

IN THE NATIONAL GREEN TRIBUNAL, WESTERN
ZONE BENCH

AT PUNE

I.A. No. 247/2024

IN

Original Application No. 141/2024

IN THE MATTER OF:

Prakash Agrawal

...Applicant

Versus

Mathias Construction Pvt. Ltd. & Ors ...Respondents

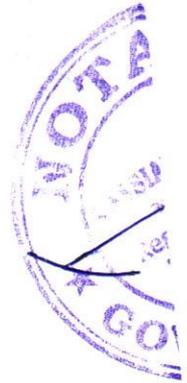
**OBJECTIONS ON BEHALF OF THE RESPONDENTS 1, 2, 3
& 4 TO CLARIFICATIONS IN ORDER DATED 27. 09.2024
I. A. 247 OF 2024 SEEKING AMENDMENT OF
O. A. 141 / 2024 FILED BY THE APPLICANT.**

MOST RESPECTFULLY SHEWETH:

1. That the present **Objections**; to the **Applicants Clarifications to Order dated 27.09.2024** in connection to **Application IA 247/2024** i.e. Amendment of O. A. 141 / 2024 is being filed on behalf of Respondent Nos. 1, 2, 3 & 4 – Mathias Construction Private Limited, Mr. Julian Richard Mathias, Mr. Joe Marcelino Mathias and Mrs. Mariola Mathias, respectively.

PRELIMINARY OBJECTIONS AT THE OUTSET

THE RESPONDENT/s, RESERVE THEIR RIGHT TO FILE A DETAILED REPLY, THE PRESENT OBJECTIONS ARE BEING FILED WITHOUT PREJUDICE TO THE RIGHT TO FILE A DETAILED REPLY IF NECESSARY OR ON DIRECTIONS OF THIS HON'BLE NATIONAL GREEN TRIBUNAL.



1. LINKING A 1990's PROJECT [INDIVIDUAL SUB-DIVIDED PLOTS] PRIOR TO E.C. NOTIFICATION OF 2006, TO THE PRESENT PROJECT OF 2007.

A. The Original Application raises unsubstantiated allegations on non-compliance of Environment Clearance norms in "Sector - 1" of "Phase - 2" of the concerned larger **ongoing project comprising of 4 sectors (Survey No. 249/1-A)** of Village Taleigao for which the EC is granted.

B. The Sale Deeds relied on in the Clarifications filed by the Applicant further strengthen the case of this Respondent. **FIRSTLY**, the said Deeds are dated 30.03.1992 and 06.03.1997 which substantiates that Phase - 1 was prior to MoEF Notification of 2006 and;

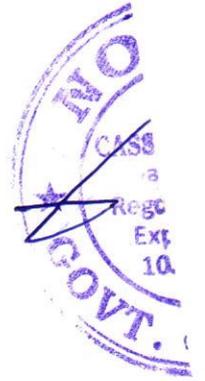
SECONDLY, that the area concerned are 475 Sq. Mtrs. and 326 Sq. Mtrs. respectively, which is below the threshold of 20,000 Sq. Mts. of “built-up area” as per Schedule 8(a) of the Notification of 2006 and; **LASTLY**, the clause highlighted by the Applicant in the sale deed/s with regards to “the PURCHASER” awarding the construction to the DEVELOPER or his nominee, clearly spells out the understanding that it was only the plot of sub-divided land which was sold, the construction/built-up area thereon was not executed at the time of the sale, thus fortifying the stand of this Respondent that the EC Norms as per Notification of 2006 are not applicable to Phase - 1.

- C. The notification of 2006, of the Ministry of Environment and Forests clearly encompasses Building and Construction projects >20,000 and <1,50,000 sq. mts of “built up area” [as per Schedule – 8 (a)] as its fundamental pre requisite for applicability of the EC Norms.**
- D. The Hon’ble Supreme Court in Civil Appeal No. 595 of 2021 M/s. Sai Baba Sales Pvt. Ltd. V. Union of India**

3

4

& Ors. observes that “**since the built-up area was less than 20,000 sq. mts., the EC permission was not needed for the intended construction**”. The area of each plot sold to individual owner “**without constructing/built-up area**” thereon at the time of sale in 1990’s was ranging from 300 to 900 approximately. ON THIS GROUND ALONE THE AMENDMENT AND CLARIFICATION OF THE APPLICANT HAS TO BE REJECTED.



- E. The Hon’ble Apex Court further noted in the abovementioned judgment “A project proponent is not expected to anticipate the changes in EC regimes, especially as a result of judicial interventions, and keep revisiting the sanctioned clearance by the competent authority or even raze down validly constructed structures. Neither can it be expected to knock the doors of an authority, not empowered at the relevant time, to process its applications. Such scenario would render the process akin to a *Sisyphean* task, eternally inconclusive and never ending.”

- F. **Apart from the fact that Phase – 1 is a project prior to MoEF Notification of 2006; the said**

Phase – 1 is also below the built-up threshold of >20,000 sq. mtrs. of built-up area and that no “built-up” area was sold to the individual owners, thus detaching itself from the claims of the Applicant as being a project concerning E.C. Norms.

ANNEXED HERETO AS A-1 IS THE COPY OF THE ABOVEMENTIONED JUDGMENT

- G. The proposed Amendment seeks to maliciously rope in “**Phase – I plots**” which are otherwise subdivided plots of a larger and independent property at **Survey No. 247** “sold undeveloped” to individual owners over the years in 1990’s. The said Survey No. 247 is independent and unconnected of the EC which is granted only to **Survey No. 249/1-A of Village Taleigao. EACH PLOT WAS SEPARATELY SOLD TO INDIVIDUAL OWNERS WITHOUT CONSTRUCTING THEREON**, which implies that there isn’t any “built-up” area at all to be considered. Construction of private houses pursuant to sale of subdivided plots by individual owners are not subjected to EC Norms nor are covered under MoEF Notification of 2006.


5

- H.** The construction/ built-up area of individual houses of individual owners was not a part of the “Project”, which otherwise was to **sub-divide plots and effect sale**. Subsequent to sale, As and when the individual owners suggested, individual sub-divided plots were developed.
- I.** The said “**Phase – I plots**” are individually sold plots whereon private owners have developed their residential houses which are below the categorized **schedule 8 (a)** of MoEF Notification of 2006 which stipulates requirement of above 20,000 Sq. Mts. and below 1,50,000 Sq. Mts. **Built Up Area** for applicability of EC norms and regulations.
- J.** The Respondents have neither intended, proposed or carried out “*any construction project falling under entry 31 of Schedule – I*” as per relied Notification of 07th July, 2004, to attract applicability of EC.
- K.** The Respondents have merely sub-divided a larger property bearing Survey No. 247 of Village Taleigao into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** and further sold it to individual



landowners who have constructed their residential houses as per independent permissions.

L. **WITHOUT PREJUDICE** the amendment sought is not imperative for proper and effective adjudication of the alleged allegations in the OA 141 of 2024; the application for amendment is *malafide*; the Amendment if allowed will cause undue prejudice to the present Respondents as well as the independent plot owners who are unconnected with the EC or project in question **nor are parties herein; the proposed amendment constitutionally and fundamentally changes the nature and character of the case;** And as a general rule, this Hon'ble Tribunal should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These basic principles are formulated by the Hon'ble Supreme Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons 2009 (10) SCC 84** which shall be taken into consideration while allowing or rejecting the application for amendment.

2. LIMITATION BARRED, APPLICATION AND CLARIFICATION IS A SUBTERFUGE



A. The Respondents state that the amendment pertains to a **different cause of action from OA 141 / 2024** and in fact concerns a new and different cause of action (**in Survey No. 247**) which is directly and substantially barred by **limitation** and as such the applicant is maliciously using a backdoor entry to adjudicate alleged causes which concern 1990's subject matters now in 2024 by way of the present Amendment. The OA 141 of 2024 concerns allegations of non-compliance in EC granted to Survey No. 249/1-A, as filed by the Applicant himself, and the proposed amendments concern Phase – I plots in Survey No. 247 which were sub-divided into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** & sold to private individuals in 1991 and are entirely unconnected to the concerned EC project. **The amendment on this pretext is attempting to salvage an alleged cause of action hopelessly barred by Section 15(3) of the NGT Act. It is categorically stated that the amendment is a subterfuge.**



B. The Respondent has sub divided and sold the plots over the **years of 1990's**, this date is pertinent as it not only makes it evident that the said subdivision, plotting and sale was executed prior to the MoEF Notifications, but also



establishes that the Applicant/ Complainant is hopelessly **barred by limitation** in terms of Section 15 (3) of the National Green Tribunal Act, 2010.

3. AMENDMENT/ CLARIFICATION CONCERNS RIGHTS OF INDIVIDUALS NOT PARTIES TO THE PRESENT O.A. 141/2024

- A.** It is categorically stated that undue, unreasonable and grave harm, injury and injustice will be caused to the Respondents if this amendment application is granted. It is not only the Respondents, but also unconnected, **3rd party private plot owners since 1990, who are not parties to the said proceedings will be affected if the said amendment is allowed.**
- B.** The said Phase – 1 plots are neither connected nor applicable for an EC as the said Phase – I plots were subdivided and sold prior to the Notifications concerning Environmental Clearances in the year **1990's**. Phase – 1 is not applicable under the terms of EC as the same was merely sub divided into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** and sold to individual private owners in the year 1990's and that the private owners have purchased the same and subsequently constructed their dwelling houses based on

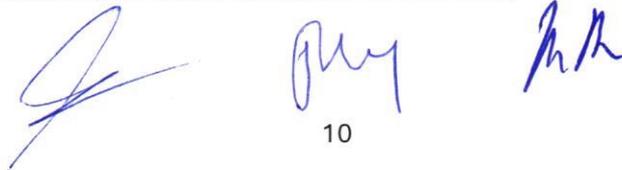


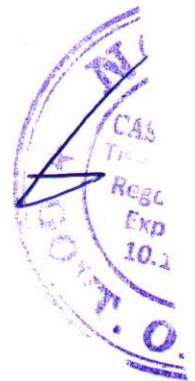
individual permissions and licenses. The applicability of the 2004 Notification as stated by the Applicant is entirely on non-applicability of mind and malafide. **The Respondents have not constructed anything at the time of the sale on the said subdivided plots and have merely sold the same to private owners.** The Phase – 1 plots are in survey No. 247 which is not connected to the Survey No. 249/1-A.

