BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
I.A. NO. 54 OF 2021
IN
APPEAL NO. 57 OF 2020 (WZ)

IN THE MATTER OF:

BHAGWANBHAI BHANABHAI SOLANKI & ANR. …APPELLANTS

VERSUS

UNION OF INDIA & OTHERS …RESPONDENTS

AND

IN THE MATTER OF:

M/S ULTRATECH CEMENT COMPANY LIMITED
[NARMADA CEMENT – JAFRABAD WORKS
…APPLICANT/ RESPONDENT NO.12

COMPILATION ON BEHALF OF RESPONDENT NO.12/APPLICANT

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NEW DELHI
DATED: 26.09.2021

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2020 SCC OnLine NGT 230

In the National Green Tribunal
(Through Video Conferencing)

(BEFORE ADARSH KUMAR GOEL, MEMBER (JUDICIAL) AND SHEO KUMAR SINGH, MEMBER (JUDICIAL) AND DR. NAGIN NANDA, MEMBER (EXPERT))

Mall Road, Vasant Kunj RWA Applicant(s);

Versus

Ministry of Environment, Forest & Climate Change and Others Respondent(s);

Review Application No. 26/2020 in Original Application No. 1038/2019

Decided on September 22, 2020, [Date of Hearing : 22.09.2020]

A. Environment Law National Green Tribunal Act, 2020 Ss. 19(4)(f), 19(1) and 19 (2) Review Recall of the Tribunal s order When warranted Held, this is called for when the jurisdictional error or illegality or fraud vitiates the very basis of the order On facts found that the Original Application (OA) was disposed of by granting appropriate relief Held, the Tribunal could not go into the applicant s further/follow up demands by view of review, particularly when they were policy considerations within the domain of the authorities concerned Civil Procedure Code, 1908, S. 114, 152, 151, and Or. 47, R. 1

Dismissing the review application, the National Green Tribunal

Held :

A Tribunal or a court may recall its earlier order if, (i) the proceedings culminating into an order suffer from the inherent and patent lack of jurisdiction, (ii) there is fraud or collusion in obtaining the judgment, (iii) there is mistake of the court, prejudicing a party, (iv) the judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented. The power to recall a judgment is not to be exercised when the ground for re-opening the proceedings or vacating the judgments was available to be pleaded in the original action but was not done, or where a proper remedy was in some other proceeding such as by way of appeal or revision was available but not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel, or acquiescence.

(Para 23)

The order passed by the Tribunal in accordance with prayer made by the applicant in the original application and was disposed of after calling of the report by competent authority, and the grievances has raised in the application has been reached finality. There is no valid reason to reopen the matter.

(Para 24)

Further, the policy matter regarding the construction of road or the existence of road or movement of road or the policy matter in which Tribunal cannot intervene.

(Para 24)

The impugned order was passed according to the prayer made by the applicant and according to the reports submitted by the authorities concerned. The review application is not maintainable.

(Para 26)

B. Environment Law National Green Tribunal Act, 2010 Ss. 15 and 14 Power and jurisdiction of the Tribunal Follow up action, if any, after disposal of the Original Application (OA) Review application filed to seek additional reliefs apart from what had already been granted while disposing of the OA Main grievance raised in the OA was against illegal setting up of a ready-mix concrete (RMC) plant on a forest land This was redressed by the Tribunal However, the applicant subsequently by way of additional or supplementary relief, asking the Tribunal to call for report how the vacated land was being used and construction activity around it But no definite case set up that the Tribunal s order was properly implemented Such an act deprecated, inter alia observing the it was against the law of evidence to shift the onus to the Tribunal Evidence Act, 1872, Ss. 101

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to 103

Held :

It is not for the Tribunal to call a report from the authorities concerned. Further, if any allegations made, or an averment is made by any applicant by way of filing an application before the Tribunal, the law of evidence requires that the burden of proof lies on the person who alleges contents. Simply, filing the application, the applicant has shifted the responsibility to do everything on the Tribunal s shoulders, without producing any evidence. There was also no prayer in the Original Application, on the relief now sought from the Tribunal.

(Para 5)

C. Civil Procedure Code, 1908 S. 114 and Or. 47, R. 1 Review Held, is available on defined grounds only These grounds are in the nature of correction of accidental error resulting from court s oversight or party s inability to produce material having deep bearing on the outcome of the case The review by no means, is a rehearing of the case at the instance of a dissatisfied party The judgment or order of a court of competent jurisdiction must have finality National Green Tribunal Act, 2010, S. 19(4)(f)

Held :

The law of review can be summarised as follows. It lies only on the grounds mentioned in O. 47, R. 1, CPC. The party must satisfy the court that the matter or the evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other sufficient reason must satisfy that the said reason is analogous to the conditions mentioned in the in O. 47 R.1, CPC. Under the grab of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that it may be possible for the court to take a view contrary to what had been taken earlier. Even the judgment given after the decision in a case cannot be a ground for entertaining the review. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the court. If a counsel has argued a case to his satisfaction and he had not raised the particular point for any reason whatsoever, it cannot be a ground of review for the reason that he was the master of his case and might not have considered it proper to press the same, or could have thought that arguing that point would not serve any purpose. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even in the garb of doing justice or substantial justice, to engage the court again to decide the controversy already decided. If a party is aggrieved of a judgment it must approach the higher court but entertaining a review to re-consider the case would amount to exceeding the jurisdiction conferred under the limited jurisdiction for the purpose of review. Justice connotes different meaning to different persons in different contexts. The courts cannot be persuaded to entertain a review application to do justice unless it lies only on the grounds mentioned in statutory provisions.

(Para 19)

D. Civil Procedure Code, 1908 S. 114 and Or. 47, R. 1(1) Review Grounds Post-judgment discovery of important material Held, refers to the material having bearing on the outcome of the case It does not include new grounds or averments

Held :

The expression discovery of new and important matter of evidence contained in the provisions of O. 47, R. 1 CPC means, discovery of an evidence or any material which may be adduced in evidence. It cannot take it in its ambit an argument which could have been advanced by a party. The power of review is to be exercised within the definitive limits. More so, a person who seeks equity must do equity and he should approach the court with clean hands, clean mind, and clean objective. The perception of justice varies from person to person, and a litigant who succeeds in court, claims that justice has been done with him but the litigant who loses, though may not have a case at all, raises grievance that justice has not done with him.

(Para 18)

E. Civil Procedure Code, 1908 S. 151 Inherent powers Purpose Held, is to render justice This power can be exercised *suo motu* or at a party s instance

Held :

Inherent powers conferred upon the court either under Section 151 of the code or any other analogous provision can be exercised by the Court to do justice or to further the cause of justice.

(Para 17)

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The court must be held to have the requisite power even under Section 151 of Code of Civil Procedure to issue such direction either suo motu or otherwise which would lead to truth.

(Para 21)

F. Civil Procedure Code, 1908 S. 11 Res judicata When not applicable Judgment or order obtained by fraud

Held :

Once it is held that a judgment and a decree has been obtained by practicing fraud on the court the principles of res judicata does not apply.

(Para 22)

G. Administrative Law Judicial review Grounds Policy matters Held, judicial review is based on constitutional or statutory violation, ultra vires and the like Wisdom of an executive policy does not fall within ambit of review unless it impinges on defined parameter like unfairness, unreasonableness, proportionality, etc.

Held :

The Tribunal or the court can intervene when there is violation of Fundamental Rights, violation of provisions of the Constitution, failure to conform to a statute, ultra vires, etc. Nothing has been shown by the applicant as to which fundamental right had been violated. All that the applicant is alleging in review application is that there is a development of a colony besides the road or the construction of road or movement on the trucks, that too is the applicant s version. Construction of road, development of a colony and movements of trucks are all policy matters. The Tribunal or the courts in exercise of their power of judicial review, do not ordinarily interfere with the executive s policy decision unless the policy can be faulted on the grounds of mala fides or reasonableness or veterans or unfairness, etc. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt personal interests of a party, does not justify invaliding the act of the policy of the respondent.

(Para 6)

It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amendable to judicial review. In matters relating to economic issues, the government has, while taking a decision right to trial and error as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is the Parliament and not the courts. A court can interfere in a policy decision of the Parliament/State Legislatures/Governments if any of the following conditions exist if the policy fails to satisfy the test of reasonableness or is unconstitutional : (i) the change in policy must be made fairly and should not give impression that was so done arbitrarily on any ulterior intention; (ii) the policy can be faulted on the grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.; (iii) if the policy is found to be against any statue or the Constitution or runs counter to the philosophy behind these provisions; (iv) it is de hors the legislative provisions; (v) if the delegate has acted beyond delegated power.

(Para 25)

ORDER

1. By way of filing this application, the review applicant has prayed to review the order dated 06.05.2020 passed by the Tribunal in Original Application No. 1038/2019 and further made a request to direct the respondent nos. 1 to 3 to submit appropriate report on the issues raised in para 8.6 of the Original Application arising out of the operation of Ready Mix Concrete (RMC) on khasra No. 1637, Village Rajourki, Delhi.

2. Original Application was filed with the prayer to direct the respondent authorities to take appropriate legal action against the unnamed RMC plant operating within the Rajokri Protected Forest area and to direct the respondent authorities to formulate and place on record strategy/scheme to prevent any such encroachments upon the Rajokri Protected Forest land.

3. In light of the prayer made in the Original Application, this Tribunal vide order dated 19.12.2019 directed PCCF (HoFF), Delhi to furnish a factual and action taken

report in the matter within a time frame.

4. In compliance thereof, the PCCF (HoFF) Delhi submitted a report which is as follows:

> 2. The Ready Mix Concrete (RMC) plant is situated in private land bearing Kh. No-1637, adjacent to Kh. No-1636 which belongs to Department of Forests & Wildlife, Govt. of National Capital Territory Delhi. After the Total Station Machine (TSM) demarcation work done by the Department of Revenue, Govt. of National Capital Territory Delhi, it was verified that some part of Kh. No-1636 (Reserve Forest) was illegally encroached by the RMC plant owner which is situated in Kh. No -1637.
>
> 3. That in compliance of the order referred to above, it is to submit that the RMC plant has been removed from Kh. No-1636 (part of Reserve Forests) by the joint committee of Department of Revenue and Forest Department, Govt. of National Capital Territory Delhi on 26/09/2019 by following due process of law. The Notice to encroacher was served by the SDM (Vasant vihar) from Department of Revenue, Govt. of National Capital Territory Delhi and the illegal structure was removed. After the removal of illegal encroachment, pits were dug for plantation to protect the area from encroachment. The area has also been protected by construction of barbed wire fencing.

5. As per report submitted by PCCF, the RMC plant was situated in private land and in compliance of the order of the Tribunal, the authorities visited and inspected the site and illegal structure was removed. After the removal of illegal encroachment, pits were dug for plantation to protect the area from encroachment. The area has also been protected by construction of barbed wire fencing. Considering the report with regard to compliance of the order, the relief as sought by the applicant by way of filing this application was fulfilled and compliant and no further action was deemed to be initiated or taken by the NGT, thus, the Original Application was disposed of finally. Now by way of filing the review application, applicant wants that the facts as contained in para 8.6 may further be considered and a report be sought from the authorities concerned. Now, in the relief clause of the review application, clause B the applicant has prayed to direct the respondent nos. 1 to 3 to submit appropriate report on the issues raised in para 8.6 of the Original Application. This Tribunal is not meant to call a report from the authorities concerned. Further, if any allegation is made or any averment is made by any applicant by way of filing application before the Tribunal, the law of evidence requires that the burden of proof lies on the person who alleges the contents. Simply, filing the application, the applicant has shifted the responsibility to do everything on the shoulders of the Tribunal without producing any evidence. Para 8 of the application contains the brief facts and not the prayer. Accordingly, everything which has been contained in para 8 does not require to be acted upon unless and until there is a prayer in the application. The facts is disclosed in para 8 are running of trucks, chemicals responsible for global warming potential, laying down illegal roads in the area, deterioration in air quality, allegation that the road which has been constructed is illegal road, the applicant approached the office of the PMO, MoEF&CC, Central Pollution Control Board, Office of District Magistrate (South), District Forest Officer, Special Commissioner of Police (Traffic), Commissioner of Police (Delhi) and South Delhi Municipal Corporation and stated that his grievance has not been redressed,

6. The Tribunal or the Court can intervene when there is violation of Fundamental Rights guaranteed under the Constitution of India, violation of any provisions of Constitution of India, failure to confirm to the statute under which it is made or exceeding the limits of authority conferred by the enabling act and nothing has been shown by the applicant as to what Fundamental Right of the applicant had been

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violated. Development of colony besides the road or the construction of road or movement on the road are common things and this Tribunal cannot restrain the movement of the trucks on the roads, that too on the basis of the version of the applicant. Construction of the road, development of colony and the movement, all are policy matters and which is well-settled that the Courts or Tribunal in exercise of their power of judicial review do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on the grounds of mala-fide on reasonableness or veterans or unfairness etc. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt personal interest of a party, does not justify invalidating the act of the policy of the respondents.

7. Section 114 read with O. 47 R. 1 of the Code of Civil Procedure, 1908 (hereinafter called C.P.C.) prescribes the limitations for entertaining a review petition. The same are; that the party filing the application for review has discovered a new and important matter or evidence after exercise of due diligence which was not within its knowledge or could not be produced by it at the time when the decree was passed; or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

The aforesaid limitations are prescribed in a crystal clear language and before a party submits that it had discovered a new and important matter or evidence which could not be produced at the earlier stage, the condition precedent for entertaining the review would be to record the finding as to whether at the initial stage, the party has acted with due diligence. Due means just and proper in view of the facts and circumstances of the case (vide A.K. Gopalan v. State of Madras , AIR 1950 SC 27).

8. Some mistake or error, if made ground for review, it must be apparent on the face of record and if a party files an application on the ground of some other sufficient reason it has to satisfy that the said sufficient reason is analogous to the other conditions mentioned in the said rule i.e. discovery of new and important matter or evidence which it could not discover with due diligence or it was not within his knowledge and, thus, could not produce at the initial stage. Apparent error on the face of record has been explained to include failure to apply the law of limitation to the facts found by the Court or failure to consider a particular provision of a statute or a part thereof or a statutory provision has been applied though it was not in operation. Review is permissible if there is an error of procedure apparent on the face of the record e.g. the judgment is delivered without notice to the parties, or judgment does not effectively deal with or determine any important issue in the case though argued by the parties. There may be merely a smoke-line demarketing an error simplicitor from the error apparent on the face of record. But there cannot be a ground for entertaining the review in the former case. Sufficient reason may include disposal of a case without proper notice to the party aggrieved. Thus, if a person comes and satisfies the Court that the matter has been heard without serving a notice upon it, review is maintainable for the sufficient reason though there may be no error apparent on the face of record.

9. The expression any other sufficient reason' contained in O. 47 R. 1 Code of Civil Procedure means sufficient reason which is analogous to those specified immediately to it in the provision of O. 47 R. 1 CPC. In Chhajju Ram v. Neki , AIR 1922 PC 112, it was held by the Privy Council that anology must be discovered between two grounds specified therein namely; (i) discovery of new and important matter or evidence; and (ii) error apparent on the face of record, before entertaining the review on any other sufficient ground. The same view has been reiterated in Debi Prasad v. Khelawan , AIR 1957 All 67; and Mohammad Hasan Khan v. Ahmad Hafis Ahmad Ali Khan , AIR 1957 Nag 97.

10. In S. Nagraj v. State of Karnataka , 1993 Supp (4) SCC 595, the Hon'ble Apex

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Court explained the scope of review observing as under:

> Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice The expression, for any other sufficient reason in the clause has been given an expanded meaning and a decree or order passed under mis-apprehension of true state of circumstances has been held to be sufficient ground to exercise the power.

The Court further held that the purpose of review is rectification of an order which stems from the fundamental principle that the justice is above all and it is exercised only to correct the error which has occurred by some accident without any blame. While deciding the said case the Hon'ble Supreme Court placed reliance upon a large number of judgments including in Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai , AIR 1941 FC 1; and Rajunder Narain Rae v. Bijai Govind Singh , (1836) 1 Moo PC 117. The same view has been reiterated by the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. Gokulprasad Maniklal Agarwal , (1999) 7 SCC 578.

11. A Full Bench of the Himachal Pradesh High Court, in D. Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh v. Beli Ram , AIR 1981 HP 1, considered the scope of review and held that not considering an existing judgment of the Hon'ble Supreme Court may be a ground of review and for the same it placed reliance upon the judgments of the Privy Council in Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao , (1899-1900) 27 IA 197 (PC), wherein it was held that the purpose of review, inter alia, is to correct an apparent error which should not have been there when the judgment was given. The Court also placed reliance upon the judgment of the Federal Court in Sir Hari Sankar Pal v. Anath Nath Mitter , AIR 1949 FC 106 wherein it was held as under:

> .. the error could not be one apparent on the face of record or even analogous to it. When, however, the Court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of record sufficient to bring the case within the purview of O. 47 R. 1, Civil Procedure Code.

In Thadikulangara Pylee's Son Pathrose v. Ayyazhiveettil Lakshmi Amma's son Kuttan , AIR 1969 Ker 186, the Kerala High Court considered a review application which was filed on the ground of subsequent judgment of the Court and dismissed the same observing as under:

> If it is borne in mind that a judicial decision only declares and does not make or change the law, although it might correct previous erroneous views of the law, a review on the basis of subsequent binding authority would not be a review of a decree which, when it was made, was rightly made, on the ground of the happening of a subsequent event.

While deciding the said case, the Court placed reliance upon the judgments of the Privy Council in Rajah Kotagiri Venkata Subbamma (supra); Chhajju Ram (supra); Bisheshwar Pratap Sahi v. Parath Nath , AIR 1934 PC 213; and on judgments of the Hon'ble Supreme Court in A.C. Estates v. Serajuddin and Co. , AIR 1966 SC 935; and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius , AIR 1954 SC 526.

12. In Sow. Chandra Kanta v. Sheik Habib , (1975) 1 SCC 674 : AIR 1975 SC 1500, the Hon'ble Apex Court dismissed a review application observing as under:

> . thus, making it that a review proceeding virtually amounts to a rehearing. May be .. a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgment is a serious subject and

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reluctant resort to it is proper only where a glaring omission or patent mistake or like grave of error is crept in earlier by judicial fallibility.

Similar view has been reiterated by the Hon'ble Supreme Court in Sajjan Singh v. The State of Rajasthan , AIR 1965 SC 845; Girdhari Lal Gupta v. D.N. Mehta , (1971) 3 SCC 189 : AIR 1971 SC 2162; Northern India Cateerers' (India) Ltd. v. Lt. Governor of Delhi , (1980) 2 SCC 167 : AIR 1980 SC 674; Aribam Tuleshwar Sharma v. Aribam Pishak Sharma , (1979) 4 SCC 389 : AIR 1979 SC 1047; and Green View Tea & Industries v. Collector, Golaghat , (2002) 1 SCC 109.

13. Similarly, in Devaraju Pillai v. Sellayya Pillai , (1987) 1 SCC 61 : AIR 1987 SC 1160, the Hon'ble Apex Court held that if a party is aggrieved of a judgment by a Court, the proper remedy for such party is to file an appeal against that judgment. A remedy by way of an application for review is entirely misconceived and if a Court entertained the application for review then it has totally exceeded its jurisdiction in allowing the review merely because it takes a different view in construction of the document.

In Delhi Administration v. Gurdip Singh Uban , (2000) 7 SCC 296 : AIR 2000 SC 3737, the Hon'ble Apex Court deprecated the practice of filing review application observing that review, by no means, is an appeal in disguise and it cannot be entertained even if application has been filed for clarification, modification or review of the judgment and order finally passed for the reason that a party cannot be permitted to circumvent or bye-pass the procedure prescribed for hearing a review application. The Court also rejected the argument that review application should be entertained to do justice in the case, observing as under:

> The words justice and injustice , in our view, are sometimes loosely used and have different meanings to different persons, particularly to those arrayed on opposite sides . Justice Cardozo said, The Web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular and broken. Many hues that seems to be simple, are found, when analysed, to be complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded.

14. In Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372, the Hon'ble Apex Court held as under:

> A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

In Union of India v. Mohd. Nayyar Khalil , (2000) 9 SCC 252, the Hon'ble Apex Court rejected the review application which was filed on the ground that the High Court had decided the case placing reliance upon the decision the Hon'ble Supreme Court, the correctness of which had been doubted and the matter had been referred to the Large Bench of the Supreme Court. Subsequently, the Larger Bench had taken a contrary view. The review petition was dismissed on the grounds, inter alia, that the situation had not been pointed out by the counsel to the Bench when the matter was initially heard.

15. In Subhash v. State of Maharashtra , 1995 Supp (3) SCC 332 : AIR 2002 SC

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2537, the Hon'ble Apex Court emphasised that Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review.

The first and foremost requirement of entertaining a review application is that the order, review of which is sought (a) suffers from any error apparent on the face of the record, and (b) permitting the order to stand will lead to failure to justice. (Vide Rajendra Kumar v. Rambhai , (2007) 15 SCC 513 : AIR 2003 SC 2095; Green View Tea and Industries v. Collector, Golaghat, Assam , (2004) 4 SCC 122; and Des Raj v. Union of India , (2004) 7 SCC 753).

In Zahira Habibullah Sheikh v. State of Gujarat , (2004) 5 SCC 353, the Apex Court referred to its earlier judgments in P.N. Eswara Iyer etc. v. Registrar Supreme Court of India , (1980) 4 SCC 680; Suthendraraja v. State , (1999) 9 SCC 323; Ramdeo Chauhan v. State of Assam , (2001) 5 SCC 714 : AIR 2001 SC 2231; and Devender Pal Singh v. State of NCT of Delhi , (2003) 11 SCC 488 : AIR 2003 SC 3365; and observed that review applications are not to be filed for the pleasure of the parties or even as a device for ventilating remorselessness, but ought to be resorted to with a great sense of responsibility as well .

16. A Division Bench of the Calcutta High Court, In re, Mahamaya Banerjee , AIR 1989 Cal 106, held that a review under O. 47 R. 1 of the Code is permissible if there had been misconception of fact and/or law by the counsel, as it will fall within the ambit of expression sufficient reason in O. 47 R. 1 of the Code. The Calcutta High Court proceeded with the presumption that in order to do justice, which has been denied to a party owing to patently wrong step taken by its counsel, the Court can exercise its inherent power to come to its rescue and to do justice. With all due respect, the said judgment does not lay down the correct law for the reason that it is settled legal proposition that inherent powers cannot be used by the Court where a Statute provides for a specific remedy.

17. Undoubtedly, inherent powers conferred upon the Court either under Section 151 of the Code or any other analogous provision, can be exercised by the Court to do justice or to further the cause of justice. (Vide Manohar Lal Chopra v. Rai Bahadur Rao Seth Hirala , AIR 1962 SC 527; Union of India v. Ram Charan , AIR 1964 SC 215; and Vikas Aggarwal v. Anubha , (2002) 4 SCC 468). However, inherent powers cannot be used by a Court where Statute itself provides for a remedy as held by the Hon'ble Supreme Court in Manohal Lal Chopra (supra); Arjun Singh v. Mohindra Kumar , AIR 1964 SC 993; Ramchandra & Sons Sugar Mills Pvt. Ltd., Barabanki (U.P.) v. Kanhayalal Bhargava , AIR 1966 SC 1899; Nainsingh v. Koonwarjee , (1970) 1 SCC 732 : AIR 1970 SC 997; State of West Bengal v. Karan Singh Vinayak , (2002) 4 SCC 188).

In Bhagwati Singh v. Deputy Director of Consolidation , AIR 1977 All 163, the Allahabad High Court rejected the review application filed on a ground which had not been argued earlier because the counsel, at initial stage, had committed mistake in not relying on and arguing those points, observing as under:

> It is not possible to review a judgment only *to give the petitioner a fresh inning.* It is not for the litigant to judge of counsel's wisdom after the case has been decided. It is for the counsel to argue the case in the manner he thinks should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued.

The Court also considered the judgment of the Federal Court in Mt. Jamna Kuer v. Lal Bahadur , AIR 1950 FC 131, wherein an observation has been made that review is

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permissible if mistake has been committed by a counsel. The Court did not follow the said judgment, observing that it was a case in which a mistake had crept in the judgment of the High Court owing to an over-sight. Therefore, it was a case wherein review was maintainable on other grounds also and the ratio of that judgment is certainly not that review lies if a counsel commits mistake.

18. More so, the expression discovery of new and important matter of evidence contained in the provisions of O. 47 R. 1 CPC means, discovery of an evidence or any material which may be adduced in evidence. It cannot take it in its ambit an argument which could have been advanced by the counsel.

To sum up, the substance of the said judgments is that the entire concept of writ jurisdiction is founded on equity and fairness and if the Court has committed a mistake, it should be removed entertaining a review application so that the result may not lead to miscarriage of justice, as rectification of an order stems from the fundamental principles that justice is above all. Provisions of Order XLVII Rule 1, C.P.C. permits the review even on the mistake of fact or even on ignorance of material fact. The review jurisdiction should be exercised to prevent miscarriage of justice or to correct grave and palpable errors committed by the Court. The power of review inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. (Vide Shivdeo Singh v. State of Punjab , AIR 1963 SC 1909; Aribam Tuleshwar Sharma v. Aribam Pishak Sharma , (1979) 4 SCC 389 : AIR 1979 SC 1047; Union Carbide Corporation v. Union of India , (1991) 4 SCC 584 : AIR 1992 SC 317; S. Nagaraj (Supra); Parision Devi v. Sumitri Devi , (1997) 8 SCC 715; Surjit Singh v. Union of India , (1997) 10 SCC 592; Revenue Divisional Officers v. A. Aruna , (1998) 6 SCC 494 and Rajendra Kumar v. Rambhal , (2007) 15 SCC 513 : AIR 2003 SC 2095).

We do not dispute the legal propositions settled by the Hon'ble Supreme Court in the aforesaid judgments and that is the ratio of the judgments, referred to by us over and above. The power of review is to be exercised within the definitive limits. More so, a person who seeks equity must do equity and he should approach the Court with clean hands, clean mind and with clean objective. The perception of justice varies from person to person, and a litigant who succeeds in Court, claims that justice has been done with him but the litigant who looses, though may not have a case at all, raises grievance that justice has not been done with him.

19. In view of the above discussion, the law of review can be summarised that it lies only on the grounds mentioned in O. 47 R. 1 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other sufficient reason must satisfy that the said reason is analogous to the conditions mentioned in O. 47 R. 1 CPC. Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. Even the judgment given subsequent to the decision in a case can be no ground for entertaining the review. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court. If a counsel has argued a case to his satisfaction and he had not raised the particular point for any reason whatsoever, it cannot be a ground of review for the reason that he was the master of his case and might not have considered it proper to press the same or could have thought that arguing that point would not serve any purpose. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even under the garb of doing justice or substantial justice, to engage the court again to decide the controversy already decided. If a party is aggrieved of a judgment, it must approach the Higher Court but entertaining a review to re-consider

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the case would amount to exceeding its jurisdiction, conferred under the limited jurisdiction for the purpose of review. Justice, as explained above, connotes different meaning to different persons in different contexts, therefore, courts cannot be persuaded to entertain a review application to do justice unless it lies only on the grounds mentioned in the statutory provisions.

20. Further relying on Budhia Swain v. Gopinath Deb , (1999) 4 SCC 396, the order can be recalled, if it was obtained by misleading the Court. Paras 6, 8 and 9 of the above citation are quoted below:

6. What is a power to recall? Inherent power to recall its own order vesting in tribunals or courts was noticed in Indian Bank v. Satyam Fibres India Pvt. Ltd. (1996) 5 SCC 550. Vide para 23, this Court has held that the courts have inherent power to recall and set aside an order

(i) obtained by fraud practised upon the Court ,

(ii) when the Court is misled by a party, or

(iii) when the Court itself commits a mistake which prejudices a party.

In A.R. Antulay v. R.S. Nayak (1988) 2 SCC 602 : AIR 1988 SC 1531 (vide para 130), this Court has noticed motions to set aside judgments being permitted where

(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented ,

(vi) a judgment was obtained by fraud ,

() a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justitiae on proof of the fact that there was no service.

8. In our opinion a tribunal or a court may recall an order earlier made by it if

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent ,

() there exists fraud or collusion in obtaining the judgment ,

(i) there has been a mistake of the court prejudicing a party or

(ii) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed.

The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni v. Sri Kali Nath AIR 1962 SC 199, it was held:

The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of

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the subject matter of the suit or over the parties to it.

21. Furthermore, the Court must be held to have the requisite power even under Section 151 of Code of Civil Procedure to issue such direction either suo-motu or otherwise which, according to him, would lead to the truth.

22. Once it is held that a judgment and decree has been obtained by practising fraud on the court it is trite that the principles of res-judicata shall not apply. The High Court, therefore, in our opinion committed a serious error in referring to the earlier orders passed by it so as to shut the doors of justice on the face of appellant for all time to come.

23. In our opinion a tribunal or a court may recall an order earlier made by it if:

(i) the proceedings culminating into an order suffer from the inherent lack of jurisdiction and such lack of jurisdiction is patent,

(ii) there exists fraud or collusion in obtaining the judgment,

(iii) there has been a mistake of the court prejudicing a party or

(iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.

The power to recall a judgment will not be exercised when the ground for re-opening the proceedings or vacating the judgment was available to be pleaded in the original action but was not done or where a proper remedy in some other proceeding such as by way of appeal or revision was available but was not availed. The right to seek vacation of a judgment may be lost by waiver, estoppel or acquiescence.

24. Accordingly, the order passed by this Tribunal in accordance with prayer made by the applicant in the original application and was disposed off after calling of the report by Competent Authority and the grievances has raised in the clause of the application has been reached finally. Further, the policy matter with regard to the construction of road or the existence of road or movement of road or the policy matter in which this Tribunal cannot be intervene. This policy matter has been dealt with in several cases and in the case of Ugar Sugar Works Ltd. v. Delhi Administrative , (2001) 3 SCC 635 the Apex Court has held as follows:

> 18. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. However, if the policy cannot be faulted on any of these grounds, the mere fact that it would hurt business interests of a party, does not justify invalidating of the policy.
>
> The Supreme Court has categorically stated that the Courts cannot interference with Government Policies on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom of the soundness of the policy, is the subject of judicial review. Courts cannot act as appellant authorities examining the correctness, suitability and appropriateness of the policy. Nor or Courts advisor to the executive on matters of policy with the executive is entitled to formulate. The scope of judicial review when examining a policy ..is to check whether it violates the fundamental rights of citizens or is oppose to provisions of the Constitution or oppose to any statutory provisions or is manifestly arbitrary.

25. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In

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matters relating to economic issues the Government has, while taking a decision, right to trial and error as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.

From the aforesaid decisions of the Apex Court, it is clear that a Court can interfere in a policy decision of the Parliament/State Legislatures/Governments if any of the following conditions exist:

(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.

(II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.

(III) The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or Legislations.

(VI) If the delegate has acted beyond its power of delegation.

26. Accordingly, we don't think it proper to intervene in the order impugned. The order was passed according to the prayer made by the applicant and according to the reports submitted by the authorities concerned. This review application is not maintainable. The Review Application No. 26/2020 in Original Application No. 1038/2019 deserves to be dismissed and accordingly dismissed.

Principal Bench at New Delhi

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(2019) 8 Supreme Court Cases 177

(BEFORE ASHOK BHUSHAN AND K.M. JOSEPH, JJ.)

Civil Appeal No. 10720 of 2018†

STATE OF MEGHALAYA .. Appellant;

Versus

ALL DIMASA STUDENTS UNION, DIMA-HASAO DISTRICT COMMITTEE AND OTHERS .. Respondents.

With

Civil Appeal No. 10611 of 2018

STATE COORDINATION COMMITTEE OF COAL OWNERS, MINERS AND DEALERS FORUM .. Appellant;

Versus

ALL DIMASA STUDENTS UNION, DIMA HASAO DISTRICT COMMITTEE AND OTHERS .. Respondents.

With

Civil Appeal No. 10907 of 2018

GARO HILLS AUTONOMOUS DISTRICT COUNCIL .. Appellant;

Versus

ALL DIMASA STUDENTS UNION, DIMA HASAO DISTRICT COMMITTEE AND OTHERS .. Respondents.

With

Civil Appeal No. 5272 of 2016‡

KA HIMA NONGSTOIN LAND OWNERS, COAL TRADERS AND PRODUCERS ASSOCIATION .. Appellant;

Versus

ALL DIMASA STUDENTS UNION, DIMA HASAO DISTRICT COMMITTEE AND OTHERS .. Respondents.

With

Civil Appeal No. ... of 2019††

LBER LALOO .. Appellant;

Versus

ALL DIMASA STUDENTS UNION, HASAO DISTRICT COMMITTEE AND OTHERS .. Respondents.

† Arising from the Judgment and Order in *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241 (National Green Tribunal, Original Application No. 110 of 2012, dt. 31-8-2018)

‡ Arising from the Judgment and Order in *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 174 (National Green Tribunal, Original Application No. 73 of 2014, dt. 10-5-2016)

†† Arising out of CA Diary No. 3067 of 2018. Arising from the Judgment and Order in *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 697 (National Green Tribunal, MA No. 92 of 2015 in Original Application No. 73 of 2014, dt. 25-3-2015)

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With

Civil Appeal No. 2968 of 2019[†‡]

STATE OF MEGHALAYA .. Appellant;

Versus

ALL DIMASA STUDENTS UNION, DIMA HASAO DISTRICT COMMITTEE AND OTHERS .. Respondents.

