draw a parallel between their registration under the Goods and Services Tax Act and the licensing requirement under the Brick Kiln Act, contending that compliance with the former should suffice for carrying on trade. This contention is vitiated by a fundamental misconception of the true nature and object of the two statutes.

50. The Goods and Services Tax (GST) Act is a fiscal enactment concerned with taxation of supplies of goods and services. It regulates revenue collection, not the legality of the trade itself. Licensing statutes, on the other hand, are regulatory instruments designed to ensure that the activity being taxed is lawful, safe, and compliant with public policy. The two operate in distinct and non-conflicting fields.

51. A trader's GST registration merely signifies that they are registered for tax purposes and it does not authorize them to engage in any particular trade without fulfilling sector-specific regulatory obligations. To hold otherwise would mean that payment of tax legitimizes any activity, however illegal

or harmful, which would be an absurd proposition. Hence, the plea of the petitioners that GST registration exempts the petitioners from the requirement of obtaining a brick trading licence is devoid of merit.

52. The petitioners have sought to equate registration under the *Goods and Services Tax Act, 2017* with compliance under the *Jammu and Kashmir Brick Kiln (Regulation) Act, 2010* and the *Rules of 2017*, contending that once they are registered under the GST regime, no separate licensing under the Brick Kiln Act is necessary for carrying on their business.
53. The *GST Act* is a **fiscal legislation**, enacted to regulate **the levy and collection of tax on the supply of goods and services**. It does not confer or regulate the right to conduct any specific business or activity; rather, it presupposes that such business is otherwise lawful and duly authorised under applicable laws.
54. The *Brick Kiln (Regulation) Act, 2010*, on the other hand, is a **regulatory statute** intended to govern the **establishment, operation, and environmental compliance of brick kilns**, to protect public health, agricultural land, and ecological balance. Its licensing requirement is a condition precedent to the lawful conduct of the activity itself.
55. The two enactments, therefore, operate in distinct and non-overlapping fields as the former is in the domain of taxation, and the latter in the domain of regulation and control of trade in a specified commodity. A registration under the GST Act merely enables the State to levy and collect tax on a transaction and it cannot, by any stretch of interpretation,

legalize an otherwise unlicensed or prohibited activity.

56. This Court finds that registration under the GST Act neither dispenses with nor substitutes the requirement of licensing under the Brick Kiln Act. The contention that payment of tax legitimizes the business, even in the absence of a valid licence, would lead to an absurd result effectively allowing tax compliance to override statutory prohibitions or public welfare measures.
57. Accordingly, the plea raised by the petitioners that registration under the GST Act, 2017, exempts them from obtaining a licence under the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010, is wholly misconceived and untenable in law.
58. **Therefore, the issue No.(III) is answered accordingly in favour of respondents and against petitioners.**

iv) Whether the writ petition is maintainable in view of the availability of an alternative statutory remedy under the Jammu & Kashmir Brinck Kiln Act, 2010.

59. It is trite law that when a statute provides an efficacious remedy by way of appeal or review, a writ petition should not ordinarily be entertained unless exceptional circumstances exist. The doctrine of exhaustion of remedies is founded upon judicial discipline and respect for legislative intent.
60. Section 20 of the Act makes it clear that any person aggrieved by a decision of the licensing authority may, within a period of thirty days from

the date on which the decision is communicated to him, prefer an appeal to Appellate Authority as may be appointed by the Government in this behalf .

For facility of reference, it would be apt to reproduce Section 20 of the Act which reads as follows:

Section 20:

Appeals. —(1) Any person aggrieved by a decision of the licensing authority may, within a period of thirty days from the date on which the decision is communicated to him, prefer an appeal to Appellate Authority as may be appointed by the Government in this behalf ; provided that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days but not later than sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) On receipt of any appeal under sub-section (1), the Appellate Authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

61. It is notable that the petitioners have approached this Court directly without filling representation against the prohibitory orders of District Magistrates of Kathua and Samba before Competent authority. Moreover, they ought to have applied first to the licensing authority for grant of license and, if aggrieved by any order of rejection or cancellation, should have preferred an appeal as provided under the Act or Rules. Since the petitioners have projected grievance against general orders issued by

Deputy Commissioners, inspite of the fact that the impugned orders have not been endorsed to them, but the petitioners have projected that impugned orders are applicable to them. Be that as it may, the petitioners if aggrieved of aforesaid orders, were under an obligation to challenge the same before the appellate authority. Having bypassed the aforesaid authority under law, the very filing of writ petition is under a clout. The petitioners have failed to justify the action in this regard.