4. CREDENTIALS AND BONAFIDES; APPROACH OF THE APPLICANT TOWARDS AN ON-GOING PROJECT AND A PROPERTY [SUB DIVIDED PLOT] PRIOR TO MoEF NOTIFICATION OF 2006.

A. The Hon'ble Supreme Court in State of UP v. Uday Education and Welfare Trust requests the Hon'ble NGT in para 98 and 99 to test the bonafides and credentials of the applicant. "We would, therefore, only request the learned NGT that, when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such litigants."

ANNEXED HERETO AS A-2 IS THE COPY OF THE ABOVEMENTIONED JUDGMENT





B. In light of an “ongoing project”, the present applicant seeks to demolish the project on alleged non-compliance. FURTHER, seeks to rope in a project prior to MoEF Notification of 2006.

**BRIEF FACTS OF THE EXTORTION AND ARREST OF
THE APPLICANT PRAKASH AGRAWAL**

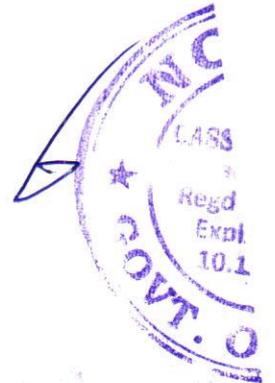


C. The Applicant Prakash Agrawal, on 30th March 2022 approached the present Respondents with various complaints made by him to numerous department/s in Delhi and Goa, with regards to the present project before this Hon'ble Tribunal (Mathias Ocean Park Phase 2 – Sector - 1). On 05th April 2022, **the Applicant Prakash Agrawal made an extortion demand of Rs. 20,00,00,000/- Rupees Twenty Crores to the present Respondent**, failing which the Applicant Prakash Agrawal threatened to initiate “legal terrorism” against the present Respondents by filing complaints before numerous authorities and courts to prevent the present Respondents from completing the said ongoing project. Further, the Applicant Prakash Agrawal threatened the present Respondent/s to induce fear of being jailed for the alleged violations if the demand for extortion money was not met with.



D. The present Respondents complained about the extortion threat to the Crime Branch Goa, who in turn laid a trap and arrested the Applicant Prakash Agrawal RED HANDED in the office of the present Respondents with the extortion cheque.

E. The Applicant was arrested RED HANDED by the Goa Crime Branch on charges of extortion based on the complaint filed by the Respondent No. 2 and as on date a chargesheet to this effect has also been filed against the Applicant. This Applicant does not deserve any levy or indulgence by this Hon'ble Tribunal in light of the unsubstantiated and *mala fide* intents of the Applicant. This position is also made clear by the Hon'ble Supreme Court that the bona fides of the Applicant need be assured before the Tribunal proceeds to adjudicate matters concerning rights of multiple parties. The Applicant is only seeking to arm-twist and harass the Respondents with such applications as an earlier attempt to extort the Respondents was foiled by the Crime Branch – Goa, which lead to the arrest of the Applicant herein who is out on conditional bail.



ANNEXED HERETO AS A-3 IS THE COPY OF THE ABOVEMENTIONED FIR/COMPLAINT AND NEWS REPORTS

F. The construction if any in 2004 in Phase – I was of private landowners, the said subdivided larger property is not a township, it is merely a larger property subdivided and sold further to private individuals. Thus, construction if any was in their private capacity which does not come under applicability of EC norms as the plot sizes into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** and are below 1000 sq mts and the same cannot be considered as a single project undertaken by the Respondents.

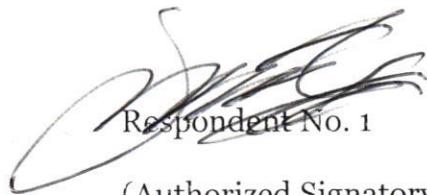
G. The Applicant is also aiming to entangle unconnected subdivided plots only to arm twist and harass the Respondents. The Applicant is using the OA as well as the present application for amendment and Clarification as a tool for “legal terrorism” against the Respondents, instead of seeking justice. The criminal case / chargesheet for extortion and such prayers in amendment makes the entire modus operandi and *mala fides* of the Applicant crystal clear before this Hon’ble Tribunal.

5. The issues raised with regards to Meridian Estates Private Limited, concern a parcel of land which admeasures below the limit of 20,000 sq. mtrs as stated by the applicant itself,



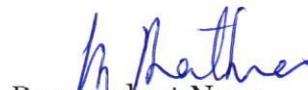
and as such doesn't merit a reply as the applicant is joining issues of an alleged civil dispute before this Hon'ble Tribunal.

- 6. The Respondents humbly prays that the application for Amendment and Clarification as filed by the Applicant be rejected/ dismissed with exemplary costs.**


Respondent No. 1
(Authorized Signatory)


Respondent No. 2


Respondent No. 3


Respondent No. 4



Through

Adv. Siddharth S. Sardesai
Advocate for the Respondents 1, 2, 3 & 4
4th Floor, SmithVandan by Adwalpalkar,
Above Indusind Bank, Near St. Inez Junction,
Panaji-Goa, 403002.

Place: Panaji-Goa
Date:12.02.2025

Mobile No. 9881884646
advsiddharthsardesai@gmail.com

I the abovenamed Deponent do hereby solemnly affirm and declare as under:-

1. I/ We am/are well conversant with the facts and circumstances of the present case and competent to swear this affidavit.
2. I/ We have read the contents of the accompanying reply, which has been drafted by my counsel under my instructions and I state that the contents thereof are true to my knowledge and are also based upon information/legal advice received by me/us and believed to be correct.
3. I adopt the contents of the accompanying application as a part and parcel of the present affidavit and the same is not being reproduced herein for the sake of brevity.
4. I/ We say that the paragraphs of the accompanying application from paragraphs 1, 1A-L, 2, 2A-B, 3, 3A - B, 4, 4A-G, 5 and 6, thereof are true to my knowledge and are also based upon information/legal advice received by me/us and believed to be correct.

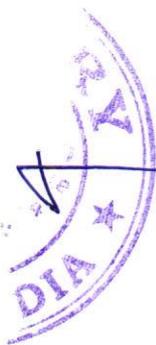

DEPONENT



VERIFICATION

I/ We say that the paragraphs of the above affidavit and paragraphs 1, 1A-I, 2, 2A, 3, 3A & B, 4, 4A-E and 5 thereof are true to my knowledge and are also based upon information/legal advice received by me/us and believed to be correct and nothing material has been concealed therefrom.


DEPONENT

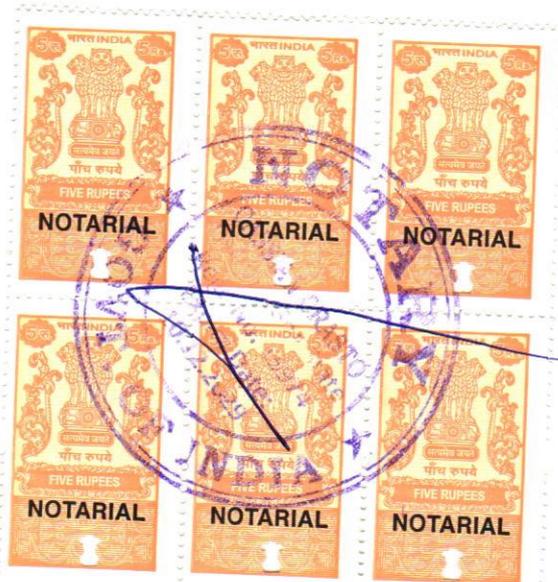


Solemnly affirmed before me by
Joe Mathias

No. 1881 Date: 12/2/2025
known/identified to me by



CASSIAN CRASTO
Advocate & Notary
(Govt of India)
Mnaji, Tiswadi, Goa



WWW.LIVELAW.IN

[REPORTABLE]IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTIONCIVIL APPEAL NO. 595 OF 2021

M/S. SAI BABA SALES PVT. LTD.

APPELLANT(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5768 OF 2021J U D G M E N THrishikesh Roy, J.

1. Heard Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellant in Civil Appeal No. 595/2021. Mr. Lonkar Nitin representing the Original Applicant before the National Green Tribunal. Ms. Aishwarya Bhati, learned Additional Solicitor General of India appears for the Ministry of Environment & Forest.

WWW.LIVELAW.IN

The Government of Maharashtra and the State Pollution Control Board are represented by Mr. Rahul Chitnis and Mr. Mukesh Verma, learned counsel respectively.

2. These two appeals are filed under Section 22 of the National Green Tribunal Act, 2010 (for short "the NGT Act") assailing the judgment and final order dated 18.1.2021 in the OA No. 83/2019. Under the impugned judgment, the NGT held that further construction cannot be made without environment impact assessment, but protected the constructions already made by the appellant, M/s Sai Baba Sales Pvt. Ltd. ("Project Proponent") on the basis of the Environmental Clearance ("EC" for short) issued by the Pimpri Chinchwad Municipal Corporation ("PCMC" for short) as per the notification dated 9.12.2016. The Original Applicant, on the other hand, is aggrieved by the decision of the NGT to protect the standing construction and limiting the impact of the impugned judgment on further construction to be made by the project proponent.

3. The main issue that arises for consideration in these matters is whether the Project Proponent herein

WWW.LIVELAW.IN

possesses a validly granted Environmental Clearance (EC) under the Environmental Impact Assessment (EIA) notification dated 14.9.2006. The 2006 EIA notification provided that the projects above 20,000 sq. meter and below 1,50,000 sq. meter should obtain an EC from the State Environment Impact Assessment Authority (SEIAA) of the Ministry of Environment, Forest and Climate Change (MoEFCC).