Civil Appeals No. 10720 of 2018 with Nos. 10611, 10907 of 2018, 5272 of 2016, ... of 2019 and 2968 of 2019, decided on July 3, 2019

A. **Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23 and List I Entry 54 — Autonomous district or region in State of Meghalaya — Privately owned/community owned land in Hills Districts — Nature of rights, including subsoil/mineral rights, of such private owners/community, applicable law and approval procedure for mining/grant of mining leases in respect of such land**

— Held, (a) private owners/community of such land have both surface right as well as subsoil rights, that is, right over minerals, (b) and therefore, NGT was not correct in declaring that all extracted coal lying in open after 15-5-2016, that is, after lapse of interim order, would vest with State of Meghalaya, (c) both MMDR Act and Rules are applicable to such private community lands and mining lease contemplated under MMDR Act is mandatory without which no mining operations can be conducted even in these private lands, (d) if scientific mining is carried on under regulated conditions as per law, ban order of NGT would not operate against such mining and said ban order applies only to illegal coal mining which was rampant, (e) in view of S. 2, MMDR Act, Central Government has power of control, regulation and development of minerals and District Council or Regional Council cannot make any law which is repugnant to law made by Parliament, and (f) State of Meghalaya has ample power to ensure compliance with statutory scheme

— Application of MMDR Act and Rules has not been barred/regulated by any Presidential Notification under Sch. VI Para 12-A(b) — There is nothing in S. 4(1), MMDR Act to indicate that restriction contained therein does not apply to privately owned/community owned land — Statutory scheme delineated by S. 13(2)(f), MMDR Act and Mineral Concession Rules, 1960 clearly contemplates grant of mining lease with regard to both categories of land: land in which minerals vest in Government and land in which minerals vest in person(s) other than Government

— It cannot be said that no mining lease is contemplated in respect of land where mineral vests exclusively with private persons — Words "mining lease" specified in MMDR Act have to be interpreted in a manner which will advance object of legislation — Essential characteristics of mining lease, under MMDR Act are that it is granted for purpose of undertaking "mining operations"; and "mining operations" means any operation undertaken for purpose of winning mineral

†‡ Arising from the Judgment and Order in *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2019 SCC OnLine NGT 105 (National Green Tribunal, Original Application No. 110 of 2012, dt. 4-1-2019)

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— Therefore, for coal mining in said Hills Districts of State of Meghalaya, it is private owner/community owner of land who is also owner of mineral, who shall grant lease for mining of coal as per provisions of Ch. V, Mineral Concession Rules, 1960 after obtaining previous approval of Central Government through State Government — If mining is done after proper approval of mining plans, ban order of Tribunal dt. 17-4-2014 shall not operate against such mines — State of Meghalaya, which has ample power to implement statutory scheme, has to ensure compliance with MMDR Act, 1957, Mines Act, 1952 as well as Environment (Protection) Act, 1986 and all other applicable laws, including all environmental laws — However, power to legislate with regard to mines and minerals throughout India is vested with Central Government in view of declaration in public interest under S. 2, MMDR Act that Union has taken under its control, regulation and development of mineral — District Council or Regional Council cannot make any law which is repugnant to law made by Parliament

— Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4, 5, 13 and 2 — Mineral Concession Rules, 1960 — Ch. V — Transfer of Property Act, 1882 — Ss. 3 and 105 — Subsoil rights/ mineral rights in privately owned/community owned land — Exploitation of — Held, has to be in compliance with scheme of MMDR Act/Mineral Concession Rules and all applicable environmental laws — Mines Act, 1952 — Ss. 5, 75 and 57 — Powers of Magistrate — Scope of — Restrictions that may be placed upon — Coal Mines Regulations, 2017, Chs. II and IV (Paras 195.4 to 195.13, 74 to 154 and 183 to 186)

B. **Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4, 5, 3(c) & (d) and 13 — Exploitation of mineral wealth by owner of land himself — Mandatory necessity of compliance with MMDR Act and Mineral Concession Rules and Environmental Laws — "Mining lease" under MMDR Act vis-à-vis "lease" under TPA — Compared**

— Held, even where land is privately owned and thus private owner owns subsoil/mineral rights therein, even then such owner has to comply with requirements of MMDR Act and Mineral Concession Rules and Environmental Laws, to exploit the subsoil/mineral rights — Property Law — Transfer of Property Act, 1882 — Ss. 3 and 105 — Words and Phrases — "Mining lease", "lease" — Mineral Concession Rules, 1960, Ch. V

C. **Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23, List I Entry 54 and Pt. X — Autonomous district or region in State of Meghalaya — Lands in Hills Districts of Meghalaya — Land revenue system during colonial times and present day and different types of lands in Khasi Hills and Jaintia Hills, discussed**

— Concluded, that, most of the lands in said Hills Districts are either privately or community owned in which State does not claim any right — Tribals owned the land as well as subsoil and mineral rights therein, which is an inescapable conclusion — Tenancy and Land Laws — Mineral/Subsoil rights (Paras 74 to 93)

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D. **Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23 and List I Entry 54 — Autonomous district or region in State of Meghalaya — Privately owned/community owned land in Hills Districts — Unscientific and unregulated mining — Reversal of incorrect decision of Tribunal by which Tribunal had vested all extracted coal lying in open as on 15-5-2016 with State of Meghalaya — Proper disposal of such coal — Directions issued**

— On suggestion of Amicus Curiae, entire extracted coal as mentioned above directed to be handed over to Coal India Ltd., for proper disposal by way of auction — State Government directed to bear transportation expenses which could be deducted from price of coal received in auction — Thus proceeds of auction to be paid back to the private owners/community owners after deducting: (a) transportation expenses, (b) royalty, (c) taxes payable, and (d) payment towards MEPR Fund

— But clarified that above order would not be applicable to coal seized due to illegal transportation and illegal mining — These have to be dealt with in accordance with S. 21, MMDR Act — Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957, S. 21 (Paras 195.20 to 195.25, 196 and 149 to 154)

E. **Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23, List I Entry 54 — Autonomous district or region in State of Meghalaya — Privately owned/community owned land in Hills Districts — Environmental degradation resulting from coal mining — Restoration of environment — Liability of State Government**

— Tribunal directing State Government to pay Rs 100 crores to Central Pollution Control Board, held, neither can be regarded as a penalty nor a fine — Modification of Tribunal's order — Tribunal's order modified to extent that said amount shall be paid to Central Pollution Control Board from MEPR Fund, and aforesaid amount should be utilised only for restoration of environment in State of Meghalaya — Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21 — Environment Law — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer (Paras 195.19 and 196, 172, 182 and 187 to 194)

F. **Environment Law — National Green Tribunal Act, 2010 — Ss. 14 to 16, 19(1) and Sch. I — Illegal, unscientific and unregulated coal mining — Environmental degradation of water, air and surface — Jurisdiction and extensive powers of NGT — Wider jurisdiction of NGT under S. 19 of 2010 Act vis-à-vis power of court under Or. 26 R. 10-A CPC — Wide discretion conferred upon NGT by enabling provision of R. 24 of 2011 Rules — Explained**

— NGT, held, did not exceed its jurisdiction under Ss. 14(1)(i) & (ii) and S. 15 of NGT Act, 2010 in entertaining original applications as well as matters transferred from High Court and issuing appropriate directions — Expert reports proved that there was environmental degradation of water,

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air and surface — Tribunal also did not exceed its jurisdiction in directing appointment of committee to secure ends of justice, to implement its directions for restoration of environment in view of S. 19(1) of NGT Act, 2010 and Or. 26 R. 10-A CPC — Tribunal also did not exceed its jurisdiction in directing constitution of a fund for implementing its directions

— Tribunal has wider jurisdiction under S. 19(1) of NGT Act, 2010 than under Or. 26 R. 10-A CPC to appoint commission for scientific investigation and call for its reports and to pass such other orders to give effect to its orders and secure ends of justice, like constituting a fund as in present case — This does not take away essential judicial function, not delegated to such commission — Tribunal is in complete control as matter is pending before it — And State Government is at liberty to obtain appropriate direction, if it is aggrieved by any act of Committee — Committee appointed in present case is concerned only with environmental degradation and illegal coal mining — It does not affect powers of District/Regional Councils (Paras 195.14 to 195.19)

— Object of NGT Act, 2010 is to provide effective and expeditious relief, compensation for damages, etc. and dispose of cases relating to protection of environment and forests and conservation of natural resources — Alleged pleading as well as materials before Tribunal were with regard to environmental degradation and pollution due to illegal and unregulated mining of coal (Paras 56 to 73)

— State Government disputing jurisdiction of Tribunal to entertain such cases, disapproved — State has a constitutional obligation to ensure clean environment to its citizens, and, therefore, should have acted as a facilitator and not as obstructionist — Civil Procedure Code, 1908 — Or. 26 R. 10-A — Wider jurisdiction of NGT under S. 19 of 2010 Act vis-à-vis power of court under Or. 26 R. 10-A CPC, explained — Constitution of India — Art. 48 and Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23, List I Entry 54 — National Green Tribunal (Practice and Procedure) Rules, 2011 — R. 24 — Interpretation of Statutes — Internal Aids — Enabling provisions — Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", in R. 24 of the NGT Rules, 2011, are words which enable the Tribunal to pass orders and the above words confer wide discretion — General Principles of Environmental Law — Environment Protection, Restoration, Rehabilitation Funds — Power of NGT to set up — Regulatory Framework, Bodies and Judicial Intervention — Court appointed Committees/CEC/Monitoring Committee — Powers of NGT to set up (Paras 56 to 73, 195.2, 195.3 and 157 to 171)

Points for consideration

From the submissions of the parties as noted and the materials on record in these appeals, the following points arose for consideration:

(*1*) Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010 (NGT Act, 2010)?

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(*2*) Whether provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) are applicable in tribal areas within the State of Meghalaya, included in the Sixth Schedule of the Constitution?

(*3*) Whether for mining the minerals from privately owned/community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960 (the 1960 Rules)?

(*4*) Whether under the MMDR Act, 1957 and the Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations?

(*5*) Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in Hills Districts of the State of Meghalaya?

(*6*) Whether the power to allot land for mining purposes is vested in Autonomous District Councils?

(*7*) Whether the order of the National Green Tribunal dated 17-4-2014 directing for complete ban on mining is unsustainable?

(*8*) Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of the State and tribals?

(*9*) Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation of minerals and to prepare action plan for restoration of environment?

(*10*) Whether NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund (MEPR Fund)?

(*11*) Whether NGT by constituting committees has delegated essential judicial powers to the committees and has further encroached the constitutional scheme of administration of tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?

(*12*) Whether direction to deposit Rs 100 crores by the State of Meghalaya by order dated 4-1-2019 of NGT impugned in CA No. 2968 of 2019 is sustainable?

(*13*) Whether NGT's order dated 31-3-2016 that after 15-5-2016 all remaining coal shall vest in the State of Meghalaya is sustainable?

(*14*) Whether assessed and unassessed coal which has already been extracted and lying in different districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal?

Partly allowing the appeals and disposing of the IAs, the Supreme Court

Held :

Point 1

The National Green Tribunal Act, 2010 was enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for

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damages to persons and property and for matters connected therewith or incidental thereto. (Para 56)

It is relevant to notice that before NGT no such plea was taken by the State of Meghalaya or any of the parties questioning the jurisdiction of NGT. However, the issue being a jurisdictional issue, the appellants were permitted to raise the issue. (Para 60)

All Dimasa Students Union v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307, *approved*

The pleadings in OA No. 73 of 2014 clearly and categorically alleged environmental degradation consequent to illegal coal mining. Inaction of respondent authorities has resulted in violation of various enactments. (Paras 66 and 67)

The present is not a case of mere allegation of environmental degradation by illegal and unregulated coal mining rather there were materials on the record where environmental degradation of water, air and surface of the land was proved. (Para 68)

Thus the Tribunal had jurisdiction to entertain the case and pass orders. The submission that the Tribunal has no jurisdiction is not expected from the State Government who is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matters the State has to act as facilitator and not as obstructionist. (Para 69)

Techi Tagi Tara v. *Rajendra Singh Bhandari*, (2018) 11 SCC 734, *distinguished*

Rajendra Singh Bhandari v. *State of Uttarakhand*, 2016 SCC OnLine NGT 456, *held, reversed*

The Tribunal did not exceed its jurisdiction under Sections 14 and 15 in entertaining the application OA No. 73 of 2014. (Para 73)

Point 2

Insofar as the land tenure in the Hills Districts of Meghalaya, there is no substantial change after the advent of the Constitution. There was no payment system of land revenue before the advent of the Constitution in the Hills Districts of Meghalaya. The lands in the Khasi Hills District of Meghalaya come under two divisions Ri Raid and Ri Kynti. Ri Raid lands are community lands which are set apart for the benefit and use of entire community. Ri Kynti lands are privately owned lands which were also owned by community as well as by individuals. The owner of the Ri Kynti land is an absolute proprietor. The tenure system in Jaintia Hills is classified into two types of lands, namely, hali/irrigated land and highland. Hali lands are further categorised in raj land, service land, village puja land and private land. Proprietary right does not vest in the State in respect to majority of lands which are either privately owned or owned by the tribal community. No system of payment of land revenue is prevalent in the Hills Districts of Meghalaya except lands which belong to the State. For the purposes of the present case where the submission of the appellant is that land in which mining operations of coal is being done are lands belonging to tribals who are owners of the land as well as of the subsoil, it may be assumed that tribal is the owner of the land. It is further the case of the appellant that in Hills Districts of the State of Meghalaya in land which is privately owned by the tribal or community owned, the tribals or the community or the clan are owners of both surface right and subsoil. It is the case of the appellant that the State does not have any right in subsoil or minerals. (Para 74)

Thressiamma Jacob v. *Deptt. of Mining & Geology*, (2013) 9 SCC 725 : (2013) 4 SCC (Civ) 559; *Anand Brahma Shah* v. *State of U.P.*, AIR 1967 SC 1081, *applied*

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Mitchell v. *Mosley*, (1914) 1 Ch 438 (CA), *cited*

Halsbury's Laws of England, 3rd Edn., Vol. 26, p. 325, *referred to*

Thus, looking to the nature of the land tenure as applicable in the Hills Districts of the State of Meghalaya, most of the lands are either privately or community owned in which the State does not claim any right. Thus, private owners of the land as well as community owners have both the surface right as well as subsoil right. Thus the tribals owned the land and also owned the minerals, which is an inescapable conclusion. (Para 76)

Part X of the Constitution separately deals with scheduled and tribal areas. Hills Districts of the State of Meghalaya were treated to be tribal area and were to be governed by Article 244(2) read with Schedule VI. (Para 77)

No notification has been issued by the President under Para 12-A(*b*) of Schedule VI of the Constitution, although, the said Para 12-A(*b*) is in the Constitution with effect from 21-1-1972. Thus, there is nothing in the Sixth Schedule of the Constitution which may indicate about the inapplicability of the MMDR Act, 1957 with regard to the Hills Districts of the State of Meghalaya. (Para 83)

The Comptroller and Auditor General has clearly stated that the MMDR Act, 1957 is fully applicable for regulation of mines and regulation of minerals in the State of Meghalaya. (Para 84)

The Meghalaya Mines and Minerals Policy, 2012 issued by the Government of Meghalaya as well as draft guidelines of coal mining activities in the State prepared in the year 2015 have been brought on the record. The above guidelines were prepared after/in consultation with the Central Government. The above draft guidelines prepared by the State clearly mention about the unregulated and unscientific mining being carried out in the State of Meghalaya. (Paras 85 to 88)

There can be no dispute to the proposition that in view of the MMDR Act, 1957, the legislative competence of the State of Meghalaya under List II Entry 23 stands denuded. However, under the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, several statutory obligations/jurisdictions have been conferred on the State of Meghalaya, which shall be referred to later in this judgment. (Para 90)

When under a parliamentary enactment, the State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement the jurisdictions conferred on the State by parliamentary enactments. It is true that Mining Policy to be framed by the State has to confine to the jurisdiction conferred on it as per the MMDR Act, 1957 and the Rules framed thereunder. There are other related issues concerning mining like protection of environment and forests for which the State has to declare its policy for implementation of its objective. Several other aspects relating to mining, like rehabilitation, reclamation and restoration have to be effectively implemented by the State for which also, it may be required to frame a policy. The Meghalaya Mines and Minerals Policy, 2012 was already framed by the State of Meghalaya, even before directions were issued by NGT. In pursuance of the NGT directions, it was draft guidelines of 2015, which were prepared by the State of Meghalaya. Thus the direction of NGT to declare Mining Policy by the State of Meghalaya cannot be said to be without jurisdiction. However, the State in its Mining Policy can only include those areas where it has jurisdiction under the MMDR Act, 1957 and the Rules framed thereunder. (Para 91)

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The request of the State of Meghalaya that exemption be granted by presidential notification under Para 12-A(*b*) has not been acceded to and this itself expresses recognition of the State of Meghalaya that the MMDR Act is applicable. There is nothing in the Sixth Schedule of the Constitution which in any manner excludes the applicability of the MMDR Act, 1957 in the tribal areas of Hills Districts of the State of Meghalaya. (Para 93)

Point 3

The legislative power under List II Entry 23 is subject to the provision of List I with respect to regulation and development under the control of the Union. When the Union has declared to have taken under its control the regulation of mines and development of minerals to the extent provided in the Act, the legislative power of the State to the above extent is denuded. (Para 98)

The use of words "no person" in Section 4(1) of the MMDR Act, 1957 is without an exception. There is nothing in Section 4(1) to indicate that restriction contained in Section 4(1) does not apply with regard to a person who is owner of the mine. Further, words "any area" under Section 4(1) also have significance which does not have any exception. Further phrase "except under and in accordance with terms and conditions with a mining lease granted under the Act" are also significant which make the intent and purpose of prohibition clear and loud. (Para 101)

The Section 5(1) proviso of the MMDR Act, 1957 is relevant since it contains a further restriction that no mining lease shall be granted with regard to any minerals specified in Para A of the First Schedule except with the previous approval of the Central Government. The present case is concerned with coal which is in Para A of First Schedule. (Para 102)

Sections 13(2)(*a*) and (*f*) of the MMDR Act, 1957 make it clear that the Rules can be made for grant of mining lease in respect of land in which minerals vest in the Government as well as in respect of any land in which minerals vest in person other than the Government. The statutory scheme, in Sections 13(2)(*a*) and (*f*) of the MMDR Act and the Mineral Concession Rules, 1960 is clear that lease can be granted with regard to both the categories of land, land in which the Government is owner of minerals and land in which minerals vest in person other than the Government. The tribals, owners of the minerals shall expressly fall in rule-making power of the Government under Section 13(*f*). (Paras 104 to 106)

In statutory provisions there is no kind of exception as contended by the appellant that when owner himself wants to win the minerals he does not require any mining lease. The submission is contrary to the express statutory scheme, in the event the submission of the appellant is accepted that with regard to minerals which vest in a private person no mining lease is required, the whole object of the Union by which it declared to have taken under its control regulation of mines and development of minerals shall be frustrated. (Para 106)

The term "lease" occurring in Section 3(c) of the MMDR Act does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act, 1882 but it has all the characteristics of a lease as defined in the Transfer of Property Act. A mining lease, therefore, may not meticulously and strictly satisfy in all cases, all the characteristics of a "lease" as defined in the Transfer of Property Act. Nevertheless, in the legally accepted sense, it has always been regarded as a lease in this country. (Paras 106 to 112)

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Tarkeshwar Sio Thakur Jiu v. *Dar Dass Dey & Co.*, (1979) 3 SCC 106; *Nageshwar Bux Roy* v. *Bengal Coal Co. Ltd.*, 1930 SCC OnLine PC 83 : (1930-31) 58 IA 29; *State of Karnataka* v. *Subhash Rukmayya Guttedar*, 1993 Supp (3) SCC 290, *relied on*

Falakrishna Pal v. *Jagannath Marwari*, 1932 SCC OnLine Cal 80 : AIR 1932 Cal 775, *held, approved*

The words "mining lease" have been given specific meaning under the MMDR Act, 1957. The provisions of an Act including definition of a term are to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted *for the purpose of undertaking mining operation* and mining operation means any operation undertaken for the purpose of winning the mineral. Applying the aforesaid definition in the Mineral Concession Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person. (Para 112)

[**Ed.**: The exploitation of the mineral wealth underlying his land by an owner appears to be conceptually no different from the raising of a building by an owner on his land. In the former case, he must comply with the law applicable to mining. In the latter case he must comply with building and planning laws. Moreover, when an owner himself mines his land, the "mining lease" contemplated by S. 4 of the MMDR Act, 1957 would probably take the form of a permit, and would not require a conveyance of the land in terms of a "lease" proper. As clarified herein, though a mining lease is often a lease proper, it need not necessarily be so always.]

Section 5(3), Mines Act, 1952 clearly empowers the District Magistrate to exercise the powers and perform the duties of an Inspector but subject to general and special orders of the Central Government, which means that there may be some restriction on the power of the District Magistrate as directed by the Central Government. (Para 116)

In this context, a Notification dated 18-9-1953 issued under Section 5(3) of the Mines Act, 1952 may be referred to. (Para 116)

The restriction as is apparent from the above notification is with regard to matters solely connected with the technical direction, management or supervision of any mine. The above notification does not take away all the functions of the District Magistrate but restriction is with regard to area mentioned therein. (Para 117)

Thus it cannot be accepted that the District Magistrate has no jurisdiction under the Mines Act, 1952 to take any action. (Para 118)

As per statutory regime brought in force by the Notification dated 15-1-2016 environmental clearance is required for a project of coal for mining of any extent of area. The Notification dated 15-1-2016 being a statutory provision shall operate on its own force and no order of any court is required for enforcement of Notification dated 15-1-2016. (Para 121)

While implementing statutory regime for carrying on mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only the MMDR Act, 1957 but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986. (Para 122)

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Point 4

a There is a marked difference between the rules contained in Chapter IV and rules contained in Chapter V of the Mineral Concession Rules, 1960. (Para 125)

The earlier statutory regime, which was enforced as per the Mineral Concession Rules, 1949 made it amply clear that mineral concessions are to be granted by private persons also, which is in substance retained in Chapter V of the 1960 Rules. Thus, mining lease to be granted as per Chapter V of the 1960 Rules is mining lease by the owner of mineral. Thus, the lessor being the private b persons and not the State Government, clearly indicates that the State Government is not to grant the lease in respect of land of privately owned/community owned owners. (Paras 124 to 129)

The reason for not providing any application to the State Government for grant of mining lease in respect of minerals, which vests in the private owners and community owners is that without consent or willingness of private owners/ c community owners of minerals, no authority is empowered to grant any mining lease with regard to minerals, of which he is the owner, it is the owner of the minerals, may be private persons or community owners, who is entitled to grant lease of minerals as per the provisions of Chapter V of the 1960 Rules. (Para 130)

As per the statutory provisions contained in the 1960 Rules especially Chapter V, a mining lease for minerals, which belongs to a private owner or a community owner, it is not the State Government, which is entitled to receive any application d or grant any mining lease, but it is the private owner or community owner, who is entitled to grant a lease for mining minerals owned by them. Issue 4 is answered accordingly. (Para 131)

Point 5

The State Government cannot say that it has no role to play with regard to mining of coal. All applications for previous approval of the Central Government e have to be routed through the State Government. (Para 134)

When mining operations of coal are being conducted without prior approval of the Central Government, the State has power under Rule 50 of the Mineral Concession Rules, 1960 to direct the parties not to undertake any prospective mining operations in the area. The power given under Rule 50 is not only enabling power, but is a statutory obligation on the State to exercise the power in the public f interest. (Para 135)

Thus the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease granted under the Mineral Concession Rules, 1960, Chapter V. (Para 139)

Point 6

It is submitted that Autonomous District Council being constitutional authority g constituted under Schedule VI of the Constitution has legislative and administrative power. (Para 141)

The power to make law entrusted to Autonomous District Council under Para 3 of Schedule VI is power to make law referable to List 2 and List 3 of the Seventh Schedule. However, with regard to regulation and development of mineral, the Union has made declaration by Section 2 of the MMDR Act, 1957 and the power h of the State Legislature is denuded in that respect. The logical corollary of the above principle is that power of Autonomous District Council shall also be denuded

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insofar as regulation and development of minerals to the extent which is covered by the MMDR Act, 1957. (Para 142)

Para 9(1) of Schedule VI confines to the licences or leases of minerals granted by the Government of the State. Para 12-A(*a*) of Schedule VI itself contemplates that any law made by the District Council or Regional Council which is repugnant to any law of the State shall be void. Thus, the status of law made by the District Council or Regional Councils has to give way to the law made by the State. There can be no doubt that the District Council and Regional Council cannot make any law which may be repugnant to the provisions of the parliamentary Act. (Para 146)

Thus the District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with the MMDR Act, 1957 and the 1960 Rules. (Para 147)

Points 7 and 8

The use of natural resources also plays major role in carrying out development. A fine balance has to be maintained in utilisation of natural resources and its conservation and preservation. One cannot be sacrificed for the interest of other. The concept of sustainable development has been evolved and is being pursued. (Para 149)

State of T.N. v. *Hind Stone*, (1981) 2 SCC 205; *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*, (2011) 7 SCC 338, *relied on*

Narmada Bachao Andolan v. *Union of India*, (2000) 10 SCC 664, *cited*

The Tribunal prohibited the rat-hole mining/illegal mining throughout the State of Meghalaya. (Para 150)

The Tribunal being satisfied from the materials on record has issued the order dated 17-4-2014 which cannot be faulted in the facts and materials which are on record in the present case. One more fact in the above context needs to be noticed i.e. after the order dated 17-4-2014, several applicants including the appellants of Civil Appeal No. 5272 of 2016 filed application for vacating the ban which was not acceded to by the Tribunal. Subsequently NGT permitted transportation of coal till 15-5-2016 and directed that after 15-5-2016, all coal within the State of Meghalaya shall vest in the State. (Paras 150 and 152)

The Tribunal after considering all pleas and materials including reports submitted by the committees affirmed the order dated 17-4-2014 and refused to withdraw the ban. There is no error in the order of NGT reaffirming its ban order in the facts of the present case. But the question which has been raised by the appellant before the Supreme Court is that whether the complete ban as imposed by NGT deserves to be vacated or modified in the interest of the State and tribals. The revenue earned by the State from coal mining plays substantial part in the economy of the State. It is also amply demonstrated from the record that tribals are the owners of the land who carry on mining of coal in their land by which they earn their substantial livelihood. (Para 153)

Though as discussed above, the manner in which the mining is being carried out by the tribals cannot be approved which is clearly in violation of statutory regime under the MMDR Act, 1957 and the 1960 Rules but in event the mining is carried out by tribals or their assignees as per the provisions of the MMDR Act, 1957 and the 1960 Rules, there can be no objections in carrying on such mining under the regulation and control of the State of Meghalaya. It is thus clarified that in event mining operations are undertaken by the tribals or other owners of Hills

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Districts of Meghalaya in accordance with mining lease obtained from the State of Meghalaya as per the MMDR Act, 1957 and the 1960 Rules, the ban order dated 17-4-2014 of the Tribunal shall not come in its way of carrying on mining operations. The ban order is for the illegal coal mining which was rampant in the State of Meghalaya and the ban order cannot be extended to valid and legal mining as per the MMDR Act, 1957 and the 1960 Rules. (Para 154)

Points 9 and 10

What Section 19(1) of the NGT Act, 2010 means to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Section 19(2) empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. (Para 157)

Order 26 Rule 10-A CPC is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves scientific investigation. The powers under Order 26 Rule 10-A CPC which are to be exercised by the court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirement in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. Thus there is no dearth of jurisdiction in NGT to appoint a committee to submit a report. Further, while asking expert to give a report NGT is not confined to the four corners of Order 26 Rule 10-A CPC rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A CPC as per Section 19(1) of the NGT Act, 2010. (Para 158)

Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion. (Para 160)

G.P. Singh in *Principles of Statutory Interpretation*, 14th Edn., *referred to*

The enabling powers given to the Tribunal under Rule 24 of the NGT Rules, 2011 are for the purpose and object to decide the subjects which are to be examined, decided and an appropriate relief is to be granted by the Tribunal. Further, subjects contain wide range of subjects which require technical and scientific inputs. The Tribunal can pass such orders as it may think fit, necessary or expedient to secure ends of justice. (Para 162)

The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The

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power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. (Para 163)

L. Hirday Narain v. *CIT*, (1970) 2 SCC 355, *considered*

Thus there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case. (Para 164)

Now coming to the challenge to the Fund which has been constituted by the Tribunal, namely, "MEPR Fund", it is useful to notice the observation of the Tribunal in its order dated 25-3-2015 by which the said Fund was created. The reasons for constitution of Fund are self-explanatory. (Para 165)

All Dimasa Students Union v. *State of Meghalaya*, 2015 SCC OnLine NGT 697, *affirmed*

NGT could have passed any order or direction to secure ends of justice which power is especially conferred by Rule 24 as noticed above, direction to constitute Fund is thus also saved under such power. (Para 166)

Point 11

In respect of constitution of committee by the Tribunal there are two other limbs of submission; that: (1) NGT by constituting committees has delegated essential judicial power to the committee; (2) the constitution of committees encroaches on the constitutional scheme of administration of tribal areas under Article 244(2) read with the Sixth Schedule of the Constitution. (Para 167)

The various instances where NGT directed for report or investigation and submission of report by committees were with the object of ensuring the implementation of the orders passed by it and to decide the environmental issues raised before it. In no manner constitution of committee can be said to be delegation of essential judicial powers of NGT to the committee. (Para 168)

The constitution of the Committee and its functions entrusted were with the object to implement the orders passed by the Tribunal. The Tribunal has already directed for preparing a scheme for the restoration of the environment and ecology. For the restoration of environment NGT vide its order dated 31-8-2018 has directed the Committee to submit its action plan and reports by email. The Tribunal, thus, had kept complete control on all steps which were required to be taken by the Committee and issued directions from time to time. It thus cannot be accepted that the essential judicial powers of NGT had been delegated to the Committee. Looking to the enormous work of restoration of environment which has to be supervised on the spot, the Committee was constituted. The State is always at liberty to obtain particular direction if aggrieved by any act of the Committee. The matter being pending before the Tribunal the acts of the Committee are under direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it. (Para 170)

All Dimasa Students Union v. *State of Meghalaya*, 2018 SCC OnLine NGT 671, *approved*

In the directions of the Tribunal to constitute committee for transportation of extracted minerals or for preparing time-bound action to deal with the restoration of environment and to ensure its implementation, there is no interference in the powers of the District or Regional Councils. Action plan for restoration of environment is consequence of the Tribunal finding out that an unregulated coal mining has damaged the environment and has caused the pollution including water pollution. It is not the case of the appellant that the District and Regional Councils have

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framed any law for restoration of environment which is being breached by the Committee or its acts. The District and Regional Councils are free to exercise all their powers and the Committee constituted by the Tribunal is only concerned with the environmental degradation and illegal coal mining. The Committee's report or direction of the Tribunal in no manner encroaches upon the administration of tribal areas by the District and Regional Councils. (Para 171)

Point 12

NGT vide its order dated 4-1-2019 directed the State of Meghalaya to deposit an amount of Rs 100 crores with the Central Pollution Control Board, which was to be spent for restoration of environment. (Para 172)

Threat to Life Arising Out of Coal Mining in South Garo Hills District v. *State of Meghalaya*, 2019 SCC OnLine NGT 105, *modified*

All Dimasa Students Union v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307, *cited*

The amount, which has been directed by NGT to be deposited by the State of Meghalaya is neither a penalty nor a fine imposed on the State. The amount has been directed to be deposited for carrying out steps regarding restoration of environment. The said amount cannot be said to be amount for damages to be paid by the State. Further, the State of Meghalaya has very limited source of revenue and putting an extra burden on the State of Meghalaya to make payment of Rs 100 crores from its own financial resources and budgetary amount may cause great hardship to the State of Meghalaya. Ends of justice will be served in modifying the direction of NGT dated 4-1-2019 to the extent that the State is permitted to transfer an amount of Rs 100 crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal (NGT) shall utilise the aforesaid amount of Rs 100 crores only for restoration of the environment. The appeal is thus, partly allowed to the above extent. (Para 182)

Threat to Life Arising Out of Coal Mining in South Garo Hills District v. *State of Meghalaya*, 2019 SCC OnLine NGT 105, *modified*

All Dimasa Students Union v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307, *cited*

Point 13

Vide order dated 31-3-2016, NGT had permitted transportation of coal till 15-5-2016 under the terms and conditions as enumerated therein. The order dated 31-3-2016 further contemplated that no coal in any form whatsoever shall be permitted to be transported after 15-5-2016 on which date the entire remaining coal shall vest in the State Government and shall be disposed of in accordance with law. (Para 183)

The main grievance of the appellant is that NGT could not have directed for vesting of coal in the State. It has already been held in the present case that the private owners of the land are also owners of the minerals and the minerals belong to the owners/tribals. And it has been found that coal mining was illegally going on unregulated by any statutory law in the Hills Districts of the State of Meghalaya without there being any mining lease. The entire mining was, thus is clear, in contravention of Section 4(1) of the MMDR Act, 1957 which attracted penalties under Section 21. (Para 184)

However, the present is not a case where any kind of penalty has been imposed on the miners except that the amount of royalty as payable on mining of coal is being collected by the State as penalty. It is true that the State Government

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has power under Section 21(5) of the MMDR Act, 1957 to recover from such person the minerals so raised, or, where such material has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, but it is for the State Government to exercise its power under Section 21(5) by way of penalty. NGT has not given any reason as to how coal shall automatically vest in the State. The right of recovery of mineral as contemplated under Section 21(5) does not amount to say that proprietary right of owner of the minerals is lost, rather, the State under Section 21(5) exercises its power to recover the mineral which has been raised without any lawful authority. Therefore, the coal extracted and lying in open after 15-5-2016 was not automatically vested in the State and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost. (Para 186)

Point 14

It is not necessary for the purpose of the present case to notice different quantities and claims of different persons for transportation. (Para 187)

Lber Laloo v. *All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698; *Lber Laloo* v. *All Dimasa Students Union*, 2018 SCC OnLine SC 3330, *referred to*

The details of assessments made by committees appointed by the State of Meghalaya have been brought on the record. The State Government itself has come with a case that huge quantity of coal in the four Hills Districts, which has been extracted, is lying waiting for orders of transportation. (Para 188)

The entire extracted coal lying at various places be directed to be taken over by Coal India Ltd., a Government of India unit, who may dispose of the same as per its normal method of disposal and proceeds be distributed as per directions issued by the Supreme Court hereinafter. NGT has already directed that for all extracted coal lying at different places, it is the State, which is the receiver-cum-custodian of the coal. The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that the entire coal is handed over to Coal India Ltd., as per the mode and manner to be formulated by the Katakey Committee, in consultation with officers of Coal India Ltd. and the State of Meghalaya. (Para 190)

The Katakey Committee and its various members and participants have done a commendable job in studying and examining various aspects of environment in the State of Meghalaya and several valuable suggestions have been given by the Committee, which are also being implemented to mitigate the suffering of the citizens consequent to the illegal coal mined. (Para 191)

The Commissioner and Secretary of the State in the Department of Mining and Geology along with the officers of Coal India Ltd. may deliberate with the Katakey Committee to finalise a comprehensive plan for transportation and handing over of the coal to Coal India Ltd. for disposal/auction as per rules of Coal India Ltd. Disposal/auction by Coal India Ltd. shall be beneficial to both the owners of the mines as well as to the State of Meghalaya. Receiving fair value of the coal should be a concern of both the owners and the State. It is for Coal India Ltd. to decide as to venue, where they shall receive the coal i.e. either at any of its depot or any other place in the State of Meghalaya and it is for Coal India Ltd. to finalise the process of disposal and auction of the coal. It goes without saying that it shall be the duty of the State of Meghalaya and its officers, especially the Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from

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where it is collected. Coal India Ltd. shall also take steps to ensure weighment of the coal when it is received by it and since all consequent steps regarding disposal, price grade of the coal shall be determined as per the weight of the coal received by Coal India Ltd. from different places. The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MEPR Fund as well as taxes out of the price of the coal. After deduction of cost of transportation, the payment of royalty and payment to MEPR Fund and taxes plus 10% of value of the coal to be given to Coal India Ltd. for the above exercise, balance amount shall be disbursed to the owner of the coal towards its price, which disbursement shall be the responsibility of the State. Coal India Ltd. after taking its expenses for transportation with 10% of price of the coal shall remit the entire amount to the State and it is for the State after deducting the royalty and payment to the MEPR Fund and taxes to pay back the balance of the amount to the owner. (Para 192)

Another aspect of the matter is also to be noticed. The coal, which has been seized by the State in illegal transportation or illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The said seized coal shall be dealt with by the State in accordance with Section 21 of the MMDR Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority and the said cases have to be separately dealt with in accordance with law. (Para 193)

Thus all IAs filed by different applicants seeking order of transportation of the different quantities stand disposed of in view of the directions as given above. Let the Katakey Committee in consultation with the State of Meghalaya and officers of Coal India Ltd. finalise appropriate mode and manner to effect the transport and disposal of the coal in the above manner. (Para 194)

Threat to Life Arising Out of Coal Mining in South Garo Hills District v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241; *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 174, *partly affirmed*

Threat to Life Arising Out of Coal Mining in South Garo Hills District v. *State of Meghalaya*, 2019 SCC OnLine NGT 105, *modified*

All Dimasa Students Union v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307, *approved*

All Dimasa Students Union v. *State of Meghalaya*, 2016 SCC OnLine NGT 422, *partly overruled*

Threat to Life Arising Out of Coal Mining in South Garo Hills District v. *State of Meghalaya*, 2013 SCC OnLine NGT 4489; *Lber Laloo* v. *All Dimasa Students Union*, 2019 SCC OnLine SC 744; *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1243, *referred to*

Lawrence Basaiawmoit v. *All Dimasa Students Union*, (2015) 14 SCC 416; *Impulse NGO Network* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2565; *Impulse NGO Network* v. *State of Meghalaya*, 2014 SCC OnLine NGT 7157; *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 839; *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2016 SCC OnLine SC 1830; *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2016 SCC OnLine SC 1831; *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2018 SCC OnLine SC 3431, *cited*

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The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.— Natural resources of the country are not meant to be consumed only by the present generation of men or women of the region where natural resources are deposited. These treasures of nature are for all generations to come and for intelligent use of the entire country. The present generation owes a duty to preserve and conserve the natural resources of the nation so that it may be used in the best interest of coming generations as well and for the country as a whole.