62. In administrative law, exhaustion of statutory remedies is a well-established principle that requires aggrieved parties to seek relief through the prescribed statutory channels before invoking judicial intervention.
63. The Hon'ble Supreme Court in case titled as **M/S. south indian bank ltd versus Naveen Mathew Philip & anr. Reported as 2023 17 SCC 311** has held as under:

“27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion”

64. In the present case, the Brick Kiln (Regulation) Act provides for an administrative hierarchy where grievances against licensing decisions can be addressed. The petitioners have neither applied for a licence nor availed any statutory remedy. Instead, they have directly invoked the extraordinary jurisdiction of this Court. The writ petition is thus

premature.

65. This Court does not find any extraordinary circumstance warranting interference at this stage. The petitioners have an adequate statutory remedy available to them. Judicial review cannot be used to bypass administrative procedures unless the impugned action is patently without jurisdiction or in violation of natural justice, neither of which is demonstrated here.

v) Whether the statutory requirement of obtaining a licence for dealing in bricks infringe the petitioners' fundamental right to carry on trade or business under Article 19(1)(g) of the Constitution.

66. The petitioners have also questioned the constitutional validity of the licensing framework under Article 19(1)(g), asserting that it infringes their right to trade and business. The right to carry on trade or business, though fundamental, is not absolute. Article 19(6) expressly authorizes the State to impose reasonable restrictions in the interest of the general public.
67. The regulation of the brick industry clearly serves public interest. The industry impacts land use, environmental quality, and employment conditions. Licensing ensures that brick kilns operate within permissible environmental norms and that trade in bricks originates only from lawful sources. The licensing condition thus has a direct nexus with legitimate state objectives.
68. The Hon'ble Supreme Court in the case of **Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others**

reported in (2016) 7 SCC 353 has held as under:-

“...57 . It is well settled that the right under Article 19(1)(g) is not absolute in terms but is subject to reasonable restrictions under clause (6). Reasonableness has to be determined having regard to the nature of right alleged to be infringed, purpose of the restriction, extent of restriction and other relevant factors. In applying these factors, one cannot lose sight of the directive principles of State policy. The Court has to try to strike a just balance between the fundamental rights and the larger interest of the society. The Court interferes with a statute if it clearly violates the fundamental rights. The Court proceeds on the footing that the legislature understands the needs of the people. The Constitution is primarily for the common 7 man”

69. The brick kiln licensing framework satisfies all four prongs. It is narrowly tailored, applying only to those engaged in manufacture or trade; it does not prohibit trade but merely regulates it; and the burden imposed obtaining a licence is minimal compared to the societal benefits of environmental protection and lawful commerce.

70. Furthermore, Article 303 of the Constitution of India reads as follows:

1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2)Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

71. Article 303(1) of the Constitution commences with a prohibitory clause, providing that neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule. In effect, the Article circumscribes the legislative competence of both Parliament and the State Legislatures to ensure that no enactment in relation to trade and commerce results in preferential treatment or discriminatory application between one State and another. It, however, does not curtail the general competence of the Legislature to impose reasonable restrictions as envisaged under the constitutional scheme, provided such restrictions operate uniformly and are not discriminatory in nature.

72. In the instant case, the licensing obligation prescribed under Rule 3 of the 2017 Rules is applicable in equal measure to all dealers engaged in the trade of bricks, irrespective of whether the bricks are manufactured within

the Union Territory of Jammu and Kashmir or brought from any other State. The said provision, therefore, does not occasion any preference or discrimination between intra-State and inter-State trade. The restriction is regulatory in character, uniformly applicable, and thus falls within the ambit of reasonable restrictions permissible under the Constitution, being in conformity with the spirit and mandate of Article 303.

73. Thus, it can be safely concluded that the statutory requirement of obtaining a license for dealing in bricks doesn't infringe the fundamental right to carry on trade or business under Article 19(1)(g) of the Constitution. Accordingly, the restriction imposed by Rule 3 is a constitutionally permissible regulatory measure under Article 19(6).