4. For deciding the issue, the necessary facts in brief are that the Project Proponent initially conceived a project of 15,040 sq. mtrs. (below the EC threshold limit of 20,000 sq. mtrs.) and it approached the PCMC for a lay out order which was a prerequisite, to obtain an EC from the SEIAA of the MoEFCC. The application was processed and the Building Permission Department of the PCMC granted the commencement certificate to the Project Proponent for an area of 15,040 sq. mtrs. and approved the plan under the sanction letter dated 14.5.2013. With such permission, the Project Proponent could construct the permitted structures, and since the built up area was less than the threshold limit of 20000 sq. mtrs.,

WWW.LIVELAW.IN

the EC permission was not needed for the intended construction.

5. The Project Proponent builder then applied and was granted additional FSI as it intended to expand the project to one with built up area of 49,012 sq. mtrs. and for this they approached the PCMC for a lay out order, which as noted earlier was essential to obtain an EC from the SEIAA of the Ministry of Environment, Forest and Climate Change (MoEFCC). The required approval was issued by the Corporation on 28.11.2016.

6. Under the Ministry's notification dated 9.12.2016, the EIA regime was altered to indicate that the EC could be obtained from the Environmental Cell of a local authority, such as the PCMC. The State of Maharashtra opted for the new regime and adopted the environmental condition stipulated in the MoEFCC notification dated 9.12.2016. This was followed by the communication of the MoEFCC on 7.7.2017 which clarified that separate environmental clearance is not required for projects upto 1,50,000 sq. mtrs. built up area in respect of municipal corporations in Pune and Konkan division.

WWW.LIVELAW.IN

7. The Project Proponent then filed an application for EC under the 2016 notification which was considered by the Environmental Cell of the PCMC which appraised the project, as contemplated in the notification dated 9.12.2016. The necessary permission for construction to the builder was issued on 28.11.2017, stipulating the environmental conditions for buildings and constructions and this permission was accorded as per the amended regime under the notification dated 9.12.2016 of the MoEFCC and consequential one dated 13.4.2017 of the Maharashtra Government.

8. While the matter stood thus, the NGT while considering the challenge by certain applicants to the exemption from EC, in a batch matter, quashed certain portions of the MoEFCC notification dated 9.12.2016. The NGT in the analogous judgment dated 8.12.2017 in the OA No. 677/2016 (*Society for Protection of Environment and Biodiversity Vs. Union of India*) and other cases, directed the MoEFCC to revisit its notification dated 9.12.2016 and to take appropriate steps to amend/rectify

WWW.LIVELAW.IN

certain clauses in the Ministry's notification, in terms of the NGT's judgment.

9. Nearly two years after the Project Proponent secured construction permission on 8.12.2017 from the PCMC, the OA No. 83/2019 was filed by the Pune resident (respondent No. 10) with the allegation that the Project Proponent had made construction without obtaining any EC. In this proceeding the NGT constituted a three Member Committee comprising the SEIAA - Maharashtra, the State PCB and the Municipal Commissioner, Pune. The Committee, after spot verification, in its Report dated 18.8.2020 noted that construction of total built up area of 22930.17 sq. mtrs. is already completed for Building Nos. A,E,B,D and the Club House. Thereafter, the NGT considered the submission of the original applicant, who contended that while the authority to grant EC is SEIAA as per the EIA notification dated 14.9.2006, the EC for the project in question was granted by the PCMC. The NGT in its order on 17.11.2020, in the first round, opined that the constructions were irregular and

WWW.LIVELAW.IN

remedial measures were directed for the project in question.

10. The above order of the NGT was challenged before this Court and the Project Proponent's CA No. 3893/2020 was allowed on 11.12.2020 whereby, the NGT's order was set aside and the matter was remitted back to the NGT to afford hearing to the appellants and to pass a fresh order.

11. The case of the Project Proponent as can be seen from the pleadings was that he had initially commenced construction on 14.5.2013 with a sanction plan of 15040.05 sq. mtrs., which, being lesser than the threshold limit of 20,000 sq. mtrs, did not require a prior EC. Thereafter, for the proposed expansion of the project, for total constructed area of 49,012 sq. mtrs., the Project Proponent approached the concerned authority on 7.11.2016 for issuance of "*Proposed Development Certificate*", which is a prerequisite to apply for EC, and the said certificate was granted on 28.11.2016 for the purpose of obtaining the EC from the SEIAA. But at that stage, by virtue of the MoEFCC notification dated

WWW.LIVELAW.IN

9.12.2016, the concerned local authority was designated as the sanctioning authority for projects between 20,000 sq. mtrs. and 50,000 sq. mtrs. and accordingly under the changed regime the Project Proponent applied to PCMC on 10.7.2017 and was sanctioned EC by the competent local authority, on 28.11.2017.

12. It is the further contention of the Project Proponent that when the NGT on 8.12.2017 had invalidated certain portions of the 2016 notification, it did not issue any order nullifying those ECs which were granted by the local authority under the altered regime.

13. The original applicant on the other hand, contended that when the NGT struck down certain provisions of the MoEFCC's 2016 notification, the 28.11.2017 EC granted by the Municipal Corporation, would not legitimize the construction and therefore the Project Proponent should be prevented from proceeding with the construction and also be penalized for the unauthorized construction.

14. The NGT then observed that because of the invalidation of certain clauses in the 2016

WWW.LIVELAW.IN

notification, the EC obtained from the PCMC is unacceptable and accordingly rendered a finding that the Project Proponent had failed to obtain the valid EC. The maintainability challenge of the OA on the ground of limitation was however rejected by observing that the cause of action arose only in 2017 when the builder allegedly exceeded the threshold limit of 20,000 sq. mtrs. Accordingly, the authorities were directed to take coercive action against the Project Proponent for construction done after 8.12.2017, when the NGT's judgment was rendered in the OA No. 677/2016. However, even with such finding having regard to the regime that existed at the relevant time and advertent to the ratio in *Goan Real Estate and Construction Ltd. Vs. Union of India*,¹ the NGT held that the construction already raised should be protected. However, further construction should be permitted only after securing the EC from the competent authority, under the current regime.

15. The picture which emerges from the above discussion is that when the Project Proponent initially wanted to

¹ (2010) 5 SCC 388

WWW.LIVELAW.IN

apply for the EC it had obtained the requisite layout sanction for applying to the SEIAA. As such, it was operating well within the applicable procedure, prior to the amendment. After grant of such sanction, while the construction was underway, the amendment came about on 9.12.2016 whereby, the local authority such as the Municipal Corporation was made the competent authority to grant EC. In the changed circumstances, the Project Proponent necessarily had to apply to the PCMC as during the interregnum before the NGT's judgment on 8.12.2017, SEIAA was not the competent authority to consider application for EC. The Project Proponent was therefore, complying with the regime set out by the amended notification. It is apposite to note that the Committee appointed by the NGT, in its report dated 11.8.2020 had clearly indicated that when the Project Proponent had received the EC on 28.11.2017, the competent authority to issue the EC was the Environmental Cell of the PCMC. Thus, it is the discernible understanding as part of the NGT's own expert Committee that the Project Proponent had obtained

WWW.LIVELAW.IN

the EC from the competent authority of the relevant time i.e. the PCMC. Interestingly, the constituted Committee also included a member of the SEIAA.

16. Moreover, only after the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016, the State of Maharashtra issued a clarification on 29.1.2018 directing that the Municipal authorities should not process pending applications. But neither the decision of the NGT nor of the Maharashtra Government categorically gave any guidance as to the implication on the EC obtained by the Project Proponent, on the strength of which, a substantial measure of construction was already made. It is also necessary to note that in the subsequent notification issued on 14.11.2018 and 15.11.2018 by the MoEFCC, the power to grant EC continued to vest in the local authority such as the PCMC, with the only change being that it is the municipality itself and not its Environmental Cell which is empowered to grant the EC. For the sake of completion, it may be recorded that the said

WWW.LIVELAW.IN

notifications of the MoEFCC is stayed by the Delhi High Court on 26.11.2018 in the WP(C) No. 12517/2018.

17. It is important to bear in mind that the Committee constituted by the NGT to report on the building project did not underscore any major deviation but instead found that the Project Proponent had made substantial compliance by obtaining the EC from the competent local authority. Moreover the OA, neither before the NGT or this Court, ever contended that appraisal done by the PCMC's Environmental Cell was defective or any different from one done by SEIAA. Both processes are also similarly structured. This may be the reason why the NGT in the impugned judgment itself protected the already made construction. However, the Project Proponent was restrained from making any further construction without obtaining clearance from the statutory EC and adhering to the environmental norms.

18. The project of the appellant comprises six buildings of which three were constructed in full, and the super structure of the fourth building is completed and only the internal works remains to be done. In the fourth

WWW.LIVELAW.IN

building, 40 out of the 64 apartments have already been sold. In this context, it would be appropriate to advert to the submission of Ms. Aishwarya Bhati, the learned ASG who had clearly stated that at the relevant time, the competent authority to grant EC is the PCMC and not the SEIAA and therefore the internal works for the fourth constructed building, can be allowed to be completed.

19. Considering the above circumstances, the NGT rightly protected the already erected buildings and this protection in our view, should not be impacted by the earlier judgment of the NGT on 8.12.2017 in the OA No. 677/2016 whereby certain portions of the MoEFCC's 9.12.2016 notification were invalidated and direction was issued to the Ministry to revisit the said notification. Importantly, neither the NGT's invalidation order nor the subsequent clarifications by the State of Maharashtra, have suggested any adverse action against the pre-existing structures. As the expert body exclusively occupying the environmental field, the NGT has assessed the factual circumstances to

consciously lean towards protecting the already constructed structures. Nothing more need be added on this aspect. It is also not necessary in this appeal to venture into the question of the retrospective implication of the invalidation of certain parts of the 2016 Notification for other project proponents, which may have gained their ECs in the interregnum.