2. These appeals have been filed challenging various orders passed by the National Green Tribunal wherein several directions were issued, measures to be taken to check and combat the unregulated coal mining in tribal areas of the State of Meghalaya which coal mining resulted not only in loss of lives but damaged the environment of the area.

Details of appeals

3. Civil Appeals Nos. 10720 of 2018, 10611 of 2018 and 10907 of 2018 have been filed against the order dated 31-8-2018[1] passed by the National Green Tribunal, Principal Bench, New Delhi. Civil Appeal No. 5272 of 2016 has been filed by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association against the order dated 10-5-2016[2] of the National Green Tribunal, Principal Bench, New Delhi. Civil Appeal (Diary No. 3067) of 2018 has been filed by Lber Laloo against the order dated 25-3-2015[3] of the National Green Tribunal, Principal Bench, New Delhi and Civil Appeal No. 2968 of 2019 has been filed against the order dated 4-1-2019[4] of the National Green Tribunal, Principal Bench, New Delhi by which the State of Meghalaya has been directed to deposit Rs 100 crores with the Central Pollution Control Board.

4. All the appeals having been filed against the orders of the National Green Tribunal (NGT), it is necessary to notice the details of various proceedings before NGT to appreciate the grievances raised in the appeals. The Gauhati High Court on the basis of a news item to the effect that on 6-7-2012, 30 coal labourers were trapped inside a coalmine at Nongalbibra in the district of South Garo Hills and 15 of them died inside the coalmine, registered PIL Suo Motu No. (SH) 3 of 2012. Vide order dated 10-12-2012 of the Gauhati High Court the matter was directed to be transferred to NGT in which notice was issued by the Tribunal on 30-1-2013[5]. Transferred matter was registered as Original Application No. 110 (THC) of 2012. All Dimasa

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241
2 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 174
3 *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 697
4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2019 SCC OnLine NGT 105
5 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2013 SCC OnLine NGT 4489

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Students Union Dima Hasao District Committee filed Original Application No. 73 of 2014 before the National Green Tribunal, Principal Bench making serious complaints with regard to rat-hole mining operation, which has been going on in Jaintia Hills in the State of Meghalaya for the last many years without being regulated by any law. It was alleged that in the course of rat-hole coal mining by flooding water several employees and workers have died. The applicant had also brought before the Tribunal a detailed report of one Dr O.P. Singh, Professor, Department of Environmental Studies, North-Eastern Hills University, Shillong, Meghalaya where entire aspects of the coal mining in the State of Meghalaya were discussed. NGT admitted the application and took the view[6] that illegal and unscientific mining can neither be held to be in the interest of people of the area, the people working in the mines nor in the interest of environment. After hearing the applicant, the Tribunal on 17-4-2014[6] passed an order directing the Chief Secretary of Meghalaya, Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by the Tribunal.

5. After the passing of the order dated 17-4-2014[6] various applications were filed before the Tribunal by different Associations and persons claiming interest in the subject-matter of the application. Application No. 317 of 2019 was filed by Western Coal Miners and Exporters Association for being impleaded in OA No. 73 of 2014, which was allowed. Another application MA No. 306 of 2014 was filed by Khasi Hills District Autonomous District Council, Shillong, East Khasi Hills District, Meghalaya (one of the appellants before us) for impleadment claiming to be a constitutional body and entitled in the sharing primarily of the royalty on the coal produced/mined, which application was allowed.

6. The Tribunal clubbed OA No. 13 of 2014, OA No. 73 of 2014 and OA No. 110 (THC) of 2012. Miscellaneous applications were filed before the Tribunal praying for vacating the order dated 17-4-2014[6]. Against the order dated 17-4-2014[6], CA No. 5756 of 2014 was filed by a coalmine owner. The miscellaneous application was also filed by the State Coordination Committee of Jaintia Hills District, Meghalaya (one of the appellants before us) for their impleadment, which was allowed[7]. This Court dismissed the civil appeal filed against the order dated 17-4-2014[6] passed by the Tribunal, however, granted liberty to the appellant to approach the Tribunal for modification of the order. The Tribunal also noticed in its order dated 9-6-2014[8] that there has been serious air, water and environmental pollution being caused by the illegal, unregulated and indiscriminate rat-hole mining being carried on in various parts of the State of Meghalaya. Serious pollution to the upstream

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307
7 *Lawrence Basaiawmoit* v. *All Dimasa Students Union*, (2015) 14 SCC 416
8 *Impulse NGO Network* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2565

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was also noticed. The Tribunal, however, noticed that there are documents on record to show that right from the year 2003, there has been serious air and water pollution in the mining areas of Meghalaya which is injurious and has not only resulted in degradation of environment, particularly the streams and underground water, but has also seriously jeopardised the human health. It was further noticed that transportation of coal in an illegal, unregulated, indiscriminate and unscientific manner has resulted in serious diseases to the people. The report of the Committee dated 9-6-2014[8] was noticed by the Tribunal. By order dated 9-6-2014[8] while permitting the transportation of the already extracted coal lying in open near the mining sites, constituted a committee for supervising such transportation. Various other directions were issued to the Committee as well as to the State and its authorities.

7. By a subsequent order dated 1-8-2014[9] the Tribunal noticed that the committee earlier constituted by order dated 9-6-2014[8] failed to perform the functions assigned to it, hence, a new committee was constituted. The Tribunal from time to time issued various directions. We need to notice four orders passed by the Tribunal in detail which are subject-matter of challenge in these appeals. The orders which are subject-matter in these appeals are orders dated 25-3-2015[3], 10-5-2016[2], 31-8-2018[1] and 4-1-2019[4].

Order dated 25-3-2015[3]

8. In order dated 25-3-2015[3] NGT noticed that the rampant, illegal, unscientific and life-threatening mining activity, particularly rat-hole mining is going on in the State of Meghalaya for years. NGT noticed the report of the Commissioner appointed by it and opined that in spite of the order dated 17-4-2014[6] fresh mining was going on. The Tribunal also noticed that the State of Meghalaya has promulgated a Mining Policy of 2012 which does not deal with rat-hole mining. The State Government was also directed to formulate and declare Mining Policy and Guidelines for the State of Meghalaya to deal with all aspects of mining, which Policy was yet to see the light of the day. The Tribunal also noticed that the order of the Tribunal has been violated by illegal mining despite complete prohibitory orders. It was noticed that the State Government has found as many as 73 cases of illegal transportation of coal in one district. Further, 15 more cases of specific violation of NGT orders had already been registered by the State Government. In all 11 districts of the State of Meghalaya, 308 cases of violation have been registered and a total number

8 *Impulse NGO Network* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2565
9 *Impulse NGO Network* v. *State of Meghalaya*, 2014 SCC OnLine NGT 7157
3 *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 697
2 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 174
1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241
4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2019 SCC OnLine NGT 105
6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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of 605 trucks and 2675.63 tonnes of coal has been seized. The stand of the State for non-compliance and its inability to comply with the direction was also noticed to the following effect:

> "(*a*) Lack of forces to carry out counter insurgency operations and implementation of NGT orders.
>
> (*b*) The State Government proposes to approach the Central Government for claiming an exemption, in terms of Para 12-A(*b*) of the VIth Schedule of the Constitution of India and from the condition of previous approval of the Central Government under the Mines and Minerals (Development and Regulation) Act, 1957 in respect of reconnaissance, prospecting and mining of coal and from the operations of the Coal Mines Nationalisation Act."

9. The Tribunal issued directions that the Additional Secretary, North-East in the Ministry of Home, Central Government shall, within a period of two weeks, hold a meeting with the Chief Secretary of the State of Meghalaya and other authorities concerned and consider the proposal of the State of Meghalaya. The Tribunal also expressed its disapproval for the conduct of the State in not formulating appropriate policy and guidelines. The Tribunal further observed that the mining in the State cannot be permitted, unless appropriate policy is prepared by the State Government.

10. The Tribunal also noticed that there is huge environmental degradation and pollution of the water in the State of Meghalaya and observed that serious steps are required to be taken for cleaning polluted waterbodies, with the above objective the Tribunal authorised the State Government to collect 10% on the market value of the coal in addition to the royalty payable to it. In this regard, the following directions were issued:

> "It is also indisputable that there has been huge environmental degradation and pollution of the waterbodies in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of "polluter pays principle", we direct that the State Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned counsel appearing for the parties and keeping in view the Notifications of the Central Government dated 10-5-2012 and that of the State Government dated 22-6-2012, we may notice that in the report of the Comptroller and Auditor General of India for the period ending 31-3-2013 under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken at Rs 4850 per metric tonne.

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Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as "Meghalaya Environment Protection and Restoration Fund" to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.

This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto."

11. Certain other directions were issued by the Tribunal vide order dated 25-3-2015[3].

Order dated 10-5-2016[2]

12. Order dated 10-5-2016[2] has been challenged by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association. NGT vide its order dated 23-12-2015[10] had permitted transportation of coal for the period till 15-5-2016. By order dated 31-3-2016[11], NGT refused to further extend the time for transportation and directed that after 15-5-2016 all extracted coal shall vest in the State. Aggrieved against order dated 31-3-2016[11] KA Hima Nongstoin Land Owners, Coal Traders and Producers Association filed CA No. 4793 of 2016 before this Court, which was disposed[12] of by granting liberty to the appellant to file application before NGT. Pursuant to the liberty granted by this Court MA No. 427 of 2016 was filed before NGT. By order dated 10-5-2016[2] applications, MAs Nos. 400 and 427 of 2016 were dismissed. By the same order the State of Meghalaya was directed to place on record the exact current quantity of coal and value thereof including the status of the coal lying and mined anywhere in the State of Meghalaya as on 1-4-2015 and the exact quantity of coal lying as on 16-5-2016. The State was also directed to submit its proposal as to how the State shall deal with the coal that is vested in the State primarily for the reasons that entire coal is illegally extracted coal.

Order dated 31-8-2018[1]

13. On 31-8-2018[1], the Tribunal noticing the earlier proceedings also noted that few issues are pending before this Court arising out of orders passed by

3 *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 697
2 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 174
10 *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 839
11 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 422
12 *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2016 SCC OnLine SC 1830
1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241

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the Tribunal. In para 10 of the order, the following has been noticed: (*Threat to Life Arising Out of Coal case*[1], SCC OnLine NGT)

> "*10*. At this stage, we may note that the following issues are pending before the Hon'ble Supreme Court arising out of orders passed by this Tribunal:
>
> (*i*) Civil Appeal No. 5272 of 2016 titled as *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, wherein the following order was passed on 21-9-2016[13]: (SCC OnLine SC paras 2-3)
>
> '*2*. Having heard the counsel for the parties, it is directed that the petitioners, as well as the respondents, who have mined the coal, are permitted to transport the coal on payment of royalty and other fees as fixed by the National Green Tribunal (for short "the Tribunal") and other relevant status. The extracted coal can be transported from 1-10-2016 till 31-5-2017. It is further directed that no other extraction shall take place in the meantime.
>
> *3*. The finding of the tribunal that the coal is vested in the State on the ground that it is illegally extracted coal, shall be adverted to at the time of final hearing. The miners shall keep the accounts and if, ultimately, it is held that the coal belongs to the State, they will refund the amount with interest. The quantum of interest shall be determined at the time of final hearing. Needless to say, these observations have been made without prejudice to the contentions to be raised by the learned counsel for the parties. The tribunal can proceed with regard to the other aspects which are pending before it.'
>
> The above order shows that question whether coal is vested in the State is to be gone into before the Hon'ble Supreme Court.
>
> Thereafter, on 28-3-2018[14], by the said order, time for transporting already extracted coal was extended up to 31-5-2018 but it was clear that no further extraction shall be allowed.
>
> (*ii*) Civil Appeal Diary No. 3067 of 2018 titled as *Lber Laloo* v. *All Dimasa Students Union*, raising the question whether ban on mining can be continued. We are informed that in the said matter, the issue of mining plan has also been raised."

14. The Tribunal further directed that ban on rat-hole mining shall continue subject to further orders of this Court. Ban on transportation of extracted coal

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13 *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2016 SCC OnLine SC 1831

14 *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2018 SCC OnLine SC 3431

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will also continue subject to further orders. Following directions were issued in para 13: (*Threat to Life Arising Out of Coal case*[1], SCC OnLine NGT)

> "*13*. Accordingly, we direct that orders of ban of rat-hole mining will continue, subject to further orders of the Hon'ble Supreme Court. Ban of transportation of the already mined material will also continue subject to further orders of the Hon'ble Supreme Court. The State of Meghalaya will be the receiver/custodian of the available extracted coal as on date, subject to further orders of the Hon'ble Supreme Court. If any further coal not so far recorded in the inventory is available, a separate inventory may be made and if it is found that the extraction was illegal, royalty in terms of orders already passed may also be collected. This may be determined by the Secretary of Mining of the State of Meghalaya. While one view is that there is extracted coal and not accounted for, the other view put forward is that it is result of illegal mining. This aspect may be gone into by the Secretary of Mining, State of Meghalaya in the first instance. The same be cross-checked by a joint team of representatives of Central Pollution Control Board and Indian School of Mines, Dhanbad."

15. The Tribunal also deliberated on restoration of the environment and rehabilitation of the victims for which funds were available. The Tribunal constituted a Committee headed by Justice B.P. Katakey, Former Judge of the Gauhati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad. Paras 14 to 26 of the order are relevant in this context, which are as follows: (*Threat to Life Arising Out of Coal case*[1], SCC OnLine NGT)

> "*14*. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will be appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katakey, Former Judge of the Guwahati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad.
>
> *15*. The Committee will take the following steps:
>
> • Take stock of all actions taken so far in this regard.
>
> • Prepare time bound action plan to deal with the issue and ensure its implementation.
>
> *16*. The Committee may requisition services of such technical experts as may be necessary and may also carry out visits to sites whenever necessary. They will be entitled to all logistic support for performing these functions which shall be provided under the directions of the Chief Secretary, Meghalaya.
>
> *17*. The Committee may also set up website for receiving and giving information on subject.

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18. The Committee may also involve educational institutions for awareness and feedback about results.

19. All authorities concerned in the State of Meghalaya shall cooperate and coordinate with the Committee. The Committee can seek such technical assistance as may be required from any relevant authority.

20. The Chief Secretary, Meghalaya to provide all facilities to said Committee to perform its functions. The Committee may send its periodical reports to the Tribunal by email at filing.ngt@gmail.com.

21. The Committee may assume its charge within two weeks from today. The Committee may prepare action plan which shall have targets of ensuring compliance. It may meet at such intervals as considered appropriate but twice in every month and fix targets for compliance.

22. The Committee will be free to take up all incidental issues. The Committee will be free to seek any further directions from this Tribunal by email.

23. The Chief Secretary of the State of Meghalaya may determine remuneration of the Chairman in consultation with him and the Chief Secretary of the State of Meghalaya will also provide all logistic support including security if needed for their proper functioning.

24. The Committee will be entitled to take the help of the technical experts in execution of this order. The Committee may frame its action plan for implementation within one month from today and implementation may be completed within six months as far as possible. The timelines may be laid down. A copy of the action plan may be sent to this Tribunal by email at filing.ngt@gmail.com. Thereafter, reports may be sent at least once in two months. The Committee may also assess the damage to the environment as well as to the individuals as already suggested in the Report.

25. The State of Meghalaya will make available all the relevant records to the Committee for the purpose. The State will also determine the remuneration to be paid to the Chairman of the Committee in consultation with him within one month from today.

26. The Committee will be at liberty to take technical assistance from any quarter which may be facilitated by the State of Meghalaya. The Committee may also supervise any issue arising out of receivership/ custodianship of the already extracted coal, including any environmental issues which any arise out of storage of the extracted material and the steps required to be taken for the purpose.

The Report of the Committee may be furnished to this Tribunal by email at filing.ngt@gmail.com.

A copy of this order may be sent to all the authorities concerned by email for compliance.

All pending matters will stand disposed of in above terms.

List for consideration of the Report on 6-3-2019."

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Order dated 4-1-2019[4]

16. Justice Katakey Committee submitted its report before the Tribunal on 2-1-2019. The Committee's various proceedings which were part of the report were noticed in detail by NGT. In para 21 of the order the following was noticed: (*Threat to Life Arising Out of Coal Mining in South Garo Hills District case*[4], SCC OnLine NGT)

> "*21*. Under issue number D, it was noted that the Meghalaya State Pollution Control Board in its report in September 1997 had noted that unplanned and unscientific coal mining activities were taking place. This had achieved dangerous dimensions in the last two decades creating ecological disturbance and adverse environmental impacts. This showed that though cognizance of the problem was taken in the year 1997, the problem continues even 20 years thereafter. The State Pollution Control Board had, in the year 1997, recommended steps to check illegal mining including generation of awareness, legislative measures, use of technology, carrying out of study but none of the recommendations were implemented even after 21 years."

17. The Tribunal after considering the report of the Committee and other materials on record came to the conclusion that the State of Meghalaya had failed to perform its duties to act on the recommendation of the report of the Meghalaya State Pollution Control Board submitted in the year 1997. The Tribunal opined that interim amount be deposited towards restoration of the environment. Paras 31 to 33 are as follows: (*Threat to Life Arising Out of Coal Mining in South Garo Hills District case*[4], SCC OnLine NGT)

> "*31*. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology, the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors. The Committee may go into these aspects to determine the final figure.
>
> *32*. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs 100 crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs 100 crores within two months with CPCB in this regard.
>
> *33*. We have already noted the extent of damage found and the value of the illegally mined material, apart from clandestine mining for which sufficient material is not available. The State had collected, as noted in the earlier order, royalty of Rs 400 crores which by now must be higher figure."

18. The State of Meghalaya has filed two appeals being CA No. 10720 of 2018 and CA No. 2968 of 2019. CA No. 10720 of 2018 has been filed

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questioning the order dated 31-8-2018[1] passed by the Tribunal by which the Tribunal directed that order of the ban of rat-hole mining will continue and further constituted Justice B.P. Katakey Committee to take steps for restoration of the environment and rehabilitation of the victims. The other Civil Appeal No. 2968 of 2019 has been filed by the State of Madhya Pradesh questioning the order dated 4-1-2019[4] by which the State of Meghalaya was directed to deposit interim amount of Rs 100 crores towards restoration of the environment.

19. Against the same order dated 31-8-2018[1] two other appeals have been filed being CA No. 10611 of 2018 by the State Coordination Committee of Coal Owners, Miners and Dealers Forum and CA No. 10907 of 2018 by Garo Hills Autonomous District Council aggrieved by the perpetual ban of coal mining by order dated 31-8-2018[1] without considering illegality of the ban in the first place. The appellants are also aggrieved by appointment of State Government receiver/custodian of the extracted coal when there is no dispute of the ownership of the coal and further the question of vesting of the coal in the State is pending consideration in this Court in CA No. 5272 of 2016.

20. CA No. 10907 of 2018 is filed by Garo Hills Autonomous District Council which is aggrieved by the order of the Tribunal dated 31-8-2018[1] by which it has confirmed the ban on coal mining which was in force for over four years and further direction by the Tribunal to constitute a committee for the disposal of funds in excess of Rs 400 crores. The appellants are aggrieved by the above and alleged that the Tribunal failed to consider that constituting the Committee without considering the roles and responsibilities of the District Council has the effect of virtually excluding the Council from issues concerning administration of forests and lands which are within the exclusive jurisdiction of the Council. The ban on coal mining has effectively closed the doors on a major source of revenue for the functioning of the District Council, which is empowered in terms of the Sixth Schedule of the Constitution to collect taxes.

21. CA No. 5272 of 2016 by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association has been filed against the order dated 10-5-2016[2] by which Miscellaneous Applications Nos. 400 and 427 of 2016 were dismissed. The appellants had prayed for modification and clarification and/or recall of the final order dated 31-3-2016[11] by which the Tribunal directed for vesting of the duly assessed already extracted coal with the State of Meghalaya and refusing to extend the time for transportation of the already extracted coal. The appellants claim for propriety rights of its members over such coal, which were mined as per prevailing custom prior to 17-4-2014.

22. Now, remains appeal being Civil Appeal of 2019 (arising out of Diary No. 3067 of 2018) filed on behalf of Lber Laloo. The appellant has filed this

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2 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 174

11 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 422

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appeal against the order dated 25-3-2015, aggrieved by the blanket ban on mining activities imposed in the State of Meghalaya by NGT which, according to the appellant, is adversely affecting the lives and livelihood of the miners in the State of Meghalaya. As a result of ban on coal mining, large number of the families are affected in the State of Meghalaya, who are dependent for their livelihood on coal mining.

Submissions

23. We have heard Shri Shekhar Naphade, learned Senior Counsel, Shri Amarendra Sharan, learned Senior Counsel, Shri Amit Kumar, Advocate General, for the State of Meghalaya. We also heard Shri Ranjan Mukherjee appearing for the State of Meghalaya. Shri Ranjit Kumar, learned Senior Counsel, appearing for the appellant in CA Diary No. 3067 of 2018 and Shri Raju Ramachandran, learned Senior Counsel, appearing for the appellant in CA No. 10907 of 2018. Shri Colin Gonsalves, learned Senior Counsel has been heard as Amicus Curiae. We have also heard the learned counsel for Respondent 1 in CA No. 5272 of 2016 (who was the applicant before NGT). Shri Nidhesh Gupta, learned Senior Counsel has been heard for the private respondents in CA No. 5272 of 2016. Shri A.N.S. Nadkarni, learned Additional Solicitor General has been heard for the Union of India. We have also heard other learned counsel who were permitted to intervene in the matter and raise various arguments in respect of their different IAs.

24. Shri Shekhar Naphade, learned Senior Counsel led the arguments on behalf of the State of Meghalaya. Shri Naphade submits that jurisdiction of NGT constituted under the National Green Tribunal Act, 2010 is confined to Sections 14, 15 and 16. Section 16 is not attracted in the present case. Section 14 deals with original jurisdiction of NGT and it takes within its compass or all of civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I. The jurisdiction depends upon two conditions which are required to be satisfied cumulatively and they are:

(1) substantial question which relates to environment, and

(2) implementation of the enactments specified in Schedule I.

25. It is submitted that the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the MMDR Act, 1957") not being specified in Schedule I, the National Green Tribunal could not have exercised jurisdiction to examine violation of the MMDR Act, 1957. It is submitted that NGT committed error in holding that the coal mining in the State of Meghalaya is unregulated. NGT proceeded on erroneous premise that the tribals of Meghalaya cannot do coal mining without obtaining lease from the State Government. It is submitted that tribals who are owners of the land are also owners of the subsoil and the minerals in the land. The land in the State of Meghalaya was property of men and villages. The Khasi Hills, Jaintia Hills and Garo Hills have different land tenure system of their own, which does not

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provide for vesting of land or minerals in the State right from pre-Independence period.

26. Shri Naphade submits that the ownership of minerals vests with the owner of the land unless the owner of the land is deprived of the same by some valid process of law, for example, the provision contained in Land Revenue Codes of different States, which categorically state that the ownership of minerals exclusively vests in the State Government. However, in the State of Meghalaya, there exists no such law that deprives the owner of the land from owning the minerals beneath it.

27. Shri Naphade submits that under the MMDR Act, 1957, the State has no legislative or executive power with regard to coal, which is a major mineral. It can neither exercise any jurisdiction of granting any mining lease to the tribals nor has it any jurisdiction to frame any mining policy. It is submitted that the provisions of the MMDR Act deal with lease and prospecting licence. The tribals of Meghalaya are owners of the minerals located in their land. Since they are the owners, there is no question of they being required to obtain either a prospecting licence or a mining lease. The concepts of lease and licence necessarily involve minimum two parties to the transaction—in case of a licence, there has to be a licensor and licensee. The owner of minerals cannot give licence or lease to himself or grant a prospecting licence. The State is not the owner of the minerals and, therefore, it cannot on its own grant prospecting licence or lease as it has no proprietary right in respect of such minerals. The State can neither be a licensor nor a lessor in such situation.

28. Shri Naphade reiterates that the whole premise of NGT that the coal mining in the State of Meghalaya is unregulated is fully erroneous. Referring to north-eastern area under which the State of Meghalaya was established as full-fledged State, it is submitted that administration of tribal areas is to be governed as per the Sixth Schedule of the Constitution of India and various orders passed by NGT directly interfered in the administration of tribal area which is vested in the Autonomous District Councils. It is submitted that NGT failed to consider the relevant statutory matrix including the provisions of the Sixth Schedule and legislation framed by the Autonomous District Councils. It is submitted that NGT has no jurisdiction to constitute any committee for the purpose of enforcing its orders. The constitution of committees including constitution of Justice B.P. Katakey Committee, former Judge of the Gauhati High Court by the impugned order dated 31-8-2018[1] is beyond the jurisdiction of NGT. The constitution of the Committee is interference with the jurisdiction of Autonomous District Council. It is further submitted that NGT has also no jurisdiction to create any fund. The Tribunal by constituting the Committee and by constituting a fund has created a parallel Government. The Tribunal not being a constitutional court it cannot issue a continuous mandamus. It is submitted that the Tribunal although issued several directions to the State

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of Meghalaya to frame mining policy whereas the State has no jurisdiction regarding framing of mining policy under the MMDR Act, 1957, the State is denuded with any legislative powers with regard to regulation and development of minerals, which have been declared by the Union to have been taken under its control. Referring to the EIA Notification dated 14-9-2006 issued under the Environment Protection Act, 1986, he submitted that environment clearance for mining was required only when area of mining was more than five hectares. In tribal areas of the State of Meghalaya, mining area consists of small area which being not more than five hectares, there was no requirement of obtaining an environment clearance. He does not dispute that after 15-1-2016 by the EIA notification now the requirement of area of being not more than five hectares having been deleted environment clearance is required as on date with regard to carrying on mining operations. The tribals are dependent for their livelihood on coal mining and, therefore, by complete ban on coal mining with effect from 17-4-2014, large number of tribals are deprived from their livelihood and it is obligatory for the State to espouse the cause of the tribals, who individually were not before NGT. There being no jurisdiction in the State of Meghalaya to grant mining lease as per special nature of land tenure in the tribal areas of the State of Meghalaya and further minerals are not vested in the State of Meghalaya, NGT erred in holding that the State has failed to carry on its obligation and failed to check coal mining in the State of Meghalaya, it is the Central Government which has all jurisdiction and authorities under the 1957 Act to make necessary rules and issue necessary directions and the State alone cannot be blamed. Referring to the Mineral Concession Rules, 1960 framed under Section 13 of the MMDR Act, 1957, it is submitted that even though Rule 13(*f*) refers to mining application with regard to land of which minerals vest in persons other than the Government, he submits that this provision shall not apply for owner when he himself carries on the mining, the question of taking lease may arise when owner of the land gives land to some other person to mine the minerals.

29. Shri Naphade, however, submits that the provisions of the Mines Act, 1952 are applicable and have to be complied with. He referred to the Mineral Conservation and Development Rules, 1988, where cess can be charged by the State.

30. Shri Amarendra Sharan, learned Senior Counsel appearing for the State of Meghalaya in CA No. 2968 of 2019 submits that NGT vide the impugned order dated 4-1-2019[4] has directed the State of Meghalaya to deposit Rs 100 crores as an interim measure which is wholly unsustainable. NGT has passed the order dated 4-1-2019[4] relying on first interim report of the Committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court. The constitution of the Committee was itself beyond the jurisdiction of NGT. Shri Sharan adopts the submissions made by Shri Naphade and in addition to those submissions, submits that the order dated 4-1-2019[4] has been passed in

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violation of principles of natural justice since no opportunity was given to the State of Meghalaya to respond to the report of the Committee used against it for imposing a penalty of Rs 100 crores. The order impugned has been made by NGT contrary to the findings recorded in the report of the Committee of Justice B.P. Katakey. The impugned order dated 4-1-2019[4] has been passed by NGT without any assessment of damage of environment whatsoever. The Tribunal also did not notice its earlier order dated 25-3-2015[3] wherein penalty has already been imposed on actual polluters i.e. coal miners and transporters based on polluter pays principle for which fund, namely, Meghalaya Environment Protection and Restoration Fund (hereinafter referred to as "MEPRF") has already been created. NGT passed order dated 4-1-2019[4] without considering the statutory provisions concerned to determine as to who is responsible for implementation of the mining statutes and the environmental legislation in the State of Meghalaya. The State of Meghalaya has limited source of revenue and putting extra burden of Rs 100 crores shall shatter the economy of the State.

31. Shri Raju Ramachandran, learned Senior Counsel, in support of appellant, Garo Hills Autonomous District Council in Civil Appeal No. 10907 of 2018 submits that NGT while passing order dated 31-8-2018[1] has ignored the Sixth Schedule of the Constitution. By order dated 31-8-2018[1], NGT could not have constituted the Committee. Referring to the Sixth Schedule of the Constitution, Shri Raju Ramachandran submits that under para 2, District Councils, Regional Councils have been constituted and also Hills District Council is a Council created under the Sixth Schedule of the Constitution framed under Article 244(2) and Article 275(1) of the Constitution of India. The constitution of Committee by NGT has virtually affected District Autonomous Council from issues concerning administration of forests and lands within the exclusive jurisdiction of the Council. The ban of coal mining has deprived the appellant from major source of Revenue. Under Para 8 of the Sixth Schedule, Autonomous District Council is entitled to share the Revenue from minerals royalty collected by the State Government. The impugned order has been passed without hearing and taking note of existence of shareholders or stake of shareholders. Shri Raju Ramachandran further submits that NGT has disposed of OAs Nos. 73, 13 and 186 of 2014 by order dated 31-8-2018[1] after this, it could not have passed any order.

32. The learned counsel for the appellant in support of CA No. 5272 of 2016 submits that the appeal filed by the appellant is only for seeking protection of the proprietary rights of its members over the coal which was mined as per prevailing custom prior to 17-4-2014. It is submitted that by

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order dated 31-3-2016[11], NGT had taken the view that all coal after 2016 shall vest in the State. The appellant had previously approached this Court by filing CA No. 4793 of 2016 against the order dated 31-3-2016[11] wherein this Court granted[12] the liberty to the appellant to approach NGT for filing application for clarification of the order. The application of the appellant for clarification was rejected by NGT without giving any reason. NGT had overreached the scope of its jurisdiction and authority in directing for vesting of the coal extracted by the members from their land in the State. It is further submitted that the MMDR Act, 1957 was enacted by Parliament to regulate the mining activities in the country which does not in any manner purport to declare the proprietary rights to the State in the minerals.

33. Mr Ranjit Kumar, learned Senior Counsel in support of CA (D) No. 3067 of 2018 submits that the Tribunal committed error in stopping the entire coal mining in the State of Meghalaya. Referring to Section 15 of the NGT Act, 2010, Shri Ranjit Kumar submits that relief, compensation and restitution can be granted as provided in Section 15. It is submitted that by stopping entire coal mining from 17-4-2014 the livelihood of the appellant and several similarly situated persons had been adversely affected. It is submitted that the Tribunal ought to have lifted the ban. The order impugned infringes right under Article 21 of the Constitution of India. The Tribunal has acted beyond its power under Section 15 of the NGT Act, 2010. The finding of the Tribunal on mining that in the State of Meghalaya mining is unregulated is not correct, whereas, a miner is required to get registered and it has to pay royalty fixed by the State of Meghalaya.

34. Shri Ranjan Mukherjee, learned counsel appearing for Respondent 2, State of Meghalaya in CA No. 3067(D) of 2019 submits that even if rat-hole mining has been banned, all mining cannot be banned. He submits that the Meghalaya Mines and Minerals Policy, 2012 has been formulated with an aim to facilitate systematic, scientific and planned utilisation of mineral resources and to streamline mineral based development of the State. The State of Meghalaya has been created to follow the customary rights and practices of coal mining in the tribal areas of Meghalaya. In this regard Letter of the Central Government dated 2-7-1987 has also been relied. The draft guidelines for coal mining activities in the State have also been framed in the year 2015. Although, NGT has directed the Ministry of Environment and Forests to look into the matter but no objection has been communicated to the State except certain minor discrepancies.

35. Shri A.S. Nadkarni, learned Additional Solicitor General appearing for the Union of India submits that the provisions of the MMDR Act, 1957 are also applicable in the tribal areas of the State of Meghalaya. The request submitted

11 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 422
12 *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn.* v. *All Dimasa Students Union*, 2016 SCC OnLine SC 1830

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by the Government of Meghalaya for issuance of presidential notification under Para 12-A(*b*) of the Sixth Schedule of the Constitution of India for exempting the State of Meghalaya from certain provisions of the MMDR Act, 1957 has not been acceded to. The Office Memorandum dated 12-3-2019 issued by the Government of India, Ministry of Coal has been referred to and relied on by the learned Additional Solicitor General in this regard. It is submitted that no prior approval for mining rights in respect of area containing coal has been given under the MMDR Act, 1957 by the Ministry of Coal, Government of India for the State of Meghalaya.

36. It is submitted that it is entirely impermissible for the appellant or any other private person to claim any rights for illegal or unlawful mining of coal in derogation of the law in force in the State of Meghalaya. It is further submitted that generation of revenue would not be a ground for claiming permission to carry out mining in contravention/derogation of the law in force. A draft guideline submitted by the State Government of Meghalaya by Letter dated 24-9-2015 was examined by the Ministry of Coal, Government of India on which decision was taken that the guidelines submitted by the Government of Meghalaya were not in conformity with the existing statutory provisions of the MMDR Act, 1957. Hence, the State of Meghalaya may reframe the guidelines in conformity with the MMDR Act, 1957 and submit. In the revised proposal dated 25-7-2016 the State of Meghalaya had proposed certain amendments in the MMDR Act, 1957 and exemption from the application of the MMDR Act, 1957 through a presidential notification under Para 12-A(*b*) of the Sixth Schedule. It had already been communicated by the Central Government that exemption from applicability of the MMDR Act, 1957 cannot be acceded to.

37. Shri Colin Gonsalves, learned Senior Counsel, appearing as Amicus Curiae, has raised various submissions. The learned Amicus Curiae has submitted a report in two volumes titled "CURSE OF UNREGULATED COAL MINING IN MEGHALAYA", a Citizen's Report from Meghalaya, 1-12-2018. In Vol. I under the head "Introduction" the Report states:

> "*Introduction*
>
> Meghalaya has a resource curse. Although, we have been endowed with abundant forests and minerals, these resources have not contributed to the good of our society, because they have been extracted without any regulation or concern for the larger common good. This unregulated, narrow, self-interest based use of natural resources has exacerbated socio-economic inequality, destroyed the environment, heightened criminality, and torn as under our egalitarian tribal social fabric.
>
> It also violates Section 39(*b*) of the Constitution which provides that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good and, therefore, the State cannot distribute the material resource of the community in any way it likes. The process of distribution must be guided

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by the constitutional principles including the doctrine of equality and larger public good.

The National Green Tribunal's landmark order regarding unregulated and illegal coal mining in our State therefore came as a wake-up call for Meghalaya society at large. This order has been criticised and appealed against by a small section of locals most of who are coalmine owners, transporters, politicians and administrators who have 'illegally' benefited out of this unregulated mining and who want things to get back to business as usual. Coal miners and politicians who are miners, truck owners, weighbridge operators, etc. have filed appeals with the Honourable Supreme Court, asking the Hon'ble Court to rescind NGT orders so that mining can once again begin."