74. **Therefore, issue number (v) is decided accordingly in favour of respondents and against the petitioner.**

CONCLUSION:

75. In light of the aforesaid discussion, whereby all the legal questions formulated by this Court have been answered in favour of the respondents and against the petitioners, this court is of the considered view that the Jammu and Kashmir Brick Kiln (Regulation) Act, 2010 and the Rules framed thereunder in 2017 constitute a comprehensive regulatory framework intended to control not only the establishment and operation of brick kilns but also the trade, sale, storage, and distribution of bricks within the Union Territory. The inclusion of the term *dealer* under Section 2(e) and the express language of Rule 3 clearly manifest the legislative

intent to bring both the manufacturers as well as dealers within the fold of the regulation.

76. The contention that the Act applies only to manufacturers cannot be accepted. The preamble itself contemplates regulation of matters *incidental thereto*, which necessarily includes the sale and storage of bricks. Any interpretation excluding dealers would frustrate the very object of the Act, rendering it ineffective and encouraging unregulated brick trading operations that evade quality checks, environmental standards, and lawful taxation.
77. Further, the contention of the petitioners that the registration under the Goods and Services Tax Act, 2017, exempts them from the requirement of obtaining a license under the Brick Kiln Act, is misconceived and is hereby rejected. The two enactments operate in distinct spheres while GST registration pertains to fiscal compliance and tax collection, the Brick Kiln Act is a regulatory statute aimed at environmental protection and land use control. Compliance in conformity with one statute does not dispense with the mandatory requirements of another statute operating in a different field.
78. Further, the contention that the said rule is violative of Article 19(1)(g) of the Constitution is not tenable in the eyes of law, in light of the fact that the licensing framework neither prohibits the carrying on of trade nor imposes unreasonable restrictions thereon, rather it merely regulates the same. The conditions prescribed under the Rules are regulatory in nature, intended to ensure that brick kilns operate in conformity with

environmental safeguards, public health considerations, and land use norms. Such regulatory restrictions are squarely covered under clause (6) of Article 19 of the constitution of India.

79. Further the objection raised by the respondents regarding the maintainability of the writ petition also merits acceptance. The Brick Kiln Act and the Rules framed thereunder provide for an appellate mechanism against orders passed by the licensing authorities. The petitioners, without availing such statutory remedies, have invoked the extraordinary jurisdiction of this Court under Article 226.
80. The impugned orders issued by the respective Deputy Commissioners, directing closure of unlicensed brick kilns and regulating the operation of existing ones, are in conformity with law and proportionate to the object sought to be achieved, and cannot be said to suffer from arbitrariness, mala fides, or want of jurisdiction. This Court further holds that the Deputy Commissioners of Kathua and Samba have acted within the scope of their statutory powers in issuing the impugned orders and accordingly the same are upheld.
81. This court is of the view that the unregulated import of bricks from outside the Union Territory without proper licensing and monitoring would inevitably lead to hoarding, black marketing, and deliberate shortage, thereby disturbing the market equilibrium and causing loss to the local revenue and adverse repercussions on the State economy. Such unchecked inflow would not only undermine the local brick manufacturing sector but would also defeat the regulatory objectives of the Act by promoting

clandestine trade. The enforcement of licensing requirements upon dealers thus serves an important economic and administrative purpose in maintaining market stability, ensuring fiscal discipline, and safeguarding legitimate local enterprises.

82. As regards the argument regarding the forms appended to the Rules of 2017, this Court is of the opinion that, Form 'B' would also encompass dealers, as it does not merely employ the term 'manufacture' but expressly includes 'sale and supply'. Since dealers are engaged in the sale of bricks, they would necessarily fall within the ambit of Form 'B'.
83. This Court further holds that the Deputy Commissioners of Kathua and Samba have been duly notified as the Licensing Authorities under Section 5 of the Act and have acted within the scope of their statutory powers in issuing the impugned orders. The seizures and enforcement measures complained of are regulatory in nature and justified by the statutory mandate. As a necessary corollary, the orders impugned are upheld.
84. The petitioners have not demonstrated any violation of natural justice, mala fide exercise of power, or lack of jurisdiction. They have also not availed the statutory remedy available under the Act, thereby rendering the present petition premature.
85. This court further holds that licensing requirement under Rule 3, read with Section 2(e) of the Act, is a reasonable regulatory condition and does not violate Article 19(1)(g) of the Constitution. It is a legitimate exercise of state power in the interest of public order, environmental balance and fiscal responsibility, fully protected by article 19(6) of the constitution of

India.

86. With these observations, the writ petition stands dismissed along with all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
04.11.2025
Gh. Nabi/Secy

- i. Whether the Judgment is Reportable: Yes
- ii. Whether the Judgment is Speaking: Yes