20. In situations of this nature, the Doctrine of *Legitimate Expectation* is attracted. The principle of the rule of law as explained in *De Smith's Judicial Review*, such as, Regularity, Predictability and Certainty in Government's dealings with the Public, must operate in the present matter. The Project Proponent can legitimately expect a certain degree of stability in the manner in which environmental regime is set and how the applications are processed. The actions of the authorities are expected to adhere to the prevalent norms only, without the element of uncertainty for the executed project.

21. In the above context we may benefit by referring to the seminal case of *Attorney General of Hong Kong v. Ng*

WWW.LIVELAW.IN

*Yuen Shiu*², where Lord Fraser speaking for the Privy Council, appositely observed thus,

"... when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty."

22. This Court in *Sethi Auto Service Station vs Delhi Development Authority & Ors*³, speaking through Justice D.K. Jain, has cited other opinions and elucidated on the concept of *legitimate expectation*, in the following manner,

"24. The House of Lords in *Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service*, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. **Enunciating the basic principles relating to legitimate expectation, Lord Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either**

(a) **** **** **** **** ****

(b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decisionmaker that they

² (1983) 2 AC 629 : (1983) 2 WLR 735

³ (2009) 1 SCC 180

WWW.LIVELAW.IN

will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn." (emphasis supplied)

23. The Doctrine of *Legitimate Expectation* is further explained in *Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries*⁴ where for a Three-Judge Bench of this Court Justice J.S. Verma observed thus: -

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

24. The more compelling public interest might possibly diminish the degree of *legitimate expectation* for a party but a balance has to be found. In the present

4 (1993) 1 SCC 71

WWW.LIVELAW.IN

matter the appellant has acted on the EC and made substantial investments. They cannot be pushed to a precipice and be made to fall. Doing so would be inequitable particularly when, the appellant has scrupulously adhered to the applicable legal framework during the concerned period. Moreover, third-party interests have also cropped up in the interregnum.

25. A Project Proponent is not expected to anticipate the changes in EC regimes, especially as a result of judicial interventions, and keep revisiting the sanctioned clearances by the competent authority or even raze down validly constructed structures. Neither can it be expected to knock the doors of an authority, not empowered at the relevant time, to process its applications. Such a scenario would render the process akin to a *Sisyphean task*, eternally inconclusive and never ending.

26. As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate to endorse the same, by

A-135

accepting the submission of the appellant's Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh clearance from the competent authority, as per the currently applicable framework. It is ordered accordingly.

27. With the above order, the appeals are disposed of without any order on cost.

.....J.
[R. SUBHASH REDDY]

.....J.
[HRISHIKESH ROY]

NEW DELHI
NOVEMBER 26, 2021

2022 LiveLaw (SC) 868

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.R. GAVAI; J., B.V. NAGARATHNA; J.
OCTOBER 21, 2022

THE STATE OF UTTAR PRADESH & ORS. ETC. ETC.

versus

UDAY EDUCATION AND WELFARE TRUST AND ANR. ETC. ETC.

National Green Tribunal Act, 2010 - Appeal against NGT order that directed the State of Uttar Pradesh to not proceed with the proposal for establishment of new wood-based industries till an assessment of the actual availability of timber was done - Allowed - The Courts should not enter into an area that is the domain of the experts. FSI, an expert body, had arrived at its estimation based on the scientific method - NGT could not have sat in appeal over the opinion of the expert - While protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck - NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State which had emphasized many advantages of granting new licenses to WBIs - While setting aside NGT orders, the following directions are issued (1) while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. (2) The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

National Green Tribunal Act, 2010 - When the credentials and bonafides of a litigant approaching the NGT are seriously raised, the same cannot be ignored Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. (Para 98-99)

Environment - The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. (Para 101)

CIVIL APPEAL NOS.2407-2412 OF 2021 WITH CIVIL APPEAL NOS. 3144-3146 OF 2022 CIVIL APPEAL NOS.3132-3134 OF 2022 CIVIL APPEAL NOS.3135-3137 OF 2022 CIVIL APPEAL NO.3138 OF 2022 CIVIL APPEAL NOS.4061-4062 OF 2022 CIVIL APPEAL NO.3141 OF 2022 CIVIL APPEAL NOS.2547-2548 OF 2020 CIVIL APPEAL NOS.3142-3143 OF 2022 CIVIL APPEAL NOS.3147-3149 OF 2022

For the parties : 26 (Appellant(s)) Mr. Vikas Singh, Sr. Adv. Mr. P.S. Patwalia, Sr. Adv. Mr. Rana Mukherjee, Sr. Adv. Mr. Kamendra Mishra, AOR 26.1 Ms. Purna Singh, Adv. Mr. Guntur Pramod Kumar, AOR 26.2 Mr. V. Giri, Sr. Adv. Appellant(s) Mr. Rajeev Kumar Dubey, Adv. Mr. Saurabh Singh Chauhan, Adv. Ms. Saroj Tripathi, AOR 26.7 Mr. Syed Waseem Qadri, Sr. Adv. Appellant(s) Mr. Md. Rashid Saeed, AOR Mr. Saeed Quadri, Adv. 26.8,26.9 Mr. V.K. Uniyal, Sr. Adv. 3 Mr. Dinesh Kumar Garg, AOR Mr. Abhishek Garg, Adv. Mr. Dhananjay Garg, Adv. Mr. Ishaan Tiwari, Adv. Mr. Satyajeet Kumar, AOR 26.3 Mr. Vinay Navare, Sr. Adv. Mr. Rajesh Srivastava, AOR Mr. Gaurav Verma, Adv Mr. Neeraj Datt Gaur, Adv Mr. Lokesh Kumar Choudhary, AOR Ms. Saroj Tripathi, AOR Mr. A. Lakshminarayanan, AOR Mr. Rudraksh Gupta, Adv. Mr. A. Velan, Adv. Mr. Akhil P. Philip, Adv. Mr. Vishwadeep Chauhan, Adv. Mr. Vikalp Sharma, Adv. Mr. Ankolekar Gurudatta, AOR 26.4 Mr. V.K. Shukla, Sr. Adv Appellant(s) Mr. Ajay Singh, Adv. Mr. Ram Kumar, Adv. Mr.

Debasis Mukherjee, Adv. Mr. Lokesh Kumar Choudhary, AOR 26 to 26.9 Mr. Dhruv Mehta, Sr. Adv. R-1 Mr. Brijender Chahar, Sr. Adv. Mr. Vivek Gupta, AOR Mr. Mrinmay Bhattmewara, Adv. Mr. Rajvir Singh Bhati, Adv. Mr. Shyam R. Agarwal, Adv. Mr. Namit Saxena, AOR Ms. Aishwarya Bhati, Ld. ASG Ms. Suhashini Sen, Adv. Ms. Archana Pathak Dave, Adv. Ms. Chinmayee Chandra, Adv. Mr. Varun Chugh, Adv. Mr. Gurmeet Singh Makker, AOR Mr. Ansar Ahmad Chaudhary, AOR Mr. Rashid Hasan Adv. Ms. Shehla Chaudhary Adv. Mr. Md. Anas Chaudhary Adv. Dr. Vinod Kumar Tewari, AOR 4 Mr. Alok Kumar, AOR Mr. Nihal Ahmad, Adv. Mr. Arvind Kumar Shukla, Adv. Mr. Amit Kumar, Adv. Ms. Prachi Goyal, Adv. Ms. Anu Singla, Adv. Mr. Tushar Swahi, Adv. Mr. Vasu, Adv. Mr. Arvind Kumar Shukla, Adv. Mr. Vasu Chaudhar, Adv. Ms. Prachi, Adv. Mr. S. K. Verma, AOR Mr. Zulfiker Ali P. S, AOR Ms. Saroj Tripathi, AOR

J U D G M E N T

B.R. GAVAI, J.

1. For the reasons stated in the applications for impleadment/intervention, the same are allowed.
2. This bunch of appeals challenges the order dated 18th February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Application Nos.313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1st March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licenses given in pursuance thereof.
3. The appeals also challenge the orders dated 18th March 2020, 2nd December 2020, and 21st December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.
4. Civil Appeal Nos.2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted licenses in pursuance of the notice dated 1st March 2019, issued by the State of Uttar Pradesh.

FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.
6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.
7. In pursuance of the order passed by this Court dated 5th October 2015 in Writ Petition (Civil) No.202 of 1995 (T.N. Godavarman Thirumalpad vs. Union of India), the Ministry of Environment and Forest and Climate Change ("MOEFCC" for short) issued Wood Based Industries (Establishment and Regulation) Guidelines 2016 (hereinafter referred to as "2016 Guidelines") vide Notification No. S.O. 3456 (E) dated 11th November 2016.
8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.
9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4th May 2018, considered the matter about the grant of licenses to various WBIs

after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

10. In the meeting of the SLC, held on 7th September 2018, since it was found that the capacity of plywood units is taken as fixed by the 2016 Guidelines, which, in turn, was based on the assessment of IPIRTI, a decision was taken that there was no need for the fresh assessment of the capacity by IPIRTI.

11. In pursuance of the aforesaid decision, E-lottery was held on 12th December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12th December 2018 and 31st December 2018, online letters of offer were issued to 1348 successful applicants. Subsequently, in the months of February and March 2019, provisional licenses were issued to 1215 successful applicants in the 8 categories to set up their WBIs. Subsequent thereto, on 1st March 2019, a notice was issued by the Government of Uttar Pradesh communicating the grant of provisional licenses to the newly selected WBIs.

12. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28th March 2019, the learned NGT directed the State Government to submit a report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

13. Being aggrieved by the notice dated 1st March 2019 issued by the State Government, Original Application Nos. 335 and 396 of 2019 also came to be filed by Samvit Foundation and U.P. Timber Association respectively before the learned NGT.