38. The learned Amicus Curiae submits that the State of Meghalaya still continues with the illegal mining. Shri Gonsalves submits that Section 4 of the MMDR Act, 1957 by use of words "no person" clearly prohibits mining operation without obtaining mining lease in accordance with the Act. Referring to Section 5, he submits that for Schedule A minerals, permission of the Central Government is required which has not been obtained. Shri Gonsalves submits that for mining, the leases are required and permission be sought. He submits that there are 53 mines per kilometre in tribal areas of Meghalaya. He submits that all extracted coal which is claimed to be lying assessed or unassessed in the State of Meghalaya is result of illegal mining and Coal India Ltd. be directed to take over the entire coal.

39. Shri Gonsalves has also referred to various reports of the Comptroller and Auditor General of India which has been brought on record in Vol. II—A Citizen's Report from Meghalaya, 6-1-2019.

40. Shri Nidhesh Gupta, learned Senior Counsel, appearing on behalf of the private respondent in Civil Appeal No. 5272 of 2016 has refuted the submissions raised by the learned counsel for the appellants. Shri Nidhesh Gupta submits that as per List I Entry 54 regulation of mines and minerals development has been declared by Parliament under the MMDR Act, 1957. Section 2, by declaration as contained in the MMDR Act, 1957, the State Government is denuded of all legislative and executive powers under List II Entry 23 read with Article 162 of the Constitution of India. Section 4 sub-section (1) makes it clear that no person can undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence. As per Section 5 sub-section (1) a State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person is an Indian national and satisfies such conditions as may be prescribed. The proviso to Section 5(1) provides that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government. The contention on behalf of the State of

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Meghalaya that the MMDR Act, 1957 does not apply to the State of Meghalaya is based on an erroneous reading of the statutory provisions.

41. Section 13 empowers the Central Government to make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of land in which minerals vest in the Government and also in respect of any land in which the minerals vest in a person other than the Government. In exercise of powers under Section 13 of the Act, the Mineral Concession Rules, 1960 have been framed.

42. Chapter V deals with the procedure for obtaining a prospecting licence or a mining lease in respect of a land in which the minerals vest in a person other than the Government. The said Chapter contains provisions from Rule 41 to Rule 52. Rule 41 stipulates that the provisions of the said Chapter apply only to the grant of prospecting licences and mining leases in respect of land in which minerals vest exclusively in a person other than the Government. Therefore, mining leases in respect of land where minerals vest in a person other than the Government are covered by the said Chapter and matters concerning grant of prospecting licences and mining leases are detailed therein.

43. As per Section 23-C, the State Government is empowered to make Rules for preventing illegal mining, transportation and storage of minerals. No Rules have been framed by the State of Meghalaya under Section 23-C. The contention on behalf of the State of Meghalaya that the MMDR Act applies only in the cases where minerals vest in the Government, therefore, the MMDR Act does not apply in the State of Meghalaya, is completely misconceived.

44. The learned counsel also relies on the stand taken by the Union of India in the status report dated 24-7-2018. Shri Gupta submits that approximate price of coal is Rs 10,000 per metric ton. Referring to notice inviting tenders by the State of Meghalaya, it is submitted that amount of Rs 1000 per metric ton was contemplated. It is submitted that selling the coal on much low price is causing loss to the Revenue as well as loss to other stakeholders. The allegations have been by Shri Gupta that sale of coal at such low price raises suspicion of underhand dealing. It is submitted that legal position be laid down by this Court and the orders of NGT be upheld.

45. In addition to the above, we have also heard several learned counsel who have filed IA for impleadment and IAs for direction including direction to transport coal belonging to them. We have heard Shri Sidharth Luthra, Shri R. Basant, Smt Meenakshi Arora, Senior Advocates and other learned counsel.

46. On 10-5-2019[15], we had passed an order permitting transportation of coal to the extent of 75,050 MT which was balance quantity from 1,76,655 MT of coal, for transportation of which this Court had passed order on 4-12-2018[16]. The order dated 10-5-2019[15] permitted transportation of the coal, for which transport challans had already been issued after 4-12-2018[16] under the terms

15 *Lber Laloo* v. *All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698
16 *Lber Laloo* v. *All Dimasa Students Union*, 2018 SCC OnLine SC 3330

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and conditions as indicated in the order dated 10-5-2019[15]. In the order dated 10-5-2019[15], we had also held that applicants need not be impleaded, however, they were permitted to intervene in the matter.

47. The counsel appearing for different applicants claim transportation of different quantity of coal which according to them has now been assessed. Still some of the applicants claim transportation of the coal which is yet to be assessed. In different applications, different quantities are claimed to be transported which according to the applicant is lying in different districts of the State of Meghalaya. IA No. 22981 of 2019 and IA No. 22991 of 2019 are applications by an applicant claiming to be auction-purchaser. The learned counsel submitted that he was declared highest bidder, he pleaded for extension of time to deposit the amount but after the order dated 15-1-2019[17], he was not permitted to transport the coal nor could he deposit the balance auction money.

48. Shri Ranjan Mukherjee, learned counsel appearing for the State of Meghalaya has filed an additional affidavit of the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department dated 6-4-2019. In the affidavit, it is stated that in pursuance of the order of NGT dated 31-8-2018[1], the State Government vide Notification dated 14-9-2018 has constituted a team to assist the Commissioner and Secretary to deal with the directives given in para 13 of the order of NGT. It is submitted that in pursuance of the Order of the State Government dated 14-9-2018, the members of the Committee have carried out assessment of unassessed extracted coal appearing in the datasheet of inventory in different Hills District. The report dated 4-10-2018 of the Deputy Commissioner, West Khasi Hills, is filed as Annexure A-3, containing the statement of unassessed extracted coal has been brought on record. Another reports dated 22-10-2018 and 16-11-2018 of West Khasi Hills District containing the statement of assessment of unassessed extracted coal have been brought on record. By report dated 12-11-2018 of the Deputy Commissioner, South-West Khasi Hills, datasheet of coal inventory has been brought on the record. The Report dated 30-10-2018, Deputy Commissioner, South Garo Hills, has also been brought on record. There were reports referring to different assessments carried out by the Committee according to the affidavit which has been filed on behalf of the Commissioner and Secretary to the Government of Meghalaya, the total quantity of coal stock which has now been assessed in different reports stands at 32,56,715 MT.

49. It is further submitted by the learned counsel for the State of Meghalaya that above assessment of coal has been also verified by Technical Committees appointed by the State of Meghalaya. Certain reports of Technical Committees have also been brought on the record along with the affidavit.

15 *Lber Laloo* v. *All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698
17 *Lber Laloo* v. *All Dimasa Students Union*, 2019 SCC OnLine SC 744
1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241

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50. Shri Colin Gonsalves, learned Amicus Curiae has challenged the assessment made by the committees appointed by the State Government as well as verification by Technical Committee report. It is submitted by Shri Gonsalves that report of Technical Committee wants to undo what has been done in the proceedings before the Tribunal and this Court. The learned Amicus Curiae submits that for transportation, five extensions were granted by NGT and four extensions were granted by this Court. Shri Gonsalves referred to Katakey Committee Report in support of his submissions.

51. Shri Nidhesh Gupta, learned Senior Counsel, has also refuted the claim of the different applicants as well as the steps taken by the State of Meghalaya in assessing the coal and verifying the same by Technical Committee. Shri Gupta submits that the coal which is now claimed to be assessed is nothing but illegally extracted coal. It is submitted that in pursuance of several orders passed by NGT and this Court substantial transportation of coal has been permitted, still the enormous quantity of coal is claimed which is nothing but an excuse to obtain an order of transportation of such illegally mined coal. It is submitted that the State of Meghalaya is hand in glove with illegal miners. Shri Gupta submits that the cost of winning coal by rat-hole mining is negligible and after payment of royalty of Rs 675 and Rs 485 towards Meghalaya Environment Protection and Restoration Fund i.e. total payment of Rs 1160, the coal is transported. The market price of the coal is approximately Rs 10,000 per metric ton. The claim of different applicants with regard to unassessed coal is false. It is submitted that all illegally mined coal should be vested in the State and no permission of transport as prayed by the different applicants be granted by this Court. The learned Senior Advocate submits that all applications praying for different directions deserve to be rejected.

52. The learned counsel for the parties in support of their respective submissions have placed reliance on various judgments of this Court which shall be referred to while considering the submissions of the parties.

Points for consideration

53. From the submissions of the parties as noted above and the materials on record in these appeals, the following points arise for consideration.

53.1. (*1*) Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?

53.2. (*2*) Whether provisions of the Mines and Minerals (Development and Regulation) Act, 1957 are applicable in tribal areas within the State of Meghalaya, included in the Sixth Schedule of the Constitution?

53.3. (*3*) Whether for mining the minerals from privately owned/ community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960?

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53.4. (*4*) Whether under the MMDR Act, 1957 and the Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations?

53.5. (*5*) Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in Hills Districts of the State of Meghalaya?

53.6. (*6*) Whether the power to allot land for mining purposes is vested in Autonomous District Councils?

53.7. (*7*) Whether the order of the National Green Tribunal dated 17-4-2014[6] directing for complete ban on mining is unsustainable?

53.8. (*8*) Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of the State and tribals?

53.9. (*9*) Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/ transportation; of minerals and to prepare action plan for restoration of environment?

53.10. (*10*) Whether NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund?

53.11. (*11*) Whether NGT by constituting committees has delegated essential judicial powers to the committees and has further encroached the constitutional scheme of administration of tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?

53.12. (*12*) Whether direction to deposit Rs 100 crores by the State of Meghalaya by order dated 4-1-2019[4] of NGT impugned in CA No. 2968 of 2019 is sustainable?

53.13. (*13*) Whether NGT's order dated 31-3-2016[11] that after 15-5-2016 all remaining coal shall vest in the State of Meghalaya is sustainable?

53.14. (*14*) Whether assessed and unassessed coal which has already been extracted and lying in different districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal?

54. Now we proceed to consider the above points in seriatim.

Point 1

55. The State of Meghalaya submits that NGT while imposing ban on mining and by forming committee and creating a "Meghalaya Environment Protection and Restoration Fund" has gone beyond its jurisdiction as conferred

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307
4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2019 SCC OnLine NGT 105
11 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 422

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on it by the NGT Act, 2010. The Tribunal has no inherent jurisdiction, its jurisdiction flows from Sections 14, 15 and 16 of the Act.

56. It is relevant to notice few provisions of the NGT Act, 2010 to comprehend the jurisdiction vested with the Tribunal. The National Green Tribunal Act, 2010 was enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Section 2 is definitions. Section 2(*c*) defines "environment" in the following manner:

> "**2. (*c*) "environment"** includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;"

57. Section 2(*m*) defines "substantial question relating to environment", which is to the following effect:

> "**2. (*m*) "substantial question relating to environment"** shall include an instance where—
>
> (*i*) there is a direct violation of a specific statutory environmental obligation by a person by which—
>
> (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
>
> (B) the gravity of damage to the environment or property is substantial; or
>
> (C) the damage to public health is broadly measurable;
>
> (*ii*) the environmental consequences relate to a specific activity or a point source of pollution;"

58. Chapter III of the Act deals with jurisdiction, powers and proceedings of the Tribunal. Sections 14 and 15, which are relevant in the present case, are as follows:

> "**14.** ***Tribunal to settle disputes***.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> 1. Ins. by Act 7 of 2017, S. 182 (w.e.f. 26-5-2017).
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

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Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

15. ***Relief, compensation and restitution.***—(1) The Tribunal may, by an order, provide—

(*a*) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(*b*) for restitution of property damaged;

(*c*) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (*a*), (*b*) and (*c*) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

59. The submission which has been pressed by the State is that neither the MMDR Act, 1957 nor the Mines Act, 1952 is prescribed in Schedule I of the Act, hence, coal mining is not within the purview of Schedule I and not within the jurisdiction of the Tribunal. The submission further is that for applicability of Section 14 both the components of sub-section (1) of Section 14 that (*i*) a substantial question relating to environment, and (*ii*) such question arises out of the implementation of the enactments specified in Schedule I, have to be satisfied.

60. It is relevant to notice that before NGT no such plea was taken by the State of Meghalaya or any of the parties questioning the jurisdiction of NGT. However, the issue being a jurisdictional issue, we have permitted the learned counsel for the appellant to raise the issue. NGT took cognizance when

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application, OA No. 73 of 2014 on 17-4-2014[6] was admitted and order was issued. The jurisdiction of the Tribunal to entertain OA No. 73 of 2014 has to be found out from the case set up and pleadings in OA No. 73 of 2014 for which we need to scrutinise the application. OA No. 73 of 2014 has been brought on record as Annexure A-3 in CA No. 5272 of 2016. The application was filed by one All Dimasa Students Union Dima Hasao District Committee. In the application, the following were the respondents:

1. The State of Meghalaya through the Principal Secretary, Forest and Environment Department, Government of Meghalaya, Shillong.

2. The Chairperson, State Pollution Control Board, Meghalaya, Shillong.

3. The State of Assam through the Principal Secretary, Forest and Environment Department, Government of Assam, Dispur.

4. The Chairperson, State Pollution Control Board, Assam, Dispur.

5. The Central Pollution Control Board, Parvesh Bhawan, East Arjun Nagar, Delhi 110 032 through its Chairperson.

6. North-Eastern Electric Power Corporation Ltd. through its Chairman and Managing Director, Brooklyn Compound, Lower New Colony, Shillong 793 003, Meghalaya.

61. Para 3 of the application states the case of the applicant and facts in brief. Paras 3 and (I) to (IV) are as follows:

"3. The applicant above named begs to present the present application to bring to the notice of this Hon'ble Tribunal about the adverse impact of unscientific opencast mining operations being still undertaken in the Jaintia Hills in Meghalaya on the ecology and socio-economy of the area concerned including Dima Hasao District of Assam. It is stated that the acid mine drainage (for short "AMD") generated from the aforesaid mining operations has resulted in making the water of River Kopili (an inter-State river flowing through the State of Meghalaya and Assam) and its tributaries highly acidic which in turn has not only caused serious far-reaching damage to the environment, water bodies, soil, agriculture, economy and industry of the area concerned but also resulted in causing erosion/corrosion of the critical underwater hydro power equipments of the Kopili Hydroelectric Project (for short "KHEP") of North-Eastern Electric Power Corporation Ltd. (for short "NEEPCO") situated in Umrongso, Dima Hasao, District of Assam inasmuch as the said acidic water is ultimately led to the reservoirs of the said project.

Facts in brief

I. That the applicant is the Secretary of Dima Hasao Students Association and filing the present petition in a representative capacity to

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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espouse the cause of the people of Dima Hasao, Assam who are constantly and continuously facing the adverse effect of the aforesaid illegal activities in the State of Meghalaya.

II. That Kopili River is an inter-State river in North-East India that flows through the States of Meghalaya and Assam and is the largest south bank tributary of River Brahmaputra in Assam, the Kopili River originates from the black mountains of Lum Bah-bo Bah-Kong in Meghalaya and flows north-west into the Brahmaputra Valley in Assam. The said river demarcates the Jaintia Hills in Meghalaya and Dirria Hasao in Assam. The river flows for a total length of 290 km and has a catchment area of 16, 420 km.

III. That the Kopili Hydroelectric Project (KHEP) of NEEPCO (a Government of India undertaking) is one of the pioneering hydroelectric project in the North-Eastern region of India. The Kopili hydroelectric plant is a 275 MW storage type hydroelectric plant consisting of two dams which have created two reservoirs, namely, Kopili reservoir is used in the Khandong powerhouse through a 2759 m tunnel to generate power. The tail water from this powerhouse is led to Umrong Reservoir is used in Kopili powerhouse through a 5473 m tunnel to generate power. Although, the dam, powerhouse and residential colony of Kopili Hydro Electric Plant (KHEP) are located in the Dima Hasao District (formerly known as North Cachar Hills District) of Assam, the catchment and reservoirs are spread in two States, namely, Meghalaya and Assam. It is further stated that Kopili River and its tributaries feed water to the reservoirs of the project. Kharkor is a major tributary of River Kopili and drains a vast area of Jaintia Hills Districts of Meghalaya. The Jaintia Hills being well known for coal mining areas are contributing acidic water in the form of acid mine drainage (AMD) to River Kharkor through its different tributaries such as Urn Pai, Myntriang, Urn Ropang, Sarbang, Mostem, etc. as these streams drain through the active and inactive coal mining areas of Jaintia Hills. The acidic water finally reaches to Khandong and Umrong reservoirs of KHEP. As a result, the water of the reservoirs has become highly acidic. The water pollution in streams of catchment area varies from brownish to reddish orange. The same polluted water through various tributaries of Rivers Kharkor and Kopili is perpetually reaching to the reservoirs of KHEP. As a result, the water of reservoirs has become highly acidic. In recent years, it has been found that acidity of reservoir water is a major threat to equipments and machinery due to corrosion/metal decay and erosion. Components such as cooling water header pipe, bends, throttling valves, pressure equaliser pipe of turbine, etc. made up of different metals and alloys are getting severely affected and incurring high maintenance cost.

IV. That the said adverse impact of the aforesaid mining operation which has not only affected the ecology and socio-economy of the area but also severely affected the generation of hydro-electricity at the Kopili Hydroelectric Plant has been subject-matter of various studies. In fact,

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a detailed project report of pilot project for remediation of acid mine drainage (AMD) in the catchment of Kopili River at the upstream of Kopili Hydro Electric Plant (KHEP), Umrongso, Dima Hasao, Assam was done by Dr O.P. Singh, Professor, Department of Environmental Studies, North-Eastern Hills University, Shillong, Meghalaya. Similarly, a detailed article based on detailed investigation by Shri Pankaj Sharma and others was published under the heading "Acid Mine Discharge—Challenges Met in a Hydro Power Project" in *International Journal of Environmental Sciences*, Vol. I, No. 6, 2011. Both the aforesaid publications give an in-depth analysis of the aforesaid problem as well as suggest remedial measures to improve the situation. However, it is stated that no proper and effective remedial measures have been taken by the authorities concerned/State respondents to abort the aforesaid menace and the ill effects of the same are still continuing and the same are being constantly faced by the innocent citizens/waterbodies, etc. of the area including the people of Dima Hasao District of Assam. Copies of the detailed project report of pilot project for remediation of acid mine drainage (AMD) in the catchment of Kopili River at the upstream of Kopili Hydro Electric Plant (KHEP), Umrongso, Dima Hasao, Assam and the article published under the heading "Acid Mine Discharge—Challenges Met in a Hydro Power Project" in *International Journal of Environmental Sciences*, Vol. I, No. 6, 2011 are annexed herewith and marked as *Annexures P-1 and P-2* respectively. The ill effect of the aforesaid operations has also been the subject-matter of news items in various newspapers including one published by *The Assam Tribune* on 20-6-2012 under the heading "Concern Over Contamination of Kopili Water" and another one published in *The Telegraph* on 20-6-2013 under the heading "Two Kopili Power Units Shut Down—Mining in Jaintia Hills Affects Machines". Copies of the news items published in *The Assam Tribune* dated 20-6-2012 and *The Telegraph* dated 20-6-2013 are annexed herewith and marked as *Annexures P-3 and P-4* respectively."

62. In Para 3(V) the appellant has extracted a report of one Dr O.P. Singh, Professor, North-Eastern Hills University, Shillong, Meghalaya. Certain paragraphs of the report stated that acid mine drainage (AMD) is the greatest environmental problem of coal industry and main source of water pollution in and around mining areas. The report mentioned that AMD degrades the water quality of the area in terms of lowering the pH of the surrounding water resources and increasing the level of total suspended solids, total dissolved solids and some heavy metals. Following is the part of Para 4.1.4 of the Report which is extracted in Para 3(V):

"4.1.4. *Impact of AMD on Environment, Socio-economy and Industry*

Impact on environment and water resources—acid mine drainage is the greatest environmental problem of coal mining industry and main source of water pollution in and around mining areas. The influx of untreated AMD into streams severely degrades both water quality and aquatic habitat

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turning water unfit for desired uses and often producing an environment devoid of most aquatic life. AMD degrades the water quality of the area in terms of lowering the pH of the surrounding water resources and increasing the level of total suspended solids, total dissolved solids and some heavy metals. Acidity and high concentration of SO_4^2; iron and other metals prove to be toxic and corrosive to most aquatic animals and plants. Precipitate of iron hydroxide increases the load of suspended solids which impair light penetration and visibility resulting into low productivity and disruption of normal functioning of the contaminated aquatic ecosystem. AMD can also be toxic to vegetation when discharged to the shallow soil water zones and wetlands (Van Green et al., 1999; Singh and Agrawal, 2004; Gosh, 1991).

Aquatic communities of rivers and streams comprise of phytoplanktoris, periphyton, macrophytes, zooplanktons, invertebrates and vertebrate species. They play important role in normal functioning of the aquatic ecosystem and are indicative of good health of water bodies. Generally, a variety of species with representatives of almost all insect orders, including a high diversity of insects belonging to the taxonomic orders of Ephemeroptera (mayflies), Plecoptera (stoneflies), and Trichoptera (caddisflies) commonly referred to as EPT taxa. Any physical, chemical or biological change in water bodies affects one or all species and disturbs the normal functioning of the aquatic ecosystem. Like many other pollutants, AMID contamination causes a reduction in the diversity and total numbers, or abundance, of these aquatic communities including benthic macroinvertebrates, fishes, etc. As a result, the community structure is altered and water bodies affected by AMD possess a lower percentage of EPT taxa (Campbell et al., 2000). Moderate AMD contamination eliminates the more sensitive species whereas severely contaminated conditions are characterised by dominance of certain taxonomic representatives of pollution tolerant organisms.

As a consequence of depletion of aquatic invertebrates, the fishes do not get adequate supply of food and suffer indirectly from AMD contamination. AMD also has direct effect on fish by causing various physiological disturbances. However, the primary cause of fish death in acid waters is loss of sodium ions from the blood. Less availability of oxygen to the cells and tissues leads to anoxia and death as acid water increases the permeability of fish gills to water, adversely affecting the gill function. Severe anoxia occurs below pH 4.2. Low pH that is not directly lethal may adversely affect fish growth rates and reproduction."

63. Further, Para 4.2.3 of the Report dealt with coal mining in Jaintia Hills and Para 4.2.4 dealt with impact of coal mining in Jaintia Hills and Para 4.2.5 dealt with degradation of water quality due to coal mining. Paras 4.2.3, 4.2.4, 4.2.5 and 4.2.6 which were extracted in OA No. 73 of 2014 are produced as below:

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"4.2.3. *Coal mining in Jaintia Hills*

Extraction of coal has been taking place in all three regions, however, major production occurs in Jaintia Hills. The mining activity in Jaintia Hills is a small-scale venture controlled by individuals who own the land. Primitive mining method commonly known as "rat-hole" mining is in practice in Meghalaya. In this method the land is first cleared by cutting and removing the ground vegetation and then digging pits ranging from 5 to 100 m^2 into the ground to reach the coal seam. Thereafter, tunnels are made into the seam sideways to extract the coal which is brought into the pit by using a conical basket or a wheelbarrow manually. Coal seams are reached by excavating the side edge of the hill slopes and then coal is extracted through a horizontal tunnel. The coal from the tunnel or pit is taken out and dumped on nearby un-mined area, from where it is carried to the larger dumping places near highways for its trade and transportation. Finally, the coal is carried by trucks to the larger dumping places near highways for its trade and transportation. Entire roadsides in and around mining areas are used for piling of coal which is a major source of air, water and soil pollution. Off-road movement of trucks and other vehicles in the area causes further damage to the ecology of the area.

Every year new areas are brought under mining and area under coal mining in Jaintia Hills is increasing day-by-day as shown in Figures 4, 5.

4.2.4. *Impact of coal mining in Jaintia Hills and beyond*

Mining operation, undoubtedly has brought wealth and employment opportunity in the area, but simultaneously has led to extensive environmental degradation and erosion of traditional values in the society. Environmental problems associated with mining have been felt severely because of the region's fragile ecosystems and richness of biological and cultural diversity. The indiscriminate and unscientific mining and absence of post-mining treatment and management of mined areas are making the fragile ecosystems more vulnerable to environmental degradation and leading to large-scale land cover/land use changes. The current modus operandi of surface mining in the area generates huge quantity of mine spoil or overburden (consolidated and unconsolidated materials overlying the coal seam) in the form of gravels, rocks, sand, soil, etc. which are dumped over a large area adjacent to the mine pits. The dumping of overburden and coal destroys the surrounding vegetation and leads to severe soil and water pollution. Large-scale denudation of forest cover, scarcity of water, pollution of air, water and soil, and degradation of agricultural lands are some of the conspicuous environmental implications of coal mining in Jaintia Hills. Further, entire coal mining area of the Jaintia Hills has become full of mine pits and caves. These open, unfilled pits are the places where surface water percolates and disappears. As a result, smaller streams and rivers of the area, which served as lifelines for the people, are either completely disappearing from the face of the earth or becoming seasonal

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instead. Consequently, the area is facing acute shortage of clean drinking and irrigation water. Besides, a vast area has become physically disfigured due to haphazard dumping of overburden and mined coal, and caving in of the ground and subsidence of land.

Continuous discharge of acid mine drainage (AMD) and toxic chemicals from coal mines, storage sites and exposed overburden have polluted the river system of the area. Acidic water on reaching to land and agricultural fields has affected the traditional agriculture and agricultural productivity of the area (Das Gupta et al, 2002; Swer and Singh, 2004)

4.2.5. *Degradation of water quality due to coal mining*

The water bodies of the area are the greatest victims of the coal mining. The water bodies are badly affected by contamination of acid mines drainage (AMD) originating from mines and spoils, leaching of heavy metals, organic enrichment and silting by coal and sand particles. Pollution of the safer is evidenced by the colour of the water which in most of the rivers and streams in the mining area varies from brownish to reddish orange. Low pH (between 2-3), high conductivity, high concentration of sulphate, iron and toxic heavy metals, low dissolved oxygen (DO) and high BOD are some of the physico-chemical and biological parameters which characterise the degradation of water quality. Analysis of physico-chemical and biological parameters of water in the mining area shows severe degradation of water quality.

The colour of the water in mining area generally varies from brownish to reddish orange. Siltation of coal particles, sand, soil, etc. and contamination of AMD and formation of iron hydroxide are some of the major causes of change in water colour. Formation of iron hydroxides [Fe $(CH)_3$] is mainly responsible for orange or red colour of water in the mining areas. Iron hydroxide is a yellowish insoluble material commonly formed in water bodies of the coalfields. It is this material that stains streams and responsible for red to orange colour of water. When elevated levels of iron are introduced into natural waters, the iron is oxidised and hydrolysed, thereby forming precipitate of iron hydroxides.

The water in coal mining areas has been found highly acidic. The pH of streams and rivers varies between 2.31 to 4.01. Solids such as fine particles of coal, sand, mud and other mineral particles were found deposited at the bottom of the water bodies. Besides, water was also found turbid and coloured due to suspended precipitates of iron hydroxides. Dissolved oxygen was found to be low in water bodies of coal mining areas, the lowest being 4.24 mg/L in River Rawaka and stream Metyngka of Rymbai.

The waters of the mining areas have been found containing sulphate concentration between 78 to 168 mg/l. Electrical conductivity is a rapid measure of the total dissolved solids present in ionic form. Water in coal mining areas was found having high conductivity. Deposition of silt at the bottom of the rivers and streams is another important problem in coal

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mining areas. Water bodies of the mining area appear to contain various types of organic matter which is evident by low dissolved oxygen (DO) and high biochemical oxygen demand (BOD).

As a result, the rivers, streams and springs which had supported extremely rich biodiversity and traditional agriculture, and were source of potable and irrigation water in the area have become unfit for human consumption. Further, there is an overall decline in agricultural productivity due to contamination of soil with coal particles, seepage of acid mines drainage and scarcity of water. The water of many rivers and streams has almost become devoid of aquatic life.

4.2.6. *Causes of deterioration of water quality*

Major causes of deterioration of water quality, as evidenced by above observations are AMD discharge, siltation and organic enrichment. As in any other coal mining area, acid mine drainage (AMD) is the main source of water pollution in the coal mining areas of Jaintia Hills. As discussed in previous chapter, AMD is formed by a series of complex geochemical and microbial reactions that occur when water comes in contact with pyrite (iron sulfide) found in coal and exposed rocks of overburden. Iron sulfide in presence of oxygen, water and bacteria forms sulphuric acid, is referred to as AMD. In the process, iron hydroxide, a yellowish orange precipitate, is also formed. The precipitate of iron hydroxide together with other contaminants causes turbidity and changes in colour of the water which reduces the penetration of light and affects the aquatic life. Extremely low pH conditions in the water accelerate weathering and dissolution of silicate and other rock minerals, thereby causing the release of other elements such as aluminium, manganese, copper, cadmium, etc. into the water. Hence, water contaminated with AMD is often coloured and turbid with suspended solids, highly acidic (low pH), and contains high concentration of dissolved metals and other elements. Most of the streams and rivers of Jaintia Hills in coal mining areas are severely contaminated with AMD and thus water has highly acidic. The pH and other parameters of some AMD affected water bodies are summarised in Table 4.1. Table 4.1: Summary of water quality parameters in some coal mining rivers/reservoir:

Sl. No.	*Rivers/Streams & Location*	*Colour of water*	*pH*	*Sulphate contents (mg/l)*	*E Conductivity (pS/cm)*
1.	Myntriang	Light	2.8	36	56
2.	Urn Pai	Brownish	3.2	186	160
3.	Rawaka, Rymbai	Reddish	2.31	166.5	135
4.	Kenaium,	Reddish	2.66	144.0	74
5.	Metyngka, Rymbai	Reddish brown	2.42	168.0	27
6.	Urn-Mynkseh, Ladrymbai	Brownish orange	3.52	118.7	67

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7.	Thwai-Kungor, Bapun	Brownish	4.01	82.87	18
8.	Umkyrpon, Khliehriat	Light orange	3.67	161.3	37
9.	Waikhyrwi, Sutnga	Brownish	3.96	78.69	-
10.	Um Roong		2.8	896	128
11.	Mostem	Brownish	2.9	616	119
12.	Sarbang	Turbid	3.35	150	32
13.	Um Lurem	Yellowish	5.0	19	3
14.	Khongdong Reservoir	Clear	4.6	43	34

Source: Present study; GSI, 2006-7;
Biahwar, 2010

The results show that most of the rivers in the coal mining areas of Jaintia Hills are severely affected by AMD as is evident from the lower pH values, higher sulphate content and EC in water samples."

64. Thus, there were clear allegations in the application that in spite of various remedial measures set out in the report no proper and effective remedial measures have been taken by the authorities concerned of the State of Meghalaya. Para 3(VI) is as follows:

"3. (VI) That the various remedial measures are set out in detail in Paras 4.4, 4.5, 5, 5.1 and 5.2 and other relevant paragraphs of the said report. However, to the best of knowledge of the applicant, no proper and effective remedial measures have been undertaken by the authorities concerned till date and the innocent citizens/water bodies, etc. of the areas concerned including that of Dima Hasao District in Assam continue to be subjected to the ill effect of the aforesaid illegal mining operation in the State of Meghalaya. That apart, continuous and irreparable damage on the environment, water, soil, agriculture, etc. in the areas concerned including Dima Hasao District of Assam are also continuing as a result of the said illegal mining operations in Jaintia Hills in the State of Meghalaya."

65. Ground A of the application is also relevant to be reproduced which is to the following effect:

"*Grounds*

A. That the aforementioned illegal mining operations in the Jaintia Hills in the State of Meghalaya have not only caused serious and irreparable damage to the ecology, water bodies and the socio-economy of the areas concerned including of Dima Hasao District of Assam but has also resulted in serious erosion/corrosion of the underwater plants and machineries and equipments of the Kopili Hydro Power Project of the North-Eastern Electric Power Corporation of India (a Government of India undertaking), the ill effect of the said mining operation has been highlighted in detail in the aforementioned detailed project report by Dr O.P. Singh, Professor,

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North-Eastern Hills University as well as the said article published in *International Journal of Environmental Sciences*. Though remedial measures were suggested in both the aforesaid studies, to the best of the knowledge of the applicant, no proper and effective remedial measures have been undertaken by the respondents herein and the ill effect of the said activities are still continuing to the detriment of the ecology, water bodies and socio-economy of the areas concerned including Dima Hasao District of Assam. It is most respectfully submitted that the total inaction on the part of the respondents herein in spite of detailed study on the subject with remedial suggestions are totally inexcusable and show the total callous attitude of the State respondents, the menace of illegal opencast mining operations in the Jaintia Hills in Meghalaya is still continuing to the detriment of the ecology and socio-economy of the areas concerned including Dima Hasao District of Assam and as such, warrants, in the most respectful submissions of the applicant, immediate intervention by this Hon'ble Tribunal. The aforesaid inaction has resulted in violation of the various enactments mentioned in Schedule I of the National Green Tribunal Act, 2010 including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 apart from infringing the fundamental rights of the applicant under Articles 14 and 21 of the Constitution of India."

66. The pleadings in OA No. 73 of 2014 as extracted above clearly and categorically alleged environmental degradation consequent to illegal coal mining. It was further stated that inaction of respondent authorities has resulted in violation of various enactments mentioned in Schedule I of the NGT Act, 2010 including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The application OA No. 73 of 2014 thus has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14. Both the component as appearing in sub-section (1) of Section 14 that is (*i*) substantial question relating to environment, and (*ii*) such question arises out of the implementation of the enactments specified in Schedule I, were involved.

67. NGT after adverting to the application OA No. 73 of 2014 on 17-4-2014[6] has undertaken different proceedings and asked for various reports from different committees including State Pollution Control Board. By order dated 31-8-2018[1], NGT had appointed a committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court which consisted of Prof. Ashok K. Singh, Rajiv Gandhi Chair Professor, Department of Environmental

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241

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Science & Engineering representative from Indian School of Mines, Dhanbad IIT (ISM), Dhanbad (826004), Dr Shantanu Kumar Dutta, Scientist 'D' representative of Central Pollution Control Board. The said Committee submitted interim report on 31-12-2018 and on the subject "Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?" has been dealt with in Issue (D) in the following manner:

"*Issue (D) Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof*?

(*i*) The Meghalaya State Pollution Control Board in the month of September 1997 published a report entitled "ENVIRONMENTAL IMPACT OF COAL MINING IN JAINTIA HILLS DISTRICT". The then Chairman of the said Board, in his foreword, has admitted unplanned and unscientific coal mining activities in the State for more than hundred years, which achieved dangerous dimensions since last two decades and are creating ecological disturbances and negative environmental impacts, to the extent that the very existence of biological life is threatened in the coal mining areas of the State. It has also been admitted that no systematic efforts to study such impacts have so far been made by any institution. The then Member Secretary of the Board, in the preface, has projected the adverse impacts on the environment because of the coal mining activities. The pH level in water of almost all the rivers and streams was found to be below the required level. In some rivers and streams, the pH level was found to be as low as 2.4. The Meghalaya State Pollution Control Board, in the said report, has observed that the random discharge of AMD and acidic run-offs from the coal storage areas have also made the rivers, streams and even groundwaters highly acidic. The ambient air quality of the coal mining and coal storage areas was also found to be degraded to certain extent. The Board, therefore, observed that—"The uncontrolled and unscientific coal mining operations in Jaintia Hills District have already created massive ecological disturbances and environmental degradation because presently neither any pollution control measures are adopted by the miners nor any sincere efforts are made for reclamation of the mine land." In the said report, the following recommendations were made to minimise the overall adverse environmental impacts of the mining activities:

(*a*) To generate social awareness among the public in general and the miners in particular about the adverse environmental impacts and the health hazards associated with such unscientific and unplanned coal mining activities.

(*b*) Preparation of the inventory of the mine owners, areas under mining and rate of land use change to get the first-hand knowledge about the quantum of the efforts required for better management of these activities.

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(*c*) To enforce suitable legislations on the lines of the National Mineral Policy immediately for exploitation of coal in most sustainable manner.

(*d*) To engage expert institution for finding out the most suited technologies for the coal exploitation with appropriate pollution control measures in order to ensure that the environment as a whole is not subjected to further degradation.

(*e*) To engage the expert institution for finding out the suitable ways for rehabilitation of the mined land in phased manner so that the scarce land resources can be brought back to productive uses.

(*f*) To look for the alternative transport facilities to control vehicular pollution.

(*g*) To identify the suitable location for the storage of coal for sale with adequate facilities to treat dump run-offs.

(*h*) To study the aspect of the presence of trace elements in the surface and groundwater because the low pH values increase the dissolution power of water. Large numbers of trace elements are always associated with the coal which gets dissolved in low pH waters. These trace elements are serious health hazards even in very low concentrations.

(*i*) To introduce lucrative schemes for the afforestation in the most affected areas.

(*j*) To develop the State Mineral Policy with the interaction of government agencies, social institutions, local elders and the miners, keeping in view the specific land ownership system of the State. Nothing of the above recommendations have been implemented so far.

(*ii*) It is, therefore, evident that apart from the water, air pollution, there is degradation of surface land because of the coal mining activities in the State of Meghalaya. Despite publication of the said report by the Meghalaya State Pollution Control Board as back as in the year 1997, no steps appeared to have been taken by any authority to check the adverse environmental effect and also to remedy the same."

68. The present is not a case of mere allegation of applicant of environmental degradation by illegal and unregulated coal mining rather there were materials on the record including the report of the experts, the Meghalaya State Pollution Control Board published in the month of September 1992, the report of Katakey Committee appointed by the Tribunal where environmental degradation of water, air and surface of the land was proved.

69. Hence, there was sufficient allegation regarding substantial questions relating to environment and violation of enactments in Schedule I. We fail to see any substance in the submission of the learned counsel for the appellant that NGT has no jurisdiction to entertain the case and pass orders. During submission, the learned counsel for the appellant has not even referred to

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application which was filed by the applicant in OA No. 73 of 2014. There were reports of the Meghalaya State Pollution Control Board before the State Government pointing out environmental degradation and the Tribunal having taken up the issue, the submission on behalf of the State that the Tribunal has no jurisdiction, is not expected from the State Government which is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matters the State has to act as facilitator and not as obstructionist. Article 48-A of the Constitution provides:

> "**48-A.** ***Protection and improvement of environment and safeguarding of forests and wildlife.***— The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."

70. The learned counsel for the appellant has placed reliance on the judgment of this Court in *Techi Tagi Tara* v. *Rajendra Singh Bhandari*[18]. This Court had occasion to consider Sections 14, 15 and 2(*m*) of the National Green Tribunal Act, 2010, which involves the question of jurisdiction of NGT. The nature of order passed[19] by NGT which was challenged before this Court has been noticed in para 1 of the judgment, which is to the following effect: (SCC p. 737)

> "*1.* This batch of appeals is directed against the judgment and order dated 24-8-2016 passed by the National Green Tribunal, Principal Bench, New Delhi (for short "NGT") in *Rajendra Singh Bhandari* v. *State of Uttarakhand*[19]. On a reading of the judgment and order passed by NGT, it is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State Pollution Control Boards (for short "SPCBs") did not have, according to NGT, the necessary expertise or qualifications to be members or Chairpersons of such high-powered and specialised statutory bodies and therefore did not deserve their appointment or nomination. While we fully commiserate with NGT and share the pain and anguish, we are of the view that the Tribunal has, at law, exceeded its jurisdiction in directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs, however well-meaning they might be. Therefore, we set aside the decision of NGT, but note that a large number of disconcerting facts have been brought out in the judgment which need serious consideration by those in authority, particularly the State Governments that make appointments or nominations to the SPCBs. Such appointments should not be made casually or without due application of mind considering the duties, functions and responsibilities of the SPCBs."

71. In the above background, this Court held that the failure of the State Government to appoint professionals and experienced persons to the key positions in the State Pollution Control Board cannot be classified as a primary

18 (2018) 11 SCC 734
19 *Rajendra Singh Bhandari* v. *State of Uttarakhand*, 2016 SCC OnLine NGT 456

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dispute over which NGT could have jurisdiction. The following was laid down in para 21: (*Techi Tagi Tara case*[18], SCC p. 750)

> "*21.* As far as we are concerned, in the context of the Act, a dispute would be the assertion of a right or an interest or a claim met by contrary claims on the other side. In other words, the dispute must be one of substance and not of form and it appears to us that the appointments that we are concerned with are not "disputes" as such or even disputes for the purposes of the Act—they could be disputes for a constitutional court to resolve through a writ of quo warranto, but certainly not for NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like NGT. While we appreciate the anxiety of NGT to preserve and protect the environment as a part of its statutory functions, we cannot extend these concepts to the extent of enabling NGT to consider who should be appointed as a Chairperson or a member of any SPCB or who should not be so appointed."

72. The issue involved in the above case was entirely different which did not directly pertain to environmental degradation. Whether NGT has jurisdiction to entertain a particular cause is a question which depends on the facts of each case. To find out as to whether NGT has jurisdiction to entertain a case, the case set up before the Tribunal has to be looked into to answer the question. The judgment of *Techi Tagi Tara*[18] was on its own facts and does not help the appellant in the present case.

73. In view of the foregoing discussion, we reject the submission of the learned counsel for the State that the Tribunal exceeded its jurisdiction under Sections 14 and 15 in entertaining the application OA No. 73 of 2014. We also record our disapproval to the stand taken by the State in this regard.

Point 2

74. Before we proceed to consider the above points, first of all, we need to notice the nature of land tenure in the Hills Districts of the State of Meghalaya. The learned counsel for the parties are not at variance on the question of nature of land tenure in the Hills Districts of the State of Meghalaya.

74.1. By the North-Eastern Area Reorganisation Act, 1971 the State of Meghalaya was formed as independent full-fledged State. After the enforcement of the Constitution the area, now comprised in the State of Meghalaya, was included in the State of Assam, the administration and control

18 *Techi Tagi Tara* v. *Rajendra Singh Bhandari*, (2018) 11 SCC 734

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of which area was as per Article 244 of the Constitution of India read with the Sixth Schedule of the Constitution.

74.2. Insofar as the land tenure in the Hills Districts of Meghalaya is concerned, there is no substantial change after the advent of the Constitution. There was no payment system of land revenue before the advent of the Constitution in the Hills Districts of Meghalaya. The learned counsel for the parties have referred to various materials pertaining to the land tenure system prevalent in the Hills Districts of the State of Meghalaya. The lands in the Khasi Hills District of Meghalaya come under two divisions *Ri Raid and Ri Kynti*. Ri Raid lands are community lands which are set apart for the benefit and use of entire community. Ri Kynti lands are privately owned lands which were also owned by community as well as by individuals. The owner of the Ri Kynti land is an absolute proprietor. The tenure system in Jaintia Hills is classified into two types of lands, namely, *hali/irrigated land and highland*. Hali lands are further categorised in raj land, service land, village puja land and private land. Proprietary right does not vest in the State in respect to majority of lands which are either privately owned or owned by the tribal community. No system of payment of land revenue is prevalent in the Hills District of Meghalaya except lands which belong to the State.

74.3. For the purposes of the present case where the submission of the appellant is that land in which mining operations of coal is being done are lands belonging to tribals who are owners of the land as well as of the subsoil, we proceed with the assumption that tribal is the owner of the land. It is further the case of the appellant that in Hills Districts of the State of Meghalaya in land which is privately owned by the tribal or community owned, the tribals or the community or the clan are owners of both surface right and subsoil.

74.4. It is the case of the appellant that the State does not have any right in subsoil or minerals. The judgment of this Court in *Thressiamma Jacob* v. *Deptt. of Mining & Geology*[20], is relied on. This Court in the above case had occasion to consider the question of ownership of subsoil/mineral rights in reference to genmom lands in Malabar area of the State of Madras. Holder of the genmom rights also claimed not only as proprietor of the soil but the owner of the minerals in the soil. This Court laid down the following in para 58: (SCC p. 752)

> "*58*. For the abovementioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth/subsoil rights vest in the State, on the other hand, the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench."

20 (2013) 9 SCC 725 : (2013) 4 SCC (Civ) 559

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75. A Constitution Bench of this Court in *Anand Brahma Shah* v. *State of U.P.*[21], had laid down that prima facie owner of a surface of the land is entitled to everything beneath the land unless there is an express or implied reservation in the grant. In para 13, the following has been laid down: (AIR p. 1088)

> "*13*. In our opinion, a reading of the two sanads supports the case of the appellant that there is no reservation of mineral rights in favour of the Government. The expression used in the sanad of 1803 AD is 'You ought to consider him the Raja of immovable jagir and of mahal and everything appertaining thereto belongs to him'. In effect, the grant to the Raja in the two sanads is a grant of the lands comprised in the mahal of Agori and everything appertaining thereto and as a matter of construction the grant must be taken to be not only of the land but also of everything beneath or within the land. Prima facie the owner of a surface of the land is entitled ex jure to everything beneath the land and in the absence of any reservation in the grant minerals necessarily pass with the rights to the surface (*Halsbury's Laws of England*, 3rd Edn., Vol. 26, p. 325). In other words, a transfer of the right to the surface conveys right to the minerals underneath unless there is an express or implied reservation in the grant. A contract, therefore, to sell or grant a lease of land will generally include mines, quarries and minerals beneath or within it (*Mitchell* v. *Mosley*[22]). It is manifest that when the sanad was executed in favour of the Raja the Government made over the land with all its capabilities to the Raja and merely imposed on him a fixed sum of revenue in lieu of all the rights the Government had as a proprietor of the soil. When neither of the parties knew undiscovered minerals underneath the land and the idea of reservation never entered their minds it cannot be held that there was any implied reservation in the grant. Nor can afterwards a distinction be drawn between the various rights that may exist on the land for the purpose of qualifying the original grant and importing into it what neither party could have imagined. It was argued on behalf of the respondents that the assessment was made on the agricultural income, but this circumstance cannot derogate from the rights conveyed to the Raja in the two sanads because no restriction was placed on the use of the land and the use by the Raja was not limited to agriculture."

76. Thus, looking to the nature of the land tenure as applicable in the Hills Districts of the State of Meghalaya, most of the lands are either privately or community owned in which the State does not claim any right. Thus, private owners of the land as well as community owners have both the surface right as well as subsoil right. We are, thus, of the opinion that tribals owned the land and also owned the minerals, which is an inescapable conclusion. We, thus, proceed to examine the issues on the premise that in privately owned land or community land, minerals also vest in the owner. We first need to consider as to whether the provisions of the MMDR Act, 1957 are applicable in the tribal area of Hills Districts of the State of Meghalaya.

21 AIR 1967 SC 1081
22 (1914) 1 Ch 438 (CA)

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77. Part X of the Constitution separately deals with scheduled and tribal areas. Hills Districts of the State of Meghalaya were treated to be tribal area and were to be governed by Article 244 sub-clause (2) read with Schedule VI. Provisions of Article 244 after formation of the State of Meghalaya are as follows:

> "**244.** ***Administration of Scheduled Areas and Tribal Areas***.—(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
>
> (2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram."

78. The Sixth Schedule of the Constitution contains "Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram". Para 20 of the Sixth Schedule refers to tribal areas and Part II of which consists of Khasi Hills District, Jaintia Hills District and Garo Hills District which have been referred to as autonomous districts. The Sixth Schedule Para 1(1) is as follows:

> "**1.** ***Autonomous districts and autonomous regions***.—(1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and II-A and in Part III of the table appended to Para 20 of this Schedule shall be an autonomous district."

79. Para 2 of the Sixth Schedule provides for constitution of District Councils and Regional Councils. Para 3 provides for powers of the District Councils and Regional Councils to make laws which is to the following effect:

> "**3.** ***Powers of the District Councils and Regional Councils to make laws***.—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—
>
> (*a*) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:
>
> Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition;
>
> (*b*) the management of any forest not being a reserved forest;
>
> (*c*) the use of any canal or water-course for the purpose of agriculture;
>
> (*d*) the regulation of the practice of jhum or other forms of shifting cultivation;

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(*e*) the establishment of village or town committees or councils and their powers;

(*f*) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(*g*) the appointment or succession of Chiefs or Headmen;

(*h*) the inheritance of property;

(*i*) marriage and divorce;

(*j*) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

80. Para 9 of the Sixth Schedule, which is relevant for the present case, is as follows:

"**9.** ***Licences or leases for the purpose of prospecting for, or extraction of, minerals***.—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final."

81. Para 12-A, which is relevant for Meghalaya, is as follows:

"**12-A.** ***Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya***.—Notwithstanding anything in this Constitution—

(*a*) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-Para (1) of Para 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under Para 8 or Para 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

(*b*) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or

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an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect."

82. Now, we revert back to the Mines and Minerals (Development and Regulation) Act, 1957. The 1957 Act has been enacted to provide for development and regulation of mines and minerals under the control of the Union. Section 1 of the Act is as follows:

"**1.** ***Short title, extent and commencement.***—(1) This Act may be called the Mines and Minerals (Development and Regulation) Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint."

83. The Act came into effect w.e.f. 1-6-1958. Whether there are any indications in the Sixth Schedule or any other provision of the law by which it can be contended that the 1957 Act is not applicable in Hills District of tribal areas of the State of Meghalaya? We may first refer to the Sixth Schedule of the Constitution which is a provision for administration of tribal areas in the State of Meghalaya. Para 12-A sub-clause (*b*) empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Para 12-A(*b*) of the sixth Schedule of the Constitution, although, the said Para 12-A(*b*) is in the Constitution with effect from 21-1-1972. Thus, there is nothing in the Sixth Schedule of the Constitution which may indicate about the inapplicability of the 1957 Act with regard to the Hills Districts of the State of Meghalaya. At this juncture, we may also notice the report of the Comptroller and Auditor General of India for the year ended 31-3-2013. In Para 7.5.1 the report mentions:

"7.5.1. *Introduction*

Meghalaya is endowed with sizeable deposits of valuable minerals like coal, limestone, uranium, granite and clay. Minerals being valuable resource, the extraction needs to be maximised through scientific methods of mining with aim to ensure extraction and utilisation of minerals. Besides, most of the mineral reserves are in areas which are under forest cover and hence, mining in the State has environmental implications. In Meghalaya, individual and local communities have ownership over the land and the minerals and barring a few reserve forest areas, the State Government has no ownership over the minerals. The activities of the Mining & Geology (M&G) Department, Government of Meghalaya (GOM) are limited to collection of royalty on the minerals exported outside the State besides geological investigation/exploration of minerals. The Mines and Minerals (Development and Regulation) Act, 1957 lays down

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the legal framework for regulation of mines and development of minerals. The Mineral Concession Rules, 1960 and the Mineral Conservation and Development Rules, 1988 were accordingly framed under the MMDR Act framed for conservation and systematic development of minerals and for regulating grant of permits, licences and leases. The GOM has introduced the Meghalaya Mineral Cess Act, 1988 to mobilise additional revenue. Further, with a view to facilitating systematic, scientific and planned utilisation of mineral resources and to streamline mineral based development of the State, the Meghalaya Mines and Mineral Policy, 2012 has also been notified with effect from 5-11-2012."

84. The Comptroller and Auditor General has clearly stated that the 1957 Act is fully applicable for regulation of mines and regulation of minerals in the State of Meghalaya.

85. The learned counsel for the State of Meghalaya has also filed before us along with an affidavit of Joint Secretary of Government of Meghalaya, Mining and Geology Department dated 13-4-2018 by which Meghalaya Mines and Minerals Policy, 2012 issued by the Government of Meghalaya as well as draft guidelines of coal mining activities in the State prepared in the year 2015 have been brought on the record.

86. Clause 10 of the Policy provides for "Regulatory Framework for Mine Development and Mining". Sub-clause (*b*) of Clause 10 required application for mineral concession either fresh or renewal is to be submitted to the State Government through the Deputy Commissioner of the district wherein the area applied for is situated and with NOC from District Council concerned and landowner. Clause 10 also refers to clearance of the Pollution Control Board of Meghalaya and other requirement. Sub-clause (1) further contemplated that order for grant of mineral concessions will be issued by the State Government, with the approval of the Central Government wherever necessary. Thus, the Policy of 2012 contemplated regulatory regime for mining lease by the State. The Mining and Geology Department of the Government had framed draft guidelines for coal mining activity in the State which has also been brought on record along with the above affidavit dated 13-4-2018.

87. The above guidelines were prepared after/in consultation with the Central Government.

88. The above draft guidelines prepared by the State clearly mention about the unregulated and unscientific mining being carried out in the State of Meghalaya. The Policy Guidelines of Coal Mining which is part of the guidelines also contains the following statement:

> "The Mines Act, 1952 and the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR), together with the rules and regulations framed under them constitute the basic laws governing the mining sector in India. While the Mines Act, 1952 governs the health and safety of the workers, the MMDR Act, 1957 (including all amendments) lays down the legal framework for the regulation of mines and development of all minerals other than petroleum and natural gas. The relevant rules in force

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under the MMDR Act, 1957 are the Mineral Concession Rules (MCR), 1960 outline the procedures and conditions for obtaining a prospecting licence or mining lease. The MCDR, 1988 lays down guidelines for ensuring mining on a scientific basis, while conserving the environment, at the same time.

Apart from the mining statutes, which also govern environment in mines, India has elaborate environment statutes for protection of environment in mining."

89. One submission of Shri Naphade with respect to direction of NGT to frame Mining Policy by the State also needs consideration. Shri Naphade submits that the State of Meghalaya having no legislative competence with regard to major minerals, the National Green Tribunal could not have directed the State of Meghalaya to frame Mining Policy.

90. There can be no dispute to the proposition that in view of the MMDR Act, 1957, the legislative competence of State of Meghalaya under Schedule VII List II Entry 23 stands denuded. However, under the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, several statutory obligations/ jurisdictions have been conferred on the State of Meghalaya, which shall be referred to later in this judgment.

91. When under a parliamentary enactment, the State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement the jurisdictions conferred on the State by parliamentary enactments. It is true that Mining Policy to be framed by the State has to confine to the jurisdiction conferred on it as per the MMDR Act, 1957 and the Rules framed thereunder. There are other related issues concerning mining like protection of environment and forests for which the State has to declare its policy for implementation of its objective. Several other aspects relating to mining, like rehabilitation, reclamation and restoration have to be effectively implemented by the State for which also, it may be required to frame a policy. We may further notice that the Meghalaya Mines and Minerals Policy, 2012 was already framed by the State of Meghalaya, even before directions were issued by NGT. In pursuance of the NGT directions, it was draft guidelines of 2015, which were prepared by the State of Meghalaya. We, thus, are of the view that direction of NGT to declare Mining Policy by the State of Meghalaya cannot be said to be without jurisdiction. However, the State in its Mining Policy can only include those areas where it has jurisdiction under the MMDR Act, 1957 and the Rules framed thereunder.

92. A perusal of the entire Policy documents indicate that the Policy has been framed by the State as per the 1957 Act and the Mineral Concession Rules, 1960.

93. The Government of Meghalaya has also made a request to the Government of India in the year 2015 for issuance of presidential notification under Para 12-A(*b*) of the Sixth Schedule for exempting the State of Meghalaya from certain provisions of the MMDR Act, 1957. After several deliberations, the Union of India has communicated through its OM dated 12-3-2019 that it is not possible to accede to the request of the Government of Meghalaya for issuance of presidential notification under Para 12-A(*b*) of the Sixth Schedule.

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Thus, the request made by the State of Meghalaya to issue exemption has not also been acceded to. The request of the State of Meghalaya that exemption be granted by presidential notification under Para 12-A(*b*) itself expresses recognition of the State of Meghalaya that provisions of the 1957 Act are applicable. We, thus, conclude that there is nothing in the Sixth Schedule of the Constitution which in any manner excludes the applicability of the 1957 Act in the tribal areas of Hills Districts of the State of Meghalaya.

Point 3

94. We need to scan through the statutory scheme of the 1957 Act to find out as to whether parliamentary legislation requires obtaining lease for winning the minerals insofar as mining of coal from privately owned land/community owned land are concerned?

95. Section 2 of the 1957 Act contains declaration to the following effect:

> "**2.** ***Declaration as to expediency of Union Control***.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

96. The 1957 Act has been enacted in reference to Schedule VII List I Entry 54 to the following effect:

> "**54.** Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

97. At this juncture, we may notice Schedule VII List II Entry 23, which is to the following effect:

> "**23.** Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

98. The legislative power under Entry 23 is subject to the provision of List I with respect to regulation and development under the control of the Union. When the Union has declared to have taken under its control the regulation of mines and development of minerals to the extent provided in the Act, the legislative power of the State to the above extent is denuded. The learned counsel for the appellant have also very fairly not disputed the position in law.

99. Section 3 of the Act contains definition clause. Section 3(*c*) defines "mining lease" and Section 3(*d*) defines a "mining operation" which are to the following effect:

> "**3.** (*c*) "**mining lease**" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
>
> (*d*) "**mining operations**" means any operations undertaken for the purpose of winning any mineral;"

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100. Section 4 of the Act contains general restriction on undertaking prospecting and mining operation. Section 4 is couched in terms of an injunction. No person shall undertake any mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and Rules made thereunder. Sub-section (1) of Section 4 is relevant in the present case, which is as follows:

> "**4.** ***Prospecting or mining operations to be under licence or lease.***— (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the Rules made thereunder:
>
> Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:
>
> Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Ltd., a government company within the meaning of clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government:
>
> Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu."

101. The use of words "no person" in Section 4(1) is without an exception. There is nothing in Section 4(1) to indicate that restriction contained in Section 4(1) does not apply with regard to a person who is owner of the mine. Further, words "any area" under Section 4(1) also have significance which does not have any exception. Further phrase "except under and in accordance with terms and conditions with a mining lease granted under the Act" are also significant which make the intent and purpose of prohibition clear and loud. Section 5 contains restriction on the grant of prospecting licences and mining lease in the following words:

> "**5.** ***Restrictions on the grant of prospecting licences or mining leases.***— (1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person—
>
> (*a*) is an Indian national, or company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013); and
>
> (*b*) satisfies such conditions as may be prescribed:

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Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Explanation.—For the purposes of this sub-section, a person shall be deemed to be an Indian national—

(*a*) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(*b*) in the case of an individual, only if he is a citizen of India.

(2) No mining lease shall be granted by the State Government unless it is satisfied that—

(*a*) there is evidence to show the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;

(*b*) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned:

Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government."

102. The proviso to Section 5(1) is relevant since it contains a further restriction that no mining lease shall be granted with regard to any minerals specified in Para A of the First Schedule except with the previous approval of the Central Government. We in the present case are concerned with coal which is in Para A of First Schedule.

103. The next provision which is relevant is Section 13 which provides for rule-making power of the Central Government in respect of minerals. Section 13 sub-section (1) and Section 13 sub-section (2) insofar as relevant in the present case are as follows:

"**13.** ***Power of Central Government to make rules in respect of minerals***.—(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(*a*) the person by whom, and the manner in which, applications for reconnaissance permits, prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;

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(*f*) the procedure for obtaining a reconnaissance permit, a prospecting licence or a mining lease in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such a permit, licence or lease may be granted or renewed;"

104. When we read clause (*a*) and clause (*f*), it makes clear that the Rules can be made for grant of mining lease in respect of land in which minerals vest in the Government as well as in respect of any land in which minerals vest in person other than the Government. The statutory scheme, thus, is clear that lease can be granted with regard to both the categories of land, land in which the Government is owner of minerals and land in which minerals vest in person other than the Government. The tribals, owners of the minerals shall expressly fall in rule-making power of the Government under Section 13(*f*).

105. The Central Government in exercise of power under Section 13 has framed the Rules, namely, the Mineral Concession Rules, 1960. Chapter IV of the Rules contains a heading "Grant of mining lease in respect of land in which the minerals vest in the Government". Rules 22 to 40 contain various provisions under Chapter IV. Chapter V has a separate heading which is "*Procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government*". Thus, Chapter V contains provisions for grant of lease in respect of minerals which vest in the person other than the Government. Rules 41 and 42 which are relevant are quoted below:

"**41.** ***Applicability of this chapter.***—The provisions of this chapter shall apply only to the grant of prospecting licences and mining leases in respect of land in which the minerals vest exclusively in a person other than the Government.

42. ***Restrictions on the grant of prospecting licence and mining lease.***—(1) No prospecting licence or mining lease shall be granted to any person unless he has filed an affidavit stating that he has—

(*i*) filed up-to-date income tax returns;

(*ii*) paid the income tax assessed on him, and

(*iii*) paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961).

(2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act."

106. The statutory scheme delineated by Section 13(2)(*f*) and the Mineral Concession Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land, that is, land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government. In statutory provisions there is no kind of exception as contended by the learned counsel for the appellant that when owner himself wants to win

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the minerals he does not require any mining lease. The submission is contrary to the express statutory scheme, in the event the submission of the appellant is accepted that with regard to minerals which vest in a private person no mining lease is required, the whole object of the Union by which it declared to have taken under its control regulation of mines and development of minerals shall be frustrated.

107. Another limb of the submission of the appellant needs to be noticed here. Shri Naphade submits that there is no concept of owner of a land granting lease to himself. He submits that concept of lease is well known and well-recognised concept as contained in Section 105 of the Transfer of Property Act. Section 105 of the Transfer of Property Act is as follows:

> "**105.** ***Lease defined.***—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
>
> ***Lessor, lessee, premium and rent defined.***—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

108. *Halsbury's Laws of England*, 4th Edn., Para 321 defines "nature of mining lease" in the following manner:

> "321. *Nature of mining lease.*—A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, properly considered, is really a sale of a portion of the land at a price payable by instalments, that is, by way of rent or royalty, spread over a number of years."

109. This Court had occasion to consider the concept of mining lease under the 1957 Act in *Tarkeshwar Sio Thakur Jiu* v. *Dar Dass Dey & Co.*[23]. This Court held that term "lease" occurring in Section 3(*c*) of Act 67 of 1957 *does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act but it has all the characteristics of a lease as defined in the Transfer of Property Act.* (emphasis supplied) In para 31, the following was laid down: (SCC p. 115)

> "*31.* It is important to bear in mind that the term "lease" occurring in the definition of "mining lease" given in Section 3(*c*) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act. But, as rightly

23 (1979) 3 SCC 106

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pointed out by a Bench of the Calcutta High Court in *Falakrishna Pal* v. *Jagannath Marwari*[24] a settlement of the character of a mining lease is everywhere in India regarded as "lease". A mining lease, therefore, may not meticulously and strictly satisfy in all cases, all the characteristics of a "lease" as defined in the Transfer of Property Act. Nevertheless, in the legally accepted sense, it has always been regarded as a lease in this country."

110. This Court proceeded further to consider Section 105 of the Transfer of Property Act and opined the following in para 37: (*Tarkeshwar Sio case*[23], SCC p. 116)

"*37*. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a "right to enjoy immovable property" within the meaning of Section 105; more so, when—as in the instant case—it is coupled with a right to be in its exclusive khas possession for a specified period. The "right to enjoy immovable property" spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject-matter of the lease is mineral land or a sand-mine, as in the case before us, it can only be enjoyed and occupied by the lessee by working it, as indicated in Section 108, Transfer of Property Act, which regulates the rights and liabilities of lessors and lessees of immovable property."

111. This Court further following *Nageshwar Bux Roy* v. *Bengal Coal Co. Ltd.*[25], in *State of Karnataka* v. *Subhash Rukmayya Guttedar*[26] laid down the following in para 6: (SCC pp. 294)

"*6*. ... The question, therefore, is whether the grant of the right to extract the minor mineral from government quarry is a lease or a licence and whether the contractor is liable to pay the royalty in respect of minor mineral extracted from the government quarry. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The normal connotation of the term lease is the preservation of the demised estate to be in occupation and enjoyment thereof for a specified period or in perpetuities for consideration; the corpus by user thereof does not disappear and at the expiry of the term or on termination the same is handed over to the lessor subject to the terms of the contract, express or implied. A right to carry on mining operations in the land on surface or subsoil is to extract the specified quantity of the minerals found therein, to remove and appropriate that mineral. Section 9

24 1932 SCC OnLine Cal 80 : AIR 1932 Cal 775
23 *Tarkeshwar Sio Thakur Jiu* v. *Dar Dass Dey & Co.*, (1979) 3 SCC 106
25 1930 SCC OnLine PC 83 : (1930-31) 58 IA 29
26 1993 Supp (3) SCC 290

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of the Mines and Minerals (Development & Regulation) Act, 1957 affords the guidance in this behalf. It says that the holder of a mining lease or agent, etc. is entitled to remove or consume the mineral. It would mean destruction of the estate leased out and appropriation thereof on payment of consideration i.e. royalty. Therefore, it is a right to enjoy immovable property within the meaning of Section 105 more so when, as in the instant case, it is coupled with a right to be in occupation or enter into possession for a specified period. Section 3(*d*) of the Act defines "mining operations" to mean any operation undertaken for the purpose of winning any minerals. It is true that no right, title or interest has been created in the contractor over the mining area. But he has been permitted to remove and use the minor minerals in the execution of the works as its (sic his) right to enjoy immovable property spoken of in Section 105 which means the right to enjoy the property in the manner in which that property can be enjoyed. In *Nageshwar Bux Roy* v. *Bengal Coal Co. Ltd.*[25] Lord Macmillan speaking for the Board held that: (SCC OnLine PC)

> 'In considering the character and effect of acts of possession in the case of a mineral field, it is necessary to bear in mind the nature of the subject and the possession of which it is susceptible. Owing to the inaccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field: it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarily be partial.' "

112. The words "mining lease" have been given specific meaning under the 1957 Act. It is well-settled principle of interpretation that the provisions of an Act including definition of a term are to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted *for the purpose of undertaking mining operation* and mining operation means any operation undertaken for the purpose of winning the mineral. Applying the aforesaid definition in the Mineral Concession Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person.

113. The examination of a statutory scheme applicable in tribal areas of the State of Meghalaya shall not be complete unless we notice two more aspects, they are:

(*i*) the Mines Act, 1952 and the Regulations framed thereunder;

(*ii*) the Environment Protection Act, 1986 and the notification issued thereunder with regard to mining project.

114. The Mines Act, 1952 is an Act to amend and consolidate the law relating to the regulation of labour and safety of mines. The Act contains various provisions regarding inspection of mining operation and management

25 1930 SCC OnLine PC 83 : (1930-31) 58 IA 29

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of mines. Section 16 provides a notice to be given to mining operations by the owner agent or manager of a mine. Section 16 is as follows:

"**16.** ***Notice to be given of mining operations***.—(1) The owner, agent or manager of a mine shall, before the commencement of any mining operation, give to the Chief Inspector, the Controller, Indian Bureau of Mines and the District Magistrate of the district in which the mine is situate, notice in writing in such form and containing such particulars relating to the mine as may be prescribed.

(2) Any notice given under sub-section (1) shall be so given as to reach the persons concerned at least one month before the commencement of any mining operation."

115. Section 18 contains duties and responsibilities of owners, agents and managers. There are various other provisions in the Mines Act, 1952 which are mandatory to be followed before working any mine. The learned counsel for the appellant has not disputed that the provisions of the Mines Act, 1952 are applicable with regard to the coal mining in the State of Meghalaya. He, however, submits that there are no powers with the District Magistrate or State Officials under the Mines Act, 1952. Chapter II of the Mines Act, 1952 deals with Inspectors and Certifying Surgeons. Section 5(3) provided that the District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government. Section 5(3) is as follows:

"**5. (3)** The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government."

116. The above provision clearly empowers the District Magistrate to exercise the powers and perform the duties of an Inspector but subject to general and special orders of the Central Government, which means that there may be some restriction on the power of the District Magistrate as directed by the Central Government. In this context, Shri Naphade has referred to a Notification dated 18-9-1953 issued under sub-section (3) of Section 5 of the Mines Act, 1952, which is to the following effect:

"*New Delhi, 18-9-1953*

S.R.O. 1789—In pursuance of sub-section (3) of Section 5 of the Mines Act, 1952 (XXXV of 1952), the Central Government hereby directs that in exercising the powers and performing the duties of an Inspector, the District Magistrate shall not, without prior reference to the Chief Inspector, take direct action or issue any order in respect of any matter solely connected with the technical direction, management or supervision of any mine, even though such direction, management or supervision may appear to him to be dangerous or defective.

[No. M-41 (370 52.)]

P.N. Sharma, Under-Secretary"

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117. The restriction as is apparent from the above notification is with regard to matters solely connected with the technical direction, management or supervision of any mine. The above notification does not take away all the functions of the District Magistrate but restriction is with regard to area mentioned therein. As noted above, Section 16 obliged the owner, agent or manager of a mine to give notice before the commencement of any mining operation to the District Magistrate of the district in which the mine is situate. Section 75 of the Mines Act, 1952 also empowers the District Magistrate to institute prosecution against any owner, agent or manager for any offence under the Mines Act, 1952. Section 75 is as follows:

> "**75.** ***Prosecution of owner, agent or manager.***—No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector;
>
> Provided that the Chief Inspector or the District Magistrate or the Inspector as so authorised shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.
>
> Provided further that in respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the previous approval of the Chief Inspector."

118. We, thus, do not accept the submission of Shri Naphade that the District Magistrate has no jurisdiction under the Mines Act, 1952 to take any action.

119. In exercise of the power under Section 57 of the Mines Act, 1952 a new set of regulations has been framed, namely, the Coal Mines Regulations, 2017. Regulation 2(*r*) defines "District Magistrate". The Regulations contain various regulatory provisions with regard to mines. Chapter II deals with returns, notices and records. Chapter IV deals with Inspectors and Mine Officials. The Regulations contain several regulatory provisions which need to be followed while working a mine by the owner or his agent. The enforcement of the Mines Act, 1952 and the 2017 Regulations have to be ensured in the public interest by the State of Meghalaya.

120. Now we come to the Environment (Protection) Act, 1986. A Notification dated 14-9-2006 was issued by the Ministry of Environment and Forests in exercise of power under Section 3(3) of the Environment Protection Act, 1986. Section 3 of the 1986 Act which provided for requirements of prior environmental clearance with regard to projects enumerates therein. The Schedule to the notification listed the projects or activities requiring prior environmental clearance. "Mining of minerals" included at Item 1(*a*) but even for mining project requirement of minimum 5 hectares area was required for applicability of the project. Substituting Item 1(*a*) of the Notification

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dated 14-9-2006 a new Notification dated 15-1-2016 has been issued. In place of Item 1(*a*) new entry has been substituted in respect of coalmine lease which is to the following effect:

(*1*)	(*2*)	(*3*)	(*4*)	(*5*)
"1(*a*)	(*i*) Mining of minerals	>50 ha of mining lease areas in respect of non-coalmine lease >150 ha of mining lease area in respect of coalmine lease Asbestos mining irrespective of mining area	<50 ha of mining lease area in respect of non-coalmine lease <150 ha of mining lease area in respect of coal mine lease	General conditions shall apply except: (*i*) for project or activity of mining of minor minerals of Category 'B2' (up to 25 ha of mining lease area); (*ii*) Riverbed mining projects on account of inter-State boundary."

121. If the project was under Category 'A', environmental clearance is required from the Ministry of Environment and Forests whereas as per the new Notification dated 15-1-2016 for Project 'B' environmental clearance is required from State Environmental Assessment Authority with respect of coal mining lease area of less than or equal to 150 ha. Now as per statutory regime brought in force by the Notification dated 15-1-2016 environmental clearance is required for a project of coal for mining of any extent of area. We have dealt with the Notification dated 15-1-2016, since it was placed before us and submissions were made by the learned counsel for the parties. The Notification dated 15-1-2016 being a statutory provision shall operate on its own force and no order of any court is required for enforcement of the Notification dated 15-1-2016. We have dealt with the matter only in view to clarify the statutory regime pertaining to mining of coal.

122. While implementing statutory regime for carrying on mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only the MMDR Act, 1957 but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986.