14. In pursuance of the directions issued by the learned NGT, the Joint Committee Report came to be submitted on 3rd August 2019. Vide order dated 6th August 2019 passed in Original Application nos. 313, 335 and 396 of 2019, the learned NGT directed the State Government to review the notice dated 1st March 2019 with regard to the establishment of new WBIs by 1350 units strictly in terms of the judgment of this Court in the case of **T.N. Godavarman vs. Union of India**. Vide order dated 1st October 2019, the learned NGT directed the status quo to be maintained.

15. The State of Uttar Pradesh filed an Interlocutory Application No.732 of 2019 in O.A. Nos. 313, 335 and 396 of 2019, seeking modification of the order dated 6th August 2019 and the order dated 1st October 2019. Vide order dated 18th December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18th February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1st March 2019 issued by the State Government for establishing new WBIs and all the provisional licenses given.

16. Being aggrieved thereby, Civil Appeal (Diary) No.12004 of 2020 was filed before this Court. Vide order dated 26th October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18th March 2020, 2nd December 2020, and 21st December 2020, the learned NGT rejected the Review Applications.

17. The appellants, therefore, approached this Court being aggrieved by the orders passed by the learned NGT in the Original Applications as well as in the Review Petitions.

SUBMISSIONS

18. We have heard Shri Vikas Singh, Shri P.S. Patwalia and Mr. Rana Mukherjee, learned Senior Counsel appearing on behalf of the State of Uttar Pradesh, Shri V. Giri, Shri Syed Waseem Qadri, Shri V.K. Uniyal, Shri Vinay Navare, Shri V.K. Shukla, learned Senior Counsels, Ms. Prerna Singh, and Mr. Rudraksh Gupta, learned counsels appearing on behalf of the appellants, who were granted provisional licenses. We have also heard Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsels appearing on behalf of the respondent No.1.

19. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by the MOEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licenses is only 12.35 lakh cubic meters per year, whereas the total timber available in the State is 80.30 lakh cubic meters per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber. Learned Senior Counsel submitted that the only authorized agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI, who has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through the FSI.

20. It is submitted that even the MOEFCC had supported the stand taken by the State of Uttar Pradesh and, therefore, the learned NGT ought not to have interfered with the decision of the State Government.

21. Shri P.S. Patwalia, learned Senior Counsel also submitted that the decision of the State Government was in tune with the decision of this Court dated 18th May 2007 and 5th October 2015 passed in Writ Petition (Civil) No.202 of 1995 (***T.N. Godavarman Thirumulpad vs. Union of India***). It is submitted that when an expert body like the FSI had done an elaborate study, there was no reason for the learned NGT to have sat in appeal over the same. He further submits that though a detailed affidavit has been filed on behalf of the State of Uttar Pradesh in compliance with the order of the learned NGT dated 18th December 2019, regarding the availability of timber, the learned NGT has totally ignored the same.

22. Shri V. Giri, learned Senior Counsel, submits that the learned NGT erred in passing orders which have vitally affected the rights of the citizens who were granted provisional licenses. He submits that the order impugned is totally in breach of the principles of natural justice. It is submitted that, from the perusal of the record, it is clear that the State of Haryana while calculating its requirement for wood also takes into consideration the import from the State of Uttar Pradesh. It is submitted that when there is excess wood available in the State of Uttar Pradesh, there is no reason why the same should be permitted to be exported to the State of Haryana at the cost of entrepreneurs in the State of Uttar Pradesh.

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license

holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

24. Shri V.K. Uniyal, learned Senior Counsel submitted that the learned NGT had erred in using the word "allotted". It is submitted that there is no question of allotment of timber to the WBIs and they are required to purchase the same from the open market.

25. Shri V.K. Shukla, learned Senior Counsel submitted that the State Government decided to grant provisional licenses for 8 different categories of WBIs. The requirement of raw material for different categories of WBIs is different. It is submitted that the learned NGT has grossly erred in considering all categories of WBIs together and setting aside the licenses granted to all of them. It is submitted that the said industries are established in pursuance of the National Agro Forestry Policy of 2014 and as such the learned NGT ought not to have interfered.

26. Ms. Purna Singh, learned counsel appears for the appellants, who have been granted provisional licenses for plywood (press only) category. She submits that for plywood (press only) industries, there is no requirement of consumption of timber directly. It is submitted that initially veneer is manufactured out of round/fresh timber. Veneer then so manufactured is glued and pressed together to manufacture plywood. It is submitted that the learned NGT has considered the requirement of timber as twice the actual requirement. She submits that in the State of Uttar Pradesh, veneer is manufactured in surplus, which is exported to the State of Haryana.

27. Shri Rudraksh Gupta, learned counsel, submits that the learned NGT has failed to take into consideration the report of the National Poplar Commission of India.

28. All the learned counsel appearing on behalf of the appellants, in unison, submit that the original applicants before the Court were not *bonafide* litigants. It is submitted that there are reasons to believe that the proceedings were initiated at the instance of either the existing WBIs in the State of Uttar Pradesh to prevent competition or they were filed at the instance of the WBIs in the State of Haryana who were importing timber from the State of Uttar Pradesh at cheaper rates.

29. Shri Dhruv Mehta, learned Senior Counsel appearing on behalf of the respondent No.1, on the contrary, submits that this Court has repeatedly held that the principles of sustainable development, the precautionary principle and the polluter pays principle are to be followed consistently. He raised a preliminary objection on the ground that in view of Section 22 of the NGT Act, the scope of an appeal before this Court could be limited to that of Section 100 of the Code of Civil Procedure, 1908. It is, therefore, submitted that unless a substantial question of law is raised, the appeal could not be tenable.

30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He submits that

an assessment has to be done on the basis of the district-wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

31. Shri Mehta further submits that the report of CEC dated 18th April 2007, accepted by this Court vide its order dated 18th May 2007, would show that the availability of timber for WBIs in the State of Uttar Pradesh is only 45.70 lakh cubic meters per year. Learned Senior Counsel submits that taking into consideration the fact that presently many imported machines from China are being used, the capacity of the existing units has gone much higher and, therefore, the timber which is available in the State of Uttar Pradesh would not be sufficient to meet the demand of the existing industries.

32. Shri Mehta submits that when SLC in its meeting dated 4th May 2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its subsequent meeting dated 7th September 2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licenses. It is submitted that the letters of the said officer dated 11th September 2019 and 20th April 2018 have been ignored by the SLC.

33. Shri Dhruv Mehta further submits that Annexure-I to the 2016 Guidelines is in contravention of the recommendations of CEC, which takes the requirement of timber for plywood unit as "NIL".

34. The learned Senior Counsel submits that vide Notification dated 20th July 2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31st October 2017, the said trees were taken out of the prohibited category. The learned NGT had set aside the said Notification of 2017 by order dated 11th September 2018. It is submitted that the said order of the learned NGT has been accepted by the State of Uttar Pradesh and a fresh notification has been issued on 7th January 2020, again bringing the said trees in the prohibited category. The learned Senior Counsel submits that while assessing the availability of timber, the trees under the said prohibited category have also been taken into consideration. He submits that if 20.75 lakh cubic meters is deducted from the availability of the timber, then the timber available in the State would be much less.

35. The learned Senior Counsel further submits that the survey has not been conducted for all the districts and has been conducted only for 30 districts and, therefore, the survey itself is erroneous.

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of **Common Cause vs. Union of India and others**¹, **Mantri Techzone Private Limited vs. Forward Foundation and others**², **Municipal**

¹ (2017) 9 SCC 499

² (2019) 18 SCC 494

Corporation of Greater Mumbai vs. Ankita Sinha and Others³ and **Pragnesh Shah vs. Dr. Arun Kumar Sharma and others**⁴.

37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of **Ankita Sinha and Others (supra)**, submits that this Court itself has considered the learned NGT to be a special Tribunal and held that it will even have jurisdiction to take suo motu cognizance of the environmental issues. He, therefore, submits that the arguments made on behalf of the appellants with regard to locus are without substance.

38. Shri Vikas Singh, learned Senior Counsel, in rejoinder, submits that the only distinction between the prohibited trees and non-prohibited trees is that the non-prohibited trees can be felled without permission, whereas prohibited trees can be felled only in certain circumstances and only after the requisite permission is granted. He submits that the perusal of the FSI survey would reveal that even after the timber requirement for 1215 new units is taken into count, the State, still, will have 26.36 lakh cubic meters in reserve. He submits that if the new WBIs are permitted, it would result in more farmers going in for agro forestry in the State, which, in turn, will increase the forest cover. It is submitted that said 1215 units are likely to give employment to around 80000 people. Learned Senior Counsel, therefore, submits that the impugned orders deserve to be quashed and set aside.

EARLIER ORDERS OF THIS COURT

39. For appreciating the rival submissions, it will be apposite to refer to certain orders passed by this Court.

40. This Court in the case of **T.N. Godavarman (supra)** passed an order on 12th December 1996. The relevant part thereof is as under:

“6. Each State Government should within two months, file a report regarding –

- (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
- (ii) the licenced and actual capacity of these mills for stock and sawing;
- (iii) their proximity to the nearest forest;
- (iv) their source of timber.

7. Each State Government should constitute within one month, an Expert Committee to assess:

- (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
- (ii) The number of existing saw mills which can safely be sustained in the State;
- (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located.”

41. Vide subsequent order dated 4th March 1997⁵, this Court directed thus:

“6. All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief

³ 2021 SCC OnLine SC 897

⁴ 2022 SCC OnLine SC 79

⁵ (1997) 3 SCC 312

Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.”

42. Vide order dated 9th May 2002, this Court constituted CEC for monitoring of the implementation of the orders passed by this Court and for placing non-compliances of the cases before it.

43. Vide order dated 29th October 2002⁶, this Court further directed thus:

“**44.** No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance with this direction. There shall also be no relaxation of rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

45. It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences.”

44. Vide order dated 1st September 2006, this Court allowed licenses to be issued to the closed sawmills, Veneer and Plywood units as per availability of timber and eligibility and seniority as per CEC recommendation.

45. In pursuance of the orders passed by this Court, SLC was constituted by the State of Uttar Pradesh for verification and compilation of information about closed WBIs.