Point 4

123. We having held that for carrying out mining operations in privately owned and community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a mandatory requirement for carrying out the mining, we have to examine the procedure for grant of such mining lease and the authority/person, who is competent to grant such lease.

124. Chapter IV of the Mineral Concession Rules, 1960 deals with grant of mining leases in respect of land in which the minerals vest in the Government

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and Chapter V deals with procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government. Chapter IV contains Rules 22 to 40 and Chapter V contains Rules 41 to 52 and the procedure and manner of applying for mining lease and grant of lease as contained in Chapter IV is not made applicable to the procedure as given in Chapter V except that by virtue of Rule 45(*i*) certain conditions of mining lease as contained in Rule 27 under Chapter IV are made applicable for mining lease under Chapter V.

125. Rule 22(1) provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf. In Chapter V, there is no such rule, which requires making an application for lease to the State Government. There is a marked difference between the rules contained in Chapter IV and rules contained in Chapter V, few of which are relevant to notice for the purposes of this case. Rule 27(2) provides that a mining lease may contain such other conditions as the *State Government may deem necessary* in regard to the matters enumerated therein. Whereas Rule 45(*iii*) provides that every mining lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be *agreed upon between the parties*. The above provision gives an indication that in the lease executed by Chapter V, the omission of the words "State Government" in Rule 45(*iii*) is indicative of the fact that conditions, which are to be added has to be agreed upon between the parties. Most important rule to be noticed is Rule 45 in this context, which is to the following effect:

> "**45. *Conditions of mining lease*.**—Every mining lease shall be subject to the following conditions:—
>
> (*i*) the provisions of clauses (*b*) to (*l*) and (*p*) to (*u*) of sub-rule (1) of Rule 27 shall apply to such leases with the modification that in clauses (*c*) and (*d*) for the words "State Government" the word "lessor" shall be substituted;
>
> (*ia*) mining operations shall be undertaken in accordance with the duly approved mining plan;
>
> (*ii*) *Omitted*;
>
> (*iii*) the lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be agreed upon between the parties;
>
> (*iv*) if the lessee makes any default in payment of royalty as required by Section 9 or commits a breach of any of the conditions of the lease, the lessor shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the lessor without prejudice to any proceeding that may be taken against the lessee determine the lease;

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(*v*) the lessee may determine the lease at any time by giving not less than one year's notice in writing to lessor."

126. It is provided in Rule 45(*i*) that in clauses (*c*) and (*d*) of Rule 27 for the words "State Government" the word "lessor" shall be substituted, which gives a clear indication that the State Government is not a lessor in a lease granted under Chapter V. Rules 27(5) and 45(*iv*) are also relevant to notice. Rule 27(5) provides as follows:

"**27. (5)** If the lessee makes any default in the payment of royalty as required under Section 9 or payment of dead rent as required under Section 9-A or commits a breach of any of the conditions specified in sub-rules (1), (2) and (3), except the condition referred to in clause (*f*) of sub-rule (1), the State Government shall give notice to the lessee requiring him to pay the royalty or dead rent or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty or dead rent is not paid or the breach is not remedied within the said period, the State Government may, without prejudice to any other proceedings that may be taken against him, determine the lease and forfeit the whole or part of the security deposit."

127. Under Rule 27(5), if the lessee makes any default in the payment of the royalty or the payment of dead rent or commits breach of any of the conditions, the State Government shall give notice to the lessee and determine the lease and forfeit the whole or part of the security deposit. Whereas under Rule 45(*iv*), the said power has been vested in the lessor, which also indicates that it is the lessor, who will determine the lease and not the State Government. Other provisions of Chapter V also support the above conclusion. Rule 47 provides for submission of copy of licence or lease to the State Government within three months of the grant of such licence or lease. Requirement of submitting the licence or lease copy to the State Government indicates that the State Government is not the authority, who is granting the lease, otherwise there was no requirement of submitting a copy to the State Government, if it was contemplated that the State Government shall grant the lease. Rule 63 in Chapter V provides that previous approval of the Central Government was to be obtained through the State Government, which is to the following effect:

"**63.** ***Previous approval of the Central Government to be obtained through State Government.***—Where in any case previous approval of the Central Government is required under the Act or these Rules, the application for such approval shall be made to the Central Government through the State Government."

128. Our above conclusion is reinforced when we look into the statutory regime regarding grant of mining lease as per the Mineral Concession Rules, which were in force prior to enforcement of the Mineral Concession Rules, 1960. Prior to the MMDR Act, 1957, earlier Central legislation which was governing the field was the Mines and Minerals (Regulation and Development) Act, 1948, under which rules have been framed by the Central Government, namely, the Mineral Concession Rules, 1949. Rule 14 of Chapter III contemplated application for prospecting licence. Chapter IV of

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the 1949 Rules contained the heading "grant of mining lease in respect of land in which the minerals belong to the Government". The provisions of Rule 27 of Chapter IV provide for application for mining lease and there were several other rules under Chapter IV, which in substance have been retained in Chapter IV of the 1960 Rules. Chapter V of the 1949 Rules contained the heading "grant of mineral concessions by private persons". As noted above, the heading of Chapter V under the 1960 Rules is "procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government". Rule 47 of Chapter V of the 1949 Rules provide for "conditions in a mining lease", which are in substance similar as Rule 45 of the 1960 Rules. Rule 47(*iv*) of the 1949 Rules was akin to present Rule 45(*i*) of the 1960 Rules. Rule 47(*iv*) of the 1949 Rules is as follows:

> "**47.** ***Conditions of mining lease***.—A mining lease granted by a private person shall be subject to the following condition:
>
> * * *
>
> (*iv*) the provisions of clauses (*i*), (*ii*), (*iii*), (*iv*), (*v*), (*vii*), (*viii*), (*ix*), (*x*), (*xi*) and (*xv*) of sub-rule (1) of Rule 41 shall apply to such lease with the modification that in clauses (*ii*), (*iii*), (*iv*) and (*xv*) for the words "State Government" the word "lessor" shall be substituted;"

129. Thus, Chapter V of the 1949 Rules dealt with the mining lease granted by private persons i.e. the category where the minerals were not owned by the Government but were owned by private persons. Chapter V of the 1960 Rules contains substantially similar provisions. Thus, Chapter V of the 1960 Rules has to be treated to be dealing with minerals owned by private owners. The earlier statutory regime, which was enforced as per the 1949 Rules made it amply clear that mineral concessions are to be granted by private persons also, which is in substance retained in Chapter V of the 1960 Rules. Thus, mining lease to be granted as per Chapter V of the 1960 Rules is mining lease by the owner of mineral and similar concept has to be borrowed and read in Chapter V as noted above. Absence of any procedure to make an application for mining lease to the State Government in Chapter V of the 1960 Rules and lessor being the private persons and not the State Government, clearly indicates that the State Government is not to grant the lease in respect of land of privately owned/ community owned owners.

130. Another reason for not providing any application to the State Government for grant of mining lease in respect of minerals, which vests in the private owners and community owners is that without consent or willingness of private owners/community owners of minerals, no authority is empowered to grant any mining lease with regard to minerals, of which he is the owner. It is the owner of the minerals, may be private persons or community owners, who is entitled to grant lease of minerals as per the provisions of Chapter V of the 1960 Rules.

131. We, thus, conclude that as per the statutory provisions contained in the 1960 Rules especially Chapter V, a mining lease for minerals, which belongs to

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a private owner or a community owner, it is not the State Government, which is entitled to receive any application or grant any mining lease, but it is the private owner or community owner, who is entitled to grant a lease for mining minerals owned by them. Issue 4 is answered accordingly.

Point 5

132. Shri Shekhar Naphade, learned Senior Counsel appearing for the State of Meghalaya has submitted that the State of Meghalaya has no control over the mining of the coal by owners of the minerals since it is the owners, who have right to carry on mining, which has been traditionally going on in the State of Meghalaya for last several decades. To find out as to whether the State of Meghalaya has any statutory control over the mining operations in the State of Meghalaya, which is going on for last several decades, we have to examine the statutory provisions governing the field.

133. We have already held that the provisions of the MMDR Act, 1957 and the Mineral Concession Rules, 1960 are applicable in the Hills Districts of the State of Meghalaya. We, in the present case, are concerned with the mining of coal, which is a major mineral as per the 1957 Act and the Mineral Concession Rules, 1960. Rule 42 of Chapter V of the 1960 Rules provides for restrictions on the grant of prospecting licence and mining lease, which is to the following effect:

> "**42.** ***Restrictions on the grant of prospecting licence and mining lease.***—(1) No prospecting licence or mining lease shall be granted to any person unless he has filed an affidavit stating that he has—
>
> (*i*) filed up-to-date income tax returns;
>
> (*ii*) paid the income tax assessed on him, and
>
> (*iii*) paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961).
>
> (2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act."

134. As per Rule 42(2), except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act. Thus, previous approval of the Central Government is mandatory before grant of mining lease of coal. Rule 63 provides that the approval of the Central Government has to be obtained through the State Government. Thus, the State Government has to be aware that any previous approval of the Central Government for mining coal has been obtained or not. Thus, restriction being statutory and without any exception the State Government cannot say that it has no role to play with regard to mining of coal. All applications for previous approval of the Central Government have to be routed through the State Government.

135. There are other rules in Chapter V itself, which provide for control of the State Government in the mining of coal. Rule 50 empowers the provision

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for prohibition of working of mines by the State Government, which is to the following effect:

> "**50.** ***Prohibition of working of mines.***—If the State Government has reason to believe that the grant or transfer of a prospecting licence or a mining lease or of any right, title or interest in such licence or lease is in contravention of any of the provisions of this Chapter, the State Government may, after giving the parties an opportunity to represent their views and with the approval of the Central Government, direct the parties concerned not to undertake any prospecting or mining operations in the area to which the licence or lease relates."

The above Rule empowers the State Government with the approval of the Central Government to direct the parties concerned not to undertake any mining operations, if it has reasons to believe that the grant or transfer of mining lease is in contravention of any of the provisions of Chapter V. Thus, when mining operations of coal are being conducted without prior approval of the Central Government, the State is not powerless to direct the parties not to undertake any prospective mining operations in the area. The power given under Rule 50 is not only enabling power, but is a statutory obligation on the State to exercise the power in the public interest.

136. Rule 51 requires a mining lease to furnish to the State Government such returns and statements as may be prescribed. Rule 52 provides for penalty, which is to the following effect:

> "**52.** ***Penalty.***—(1) If the holder of a prospecting licence or a mining lease or his transferee or assignee fails, without sufficient cause, to furnish the documents or information, or returns referred to in Rule 46, Rule 47, Rule 48, or Rule 51, or acts in any manner in contravention of Rule 49 or Rule 50, he shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to five thousand rupees or with both.
>
> (2) If any person grants or transfers or obtains a prospecting licence or mining lease or any right, title or interest therein, in contravention of any of the provisions of this Chapter, he shall be punishable with imprisonment which may extend to one year or fine which may extend to five thousand rupees or both."

137. Rule 52 gives the State Government ample power to prosecute and punish mining leases or his transferees or assignees on violation of the rules or contravention of any of the provisions of Chapter V, which is ample power to the State to ensure that the Act is faithfully followed.

138. The State was advised by the Comptroller and Auditor General of India in its report ended 31-3-2013 in Para 4.5.1 to regulate mining by following the Mines and Minerals (Development and Regulation) Act, 1957. Para 7.5.8 of the same report has made the following as Recommendation 1:

> "*Recommendation 1.*—The M&G Department should take necessary measures to regulate mining in the State in accordance with the provisions of the MMDR Act and Rules thereunder."

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139. The State is thus well aware of its statutory obligation which is reflected in Mining Policy of 2012 and Draft Guidelines, 2015 but still before this Court their contention that no mining lease is to be obtained for privately owned/community owned land in Hills Districts of the State of Meghalaya is unacceptable and not in a good spirit. Our country being governed by the Constitution of India all the States are to implement parliamentary Acts in true spirit and in the present case the State having been advised time and again by the Comptroller and Auditor General and being well aware of its statutory obligation as noticed above it comes ill from the State to contend before this Court that there is no requirement of mining lease for winning the minerals. The above stand of the State taken before this Court gives the impression that instead of implementing the parliamentary enactment and regulatory regime for mineral regulation some vested interests want to continue the illegal regime of illegal mining to the benefit of a few persons, which is unacceptable and condemnable. We, thus, conclude that the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease is granted under the Mineral Concession Rules, 1960, Chapter V, as discussed above.

Point 6

140. One more point which needs to be considered is as to whether power to allot land for mining purpose is vested in Autonomous District Council?

141. The submission on behalf of one of the Autonomous District Councils is, which is the appellant before us as well as on behalf of the State of Meghalaya, is that Autonomous District Council being constitutional authority constituted under Schedule VI of the Constitution has legislative and administrative power. Reference to various legislations framed by Autonomous District Council which received the assent of the Governor has also been relied on. Para 3 of Schedule VI enumerates the power of District Council and Regional Council to make laws which we have extracted above.

142. Certain legislation framed by the District Council has also been referred, namely, the Khasi Hills District (Trading by Non-Tribals) Regulations, 1954, the United Khasi Jaintia Hills Autonomous District (Management and Control of Forest) Rules, 1960. The Khasi Hills Autonomous District (Trading by Non-Tribals) Rules, 1959, all framed in exercise of power under Para 3 of the Sixth Schedule. The power to make law entrusted to Autonomous District Council under Para 3 of Schedule VI is power to make law referable to List 2 and List 3 of the Seventh Schedule. We have already noticed above that with regard to regulation and development of minerals, the Union has made declaration by Section 2 of the 1957 Act and the power of the State Legislature is denuded in that respect. The logical corollary of the above principle is that power of Autonomous District Council shall also be denuded insofar as regulation and development of minerals to the extent which is covered by the 1957 Act. We may refer to one Rule 4 of the United Khasi Jaintia Hills

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District (Trading by Non-Tribals) Rules, 1959, which contemplates form of licence and one of the licences referred to is under Rule 4 is licence in Form E. Rule 4 is as follows:

> "**4.** ***Form of Licence***.—(1)-(4) * * *
>
> (5) Licence in Form 'E' shall be issued for the mining of minerals and the sale or purchase of minerals accruing from the autonomous district and for the import of minerals into the autonomous district for sale therein as specified in Part 'E' of the First Schedule on payment of prescribed licence fee subject to the conditions specified in the licence...."

143. It is relevant to notice that the United Khasi Jaintia Hills District (Trading by Non-Tribals) Rules, 1959 has been repealed insofar as Jaintia Hills Districts are concerned by the Jaintia Hills Autonomous District (Trading by Non-Tribals) Regulation Act, 2011, Section 18. The 1959 Rules are still in force in Khasi Hills Autonomous Districts, since, no other regulations have been placed before us repealing the 1959 Rules. In the 2011 Regulations, one aspect needs to be noted in Section 2, which is the definition clause. By clause (*viii*), "trade" has been defined, which is to the following effect:

> "**2. (*viii*) "Trade**" means any trade involving buying and selling or business for profit and includes exchange of goods or commodities or business or import, export and transport of goods/commodities or entry of goods into market for sale or trade and business such as construction works or other work rendered by the contractor or his agent and it also includes person and persons engaged by such contractor or agent or any other profession or vocation such as barber, cobbler, tailoring, cattle rearing (which include piggery, goatery, poultry) milk and dairy products, automobiles making or repairing, electrician, furniture makers, pharmacist, physician, transport and any other similar vocation or profession and the term "trade" and "trading" shall be construed accordingly."

144. The grant of licences contemplated by the Regulations are only with respect to the "trade" as defined in Section 2(*viii*). The entire Regulations do not refer to any kind of trade in mining of coal or mining operations. Thus, the 2011 Regulations have nothing to do with the mining of coal.

145. Constitutional provisions of Schedule VI are also relevant to be noticed. Para 9 of Schedule VI refers to licences or leases for the purpose of prospecting for, or extraction of, minerals. Para 9 is as follows:

> "**9.** ***Licences or leases for the purpose of prospecting for, or extraction of, minerals***.—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Court of such district shall be made over to that District Council.

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(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final."

146. Para 9(1) confines to the licences or leases of minerals granted by the Government of the State. Schedule VI which constitutes the District Councils and Regional Councils enumerates their powers. Para 9 refers to licences or leases for extraction of minerals granted by the Government of the State. Para 9 only deals with share of the royalties to District Councils as agreed upon between the Government of the State and the District Councils. Further Para 12-A(*a*) itself contemplates that any law made by the District Council or Regional Council which is repugnant to any law of the State shall be void. Thus, the status of law made by the District Council or Regional Councils has to give way to the law made by the State. There can be no doubt that the District Council and Regional Council cannot make any law which may be repugnant to the provisions of the parliamentary Act.

147. We, thus, are of the view that District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with the 1957 Act and the Mineral Concession Rules, 1960.

Points 7 and 8

148. This Court in *State of T.N.* v. *Hind Stone*[27], speaking through Chinnappa Reddy, J., has made the following weighty observations: (SCC pp. 212-13, para 6)

"*6.* Rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957."

149. No one can dispute the underlying object in the above observations of this Court. The use of natural resources also plays major role in carrying out development. A fine balance has to be maintained in utilisation of natural resources and its conservation and preservation. One cannot be sacrificed for the interest of other. The concept of sustainable development has been evolved and is being pursued. In this context, reference be made to the three-Judge

27 (1981) 2 SCC 205

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Bench judgment of this Court in *Lafarge Umiam Mining (P) Ltd.* v. *Union of India*[28]. In para 75, the following legal position was noticed: (SCC pp. 367-68)

> "*75.* Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of "sustainable development". It is equally well settled by the decision of this Court in *Narmada Bachao Andolan* v. *Union of India*[29] that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

150. Now we come back to the order of NGT dated 17-4-2014[6] by which the Tribunal prohibited the rat-hole mining/illegal mining throughout the State of Meghalaya. We have noticed above that in OA No. 73 of 2014 wherein the above order was passed, sufficient materials were brought on the record including experts report which proved that illegal coal mining in the State of Meghalaya is degrading the environment. The Court also noticed the report of Professor Dr O.P. Singh which noticed that the Meghalaya Pollution Control Board in the year 1997 has submitted the report about the environmental pollution consequent to illegal mining.

151. The learned Amicus Curiae has invited our attention to the report of the Comptroller and Auditor General for the year ending 31-3-2013, where the Comptroller and Auditor General has noticed that due to acid mine drainage several locations of Lukha River were severally polluted. The report also referred to investigation by the Meghalaya State Pollution Control Board in November 2011 and noticed that no effective steps were taken to control AMD. Para 7.5.23.1 of the report is as follows:

> "*7.5.23.1. Pollution of rivers due to acid mine drainage from coal mines*
>
> Based on media reports relating to pollution of Lukha River in Jaintia Hills, the Meghalaya State Pollution Control Board (MSPCB) conducted (November 2011) an investigation to ascertain the water quality of Lukha River and its feeding streams in Jaintia Hills District vis-à-vis a similar investigation carried out in February 2007. For this purpose, eight water

28 (2011) 7 SCC 338
29 (2000) 10 SCC 664
6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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and sediment samples were collected from the same sampling locations investigated during 2007. The findings are as follows:

Table 1.6

Station	*pH BIS norms 6.5-8.5*		*Iron(mg/l) BIS norms:0.3*		*Sulphate(mg/l) BIS norms:200.0*	
	2007	*2011*	*2007*	*2011*	*2007*	*2011*
St.1	3.0	2.7	3.6	6.2	254.0	566.5
St.2	7.5	5.0	0.13	5.4	13.4	305.0
St.3	6.8	7.3	0.17	0.4	62.0	8.69
St.4	4.5	4.3	0.46	4.8	211.8	265.0
St.5	6.3	5.0	0.32	1.2	188.8	200.0
St.6	4.3	6.2	0.372	0.26	192.1	118.2
St.7	7.9	8.2	1.35	0.18	99.0	29.04
St.8	7.8	8.1	0.3	0.28	101.5	45.6

The water quality characteristics in terms of pH, sulphate and iron concentrations with respect to Stations 1, 2, 4 and 5 indicated that there is significant deterioration of water quality in comparison to that of the year 2007 the major cause of which was the AMD from coal mining in these areas.

The investigation made by MSPCB further revealed that the river water on the entire stretch of the sampling locations was not suitable for drinking purpose…."

152. The Tribunal being satisfied from the materials on record has issued the order dated 17-4-2014[6] which cannot be faulted in the facts and materials which are on record in the present case. One more fact in the above context needs to be noticed i.e. after the order dated 17-4-2014[6], several applicants including the appellants in Civil Appeal No. 5272 of 2016 filed application for vacating the ban which was not acceded to by the Tribunal. Subsequently NGT permitted transportation of coal till 15-5-2016 and directed that after 15-5-2016, all coal within the State of Meghalaya shall vest in the State.

153. The Tribunal after considering all pleas and materials including reports submitted by the committees affirmed the order dated 17-4-2014[6] and refused to withdraw the ban. We do not find any error in the order of NGT reaffirming its ban order in the facts of the present case. But the question which has been raised by the appellant before this Court is that whether the complete ban as imposed by NGT deserves to be vacated or modified in the interest of the State and tribals. The revenue earned by the State from coal mining plays substantial part in the economy of the State. It is also amply demonstrated from the record that tribals are the owners of the land who carry on mining of coal in their land by which they earn their substantial livelihood.

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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154. Though as discussed above, the manner in which the mining is being carried out by the tribals cannot be approved which is clearly in violation of statutory regime under the 1957 Act and the 1960 Rules but in the event the mining is carried out by tribals or their assignees as per the provisions of the 1957 Act and the 1960 Rules, there can be no objections in carrying on such mining under the regulation and control of the State of Meghalaya. We thus clarify that in the event mining operations are undertaken by the tribals or other owners of Hills Districts of Meghalaya in accordance with mining lease obtained from the State of Meghalaya as per the 1957 Act and the Mineral Concession Rules, 1960, the ban order dated 17-4-2014[6] of the Tribunal shall not come in its way of carrying on mining operations. The ban order is for the illegal coal mining which was rampant in the State of Meghalaya and the ban order cannot be extended to valid and legal mining as per the 1957 Act and the 1960 Rules.

Points 9 and 10

155. The appellants contend that NGT has no jurisdiction to constitute any committee. NGT vide its different orders has constituted different committees for submitting reports for different purposes. The constitution of which committees are sought to be challenged on the ground that NGT has no jurisdiction to constitute a committee. Similarly, order of the Tribunal directing for constituting a fund, namely, Meghalaya Environment Protection and Restoration Fund has been challenged on the ground that the Tribunal has no jurisdiction to constitute any fund.

156. What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows:

> "**19.** ***Procedure and powers of Tribunal.***—(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
>
> (2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.
>
> (3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.
>
> (4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—
>
> (*a*) summoning and enforcing the attendance of any person and examining him on oath;

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(*e*) issuing commissions for the examination of witnesses or documents;

(*f*) reviewing its decision;

(*g*) dismissing an application for default or deciding it ex parte;

(*h*) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(*i*) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(*j*) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(*k*) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

157. Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What sub-section (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Sub-section (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:

"**10-A.** ***Commission for scientific investigations***.—(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

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(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9."

158. Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10-A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above.

159. There is one more provision which throws considerable light on the above. Under Section 35 of the NGT Act, 2010 the Central Government is empowered to make rule for carrying out the provisions of the Act. Rules have been framed in exercise of powers under Section 35, namely, the National Green Tribunal (Practice and Procedure) Rules, 2011. The said Rules have been framed in exercise of powers under Section 4(4) as well as Section 35. The 2011 Rules are Rules also for practice and procedure of the Tribunal. Rule 24 which is relevant for the present case is as follows:

"**24.** ***Order and directions in certain cases***.—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

160. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.

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161. Professor Justice G.P. Singh, in *Principles of Statutory Interpretation*, 14th Edn. while dealing with enabling words says:

> "Ordinarily, the words 'may' and 'it shall be lawful' are not words of compulsion. They are enabling words and they only confer capacity, power or authority and imply discretion. 'They are both used in a statute to indicate that something may be done which prior to it could not be done'. The use of words 'shall have power' also connotes the same idea."

162. The enabling powers given to the Tribunal under Rule 24 are for the purpose and object to decide the subjects which are to be examined, decided and an appropriate relief is to be granted by the Tribunal. Further, subjects contain wide range of subjects which require technical and scientific inputs. The Tribunal can pass such orders as it may think fit necessary or expedient to secure the ends of justice.

163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain* v. *CIT*[30], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)

> "*14*. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen."

164. We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case.

165. Now coming to the challenge to the Fund which has been constituted by the Tribunal, namely, "Meghalaya Environment Protection and Restoration

30 (1970) 2 SCC 355

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Fund", it is useful to notice the observation of the Tribunal in its order dated 25-3-2015[3] by which the said Fund was created. The reasons for constitution of Fund are self-explanatory which are to the following effect: (*All Dimasa Students Union case*[3], SCC OnLine NGT)

> "It is also indisputable that there has been huge environmental degradation and pollution of the waterbodies in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of "Polluter Pays Principle", we direct that the State Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned counsel appearing for the parties and keeping in view the Notifications of the Central Government dated 10-5-2012 and that of the State Government dated 22-6-2012, we may notice that in the report of the Comptroller and Auditor General of India for the period ending 31-3-2013 under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken as Rs 4850 per metric tonne. Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as "Meghalaya Environment Protection and Restoration Fund" to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.
>
> This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto."

166. As noticed above, NGT could have passed any order or direction to secure ends of justice which power is especially conferred by Rule 24 as noticed above, direction to constitute Fund is thus also saved under such power.

Point 11

167. In respect of constitution of committee by the Tribunal there are two other limbs of submission; that, (1) NGT by constituting committees has delegated essential judicial power to the committee; (2) the constitution of committees encroaches on the constitutional scheme of administration of tribal areas under Article 244(2) read with the Sixth Schedule of the Constitution.

168. The Tribunal vide its various directions has asked for reports from State officials and the committees. The various instances where NGT directed

3 *All Dimasa Students Union* v. *State of Meghalaya*, 2015 SCC OnLine NGT 697

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for report or investigation and submission of report by committees were with the object of ensuring the implementation of the orders passed by it and to decide the environmental issues raised before it. In no manner constitution of committee can be said to be delegation of essential judicial powers of NGT to the committee.

169. Now, we come to the Katakey Committee which was constituted by the Tribunal on 31-8-2018[1]. In paras 14 and 15, the Tribunal while directing for constitution of Committee headed by Justice B.P. Katakey directed: (*Threat to Life Arising Out of Coal Mining case*[1], SCC OnLine NGT)

> "*14*. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will be appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katakey, former Judge of the Guwahati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad.
>
> *15*. The Committee will take the following steps:
>
> (*i*) Take stock of all actions taken so far in this regard.
>
> (*ii*) Prepare time-bound action plan to deal with the issue and ensure its implementation."

170. The constitution of the Committee and its functions entrusted were with the object to implement the orders passed by the Tribunal. The Tribunal has already directed for preparing a scheme for the restoration of the environment and ecology. The environment and ecology restoration plan was submitted before the Tribunal along with the affidavit dated 3-10-2017 as has been noticed in the order dated 2-1-2018[31] of NGT. In the constitution of the Katakey Committee, thus, it cannot be said that essential judicial functions were delegated to the Committee by the Tribunal. For the restoration of environment NGT vide its order dated 31-8-2018[1] has directed the Committee to submit its action plan and reports by email. The Tribunal, thus, had kept complete control on all steps which were required to be taken by the Committee and issued directions from time to time. We, thus, do not accept the submission of the appellant that the essential judicial powers of NGT had been delegated to the Committee. Looking to the enormous work of restoration of environment which has to be supervised on the spot, the Committee was constituted. We, however, observe that the State is always at liberty to obtain particular direction if aggrieved by any act of the Committee. The matter being pending before the Tribunal of acts of the Committee are under direct control of the Tribunal and if the Committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2018 SCC OnLine NGT 1241

31 *All Dimasa Students Union* v. *State of Meghalaya*, 2018 SCC OnLine NGT 671

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171. Now, we come to the second limb, that the constitution of the Committee encroaches the constitutional scheme of the tribal areas. We revert back to the Sixth Schedule of the Constitution. Para 3 of the Sixth Schedule enumerates the powers of the District Council and Regional Council to make laws. The powers of the District and Regional Councils are enumerated under para 3. In the directions of the Tribunal to constitute committee for transportation of extracted minerals or for preparing time-bound action to deal with the restoration of environment and to ensure its implementation, there is no interference in the powers of the District or Regional Councils. Action plan for restoration of environment is consequence of the Tribunal finding out that an unregulated coal mining has damaged the environment and has caused the pollution including water pollution. It is not the case of the appellant that the District and Regional Councils have framed any law for restoration of environment which is being breached by the committee or its acts. The District and Regional Councils are free to exercise all their powers and the Committee constituted by the Tribunal is only concerned with the environmental degradation and illegal coal mining. The Committee's report or direction of the Tribunal in no manner encroaches upon the administration of tribal areas by the District and Regional Councils.

Point 12

172. NGT vide its order dated 4-1-2019[4] directed the State of Meghalaya to deposit an amount of Rs 100 crores with the Central Pollution Control Board, which was to be spent for restoration of environment. The State of Meghalaya aggrieved by the above direction has filed Civil Appeal No. 2968 of 2019. We have already noticed the submission of Shri Amarendra Sharan, Senior Advocate.

173. Shri Colin Gonsalves, learned Amicus Curiae has refuted the submissions made by the learned counsel for the appellant. It is submitted that despite the specific ban on coal mining by order dated 17-4-2014[6] in the entire State, illegal coal mining had been going on, which was proved from the reports and pictures referred to in the report. The State is responsible and *constitutionally obligated* to provide clean environment to every citizen. They having entirely failed to *stop* the illegal mining, which is cause of degradation of pollution including pollution of river streams, the Tribunal has rightly directed the State of Meghalaya to deposit Rs 100 crores. Shri Gonsalves submits that in spite of State Pollution Control Board as well as Comptroller Auditor General having invited the attention of the State of Meghalaya towards serious pollution especially in the river water, no steps were taken by the State of Meghalaya. It is further submitted that restoration of environment requires carrying out various projects and unless the State provides for necessary fund and finances,

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6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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the restoration of damaged environment cannot be undertaken. It is further submitted that the State had collected huge fund of Rs 4,33,07,26,731, which amount had not been spent by the State, although, it was required to take steps for restoration of environment.

174. NGT vide its order dated 31-8-2018[1] constituted a committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad. By subsequent order dated 19-9-2018[32] issued by the Tribunal, additional Chief Secretary to Government of Meghalaya was made the Member Secretary/Coordinator for proper functioning of the Committee. The Committee visited different sites, held various meetings, various presentations were also made before the Committee by Meghalaya State Pollution Control Board and other bodies, namely, North-Eastern Centre for Technology Application and Reach, North-Eastern Space Application Centre. In Para 12(*g*), the following has been stated by the Committee:

> "12. (*g*) Presentation was also made by the Meghalaya State Pollution Control Board on the coalmine activities and its impact on the land used, water quality, air quality, ecology as well as socio-economic impact. The Committee, on the basis of the said presentation, found the following:
>
> (*i*) Continuation of coalmine activities for a long time in an unplanned and unscientific manner as well as without any pollution control measures.
>
> (*ii*) Such mining activities are generating huge ecological disturbances and negative environmental impacts.
>
> (*iii*) Water in rivers and streams in the mining areas has become highly acidic in nature with pH value of 2.7 since 1991-92 due to presence of high percentage of sulphur in coal, which reacts after mixing with oxygen in air and water giving rise to AMD problem. No difference of pH level of water in rivers, streams and mine drains have been noticed during monsoon.
>
> (*iv*) pH level of water in springs, tap water and hand pumps also found to be less than permissible limit of drinking water standards.
>
> (*v*) Absence of biological life in the water bodies.
>
> (*vi*) Ambient air quality of the coal mining areas and coal storage areas exceeds the National Ambient Air Quality Standards on few occasions.
>
> (*vii*) Requirement of urgent steps to be taken to generate social awareness about the adverse environmental impacts and the health hazards associated with unplanned and unscientific coal mining activities."

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175. Action plans for restoration of environment were also discussed and finalised.

176. On detailed discussion on Issue (A), the Committee with details including photographs and maps observed the following:

> "(*vi*) From the aforesaid materials available before the Committee, it is, therefore, evident that the coal mining activities, which includes the extraction of coal and transportation, is going on in the State of Meghalaya, at least in East Jaintia Hills District, where such mining activities are most, despite the ban imposed by the Hon'ble NGT vide its order dated 17-4-2014[6]. Very sincere and honest efforts are required on the part of the State Government to stop the mining activities, which are going on. Such mining activities are going on without adopting any safety measures for the workers and without caring for adverse environmental effect. A sincere desire to stop such illegal mining activities is also necessary on the part of the State and Central Government agencies for implementation and monitoring of health, safety and environmental regulations.
>
> (*vii*) The result of ongoing un-abetted illegal mining, despite the ban imposed by NGT, is the very tragic incident that occurred very recently on 13-12-2018 in a coalmine in Ksan Village near Lytein River under Saipung Police Station in East Jaintia Hills District, where 15 (fifteen) coalmine workers were reported trapped, while they were working in the mine. Unfortunately, none of them so far could be rescued. For the said incident, Saipung Police Station Case No. 15(12)/2018 under Sections 188/304-A/34 IPC read with Section 3(2)(*d*) of the PDPP Act and Section 21(1) of the MMDR Act against the coalmine owner has been registered. A magisterial enquiry to find out the facts and circumstances leading to the said incident, has also been directed."

177. The fact that on 13-12-2018, 15 coalmine workers were trapped in an ongoing coal mining operation, who all have been reported to be dead itself proves beyond any shade of doubt that order dated 17-4-2014[6] banning mining in the entire State of Meghalaya was neither enforced nor were serious endeavours taken by the State or its authorities to save the environmental pollution. With regard to restoration of the environment and restoration of the victims, action plans were formulated by the Committee.

178. The first submission raised by Shri Amarendra Sharan challenging the order is violation of principles of natural justice. The report dated 31-12-2018 of the Committee itself in Issue (*f*)(*iv*) noticed:

> "Website has been opened and all the proceedings of the Committee are uploaded in the said website."

179. The report being placed on website on 31-12-2018 itself, there is no question of serving copy of the report of the Committee to the stakeholders. It is

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further relevant to notice that the Additional Chief Secretary of the Government of Meghalaya was himself the Member Secretary and Coordinator of the Committee under the orders of the Tribunal dated 19-9-2018[32]. All proceedings of the Committee, its meetings and minutes, were with the knowledge and participation of the Coordinator/Additional Chief Secretary of the State of Meghalaya.

180. A perusal of the order dated 4-1-2019[4], which is impugned in the appeal indicates that although the learned counsel for the State of Meghalaya was present and was heard but no kind of objection was raised regarding acceptability of the report. The report obtained by NGT through the Committee was to take effective steps towards protection of environmental pollution and for restoration of damaged environment. Pollution of the various rivers and streams and steps for treating the acidic water were urgently required. Several presentations before the Committee were also made and different steps regarding restoration of environment were to be taken as noticed and indicated in the report of the Committee. As noticed above, NGT vide its order dated 25-3-2015[3] constituted a fund, namely, "Meghalaya Environment Protection and Restoration Fund" to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya. It is reiterated in the report of the Committee that an amount of Rs 433 crores is already lying in the said fund, which has not been spent.

181. The learned counsel for the appellant has laid much emphasis that there had been no calculation of the extent of damage nor could the Tribunal have arrived at on the amount of damages to the extent of Rs 100 crores, which was directed to be deposited by the State of Meghalaya with the Central Pollution Control Board.

182. We are of the view that the amount, which has been directed by NGT to be deposited by the State of Meghalaya is neither a penalty nor a fine imposed on the State. The amount has been directed to be deposited for carrying out steps regarding restoration of environment. We further agree with the submission of the learned counsel for the appellant that the said amount cannot be said to be amount of damages to be paid by the State. We further find force in the submission of the learned counsel for the appellant that the State of Meghalaya has very limited source of revenue and putting an extra burden on the State of Meghalaya to make payment of Rs 100 crores from its own financial resources and budgetary amount may cause great hardship to the State of Meghalaya. Ends of justice will be served in modifying the direction of NGT dated 4-1-2019[4] to the extent that the State is permitted to transfer an amount of Rs 100 crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal

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(NGT) shall utilise the aforesaid amount of Rs 100 crores only for restoration of the environment. The appeal is thus, partly allowed to the above extent.

Point 13

183. Vide order dated 31-3-2016[11], NGT had permitted transportation of coal till 15-5-2016 under the terms and conditions as enumerated therein. The order dated 31-3-2016[11] further contemplated that no coal in any form whatsoever shall be permitted to be transported after 15-5-2016 on which date the entire remaining coal shall vest in the State Government and shall be disposed of in accordance with law.

184. The main grievance of the appellant is that NGT could not have directed for vesting of coal in the State. The submission is that members of the appellant association have proprietary rights in the coal with which they could not be divested by the Tribunal. We have already held that private owners of the land are also owners of the minerals and the minerals belong to the owners/tribals. We have also found that coal mining was illegally going on unregulated by any statutory law in the Hills Districts of the State of Meghalaya without there being any mining lease. The entire mining was, thus is clear, in contravention of Section 4(1) of the 1957 Act which attracted penalties under Section 21.

185. Section 21 of the Act is as follows:

> "**21.** ***Penalties***.—(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.
>
> (2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.
>
> (3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.
>
> (4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

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(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable."

186. The mining of coal in contravention of Section 4(1) invites penalties as enumerated in Section 21. The present is not a case where any kind of penalty has been imposed on the miners except that the amount of royalty as payable on mining of coal is being collected by the State as penalty. It is true that the State Government has power under Section 21(5) to recover from such person the minerals so raised, or, where such material has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, but it is for the State Government to exercise its power under Section 21(5) by way of penalty. NGT has not given any reason as to how coal shall automatically vest in the State. The right of recovery of mineral as contemplated under Section 21(5) does not amount to say that proprietary right of owner of the minerals is lost, rather, the State under Section 21(5) exercises its power to recover the mineral which has been raised without any lawful authority. We, thus, are of the view that coal extracted and lying in open after 15-5-2016 was not automatically vested in the State and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.

Point 14

187. Several IAs have been filed by different applicants seeking direction to transport already extracted coal lying at different places in Hills Districts of the State of Meghalaya. Different applicants may claim to different quantities of coal situate at different places. By our order dated 10-5-2019[15], we have already permitted transportation of balance coal to the extent of 75,050 MT for which challans were already issued after the order of this Court dated 4-12-2018[16]. The above quantity of said 75,050 MT was balance quantity out of 1,76,655 MT, for transportation of which order was passed by this Court on 4-12-2018[16]. In addition to the aforesaid quantity, claim with regard to different quantities by different applicants has been laid. It is not necessary for the purpose

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16 *Lber Laloo* v. *All Dimasa Students Union*, 2018 SCC OnLine SC 3330

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of the present case to notice different quantities and claims of different persons for transportation. After the order of NGT dated 31-8-2018[1], the State of Meghalaya has constituted committees to assist the Commissioner and Secretary, Mining and Geology to prepare a separate inventory with regard to coal not so far recorded in the inventory available with NGT. In pursuance of the said direction, as contained in para 13 of the order, steps were taken and various committees had made certain assessments with regard to different quantities of coal lying in four Hills Districts of the State of Meghalaya. The Katakey Committee Report dated 31-12-2018 has in chart noticed the different quantities as was informed by letter dated 13-11-2018 to the Commissioner and Secretary to the Government of Meghalaya. While dealing with Issue 3, in Paras (*iii*), (*iv*) and (*v*), the following has been stated:

> "(*iii*) The Commissioner & Secretary to the Government of Meghalaya, Mining & Geology Department, in the ATR submitted on 13-11-2018 has stated about the availability of 1,76,655 MT of already inventorised coal for transportation, which has also been reflected in the order dated 4-12-2018[16] passed by the Hon'ble Supreme Court. The Commissioner & Secretary, in the said ATR, has also stated that 23,25,663.54 MT of coal, other than those inventorised coal, remained un-inventorised and available for transportation, district-wise break up of which is as follows:
>
> "*Report on extracted coal reflected as unassessed or nil in the inventory approved by NGT*

Sl. No.	*Name of district*	*Declared quantity in MT*	*Assessed quantity in MT*
1.	East Jaintia Hills District	15,46,687.00	13,22,379.00
2.	West Khasi Hills District	7,29,757.00	7,78,297.99
3.	South-West Khasi Hills District	1,25,600.63	2,14,145.55
4.	South Garo Hills District	12,834.00	10,841.00
	Total	24,14,878.63	23,25,663.54"

> (*iv*) From the aforesaid district-wise break-up of extracted coal, which was un-inventorised, it appears that the quantity of such coal was highest in East Jaintia Hills District, where the Deputy Commissioner, as noticed above, has admitted ongoing coal mining activities despite the ban imposed by the Hon'ble NGT vide order dated 17-4-2014[6]. The stand of the

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Government that the quantity of coal, as reflected in the aforesaid chart was mined prior to the said ban, appears to be not acceptable, in view of the aforesaid admission of the Deputy Commissioner and also what the Committee has noticed during its field visit on 12-11-2018. It seems that there is an attempt to show the freshly mined coal i.e. the coal mined after the ban imposed by the Hon'ble NGT, as the coal left out from the assessment and remained un-inventorised though mined prior to the said ban. The Committee also apprehends that such freshly mined coal may be transported taking advantage of the order dated 4-12-2018[16] passed by the Hon'ble Supreme Court.

(*v*) The Hon'ble NGT vide its order dated 31-8-2018[1] given the responsibility of going through the said issue to the Secretary of Mining, State of Meghalaya in the first instance and to be cross-checked by the Joint Team of representatives of the Central Pollution Control Board and India School of Mines, Dhanbad. As reported, no such cross-check has so far been made."

188. The State of Meghalaya has filed additional affidavit dated 6-4-2019 of the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department, where details of assessments made by committees appointed by the State of Meghalaya have been brought on the record. In the affidavit, it has also been stated that a Technical Committee was also constituted to perform the verification of the assessments made by the Deputy Commissioners of respective districts. As per the affidavit, assessment of extracted coal stocks in above four districts is *32,56,715 MT* whereas in the report submitted by the Katakey Committee, the said figure in the above four districts is 23,25,663.54 MT. The Technical Committee submitted their report, which has been brought on the record along with the additional affidavit verifying the assessed quantities. In the affidavit of the Commissioner and Secretary, it has also been sated that the Technical Committees have submitted that it is difficult to define with certainty that which coal was mined prior to ban in 2014 and mined after 2014. From the above, it is clear that the State Government itself has come with a case that huge quantity of coal in the four Hills Districts, which has been extracted, is lying waiting for orders of transportation. The learned Amicus Curiae and Shri Nidhesh Gupta, learned Senior Counsel have refuted the claim made by the applicants as well as the State of Meghalaya. It is submitted by the learned Amicus Curiae that in fact the State is not making any effort to stop the illega mining, in spite of the ban of 17-4-2014[6], illegal mining of coal has been permitted and now such illegally mined coal has also been assessed and the State also supports the claim

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of transportation of the applicants in the guise that coal lying in open is an environmental hazard.

189. Shri Nidhesh Gupta, learned Senior Counsel appearing for private respondents in CA No. 5272 of 2016 has submitted that the State auctioned coal on a meagre price, whereas market rate of the coal is approximately Rs 10,000 per MT. In the present case, we have noticed that illegal coal mining is going on in spite of ban by NGT by its order dated 17-4-2014[6]. The Katakey Committee Report has also opined that all the extracted coal lying in different districts is coal, which has been illegally mined after the imposition of ban by the order dated 17-4-2014[6]. All coal being illegally mined, the State is fully entitled to impose a penalty i.e. to realise the royalty and the amount of MEPR Fund. The coal being major mineral and useful for different industries and projects, appropriate disposal of extracted coal is also of paramount importance.

190. We accept the suggestion of the learned Amicus Curiae that entire extracted coal lying at various places be directed to be taken over by Coal India Ltd., a Government of India unit, who may dispose of the same as per its normal method of disposal and proceeds be distributed as per directions issued by this Court hereinafter. NGT has already directed that for all extracted coal lying at different places, it is the State, which is the receiver-cum-custodian of the coal. The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that the entire coal is handed over to Coal India Ltd., as per the mode and manner to be formulated by the Katakey Committee, in consultation with officers of Coal India Ltd. and the State of Meghalaya.

191. The Katakey Committee and its various members and participants have done a commendable job in studying and examining various aspects of environment in the State of Meghalaya and several valuable suggestions have been given by the Committee, which are also being implemented to mitigate the suffering of the citizens consequent to the illegal coal mined.

192. We direct that the Commissioner and Secretary of the State in the Department of Mining and Geology along with the officers of Coal India Ltd. may deliberate with the Katakey Committee to finalise a comprehensive plan for transportation and handing over of the coal to Coal India Ltd. for disposal/auction as per rules of Coal India Ltd. Disposal/auction by Coal India Ltd. shall be beneficial to both the owners of the mines as well as to the State of Meghalaya. Receiving fair value of the coal should be a concern of both the owners and the State. It is for Coal India Ltd. to decide as to venue, where they shall receive the coal i.e. either at any of its depot or any other place in the State of Meghalaya and it is for Coal India Ltd. to finalise the process of disposal

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and auction of the coal. It goes without saying that it shall be the duty of the State of Meghalaya and its officers, especially the Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. Coal India Ltd. shall also take steps to ensure weighment of the coal when it is received by it and since all consequent steps regarding disposal, price grade of the coal shall be determined as per the weight of the coal received by Coal India Ltd. from different places. The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MEPR Fund as well as taxes out of the price of the coal. After deduction of cost of transportation, the payment of royalty and payment to MEPR Fund and taxes plus 10% of value of the coal to be given to Coal India Ltd. for the above exercise, balance amount shall be disbursed to the owner of the coal towards its price, which disbursement shall be the responsibility of the State. Coal India Ltd. after taking its expenses for transportation with 10% of price of the coal shall remit the entire amount to the State and it is for the State after deducting the royalty and payment to the MEPR Fund and taxes to pay back the balance of the amount to the owner.

193. Another aspect of the matter is also to be noticed. The coal, which has been seized by the State in illegal transportation or illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The said seized coal shall be dealt with by the State in accordance with Section 21 of the 1957 Act and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority and the said cases have to be separately dealt with in accordance with law.

194. We, thus, are of the view that all IAs filed by different applicants seeking order of transportation of the different quantities stand disposed of in view of the directions as given above. Let the Katakey Committee in consultation with the State of Meghalaya and officers of Coal India Ltd. finalise appropriate mode and manner to effect the transport and disposal of the coal in the above manner.

Conclusions

195. From the foregoing discussions we arrived at the following conclusions:

195.1. The application OA No. 73 of 2014 has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14 of the National Green Tribunal Act, 2010. Both the component as appearing in sub-section (1) of Section 14, that is (*i*) substantial question relating to environment, and (*ii*) such question arises out of the implementation of the enactments specified in Schedule I, were present.

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195.2. The allegations of the applicant of OA No. 73 of 2014 of environmental degradation by illegal and unregulated coal mining were fully proved from materials on the record including the report of the experts, report of the Meghalaya State Pollution Control Board, the report of the Katakey Committee, which all proved environmental degradation of water, air and surface.

195.3. The stand taken on behalf of the State of Meghalaya before this Court that the Tribunal has no jurisdiction cannot be approved. The State Government is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter, the State has to act as facilitator and not as obstructionist.

195.4. According to the land tenure system as applicable in the Hills Districts of the State of Meghalaya, most of the lands are either privately or community owned in which the State does not claim any right. The private owners of the land as well as community owners have both the surface right as well as subsoil rights.

195.5. Para 12-A sub-clause (*b*) of the Sixth Schedule of the Constitution empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Para 12-A(*b*). There is nothing in the Sixth Schedule of the Constitution which may indicate about the inapplicability of the 1957 Act with regard to the Hills Districts of the State of Meghalaya.

195.6. There is nothing in Section 4(1) of the 1957 Act to indicate that restriction contained in Section 4(1) does not apply with regard to privately owned/community owned land in Hills Districts of Meghalaya. Further, words "any area" under Section 4(1) also have significance which does not have any exception. Further phrase "except under and in accordance with terms and conditions with a mining lease granted under the Act" are also significant which make the intent and purpose of prohibition clear and loud.

195.7. The statutory scheme delineated by Section 13(2)(*f*) and the Mineral Concession Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land i.e. land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government.

195.8. The Mines Act, 1952 contains various provisions regarding inspection of mining operation and management of mines. The provisions of the Mines Act, 1952 are mandatory to be followed before working a mine. The regulations, namely, the Coal Mines Regulations, 2017 also contain several regulatory provisions which need to be followed while working a mine by a

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mining leaseholder. The enforcement of the Mines Act, 1952 and the 2017 Regulations have to be ensured by the State in the public interest.

195.9. As per statutory regime brought in force by Notification dated 15-1-2016 issued under the Environment (Protection) Act, 1986, environmental clearance is required for a project of coal for mining of any extent of area. While implementing statutory regime for carrying on mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only the MMDR Act 1957, but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986.

195.10. In Hills Districts of the State of Meghalaya for carrying coal mining operations in privately owned/community owned land it is not the State Government which shall grant the mining lease under Chapter V of the 1960 Rules, but it is the private owner/community owner of the land, who is also the owner of the mineral, who shall grant lease for mining of coal as per the provisions of Chapter V of the 1960 Rules after obtaining previous approval of the Central Government through the State Government.

195.11. The State of Meghalaya has ample power and jurisdiction under the 1957 Act and the 1960 Rules to check, control and prohibit coal mining operations in the Hills Districts of the State of Meghalaya.

195.12. The Union having made declaration by Section 2 of the 1957 Act taking under its control regulation and development of mineral, the power of Autonomous District Council to legislate on the subject shall also be denuded as that of the State Legislature.

195.13. In event the mining is carried out by a mining leaseholder as per the provisions of the 1957 Act and the 1960 Rules with an approved mining plan there can be no objections in carrying of such mining operations under the regulation and control of the State of Meghalaya. We clarify that in the event mining operations are undertaken in privately owned/community owned land in Hills Districts of Meghalaya in accordance with mining lease with approved mining plan as per the 1957 Act and the Mineral Concession Rules, 1960, the ban order dated 17-4-2014[6] of the Tribunal of the NGT shall not come in the way of carrying on mining operations.

195.14. Under Order 26 Rule 10-A of the Civil Procedure Code, a court can appoint a commission for scientific investigation. The power which can be exercised by a court under Order 26 Rule 10-A CPC can very well be exercised by the NGT also. The NGT while asking expert to give a report is not confined to the four corners of Rule 10-A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10-A by virtue of Section 19(1) of the NGT Act.

195.15. Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends

6 *All Dimasa Students Union* v. *State of Meghalaya*, 2014 SCC OnLine NGT 2307

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of justice. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a committee.

195.16. The direction to constitute a fund, namely, "Meghalaya Environment Protection and Restoration Fund", is also saved under the above power.

195.17. NGT by directing for constitution of committee has not delegated essential judicial functions. The Tribunal had kept complete control on all steps which were required to be taken by the committees and has issued directions from time to time. The State is always at liberty to obtain appropriate directions if aggrieved by any act of the committee. The matter being pending before the Tribunal all acts of the committee are under direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.

195.18. NGT by issuing direction to constitute the committee for transportation of the extracting mineral, for preparing time-bound action plan to deal with the restoration of environment and to ensure its implementation does not in any manner interfere with the powers of the District or Regional Councils. The District and Regional Councils are free to exercise all their powers and committee constituted by the Tribunal is only concerned with the environmental degradation and illegal coal mining. The committees report or direction of the Tribunal in no manner encroaches upon the administration of tribal areas by the District and Regional Councils.

195.19. The amount which has been directed by NGT to be deposited by the State of Meghalaya is neither a penalty nor a fine imposed on the State of Meghalaya. We accept the submissions of the learned counsel for the appellant that the State of Meghalaya has very limited source of finances and putting an extra burden on the State of Meghalaya to make payment of Rs 100 crores from its own financial resources may cause great hardship to the State of Meghalaya. Ends of justice be served in modifying the direction of NGT dated 4-1-2019[4] to the extent that the State is permitted to transfer an amount of Rs 100 crores from the amount lying in MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal shall utilise the aforesaid amount of Rs 100 crores only for restoration of the environment in the State of Meghalaya.

195.20. The coal extracted and lying in open after 15-5-2016 does not automatically vest in the State of Meghalaya and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.

4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District* v. *State of Meghalaya*, 2019 SCC OnLine NGT 105

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195.21. The suggestion of the learned Amicus Curiae that entire extracted coal lying at various places in Hills Districts of Meghalaya be directed to be taken over by Coal India Ltd. is accepted. Coal India Ltd. may dispose of the same as per its normal method of disposal and proceeds be dealt with as per directions issued.

195.22. The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that entire coal is handed over to Coal India Ltd., as per the mode and manner to be formulated by the Katakey Committee in consultation with officers of Coal India Ltd. and the State of Meghalaya.

195.23. It is for Coal India Ltd. to decide as to venue, where they shall receive the coal i.e. either at any of its depot or any other place in the State of Meghalaya and it is for Coal India Ltd. to finalise the process of disposal and auction of the coal. It shall be the duty of the State of Meghalaya and its officers especially the Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. All concerned shall take steps to ensure weighment of the coal when it is received by Coal India Ltd.

195.24. The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MEPR Fund as well as taxes out of the price of the coal. After deducting its expenses for transportation with 10% of price of the coal, Coal India Ltd. shall remit the balance amount to the State and it is for the State after deducting the royalty and payment to the MEPR Fund and taxes to pay back the balance amount to the owner.

195.25. The coal which has been seized by the State in illegal transportation and illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The seized coal shall be dealt with by the State in accordance with Section 21 of the 1957 Act and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority.

196. In view of the foregoing discussions and conclusions, all these appeals are decided in the following manner:

196.1. Civil Appeal No. 10720 of 2018, Civil Appeal No. 10611 of 2018, Civil Appeal No. 10907 of 2018 and Civil Appeal No. … of 2019 (arising out of Civil Appeal Diary No. 3067 of 2018) are dismissed subject to declaration and clarification of law as made above.

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196.2. Civil Appeal No. 5272 of 2016 is allowed setting aside the order of NGT dated 31-3-2016[11] to the extent it declared that all extracted coal after 15-5-2016 shall vest in the State of Meghalaya.

196.3. Civil Appeal No. 2968 of 2019 is partly allowed permitting the State of Meghalaya to transfer the amount of Rs 100 crores to the Central Pollution Control Board from the Meghalaya Environment Protection and Restoration Fund which amount shall be used by Central Pollution Control Board only for restoration of environment.

196.4. All IAs seeking direction for transportation of coal are disposed of directing:

196.4.1. All extracted coal as assessed by the State of Meghalaya lying in different districts of the State of Meghalaya which as per order of NGT is in custody of the State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.

196.4.2. The Katakey Committee after discussion with Coal India Ltd. and the State of Meghalaya shall formulate a mechanism for transport, weighment of all assessed coal.

196.4.3. Coal India Ltd. shall auction the coal so received by it as per its best judgment and remit the proceed to the State to the extent as directed above.

196.4.4. All coal seized by the State for which cases have already been registered shall be dealt with by the State in accordance with Section 21 of the 1957 Act.

197. Before we close, we record our appreciation for valuable assistance rendered by the learned counsel for the parties which enabled us to decide several important issues in these appeals. We also record our appreciation for assistance rendered by the learned Amicus Curiae Shri Colin Gonsalves, Senior Advocate.

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11 *All Dimasa Students Union* v. *State of Meghalaya*, 2016 SCC OnLine NGT 422

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CMPMO No. 208 of 2019

Naseeb Deen v. Harnek Singh

2019 SCC OnLine HP 1034 : AIR 2019 HP 173

In the High Court of Himachal Pradesh at Shimla
(BEFORE AJAY MOHAN GOEL, J.)

Naseeb Deen and Another ..... Petitioners;
v.
Harnek Singh ..... Respondent.

CMPMO No. 208 of 2019
Decided on July 19, 2019

Advocates who appeared in this case :
For the petitioners: Mr. Sanjay Jaswal, Advocate.
For the respondent: Mr. Anuj Gupta, Advocate.

The Judgment of the Court was delivered by

AJAY MOHAN GOEL, J. (Oral):— By way of this petition filed under Article 227 of the Constitution of India, the petitioners have challenged order, dated 11.03.2019, passed by the Court of learned Civil Judge (Junior Division), Jawali, District Kangra, H.P., in CMA No. 61/2019 in Civil Suit No. 115/2016, titled as Harnek Singh v. Naseeb Deen, vide which an application filed by the respondent herein under Order XXVI, Rule 9 of the Code of Civil Procedure (hereinafter referred to as 'the Code') for appointment of a Revenue Officer as a Local Commissioner stands allowed.

2. Brief facts necessary for the adjudication of the present case are that respondent/plaintiff has filed a suit against the petitioners/defendants seeking a decree of injunction for restraining the defendants from raising any construction, dispossessing, interfering, cutting, felling and removing the trees standing upon the suit land. In the alternative, the plaintiff has also prayed for possession of the suit land. The suit has been filed in October, 2016.

3. During the pendency of the said suit, the plaintiff has filed an application under Order XXVI, Rule 9 of the Code for appointment of any Revenue Officer of Tehsil Fatehpur or Sub Division Jawali as Local Commissioner for locating the exact nature and extent of encroachment by the defendants and fixing boundaries of the suit land. It was averred in the application that the parties were having strained relation with each other; despite a status quo order having been passed, the defendants were interfering in the suit land; and they were also encroaching upon the suit land, hence appointment of a Local Commissioner was necessary for locating the exact nature and extent of encroachment by the defendants.

4. The application was resisted by the defendants, inter alia, on the ground that it was always open to the plaintiff to have had approached the Revenue Authorities for getting the land demarcated and the Court is not to create evidence for either of the parties. It was further the case of the defendants that they were not interfering in the suit land nor they had any intention to do so and they were in possession of their property pursuant to the recent partition having entered into between the parties and the plaintiff was estopped from filing the application. It was denied by the defendants that they were encroaching upon the suit land, as alleged.

5. Vide impugned order, learned Trial Court has allowed the application so filed by the plaintiff under Order XXVI, Rule 9 of the Code by holding that as issues were not

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yet framed in the main suit and as proceedings in the case were at a preliminary stage, therefore, the Court was of the opinion that if a Local Commissioner in the case was appointed, no prejudice shall be caused to the defendants, rather it will help in the proper and final adjudication of the dispute between the parties.

6. Feeling aggrieved, the petitioners, who are the defendants before the learned Court below have filed the present petition.

7. Learned counsel for the petitioners has argued that the impugned order is not sustainable in the eyes of law, as the same has been passed by the learned Court below in a hot haste, without even realizing that as even the issues were not yet framed, there was no necessity of such an application being entertained by the learned Trial Court. Because it was the allegation of the plaintiff that the suit land stood encroached upon by the defendants, onus was upon him to prove the same and it was not for the Court to create evidence in favour of the plaintiff.

8. On the other hand, learned counsel for the respondent/plaintiff has argued that there is no perversity with the impugned order, as learned Court below has rightly allowed the application to put an end to the lis between the parties, because the demarcation if carried out, would demonstrate as to whether there is any encroachment upon the suit land or not and the same would assist the Court in the adjudication of the case.

9. Having heard learned counsel for the parties, this Court is of the view that the impugned order is not sustainable in the eyes of law. It is not in dispute that the application under Order XXVI, Rule 9 of the Code was filed by the plaintiff before the learned Trial Court even before the issues stood framed by the learned Court below. It is the allegation of the plaintiff that the defendants are encroaching/have encroached upon the suit land. It is settled preposition of law that he who alleges, has to prove. Meaning thereby, because it is the contention of the plaintiff that the defendants have encroached upon the suit land or are encroaching upon the same, onus is upon him to prove his case. There is no material on record to demonstrate that the plaintiff, at any stage, has approached the Revenue Authorities, for demarcation of the land in issue. In these circumstances, filing of the application by the plaintiff at the stage when not even issues were framed by the learned Trial Court, but obvious was an attempt to create evidence in his favour and this important aspect of the matter has been completely overlooked by the learned Court below. In other words, in the present case, learned Trial Court has fallen into the trap of the plaintiff by allowing the application so filed by the plaintiff and this has let out a helping hand to the plaintiff to create evidence in his favour at a stage when not even the issues were framed.

10. Order XXVI, Rule 9 of the Code, inter alia, provides that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Meaning thereby that it has to be the satisfaction of the Court that a local investigation is necessary or proper for the purpose of elucidating any matter in dispute. This provision is not a tool which is to be permitted to be used by the parties concerned to create evidence in their favour. This important aspect of the matter has also been lost sight of by the learned Trial Court while passing the impugned order.

11. Accordingly, in view of the observations made hereinabove, this petition is allowed. Impugned order, dated 11.03.2019, passed by the Court of learned Civil Judge (Junior Division), Jawali, District Kangra, H.P., in CMA No. 61/2019 in Civil Suit No. 115/2016, titled as Harnek Singh v. Naseeb Deen, is set aside. The petition stands disposed of, so also pending miscellaneous applications, if any.

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CS 150 of 2011

Dau Lal Derasaria v. Anand Kishore Sharma

2017 SCC OnLine Cal 8198

In the High Court of Calcutta
Ordinary Original Civil Jurisdiction
Original Side
(BEFORE SAHIDULLAH MUNSHI, J.)

Dau Lal Derasaria
v.
Anand Kishore Sharma

CS 150 of 2011 and GA 5 of 2017
Decided on May 4, 2017

Appearance:
Mr. G.S. Pal, Adv.
Mr. L.L. Mandal, Adv. ... for the plaintiff
Mr. P.K. Drolia, Adv. ... for the defendant

SAHIDULLAH MUNSHI, J.:— The Court: GA 5 of 2017 has been filed by the defendant praying for appointment of handwriting expert to verify, examine and compare the signature of the defendant on the purported promissory note dated August 28, 2008 with those of the admitted signature of the defendant and to submit a report before this Hon'ble Court. He has also prayed that a forensic laboratory may be appointed to verify the time of execution of the purported promissory note dated August 28, 2008 and to verify the age of the papers used therein regarding the genuineness thereof and to file a report before this Hon'ble Court within a time frame.

2. The plaintiff has filed affidavit-in-opposition and reply was also filed by the defendant. In the petition the plaintiff has claimed that he has made his claim on the basis of a document namely the promissory note dated August 28, 2008. According to the defendant, he has never signed the said document and the same is a suspect document. Therefore, the defendant claims that the same should be sent for examination by a handwriting expert to examine the genuineness of the said document.

3. In the opposition filed by the plaintiff it has been stated that no expert is required to be appointed.

4. However, the plaintiff has claimed that there is an admitted signature lying in the United Bank of India, Dharmatala Branch, 39, Lenin Sarani, Kolkata - 700 013 for operating current bank account in the name of Asha Kutir Silpa, a partnership firm, where the defendant was a partner in the year 2005. In the affidavit-in-opposition, however, the plaintiff has not disputed the contentions regarding the appointment of a handwriting expert but what the defendant submitted is that the handwriting should be compared by the Court itself by calling for the record from the said Dharmatala Branch.

5. Mr. Drolia, learned Counsel for the defendant, in support of his application for appointment of a handwriting expert has relied upon a judgment in the case of Natabar Behera v. Batakrishna Das reported in AIR 1987 Orissa 7. In the said judgment various decisions of the Hon'ble Apex Court has been referred to and after discussing those judgments in paragraph 8, Their Lordships in the Division Bench of

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Orissa High Court has held that the Court has to form an opinion upon a point of foreign law or science or art or as to the identity of the handwriting or finger impressions. The opinion upon that point of the persons specifically skilled in such subject is relevant. Their Lordships opined that a handwriting expert is relevant under Section 45 of the Evidence Act.

6. According to Mr. Drolia a handwriting expert recognised by the Government should be appointed to verify the genuineness of the signature on the disputed document on the basis of which the plaintiff has made his claim in the suit.

7. Mr. Pal, learned Counsel appearing on behalf of the plaintiff-opposite party has relied on a judgment in the case of Ramanlal Rathi v. State of West Bengal reported in 1950 Supreme (Cal) 117. Relying on the said judgment the learned Counsel has submitted that when there is a witness in the document the Court need not appoint a handwriting expert to verify the genuineness of the document.

8. However, the said decision is based on a fact which is not at all relevant for the present case. In the said decision it was held by the Court that a handwriting expert need not be appointed in view of the witnesses already examined before the Court. This decision is distinguishable on fact.

9. The next decision relied upon by the learned Counsel for the plaintiff as in the case of Velaga Sivarama Krishna v. Velaga Veerabhadra Rao decided by the Hon'ble Bench of Andhra Pradesh High Court, Hyderabad. Relying on paragraphs 6, 7 and 8, the learned Counsel submits that a handwriting expert is not required to be appointed. He also submits that it is always open for the Court itself to compare the signature on the promissory note with the admitted signature of the defendant to find the genuineness.

10. On perusal of the said judgment, it appears that in paragraph 7, the Hon'ble Bench of the Andhra Pradesh High Court has held since another Single Bench has expressed an opinion that nine years old document need not be sent for verification to a handwriting expert and the Single Bench opined that the said decision of other Single Bench is distinguishable.

11. Therefore, simply because the admitted signatures or specimen signatures are old, it need not be sent for comparison, cannot be accepted.

12. The last decision relied on by the learned Counsel for the plaintiff is the decision of the Apex Court in the case of State of Maharashtra v. Sukhdeo Singh reported at (1992) 3 SCC 700. The learned Counsel has drawn attention of this Court at paragraph 28 of such decision to submit that appointment of a handwriting expert is not necessary. The examination of the witnesses will be sufficient. However, in the said judgment it has been observed at paragraph 29 that normally Courts have considered it dangerous to base a conviction solely on the testimony of a handwriting expert because such evidence is not regarded as conclusive. Since such opinion evidence cannot take the place of substantive evidence, Courts have, as a rule of prudence, looked for corroboration before acting on such evidence.

13. On perusal of the judgment it appears in paragraph 30 that the ratio has been decided by the Court otherwise. The Apex Court says that what emerges from the case law referred to above is that a handwriting expert is a competent witness whose opinion evidence is recognised as relevant under the provisions of the Evidence Act and has not been equated to, the class of evidence of an accomplice. It would, therefore, not be fair to approach the opinion evidence with suspicion but the correct approach would be to weigh the reasons on which it is based. The quality of his opinion would depend on the soundness of the reasons on which it is founded. But the court cannot afford to overlook the fact that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger-prints; courts have, therefore, been wary in placing implicit reliance on such opinion

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evidence and have looked for corroboration but that is not to say that it is a rule of prudence of general application regardless of the circumstances of the case and the quality of expert evidence. No hard and fast rule can be laid down in this behalf but the Court has to decide in each case on its own merits what weight it should attach to the opinion of the expert.

14. Heard the parties at length and considered the provisions of Order XXVI Rule 10A and 10B of the Code of Civil Procedure. The said Rules are set out below.

> "10A. Commission for scientific investigation.- (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.
>
> (2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.
>
> 10B. Commission for performance of a ministerial act.- (1) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.
>
> (2) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

15. Rule 10A specifies that if any question arises in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted then the Court if it thinks fit and necessary or expedient in the interests of justice can issue a commission to such person as it thinks fit.

16. For my own satisfaction, I have compared the signature on the promissory note of Anand Kishore Sharma with that of the signature made on the vokalatnama as also the written statement filed by the defendant. On a comparison in bare eyes it appears that the signature varies. However, the signature requires to be examined as to whether this is a genuine signature of the defendant or not and, therefore, an expert opinion is required. To meet the ends of justice, this Court considers that it is necessary to appoint an expert in the interests of justice to verify as to whether the signature on the promissory note is the genuine signature of the defendant or not.

17. However, since it is pointed out by the plaintiff that there are other admitted signatures which might be lying with the bank of the defendant's while opening current or savings accounts. Those contemporaneous signatures may also be taken into consideration while verifying the signature of the defendant on the promissory note.

18. This Court has no hesitation to held that in this case an opinion from an expert is necessary and, accordingly, I direct the Director, Government examiner of questioned document, 30, Gorachand Road, Kolkata - 700 014 to examine the promissory note dated August 28, 2008 purportedly signed by Anand Kumar Sharma on August 28, 2008 and in doing so the said authority is also directed to compare his other admitted signatures on the vokalatnama and written statement filed before this Court as also his contemporaneous signatures lying in his bank account, bearing No. 482548515 (Indian Bank, Burra Bazar) and also with the alleged signatures of the defendant lying with the current bank accounts, being A/c Nos. 0085250301831 and

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0085250301865 lying at Dharmatala Branch, 39 Lenin Sarani Road, Kolkata - 700 031.

19. After such verification, comparison and examination of the alleged signature on the said promissory note of the defendant the said authority shall submit a report in sealed cover before this Court within a period of eight weeks from the date of communication of this order. For the said purpose let the aforesaid promissory note in original, the vokalatnama signed by the defendant, a Xerox copy of the written statement containing the signature of the petitioner and also a copy of this petition (GA 5 of 2017) be made over by the learned Registrar, Original Side to the said expert within a period of three weeks from date.

20. The expert is also given liberty to ask for the documents from the bank and the concerned bank authorities shall extend their cooperation to furnish those documents before the expert.

21. Let this matter appear for framing of issues on June 7, 2017 along with CS 150 of 2011.

22. GA 5 of 2017 is, accordingly, disposed of.

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(2014) 2 High Court Cases (Cal) 210

2014 SCC OnLine Cal 7525

Calcutta High Court

(BEFORE SUBRATA TALUKDAR, J.)

SANDHYA RANI DAS

Versus

PARIKSHIT DAS

C.O. No. 250 of 2005, decided on April 2, 2014

Civil Procedure Code, 1908 — Or. 26 R. 10-A — Refusal to allow the petition filed by the defendants under Or. 26 R. 10-A for scientific investigation of the LTI of the executrix — The finding of the learned Trial Court that both PW 2 and PW 3 were not cross-examined with the specific suggestion that the LTI of MB was forged was held valid — Further finding of the learned Trial Court that the deposition OPWs 1 and 2 did not contain any reference to the allegation that the LTI of MB was forged was valid — The onus of cross-examining the witness on such a material issue ought to have been availed of by the petitioners was followed by the Court — Held, the failure of the petitioner to avail of such opportunity by putting a specific query on the authenticity of the LTI of MB must lead to the inference that the petitioner had practically abandoned such plea in spite of making averments in the written statement — Held, science of identifying LTI is an exact science however — The same cannot be a matter of routine and sufficient circumstances must exist to persuade a Court to allow such investigation under Or. 26 R. 10-A — On the fact of the instant case by failing to cross-examine the PWs on a relevant and material issue — Held, the learned Trial Court legally inclined not to allow the petition filed by the petitioner-defendant under Or. 26 R. 10-A

Arabinda Kumar Pal v. *Ranjan Kumar Pal*, 2010 SCC OnLine Cal 2164; *Jaspal Singh* v. *State of Punjab*, (1980) 1 SCC 487 : 1979 SCC (Cri) 920, *reliance placed on*

Advocates who appeared in this case:
Sri P.B. Sahoo, Sri Sudhakar Biswas, for the Petitioners;
Sri Kaushik Chanda, Ms Sumitra Das, Ms Ulashima Ansar, for the Opposite Parties.