46. The FSI conducted its assessment and assessed the annual availability of wood from TOF in the State of Uttar Pradesh at 55.61 lakh cubic meters vide report dated 3rd April 2007.

47. On the basis of the report of the FSI, the SLC assessed the annual availability of timber for WBIs from TOF at 53.01 lakh cubic meters. CEC further reduced the same to 43.70 lakh cubic meters. However, it added 2.00 lakh cubic meters per year as timber available from government forests, and, therefore, assessed the annual availability of timber at 45.70 lakh cubic meters.

48. It is to be seen that in its report itself, the CEC included 17.77 lakh cubic meters of timber from the prohibited species. This Court considered the report of CEC and passed the following order on 18th May 2007:

“The matters relate to Saw Mills, Plywood and Veneer Units.

The CEC has considered the availability of wood for the industries, which was assessed as 43.70 lakh cu. mt from trees outside forests and 02.00 lakh cu. mt from Government Forests.

It has also assessed the units into four categories.

We accept the CEC's recommendations. The Saw Mills, Plywood and Veneer Units may be permitted, on the basis of the recommendations made by the CEC.

Licences may be given by the State Level Committees.

If there are any objections regarding grant of licences, the parties would be at liberty to submit their applications before the CEC for consideration.”

49. It could thus be seen that in 2007 itself, this Court had accepted the recommendations of the CEC wherein the CEC had computed the total availability of timber and had also taken into consideration the availability of timber from the prohibited category.

⁶ (2008) 16 SCC 337

50. Vide order dated 29th February 2008, this court considered the issue regarding the manufacturing of Medium Density Fiber board (MDF) and Particle board in the States of Punjab, Uttarakhand and Karnataka. While considering the same, this Court passed the following order:

"The matter relates to the manufacturing of Medium Density Fiber board (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has filed its report and stated that there is a growing trend to use more and more MDF / Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest can be used by MDF/Particle Board plants."

51. In view of the permissions granted by this Court, the licenses were granted to the unlicensed sawmills which were closed on account of the orders passed by this Court taking into consideration the availability of timber between 2007 and 2010. However, it is to be noted that the said licenses were granted only to the units which were closed and not to the new units.

52. The matter again came up for consideration before this Court on 30th April 2010, when this Court passed the following order:

"(II) after meeting the requirement of the licensed wood based industry, the units permitted by this Hon'ble Court and the units whose category is yet to be finalised, the plywood/veneer units falling in category IV may be considered for grant of license to the extent of timber availability and strictly in the order of seniority, subject to the one-time payment of Rs.9 lakhs per press in respect of the veneer units and compliance of the other conditions that have been stipulated. The one-time payment of penalty will be in addition to the normal licence fee and the other charges, if any, payable to the U.P. Forest Department. As decided earlier, the above said amount should be kept in a designated interest bearing bank account and should be utilized only after the scheme in this regard is approved by this Hon'ble Court;"

53. It could thus be seen that this Court permitted granting of additional licenses if additional timber was found to be available.

54. The CEC in its meeting held on 26th May 2010 with the SLC and representatives of WBIs Associations in the State of Uttar Pradesh, after taking into consideration the capacity of timber for Vertical Band Saw (VBS) sawmill, modified/reduced the value of capacity of timber for VBS sawmills upto 10 Horse Power from 540 to 270 cubic meters per year for the State of Uttar Pradesh in line with other States. As such, additional 9,58,230 cubic meters of timber became available for licenses from 3,549 such VBS units. In view of this position between 2010 and 2015, licenses came to be issued by the State of Uttar Pradesh to unlicensed WBIs, which were closed earlier by the order of this Court, as per the criteria recommended by the CEC and accepted by this Court.

55. The matter again came up for consideration before this Court on 5th October 2015 with regard to WBIs, when this Court passed the following order:

"CATEGORY I - MATTERS RELATING TO WOOD BASED INDUSTRIES:

We have heard Shri Harish Salve, learned *amicus curiae*, Shri Ranjit Kumar, learned Solicitor General of India, Shri K.K. Venugopal, learned senior counsel and other learned senior counsel/counselors. Accordingly, we pass the following orders:

(i) The State Level Committees for Wood-Based Industries ("SLCs") are, subject to the compliance of the prescribed guidelines and procedure, authorized to take decisions regarding the grant of license/permission to the wood-based industries;

(ii) In each State/UT for which the SLC has so far not been constituted, the SLC under the Chairmanship of the Principal Chief Conservator of Forests with a representative of the Ministry of Environment and Forest and Climate Change ("MoEFCC") and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/ equivalent rank will immediately be constituted;

(iii) The MoEF is authorized to issue appropriate guidelines in conformation with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to assessment of timber availability for wood-based industries and grant of license/permission to the wood-based industries including addition of new machineries and also utilization of amounts recovered from the wood-based industries and connected matters;

(iv) Any person aggrieved by the decision taken by the SLC may file an appeal before the MoEFCC seeking appropriate relief within 60 days' time. If, for any reason, any person is aggrieved by the orders so passed in the appeal, he may prefer an appropriate petition/application/appeal before the appropriate forum/Court for grant of appropriate relief(s).

We also permit the MoEFCC to condone the delay, if any, in filing an appeal, if sufficient cause is made out by the applicant(s)/appellant(s)"

56. It is thus seen that vide the said order, SLCs were authorized to take decisions regarding the grant of license/permission to the WBIs. Vide the said order, it was also directed to constitute SLC under the Chairmanship of the Principal Chief Conservator of Forest with a representative of MOEFCC and an officer of the State Forest Department/Industries Department not below the rank of the Chief Conservator of Forests/equivalent rank. This Court further directed the SLCs to be constituted in each State/Union Territory for which the SLC was not yet constituted. The MOEF was also authorized to issue appropriate guidelines in conformity with the orders and directions issued by this Court and also the existing guidelines to the SLCs relating to the assessment of timber availability for WBIs. Appeals could be filed before MOEFCC against the decision of the SLC.

MOEFCC GUIDELINES

57. In accordance with the directions issued by this Court vide order dated 5th October 2015, the MOEFCC issued 2016 Guidelines on 11th November 2016. The 2016 Guidelines provided for the constitution of the SLC as well as the powers and functions of SLC. Under clause 4 of the 2016 Guidelines, the SLC was authorised to assess the availability of timber for wood based industrial units in the State/UT every five years. The SLC was also authorised to approve appropriate locations for setting up of wood based industrial units. It was also authorized to approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity.

58. Clause 5 of the 2016 Guidelines provides for the assessment of the availability of timber for wood based industrial units. It requires that the quantity of timber would be assessed by commissioning the study, preferably in collaboration with institutes/universities of repute, once in five years. Under clause 6 of the 2016 Guidelines, the timber requirement for various units as assessed by IPIRTI was given in Annexure I. The said Annexure I reads thus:

"The Indian Plywood Industry Research and Training Institute (IPIRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an

average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.

The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8x4x6, 8x4x12, 8x4x15, 4x4x7, 4x4x10. A 8x4x10 capacity press can produce upto 10 plywood pieces of 8'x4' size per hour whereas a 8x4x15 capacity press can produce upto 15 plywood pieces of 8'x4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8x4x10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8x4x10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated."

59. It could thus be seen that even as per the assessment of the IPIRTI, the timber requirement of a plywood unit is required to be taken as 'NIL' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as raw material. It could thus be seen that the plywood units use presses of various sizes.

60. In pursuance of the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh under the Chairmanship of Principal Chief Conservator of Forest/Head of Forest Department on 17th May 2017. Vide Notification dated 11th September 2017, the MOEFCC amended the 2016 Guidelines.

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4th May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7th September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26th May 2010 had reduced the annual consumption of timber of sawmills upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licenses, on 1st March 2019, the State Government issued a Notice with regard to grant of provisional licenses to

the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1st March 2019 issued by the State Government and provisional licenses given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

CONSIDERATIONS

63. The learned NGT while passing the impugned order has set aside the notice of the State of Uttar Pradesh on the following grounds:

- (1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions;
- (2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;
- (3) that it is the stand of the State of Uttar Pradesh that the total potential availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;
- (4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;
- (5) that the standard error percentage adopted by the FSI is not correct and is much higher;
- (6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;
- (7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

64. It is to be noted that after this Court allowed the licenses to be issued to the closed sawmills vide order dated 1st September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18th May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30th April 2010, this Court permitted additional licenses to be granted if additional timber was available. Accordingly, licenses were granted between 2010 and 2015. Vide subsequent order dated 5th October 2015, this Court allowed the grant of license/permission to unlicensed WBIs in the country. This Court had directed the reconstitution of the SLCs for WBIs. In pursuance of the directions issued by this Court, the 2016 Guidelines were issued by the MOEFCC. As per the 2016 Guidelines, the SLC was reconstituted in the State of Uttar Pradesh on 17th May 2017.

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute,

once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

"In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.

The report gives an assessment of the growing stock existing outside state forest reserves. The report has also indicated district-wise, species-wise and girth class-wise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the state besides providing benchmark data for tree crop in non-forest area."

66. After conducting the survey, the FSI has come to a finding that the State of Uttar Pradesh had an annual potential production of 77,74,521 cubic meters of timber. For conducting the survey, the FSI acquired satellite data for the inventoried districts of Uttar Pradesh State from National Remote Sensing Centre, Hyderabad. The entire gambit of scientific methodology was applied. The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. It will be relevant to refer to the following part of the report of the FSI:

"The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per hectare and volume per hectare over the entire Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately."

67. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. Districtwise production was estimated before concluding that 77,74,521 cubic meters of timber was the annual potential production. The contention of the respondents that the rotation method was not applied is totally incorrect. It will be relevant to refer to paragraph 5.4 of the said report, which reads thus:

"5.4 Estimates of Annual Potential Production of Wood from TOF (Rural) Yield of a forest depends on several factors such as its structure, growth, density, productive capacity of site etc. The estimate of yield been generated for rural area using growing stock estimates. The Uttar Pradesh Forest Department was supplied the complete list of tree species which were found in the survey. The Uttar Pradesh Forest Department was asked to indicate tree species being used as 'timber' and 'non timber' and rotation period of specified timber species. ***The Uttar Pradesh Forest Department informed that they do not have rotation period of all species and requested Forest Survey of India to use their rotation period used for estimation of annual potential production of wood.*** The species are arranged into two groups; one containing the species having timber values and another containing rest by agro-climatic zone wise. The yield has been calculated using Von Mentel formula as given below:

Yield= 2GS/R

Where GS: Growing Stock

R: rotation period

Using the information of timber value, growing stock and rotation period in the above mentioned formulae species wise yield were calculated. The AgroClimatic Zone wise yield has been given in Annexure-11."

[emphasis supplied]

- 68.** The standard error was also determined by applying the appropriate scientific method.
- 69.** The FSI, hence, considered various aspects before concluding and submitting its 101 page report.
- 70.** It could thus be seen that the estimation as arrived at by the FSI was by applying a proper and adequate scientific method.
- 71.** However, it is surprising that the learned NGT has brushed aside such a scientific exercise by merely observing that the figures arrived at were by estimation and not realistic.
- 72.** The FSI has published a paper on "Trees Outside Forest Resources in India". The contributors to the said paper are (1) Dr. Subhash Ashutosh, DG, FSI; (2) Prakash Lakhchaura, DDG, FI, (3) Kamal Pandey, DD, FI; (4) Dr. Sourav Ghose, Proj. Scientist D; (5) Sushila Tripathi; and (6) H.K. Tripathi. The paper shows that the timber and panel products of TOF origin have emerged as the major alternative to timber from forests and thus TOF have significantly obviated pressure from forests. The report shows that, the extent of TOF in the country has been assessed at 29.38 m hectare, which is around 8.94% of the total geographical area of the country. The report further shows that based on the recommendations of the National Commission on Agriculture (NCA, 1976), the Government of India launched a social forestry program in the late seventies on a large scale. The paper further shows that, these days satellite data in a wide range of spectral, spatial, radiometric and temporal resolutions are available from various Remote Sensing Agencies of several countries. It further shows that there has been a rapid advancement in the development of digital image processing software. It, therefore, observes that the desired mapping of natural resources with reasonable accuracy is possible. The report refers to the methodology of assessment of TOF in different countries of the world and refers to various authorities. It refers to different types of methodologies used for different periods; the first one being from 1991 to 2001; the second period being from 2001 to 2016; and the third period being from 2016 onwards. The report shows that the State of Maharashtra has the highest potential annual yield of timber in India followed by the States of Uttar Pradesh and Karnataka.
- 73.** It will be relevant to refer to the conclusion of the said paper, which is as follows:

"5. Conclusion

TOF play a significant role in the socioeconomic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs

and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.

TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.

Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country. Through expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030."

74. It could thus be seen that the FSI has also emphasized the need of promoting TOF. It has been observed that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economy of the rural area, and environmental amelioration in the urban area and feed WBIs with raw material and thus generate significant employment.

75. It is our considered view that, when the estimation was done by the FSI by applying the scientific method and had arrived at the conclusion based on satellite data, such a report could not have been brushed aside by the learned NGT lightly.

76. Insofar as the finding of the learned NGT that the survey also takes into consideration the prohibited trees, the felling of which is not permissible, it will be relevant to note that the Notification dated 7th January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31st December 2025 except under unavoidable circumstances, such as when a tree is dead or dying or it constitutes a danger to persons or property, or its felling is necessary for executing development work approved by the Government, or if the fruit bearing capacity of such tree has declined substantially. Such trees cannot be felled unless permission to fell such tree has been obtained in writing from the competent authority. The tree owners are also required to maintain 10 trees in place of each tree felled. It is thus clear that there is no absolute prohibition for felling the trees which are in the prohibited category. However, the same can be done only in exceptional circumstances.

77. It is to be noted that the prohibited trees also include trees like Mango, Jamun, etc. which are fruit bearing trees. After a particular number of years, the fruit bearing capacity of such trees drastically reduces and as such, the farmers normally fell such trees and go in for replantation of the orchard. Apart from that, it is to be noted that the CEC itself approved the availability of timber for the State of Uttar Pradesh in its report dated 19th April 2007, which included 17.77 lakh cubic meters of prohibited trees. The said report of the CEC was approved by this Court vide its order dated 18th May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions

issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs.3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

79. As such, the learned NGT has grossly erred in deducting the availability of timber from the prohibited trees. By now, it is more than settled that the Courts should not enter into an area that is the domain of the experts. FSI, which is undisputedly an expert body, had arrived at its estimation based on the scientific method. The learned NGT could not have sat in appeal over the opinion of the expert.

80. It is relevant to note that MOEFCC, in pursuance of the directions issued by the learned NGT had filed its opinion on 18th December 2019. It will be relevant to refer to paragraph 8 of the said opinion.

"8. That based on the examination of available documents in light of the provisions of the Wood Based Industries (Establishment and Regulation) Rules, 2016, MoEFCC is of the opinion that the State of U.P. has followed the Wood Based Industries (Establishment and Regulation) Guidelines, 2016 (as amended in 2017) issued by MoEFCC. The availability of wood in the State has also been assessed by the SLC through FSI. The Ministry is, therefore, of the view that the SLC may approve setting up of new industries in the State if it is satisfied that sufficient timber is available legally to run the new wood based industries."

81. The learned NGT has failed to take into consideration the stand of the MOEFCC, which also supported the stand of the State that sufficient timber was available legally to run the new WBIs.

82. Insofar as the contention of the learned counsel for the respondents that, though in the meeting of the SLC dated 4th May 2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7th September 2018 did a volte-face and decided not to get the assessment done from IPIRTI, the perusal of the minutes of the meeting of the SLC dated 7th September 2018 would reveal that it was found that the IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was noticed that, as per the report of the FSI, the TOF available was 77,74,522 cubic meters. Adding the timber available in the forest area of 2,57,273 cubic meters, the total quantity of availability of timber was 80,31,795 cubic meters. It is to be noted that the SLC had taken note of the letter dated 29th August 2018 issued by the Director, IPIRTI, where he had communicated that no assessment pertaining to the annual consumption of timber by Veneer and Plywood Industries was undertaken by the IPIRTI during the last two years in any State of the country. It was found that the 2016 Guidelines itself provided for annual consumption of timber based on the report of IPIRTI. In this premise, it was found that there was no need to conduct a fresh study/assessment for the consumption of timber by WBIs by IPIRTI. It was decided to accept the figures as provided in the 2016 Guidelines.

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly

explained by this court in the case of *Tata Cellular vs. Union of India*⁷, which has been consistently followed in a catena of cases. This Court, in the said case, observed thus:

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decisionmaker must understand correctly the law that regulates his decisionmaking power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

84. Applying the aforesaid principle to the present case, it cannot be said that the decision-making process has been vitiated either on account of illegality, irrationality or procedural impropriety.

85. With regard to the contention of Shri Dhruv Mehta, learned Senior Counsel, that Annexure I to the 2016 Guidelines providing the timber requirement of a plywood unit to be taken as “NIL” is contrary to the CEC recommendations is concerned, we do not find any substance in the said submission. Firstly, 2016 Guidelines have been issued by the MOEFCC in pursuance of the directions issued by this Court dated 5th October 2015. In any case, the raw material for plywood industries is ‘Veneer’ and the raw material for veneer is ‘timber’. We find substance in the contention of the appellants that, if timber is to be considered again as a raw material for plywood, then it will amount to showing the consumption of the same timber more than once, which is, in fact, not consumed. It is not in dispute that veneer is a raw material for plywood, which is derived from timber. The same timber is used for deriving veneer and such veneer, which is used for manufacturing plywood, cannot be counted twice. In any case, as long as the 2016 Guidelines which are issued in pursuance of the directions issued by this Court are not set aside, the contention in that regard is without substance.

86. That leads us to consider the contention of the respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary

⁷ (1994) 6 SCC 651

principle and the polluter pays principle. No doubt that the protection of the environment is of utmost importance. It is the duty of this generation to protect the environment for future generations.

CONCLUSION

87. It cannot be disputed that Section 20 of the NGT Act itself directs the learned Tribunal to apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Undisputedly, it is the duty of the State as well as its citizens to safeguard the forest of the country. The resources of the present are to be preserved for the future generations. However, one principle cannot be applied in isolation of the other.

88. It is necessary that, while protecting the environment, the need for sustainable development has also to be taken into consideration and a proper balance between the two has to be struck.

89. A body having expertise in the field, i.e. the FSI, upon a scientific study, has concluded that there is sufficient timber available in the State of Uttar Pradesh. Not only that, but the respondents themselves have placed on record a project report on "Study to know the percentage and value of the raw material sourced through U.P. Forests by Plywood and Khair (Kattha) Industries in U.P.". The said report is prepared by RAK Management Consultants on the instructions of the Department of Planning, Economic and Statistics Division, Government of Uttar Pradesh. The said report itself shows that the consultants, during the field survey, observed resentment among the plywood manufacturers against the process of issuing new licenses to the WBIs by the State Government.

90. The report further goes on to show that on average 1500-1700 trucks/tractor trollies of the eucalyptus and popular wood from all over Haryana, Punjab, Himachal Pradesh and Uttar Pradesh go to Yamuna Nagar, Haryana daily. Out of the said trucks/trollies, approximately 300350 tractor trollies and some other small vehicles per day come from Uttar Pradesh. The report shows that approximately 5 to 6 lakh metric tons of timber per year is exported to Yamuna Nagar. The said material belongs to the western districts of Uttar Pradesh, i.e. Muzaffarnagar, Saharanpur, Shamli, Baghpat and Meerut. It is stated that there is no sufficient market for this produce in the said area. The report further finds that the western districts of Uttar Pradesh, i.e. Meerut, Muzaffarnagar, Saharanpur, Baghpat and Shamli, etc. do not have sufficient number of plywood and veneer units and as such, they are not sufficient for the entire farmers' produce available in the said area. The report itself shows that the western districts need around 80-85 plywood and veneer units. The report goes on further to show that there is dissatisfaction among the already existing industrialists about the assessment made by the FSI.