Chronological list of cases cited ***on page(s)***

1. 2010 SCC OnLine Cal 2164, *Arabinda Kumar Pal* v. *Ranjan Kumar Pal* — 214, 215
2. (2008) 4 SCC 530, *Thiruvengadam Pillai* v. *Navaneethammal* — 212
3. (1984) 1 Cal LJ 161, *Krittibas Bhattacharya* v. *State of W.B.* — 214
4. (1980) 1 SCC 487, *Jaspal Singh* v. *State of Punjab* — 212
5. (1979) 2 SCC 158, *State (Delhi Admn.)* v. *Pali Ram* — 212
6. 1960 SCC OnLine Cal 44 : AIR 1961 Cal 359, *A.E.G. Carapiet* v. *A.Y. Derderian* — 214

The Judgment of the Court was delivered by

SUBRATA TALUKDAR, J.— The short point in this civil revisional application numbered as CO No. 250 of 2005 is the refusal by the learned 13th Additional District Court, Alipore by its Order No. 30 dated 9-9-2004 in Original Suit No. 5 of 2001 to allow the petition filed by the defendants under Order 26 Rule 10-A CPC for scientific investigation of the LTI of the executrix, Mohini Bala Dasi (since deceased).

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2. The original suit was filed by the plaintiff under Section 276 of the Succession Act for grant of probate in respect of Will dated 16-5-1994 executed by the late Mohini Bala Dasi. The defendants, who are the present petitioners in CO No. 250 of 2005 filed their objection and hence the suit became contested and was transferred to the learned 13th Additional District Court, Alipore being registered as Original Suit No. 5 of 2001.

3. In the suit the defendants filed an application under the Order 26 Rule 10 read with Section 151 CPC. In the said application the defendant contended that the LTI of the executrix, Late Mohini Bala Dasi in the alleged will is required to be proved by scientific investigation qua the LTI of the executrix in a gift deed executed by her during her lifetime.

4. The learned Trial Court, upon contested hearing, arrived at the finding that in the light of the deposition on record it was never suggested to the PWs that the LTI of the executrix on the alleged will was forged.

5. The deposition of the witnesses on behalf of the plaintiff have been placed for consideration before this Court.

6. PW 1, Bankim Bihari Ojha, the scribe of the Will he has stated that he knew the late Mohini Bala Dasi during her lifetime and used to look after her cases. He has further stated that in the month of Baisakh 1401 BS Mohini Bala Dasi told him she will give some properties to her nephew, Parikshit Das as she had brought him up from her childhood. Upon being advised that she would have to complete formalities for executing the Will she came to the chamber of PW 1. PW 1 prepared a draft of the Will as per her instruction and handed the same over to her. PW 1 recognised the Will in Court and deposed that all three witnesses put their signature on the Will in presence of the executrix.

7. In respect of the LTI of Mohini Bala Dasi he has deposed as follows:

> "Not a fact that Mohini Bala Dasi never executed the will. At that time Mohini Bala Dasi was mentally alert and physically fit. Not a fact that will is collusive one. Not a fact that the LTI on the impugned will is not the LTI of Mohini Bala Dasi. I knew the husband of Mohini Bala Dasi."

8. PW 2, who is an attesting witness to the Will has deposed as follows:

> "After writing the will the scribe read it over before Mohini Bala Dasi and us. Mohini Bala Dasi thereafter put her LTI. on the will taken by Bankim Ojha. Thereafter we, the witnesses put a signature on the will. This is the said will marked exhibit 1 and exhibit ½ is my signature. We saw Mohini Bala Dasi to put her LTI on the will and Mohini Bala Dasi also saw us sign on the will. At the time of execution of Mohini Bala was mentally alert and physically fit."

9. In his cross-examination PW 2 stated as follows:

> "After execution of the will I have seen the same in Court today for the second time. The will was handed over to Mohini Bala Dasi after execution. Not a fact that on the impugned date of execution of the will Mohini Bala was ill and lying bed-ridden. Not a fact that the recital of the will was not read over to Mohini Bala. Not a fact that the Mohini Bala did not put her

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LTI before us. Not a fact that we have created this will on a paper where the LTI of Mohini Bala was affixed. Not a fact that we, the witnesses did not put our signatures on the will in the presence of Mohini Bala. Not a fact that Bankim Ojha did not write the will in his presence nor he read over the recital before Mohini Bala and obtained her LTI. Not a fact that the writing of the will was not written at 11.00 a.m."

10. PW 3 the Plaintiff in his evidence pertaining to the alleged LTI of Mohini Bala Dasi has stated in his cross-examination as follows:

"Not a fact that the LTI put in the will is not the LTI of Mohini Bala. Not a fact that I came to know about the will firstly from Bankim Ojha."

11. Sri Sahoo, learned Senior Counsel, has primarily argued that when it comes to the question of examination of LTI the same is required to be done in a scientific manner. Relying on a decision of the Supreme Court in *Thiruvengadam Pillai* v. *Navaneethammal*[1], Sri Sahoo relies on paras 15 and 18 which state as follows:

"*15.* Section 45 of the Evidence Act, 1872 related to 'opinion of experts'. It provides inter alia that when the Court has to form an opinion as to identity of handwriting or finger impressions, the opinion upon that point of persons specially skilled in questions as to identity of handwriting or finger impressions are relevant facts. Section 73 provides that in order to ascertain whether a finger impression is that of the person by whom it purports to have been made, any finger impression admitted to have been made by that person, may be compared with the one which is to be proved. These provisions have been the subject-matter of several decisions of this Court.

15.1. In *State (Delhi Admn.)* v. *Pali Ram*[2] this Court held that a court does not exceed its power under Section 73 if it compares the disputed writing with the admitted writing of the party so as to reach its own conclusion. But this Court cautioned

'30. . .Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that the Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.'

12. He has also relied upon a decision of *Jaspal Singh* v. *State of Punjab*[3] wherein at para 8 the Hon'ble Supreme Court has held as follows:

1 (2008) 4 SCC 530
2 (1979) 2 SCC 158
3 (1980) 1 SCC 487 : AIR 1979 SC 1708

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"Learned Counsel for the appellants also relied on the evidence of Dr Mohinder Pratap, PW 1 who has stated that the deceased had reached the hospital on 4-8-1971 at 2 a.m. Although the injured was speaking something his statement could not be recorded. On the other hand, the witness recorded the statement of the mother Tej Kaur who seems to have given a different version and suggested that her son Bhupinder Singh deceased had an injury on his abdomen which was caused by the falling of a bag containing wheat on his stomach. The thumb impression of Tej Kaur on the alleged statement was sent to the expert who was of the opinion that this could not be the thumb impression of Tej Kaur. *The science of identifying thumb impression is an exact science and does not admit of any mistake or doubt*. The report of Dr K.S. Puri clearly demonstrates that the thumb impression the statement Exhibit P/B was not that of Tej Kaur but was of some other woman who appears to have falsely represented to the Doctor that she was the mother of the deceased. This is supported not only by the fact that the thumb impression of Tej Kaur on the statement Ext. P/B was forged but also by the categorical statement of PW 6 wherein she denied having made any such statement before the Doctor. The doctor although examined as a witness in court was never made to identify Tej Kaur who was also one of the witnesses, nor was any application given by the accused that the Doctor should be called upon to identify Tej Kaur, PW 6 in order to test the validity of the statement that it was really Tej Kaur who made the statement Ext. P/B before the Doctor. In these circumstances, therefore, the evidence of the Doctor does not appear to be of any assistance to the defence."

13. Sri Sahoo has also placed Order 26 Rule 10-A of the Code of Civil Procedure which enjoins upon the Court to order a Commission for scientific investigation of a disputed signature or, in this case LTI. According to the learned Counsel the petitioner cannot be deprived of a right conferred by statute to have the LTI examined.

14. Sri Sahoo has further argued that the defendants have alleged at para 12 of their written statement as follows:

"The said Mohini Bala Dasi died intestate and without her knowledge and/or by misrepresentation upon the said deceased, the alleged plaintiff manipulated and manufactured the said alleged will by putting fabricated and forged thumb impression of the deceased Smt Mohini Bala Dasi and trying to get probate of the said Will by camouflaging the learned Court."

15. Sri Sahoo points out that the cross-examination of a witness requires skill. He therefore disputes the evidence of the PWs (as quoted above in this judgment) to the effect that it was never the intention of the defendants not to question the PWs on the authenticity of the LTI of Mohini Bala Dasi since such a point was already taken in the written statement of the defendants which was subsequent echoed in their application under Order 26 Rule 10 of the Code of Civil Procedure. He points out that at any stage the LTI of the executrix can be examined by the Court.

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16. Per contra Sri Chanda points out that the order impugned of the learned Trial Court makes it evident that PWs 2 and 3 were never suggested in their cross-examination that the LTI of Mohini Bala on the alleged will was forged. On the contrary, it was suggested to PW 2 that Mohini Bala did not put her LTI before them and they have created this will on a paper where the LTI of Mohini Bala was affixed.

17. Therefore, according to the learned Trial Court, by putting such suggestion to PW 2, the defendants have practically admitted the LTI of Mohini Bala. It is further recorded in the order impugned that OPs 1 and 2 did not state anything about the Will and they have also not stated that the Will does not bear the LTI of Mohini Bala Dasi as the same is forged.

18. Sri Chanda draws the attention of this Court to the evidence of PW 2 and argues that in the light of the specific suggestion that the will was created on a paper where the LTI of Mohini Bala was affixed, there was no specific suggestion by the defendants that the LTI of Mohini Bala was forged. In such view of the matter, according to Sri Chanda, the learned Trial Court, in the absence of specific evidence of questioning the authenticity of the LTI cannot embark on a roving enquiry and exercise powers under Order 26 Rule 10-A CPC.

19. Sri Chanda relies upon an unreported judgment of this Court in the matter of *Arabinda Kumar Pal* v. *Ranjan Kumar Pal*[4] wherein an Hon'ble Single Bench was pleased to hold as follows:

> "The effect of not cross-examining the plaintiff's witness with regard to such material issue was considered by the Hon'ble Court in *A.E.G. Carapiet* v. *A.Y. Derderian*[5] wherein it was held as follows:
>
> 'Where the opponent had declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice.'
>
> The aforesaid principle which was laid down by this Hon'ble Court in the said decision was followed in a subsequent decision of this Hon'ble Court in *Krittibas Bhattacharya* v. *State of W.B.*[6] wherein it was held that 'if a defendant fails to put essential and material question to the plaintiff's witness in cross-examination, the defendant is deemed to admit the plaintiff's case on that point.'
>
> Following the principle which was laid down by this Hon'ble Court in the aforesaid decisions, this Court finds no hesitation to hold that by not cross-examining the attesting witness on the question of genuineness of the signature of the testator in the impugned will, the said defendants practically admitted the genuineness of the signature of the testator in the said will. If that be so then, in my view, no such reference, as prayed

4 2010 SCC OnLine Cal 2164
5 1960 SCC OnLine Cal 44 : AIR 1961 Cal 359
6 (1984) 1 Cal LJ 161

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for, by the petitioner is necessary as the said defendants practically have abandoned and/or given up their plea regarding the dispute relating to genuineness of the signature of the testator in the impugned will. Facts admitted need not be proved. As such no elucidation on the question of genuineness of the execution of the will by the testator, by reference to the handwriting expert, is necessary in the facts of the instant case."

20. Relying on the said decision, Sri Chanda therefore argues that admitted facts need not be reopened.

21. Heard. Considered the materials on record.

22. This Court is of the opinion that the decision rendered in CO No. 3472 of 2008 squarely applies to the facts of this case. The learned Trial Court had correctly held that both PW 2 and PW 3 were not cross-examined with the specific suggestion that the LTI of Mohini Bala was forged. The learned Trial Court also correctly held that the deposition OPWs 1 and 2 did not contain any reference to the allegation that the LTI of Mohini Bala was forged.

23. This Court is in respectful concurrence with the ratio propounded in the unreported decision of *Arabinda Kumar Pal* v. *Ranjan Kumar Pal*[7] that the onus of cross-examining the witness on such a material issue ought to have been availed of by the petitioners. The failure of the petitioner to avail of such opportunity by putting a specific query on the authenticity of the LTI of Mohini Bala must lead to the inference that the petitioner has practically abandoned such plea in spite of making averments in the written statement.

24. This Court cannot also be unmindful of the evidence of PWs 1, 2 and 3 which are clear and cogent on the circumstances leading to the execution of the will of Lt. Mohini Bala Dasi and the same are worthy of credence.

25. Although there can be no dispute with the legal proposition advanced by Sri Sahoo and based on judicial authority that the science of identifying LTI is an exact science, the same cannot be a matter of routine and sufficient circumstances must exist to persuade a Court to allow such investigation under Order 26 Rule 10-A of the Code of Civil Procedure.

26. In the facts of the present case by failing to cross-examine the PWs on a relevant and material issue, the learned Trial Court was correctly inclined not to allow the petition filed by the present petitioner-defendant under Order 26 Rule 10 CPC.

27. Accordingly, the order impugned No. 30 dated 9-9-2004 passed by the learned 13th Additional District Court, Alipore in original Suit No. 5 of 2001 warrants no interference.

28. CO No. 250 of 2005 is accordingly dismissed. There will be however, no order as to costs.

29. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

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7 2010 SCC OnLine Cal 2164

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH AT PUNE
I.A. NO. 54 OF 2021
IN
APPEAL NO. 57 OF 2020 (WZ)

IN THE MATTER OF:

BHAGWANBHAI BHANABHAI SOLANKI & ANR. …APPELLANTS

VERSUS

UNION OF INDIA & OTHERS …RESPONDENTS

AND

IN THE MATTER OF:

M/S ULTRATECH CEMENT COMPANY LIMITED
[NARMADA CEMENT – JAFRABAD WORKS
…APPLICANT/ RESPONDENT NO.12

NOTE ON ARGUMENTS

I. BRIEF BACKGROUND

1. The present application seeks recall of the ex-parte order dated 30.06.2021 **[R-12/1 @ Pg. 42-44/ Vol.1]** passed in the Appeal Nos. 57/2020 and 58/2020.
2. The appellants filed the above mentioned appeals praying for quashing of the EC granted by SEIAA vide letter No. SEIAA/GUJ/EC/1(a)/1399/2020 and SEIAA/GUJ/EC/1(a)/1400/2020 to the Narmada Cement – Jafrabad works unit of the Respondent No.12/Applicant herein for mining of limestone in the Babarkot Limestone Area in District Amreli in State of Gujarat over a lease of 49.045 ha.
3. Vide order dated 30.06.2021, Hon'ble Tribunal appointed an eight-member joint committee to ascertain the compliance status of environment norms in the grant of EC and compliance of EC conditions in the functioning of the project. It was observed that the Committee meeting may be held within two weeks of receipt of copy of the order. The Committee was further directed that a factual and action taken report may be furnished within three months with an advance copy to the project proponents **[R-12/1 @ Pg 43/Vol.1]**

II. This Hon'ble Tribunal has power to recall an order if there exists fraud in obtaining the judgment.

It is submitted that under Section 19 of the National Green Tribunal Act, this Hon'ble Tribunal has the power to regulate its own procedure and further U/s 19(4) (h) it has the power to set aside any order passed ex-parte.

In the present case, it is submitted that this Hon'ble Tribunal may exercise its discretion to recall the ex-parte order dated 30.06.2021 appointing a Committee in view of the false averments made by the Appellant thereby playing a fraud on the Tribunal.

The Tabular chart highlighting the fake averments made in the Appeal on basis of which direction of appointing a Committee has been passed is set out subsequently.

III. **Even though this Hon'ble Tribunal has wider powers than a Civil Court has under Order 26 Rule 10A of the Code of Civil Procedure, 1908, for appointing a Committee, in the facts and circumstances of the case, there is no prima facie case or fact which makes it necessary or expedient to appoint a Committee without first hearing the Applicant/Respondent No.12.**

Order 26, Rule 10-A of the Code of Civil Procedure provides for the power of the Court to issue a commission for scientific investigation and the sub-sections thereof are extracted hereinbelow:

(1) *Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.*

(2) The provisions of rule 10 of the Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

It is submitted that this Hon'ble Tribunal has wide powers to appoint a Committee where (a) there is material on record to justify allegations of environmental

degradation or (b) to implement and monitor compliance of orders/directions passed by the Hon'ble Tribunal.

It is submitted that Power to issue direction of Constitution of Committee has to be exercised on a different criteria in cases filed U/s 14 and 15 of NGT Act and Appeals challenging grant of EC u/s 16 of the Act. This is for the reason that the grant of EC has been scrutinised by Expert Committees and granted after a Public hearing. Therefore, in an appeal under Section 16 of the Act, the EC has been granted only after scientific investigation by the Expert Appraisal Committee.

In a case under Section 16, it is only after hearing the parties, if the Hon'ble Tribunal is of the prima facie view that the procedure prescribed for grant of EC has not been followed or the Expert Committee has not addressed all environmental issues or EIA report is lacking or that necessary conditions have not been imposed in the grant of EC, it may be expedient to appoint a Committee to ascertain the factual position. It is submitted that it can be established on record that all norms for grant of EC have been followed in the present case.

It is submitted further that the present case is not a case of violation of EC conditions since mining activity has not commenced, as has been wrongly alleged.

It is submitted that if after hearing the Respondents, after completion of pleadings, this Hon'ble Tribunal arrives at a prima facie view that procedure for grant of EC has not been followed or the EC conditions have been violated, it may at that stage exercise its discretion for appointment of a Committee.

IV. **False averments have been made by the Appellants**

The following Tabular chart would show that false averments were made by the Appellants which were recorded by this Hon'ble Tribunal because of which this Hon'ble Tribunal was misled by the Appellants to pass a direction for appointment of Committee:

S.No.	Averment made in Appeal	Response
1.	EC granted without due process of law in an Eco sensitive zone	Land use map of study area prepared pursuant to TOR dated 17.11.2016 shows there are no national parks or sanctuary, biosphere reserves, wildlife corridors within 10 Km radius of mining lease area. **[Pg 352-353, Vol. II of Recall Application]** In view of the same, no clearance from NBWL is required. Eco sensitive zone of Girnar Wildlife sanctuary declared vide Gazette Notification SO 1260(E) dated 31.5.1992 is more than 100 Km away from mining lease.
2.	No approved wildlife conservation plan	Wildlife Conservation plan has been approved by Chief Wildlife Warden vide letter dated 7.10.2020 for next 10 years. **[Pg 46, Vol. I of Recall Application]** Wildlife Conservation Plan **[Pg 50-94, Vol.I of Recall application]**
3.	Due process was not followed	Due process was followed: (1) After submission on Form-I **[Pg. 8-23 of additional documents]** and Pre -feasibility report **[Pg. 24-54 of additional documents]** by Respondent No.12 on 17.9.2016, TORs were issued. [**Pg 72 of Appeal]** (2) Public hearing was held as per procedure prescribed as certified by report of GPCB and Additional District Magistrate. **[Pg 86-87 of Appeal]** (3) Action plan was made to deal with issues raised during public hearing **[Pg 246-253, Vol. II of Recall application]**

		(4) Final EIA report was submitted after Public hearing **[Pg 294-372 Vol. II, Pg 373-606 Vol. III and Pg 607-835 Vol. IV of Recall application]** A detailed appraisal was done by SEAC in its meetings held on 3.1.2018 **[Pg 121 of Appeal @ Pg 133-146]** 3.10.2018 **[Pg 147-154 of Appeal @ Pg 150-154]** 14.9.2020 **[Pg 155-161 @ Pg 158-160 of Appeal]** 12.10.2020 **[Pg 162-171 Vol.I of Appeal @ Pg 165]** and by SEIAA on 5.11.2020 **[Pg 172 of Appeal]**
4.	Floral and Faunal diversity concealed in EIA Report	This has been dealt with in EIA report in Para 3.5.11 Ecology & diversity (Flora & Fauna) **[Pg 380-395, Vol.III of Recall application]**
5.	There is presence of Asiatic Lion within mining lease area and Environmental Consultant has ignored data on Asiatic lions. Reliance placed on 14th Lion Estimate Report 2015	I. For the purpose of renewal of another mining lease of Respondent No.12 over an area of 565.95 ha in village Babarkot itself. In December 2002, the Government of Gujarat initiated a study from Wildlife Institute of India (WII) to undertake ecological study of part of mining lease area (65.24 ha) and provide an assessment of impact of lease renewal on movement and ecology of Asiatic lions. **[Pg 105-106 of Vol.I of Recall application]** It was found by WII that: (a) The impact zone which was within 10 km radius of the study area was unlikely to support a resident population of lions and does not have potential for establishing a long-term viable lion population. (b) The area has low potential even for the future establishment of a resident lion population.

		(c) The proposed lease renewal area was held a habitat unsuitable for lions. Further major prey for lions in the area was overstock and therefore even if lions take residence, their existence would be fraught with conflicts with local human interests. (d) The geographic location of the proposed renewal area does not lie in any current or potential movement corridor of lions or other wildlife. (e) There would be no major impact on habitat of lions or other wild life within the area proposed for leave renewal. **[Pg 129-130, Vol. I of Recall application]** The said lease area is _____ meters away from the subject lease. **[Please confirm]** II. It is submitted that the 14th Lion Estimate Report -2015 relied upon by the Appellants but not produced before this Hon'ble Tribunal shows that out of 523 Asiatic lion population, 18 lions have been sighted in South eastern coast [Rajula -Jafrabad, Nageshree]. **[Pg.166-168 of additional documents].** The Appellant has not placed any document on record to show that there is presence of Asiatic lions within the mining lease area. III. The conservation plan also records that lion is sometimes observed in the core zone, that is 10 km from the periphery of the mining site but are not permanent residents. A detailed biological survey was carried out. It is wrongly contended that the Environmental consultant ignored the data on Asiatic lions. Further,

		detailed conservation plan for Lion has been provided in the conservation plan, although it is found that in the core zone, local population does not consider lion to be a potential threat. **[Details of lion – Pg 85-86 Vol. I of Recall application] [Conversation measure for Asiatic lion, leopard and Indian Peafowl – Pg 91-92 Vol. I of Recall application]**
5.	Mining operations commenced before grant of EC	I. The approved modified mining plan for 2018-2019 to 2020-21 approved on 6.9.2018, forming part of EIA report shows that no mining operations had commenced till that date. **[Pg 580 Vol. III of Recall application @ Pg. 601]** II. Certificate issued by District Mining Officer on 14.07.2021 certifying that no mining operations have commenced. **[Pg 135 Vol. I of Recall application]** III. Respondent No.12 submitted the six monthly compliance report on 27.5.2021 as per EC Condition wherein it was stated that mining has not started in the mining lease area as corrigendum to EC has been applied for only on 27.11.2020 for inclusion of blasting and inclusion of certain survey numbers. **[Compliance report-Pg 136-147 Vol. 3 of Recall application @ Pg 137, 138, 139, 141]** IV. The monthly returns filed under Form 8 of MCD Rules, 1988 also show no workmen

		employed and no production taking place. **[Pg. 169-182 of additional documents]**
6.	Respondent No.12 does not have Consent to operate	Respondent No.12 has all necessary permissions: (a) Environment clearance – [**Pg. 46-50 of Appeal/159-163 of additional documents]**. Application dated 27.11.2020 for corrigendum to EC for inclusion of blasting and inclusion of certain survey numbers allowed in 200th meeting of SEAC dated 5.5.2021. (b) Forest clearance: It has been recorded in minutes of meeting of APCCF (Wildlife) Gandhinagar held on 6.12.2019 that there is no forest land involvement in project area. **[Pg 148-150 Vol. I of Recall application]** Therefore forest clearance is not necessary. (c) Consent to Establish: Granted by GPCB vide letter dated 27.11.2020 valid for 7 years. **[Pg 153 Vol. I of Recall Application]** (d) Consent to Operate: Vide order No. AW-110924 dated 4.1.2021, GPCB granted consolidated Consent under Air Act and Water Act and Authorisation under Rule 6(2) of the Hazardous & Other Waste (Management & Transboundary) Rules, 2016 valid till 30.11.2025. **[Pg 151-152 Vol. I of Recall application]**

		(e) A valid mining lease was granted on 8.1.2017 for a period of 50 years and a lease deed was executed on 11.1.2017 and Mine Development and Production Agreement was executed on 10.1.2017. An amount of Rs. 5,05,00,000 (Five Cr Five Lacs) has been deposited as Performance Security. **[Reference: Page 586, Vol. III of Recall Application]** (f) The first mining plan was approved on 31.5.2017 **[Pg 158-159 Vol. I of Recall Application]** Pursuant to SEAC directions of 3.1.2018, modified mining plan was approved on 6.9.2018 **[Pg 154-155 Vol. I of Recall application/Pg. 580 Vol. III of Recall Application]** Thereafter, on 13.1.2021, Review of mining plan was approved for year 2021-22 to 2025-26 **[Pg 156-157 Vol. I of Recall application]** (g) On 7.1.2021, working permission was granted by Director General Mines Safety under Regulation 106(2)(b) of Metalliferrous Mines Regulation, 1961 **[Pg 160-173 Vol. I of Recall application]**
7.	Mining lease over 49.845 ha and Mining lease of 14.2045 ha (subject matter of Appeal 58/2020)	I. As certified by Department of Mines & Geology on 17.11.2017, the two mining leases are situated at a distance of 600 meters with private and government waste land in between. There is no common boundary between the two leases. **[Pg 178 Vol. I of Recall application]**

	are in a cluster and have separated mining lease area into two units to avoid the project being categorised as category A project.	Therefore the mines do not form a cluster which consists of group of mines with mine lease boundary lying in close vicinity of within 100 meters. II. There is no continuation of revenue blocks evident by list of survey numbers authenticated by section office of Industry and Mines. **[Pg 179-180 Vol. I of Recall application]** III. Assuming that mines can be said to be a `cluster'. As per the Notification No. S.O. 3977 (E) dated 14.08.2018 **[Pg. 181-190 Vol. I of Recall Application]** issued by the MoEF & CC, mining lease of less than 100 hectares is considered a B category mine. Moreover, in the said notification, Cluster is considered in respect of minor mineral leases. In any event cluster of any size with any of the individual lease > 100 ha will only be considered as A category mine. In the present case, since both the leases are less than 100 hectares, the same would fall in B category even if considered as a cluster. IV. SEAC in its 363rd meeting held on 3.1.2018 considered this issue and called for an opinion from Commissioner, Geology and Mining **[Pg 121 @ Pg 146 of Appeal]** Commissioner, Geology and Mining vide letter dated 25.6.2018 opined that the map of mining leases shows that mining leases are individual **[Pg. 191 Vol. I of Recall application]** V. Under Section 11 (4) of the Mines and Minerals (Development and Regulation) Act, 1957 the State Government shall notify the

		areas in which prospecting cum mining leases shall be granted. It is submitted that the State Government had notified the two areas separately and issued separate Letter of Intent and it is not the Applicant who has separated the mining lease area into two units.
8.	Data that shows that total Mining leases that occur in perimeter of 10 Km not disclosed	I. The TOR required disclosure of distance of nearby mining lease areas from the periphery of the proposed project including a map covering distance of 1 Km from the periphery of the proposed project and if no mining lease areas are existing within 500 meters periphery of the proposed project and a certificate of the Geologist in this regard. **[Pg. 323 Vol. II of Recall Application]** Certified map of District Geologist, Amreli giving requisite information was provided at Annexure-II of the EIA Report. **[Pg. 532 Vol. III of Recall Application]**
9.	Limestone mining is not possible at the site	Complete geology of the area has been produced in EIA report which shows existence of rich limestone beds. **[Pg. 331-333 Vol. II of Recall Application]**
10.	Public hearing was a farce	I. Public hearing was conducted as per procedure provided in EIA Notification 2006 as under: (1) Advertisement publicising the public hearing was published in Indian Express in English on 4.8.2017 and in Gujarati in Saurashtra Samachar paper on 4.8.2017 **[Pg 192-193 Vol. I of Recall application]** (2) GPCB and Additional District Magistrate, Amreli presided over the public hearing attended by 3000 persons, submitting their

		report that public hearing was conducted as per procedure **[Pg 86-87 of Appeal]** The statement showing issues raised by stakeholders and response given by representatives of Respondent No.12 was also annexed to the Report. **[Pg 88-100 of Appeal]** II. Appellant No.1 never sent any query to Respondent No.12. The queries raised by Appellant No.2 were responded to. **[Pg. 229-236 Vol. II of Recall Application]** III. In the 363rd SEAC meeting Respondent No.12 was directed to submit detailed action plan for all issues raised during public hearing including complaints received in written form. This was submitted and included in Final EIA report at Table 7-4. **[Pg. 456-461 of Vol. III of Recall Application]**
11.	EC has been granted ignoring impact on environment	EIA report deals with impact and mitigation measures to prevent pollution as under:- (1) Impact on Air environment during mining operation was discussed in Para 4.2 of EIA Report **[Pg. 408 Vol. III of Recall Application]** Impact on Air environment due to excavation and generation of pit was discussed at para 4.2.1 of EIA Report. **[Pg. 410 Vol. III of Recall Application]**; Impact due to vehicular movement discussed at para 4.2.2 **[Pg. 414 Vol. III of Recall Application]**; Incremental traffic discussed at Para 4.2.3 **[Pg 418 Vol. III of Recall Application]** Mitigation measures were

		provided at Table 4-2 of EIA Report **[Pg. 409 Vol. III of Recall Application]** (2) Chapter 10 of EIA Report provides for environment management plan. Table 10.1 gives the EMP for Air environment **[Pg. 464-465 Vol. III of Recall Application]** Condition 35 to 41 have been imposed in EC to mitigate impact on Air environment. **[Pg. 47-48 of Appeal]** (3) Impact on Noise environment is discussed at Para 4.3 of EIA report **[Pg. 418-424 Vol. III of Recall Application]** Mitigation measures are provided at Table 4-0 **[Pg. 419 Vol. III of Recall Application]** Table 10-4 deals with EMP for noise environment **[Pg. 468 Vol. III of Recall Application]** (4) Water environment discussed at Para 4.4 of EIA report **[Pg. 424-425 Vol. III of Recall Application]** Mitigation measures are provided in Table 4-16 **[Pg. 426 Vol. III of Recall Application]** Table 10-2 provides EMP for water environment. **[Pg. 466 Vol. III of Recall Application]** (5) Land and Soil environment is at Para 4.5 of EIA report **[Pg. 427 Vol. III of Recall Application]** Mitigation measures – Table 4.17 **[Pg. 428-429 Vol. III of Recall Application]** Table 3-10 tabulates EMP on land & soil environment **[Pg. 466-467 Vol. III of Recall Application]** Water Conservation Measures **[Pg. 469-470 Vol. III of Recall Application]**

		(6) Ecology and biodiversity Table 4.6 **[Pg. 430 Vol. III of Recall Application]** Mitigation Measures - Table 4-19 **[Pg. 431 Vol. III of Recall Application]** It provided for a green belt development including green belt designing, locations, budget allocation, plant species etc. It is proposed that 8000 tree saplings will be planted in 4 ha area. Para 10-3-6 **[Pg. 470-473 Vol. III of Recall Application]** (7) Environment Social commitment – Para 10.3.7 of EIA report **[Pg. 473-477 Vol. III of Recall Application]** In any event, Respondent No.12 has been contributing to the area under Corporate Social Responsibility **[Annual CSR report for FY 2019-2020 and 2021-21 – Pg. 254-269 Vol. II of Recall Application]** (8) Conservation Plan for flora and fauna **[Pg. 536-547 Vol. III of Recall Application]**
12.	Impact on marine environment not considered	Mining area does not fall within CRZ and is at an aerial distance of 2 Kms from the sea. [CRZ – Map – Annexure 10 of EIA report **[Pg 531 Vol. III of Recall Application]** [Map showing aerial distance of mining lease from sea – **[Pg. 270 Vol. II of Recall Application]** Therefore, there is no impact on marine environment.
13.	Respondents did not submit additional data as required by SEAC	SEAC in 363rd meeting held on 3.1.2018 sought additional data **[Pg 146 of Appeal]** Vide its letter dated 25.9.2018, Respondent No.12 submitted information to the same queries and informed that for some points compliance is

		awaited. **[Pg 271-272 Vol. II of Recall Application]** In 438th meeting of SEAC held on 3.10.2018, additional data not yet submitted by Respondent No.12 with respect to three points was sought for **[Pg. 150 of Appeal]** Vide letter dated 28.8.2020, Respondent No.12 submitted the details sought in SEAC meeting of 3.10.2018. This is recorded in minutes of 51st meeting of SEA held on 14.9.2020 **[Pg. 158-160 of Appeal]** Till that stage final approval of conservation plan had not been received from Chief Wildlife warden. **[Pg. 160 of Appeal]** Once the same was received on 7.11.2020, SEAC in its 70th meeting held on 12 October 2020 recommended grant of EC. **[Pg 165 of Appeal]**
14.	No effective mechanism for compliance of EC conditions	I. Chapter 6 of final EIA report provides for environmental monitoring program which includes constant and regular monitoring of air pollution, water pollution, noise quality and weather monitoring **[Pg 438-439 Vol. III of Recall Application]** II. Condition 55 of EC provides for submission of 6 monthly report to regional office of MoEF &CC **[Pg 48-49 of Appeal]** Condition 65 provides for submission of 6 months compliance report to SEIAA, SPCB and Regional office of MoEF **[Pg 49 of Appeal]** III. Pursuant to the same, 6 monthly compliance report was submitted by Respondent No.12 on 27.5.2021 **[Pg. 136-147 Vol. I of Recall Application]**

15.	No plan for Green belt plantation	Para 2.14 and 2.15 of EIA report detail the afforestation programme upto the end of life of mine. **[Pg 340-341 Vol. II of Recall Application]** Condition No.11, 53 and 54 of EC also mandate development of green belt **[Pg. 46, 48 of Appeal]** With respect to the existing mining lease of Respondent No.12 in village Babarkot, the 9 November 2019 report on adequacy of green belt states that Respondent No.12 has planted more than 2 Lakh plants covering 23 ha of land. **[Pg.55-158 of additional documents]**
16.	Top soil not being preserved	Para 4.5.6 of EIA report deals with land and soil environment **[Pg 427-429 Vol. III of EIA Report]** Table 10.3.3 gives EMP for land and soil environment **[Pg. 466-467 Vol. III of EIA report]**
17.	Ground water and soil tests not being conducted	Reports for ground water testing and soil testing are annexed **[Pg 284-293 Vol. III of Recall Application]**

V. **Appellant has not come with clean hands**

Appellant has deliberately not placed the EIA report before this Hon'ble Tribunal which would have clearly shown the falsity of the averments made in the Appeal. **[EIA report – Pg. 294-372 Vol. II; Pg 373-606 Vol. III; Pg. 606-835 Vol. III]**

Appellant No.2 has been involved in instances of physical assault on officials of Respondent No.12 Company for which criminal complaints have been filed. **[Pg 835-841 Vol. IV]**

From:	Prerna Singh
To:	nitinlonkar@gmail.com
Cc:	ngt-pune@gov.in; Shweta Kabra
Subject:	Service of Compilation of filed by the Respondent No. 12 | Bhagwanbhai Bhanabhai Solanki & Anr. v Union of India & Ors. Appeal No. 57/2020 & 58/2020
Date:	26 September 2021 18:45:02
Attachments:	Compilation of Judgements- Bhagwanbhai.pdf

Dear Sir

This email is being addressed to you on behalf of the Respondent No. 12 **(Narmada Cement-Jafrabad Works, unit of Ultratech Cement Ltd**.) in ' Bhagwanbhai Bhanabhai Solanki & Anr. v Union of India & Ors. Appeal No. 57/2020 & 58/2020' before NGT Western Zone Bench. We hereby serve you with the compilation being filed by us before the Hon'ble NGT. You are requested to kindly acknowledge the receipt of the same.

Regards
Prerna Singh