91. It is further to be noted that the State has specifically pointed out before the learned NGT that on the establishment of WBIs, an investment of about Rs.3000 crore was likely to be attracted in the State; employment opportunities to over 80000 people will be available and the farmers of the State would get a more remunerative price. This would result in more impetus for large-scale plantation and agro-forestry. The State also emphasized that this will reduce dependence on traditional/cash crops and also reduce migration of people to urban areas. It is also emphasized that if the new WBIs are permitted, it will reduce the import of WBIs produce. However, all these aspects have not been taken into consideration by the learned NGT.

92. It will be relevant to note that the Forest Research Institute, Dehradun, Uttarakhand has published 'Country Report of Poplars and Willows Period : 2012-2015'. The report states that the timber from poplar and willow is the backbone of vibrant plywood, board, match,

paper and sports goods industries. The report further states that in tune with Indian Agroforestry Policy 2014, the plantation of poplar has been promoted. It further states that the Planning Commission of India has given special grants to certain States for the diversification of agriculture where farmers are advised to move away from paddy cultivation to sustain agricultural production. Poplar and eucalyptus are among the few trees promoted under this diversification plan. The report states that Poplar plays a significant role in rural development by generating employment for many categories of skilled, semi-skilled and unskilled workers.

93. The paper on "Trees Outside Forest Resources in India" published by the FSI, cited supra, also emphasizes that TOF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. TOF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that TOF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

94. As already discussed herein above, the majority of TOF is from two species, i.e. Poplar and Eucalyptus. These trees are fast growing. If a market is available for the said trees, there will be impetus to the farmers for large scale plantations. The rotation in these species is quite fast. This will, in turn, increase the green coverage. We are of the considered view that the learned NGT has taken a lopsided view. It has failed to take into consideration the concerns expressed by the State. The learned NGT has committed patent error in ignoring the expert's report and sitting in appeal over the same. The learned NGT has also failed to take into consideration the stand taken by the MOEFCC, which supported the stand of the State. As already discussed herein above, the State had emphasized many advantages of granting new licenses to WBIs. It was also emphasized that the timber from the State of Uttar Pradesh was being exported to the State of Haryana. However, none of these aspects have been considered by the learned NGT. We are, therefore, of the considered view that the impugned orders of the learned NGT are not sustainable in law.

95. There is another reason, in our view, why the order of the learned NGT would not be sustainable. Though, on the date on which the review applications were rejected, 1215 provisional licenses were already granted and 633 units had already been established and commenced production, the learned NGT has passed the impugned order which adversely affects their interest. Either some of such industries ought to have been impleaded in their representative capacity or a public notice should have been given so that such license holders could have represented their case. However, the said contention is lightly brushed aside by the learned NGT by holding that, since the issue is related to the general decision of the State which is applicable uniformly to all the proposed provisional licensees, it is not necessary to consider the issue raised in the impleadment applications. It is more than a settled law that the principles of natural justice are required to be followed even in administrative actions when such actions adversely affect the rights of the citizens. When the learned NGT exercised its judicial powers, it could not have ignored the principles of natural justice, which, even under Section 19(1) of the NGT Act, it is bound to follow.

96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and *bonafides* of the original applicants.

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of **Ankita Sinha and Others (supra)** to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and *bonafides* of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the *bonafides* and credentials of such litigants.

100. Though we are allowing the appeals, setting aside the orders of the learned NGT, and upholding the action of the State Government in granting licenses, we would like to remind the State and its authorities that it is their duty to protect the environment. The State and its authorities should ensure that necessary steps are taken for arresting the problem of declining forest and tree cover. The State and its authorities should make meaningful and concerted efforts to ensure that the green cover in the State of Uttar Pradesh is not reduced and to ensure that it increases.

101. The conservation of forest plays a vital role in maintaining the ecology. It acts as processors of the water cycle and soil and also as providers of livelihoods. As such, preservation and sustainable management of forests deserve to be given due importance in formulation of policies by the State. In this regard, it will be apposite to refer to certain earlier pronouncements of this Court.

(a) In the case of **Samatha vs. State of A.P. and Ors.**⁸, a three-Judge Bench of this Court after referring to the earlier judgment in the case of **State of H.P. and others vs. Ganesh Wood Products and others**⁹ observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of **Essar Oil Ltd. vs. Halar Utkarsh Samiti and others**¹⁰, this Court discussed the need for a balance between the economic and social needs and development on the one hand and environment considerations on the other. It was observed that laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. In this regard, the observations of this Court in the case of **Indian Council for Enviro-Legal Action vs. Union of India and others**¹¹ were quoted as under:

“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment.”

(c) In the case of **Maharashtra Land Development Corporation and others vs. State of Maharashtra and another**¹² reference was made to **Glanrock Estate Private Limited vs. State of Tamil Nadu**¹³ wherein it was observed as under:

27. Forests in India are an important part of the environment. They constitute [a] national asset. In various judgments of this Court delivered by the Forest Bench of this Court in *T.N. Godavarman Thirumulpad v. Union of India* (Writ Petition No. 202 of 1995), it has been held that ‘intergenerational equity’ is part of Article 21 of the Constitution.

28. What is intergenerational equity? The present generation is answerable to the next generation by giving to the next generation a good environment. We are answerable to the next generation and if deforestation takes place rampantly then intergenerational equity would stand violated.

29. The doctrine of sustainable development also forms part of Article 21 of the Constitution. The ‘precautionary principle’ and the ‘polluter pays principle’ flow from the core value in Article 21.

⁸ AIR 1997 SC 3297 = (1997) 8 SCC 191

⁹ (1995) 6 SCC 363

¹⁰ (2004) 2 SCC 392

¹¹ (1996) 5 SCC 281

¹² (2011) 15 SCC 616

¹³ (2010) 10 SCC 96

30. The important point to be noted is that in this case we are concerned with vesting of forests in the State. When we talk about intergenerational equity and sustainable development, we are elevating an ordinary principle of equality to the level of overarching principle.”

(d) Of course, one cannot ignore one of the several dicta of this Court in *T.N. Godavarman Thirumulkpad vs. Union of India and others*¹⁴ wherein this Court enunciated the definition of “forest” in the following words:

“4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word “forest” must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term “forest land”, occurring in Section 2, will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof...”

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7th January 2020 are satisfied. The State Government shall also ensure that when such permissions are granted to the applicants, the applicants scrupulously follow the mandate in the said notification of planting 10 trees against 1 and maintaining them for five years.

103. In the result, the appeals are allowed. The impugned orders passed by the learned National Green Tribunal, Principal Bench, New Delhi in Original Application Nos.313, 335 and 396 of 2019 as well as in the Review Applications are quashed and set aside.

104. Pending applications, if any, shall stand disposed of.

No costs.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)

Pl. Crime Branch, Alibandar
Outward No. 1759
Dated: 08/04/22

N.C.R.B.

I.I.F.-I



GOA POLICE

**FIRST INFORMATION REPORT**

(Under Section 154 Cr.P.C.)

1 District North Goa P.S. Crime PS Year 2022
 FIR No. 36/2022 Date 07-04-2022 12:39

Act	Sections	r/w Section
Indian Penal Code (IPC)	384	

3 (a) Occurrence of Offence

Exact Date 05-04-2022 Exact Time TNK Day Tuesday

(b) Date of Information Received at P.S. 07-04-2022

Time of Information Received at P.S. 12:39

(c) GD Reference Entry No. 33 Date 07-04-2022 Time 12:39:26

4 Type of Information

5 Place of Occurrence

(a) Direction and distance from P.S. North 10 Km(s)

Beat No. Panaji City

(b) Address House No.C-13/156,Mathias
House,Campal,Tiswadi,North Goa

(c) In case, outside the limit of this Police Station,then

Name of P.S.

District

Other Places

6 Complainant / Informant

Name	Relation Details	Date/Year of Birth	Nationality	Occupation	Address
Joe Mathias Mathias Alias Name:	Name: Marcelino Relation Type: Father	D.O.B: Age:73	Nationality: Indian Passport No.: Date of Issue: Place of Issue:	Business	Present Address: M.D. of M/S Mathias Construction Pvt. Ltd. of at H. No. C-13/156 ,Mathias House ,Campal ,Tiswadi ,North Goa , Goa Permanent Address: Same As Above.

7 Details of Known / Suspected / Unknown accused with full particulars

Name	Relation Details	Date/Year of Birth	Nationality	Occupation	Address

FIRST INFORMATION REPORT

Accused Type: Known Name: Prakash Agarwal Alias Name:	Name: Relation Type:	D.O. B: Age:	Indian	Business	Present Address: flat No.703, 3 BHK ,La Gomera Building ,Mathias Ocean Park ,Donapaula ,Tiswadi ,North Goa , Goa Permanent Address: Same As Above.
--	---	-----------------------------------	--------	----------	---

8 Reasons for delay in reporting by the complainant / informant

Immediately.

9 Particulars of Properties stolen / involved

Property Category	Property Type	Property Status	Estimated Value (in Rs.)
No Records Available			

10 Total value of property stolen / involved

11 Inquest Report/U.D. case No., if any

12 First Information contents (Brief Facts)

On 05/04/2022 TNK at office at House No.C-13/156, Mathias House, Campal Panaji-Goa accused namely Prakash Agarwal owner of flat No.703, 3 BHK flat in building La Gomera, at Mathias Ocean Park, Dona Paula-Goa approached the complainant and threatened to file complaints to various forum/Authorities and induced fear that accused and his friend will not let the complainant complete remaining part of project in survey No.249/1-A of Village Taleigao,

and demanded a sum of Rs.20 Crores to settle the issue. Further the complainant stated that the accused Mr. Agarwal will be coming to the complainant office on 07/04/2022 at 04.00 PM to collect part of the money to be extorted which the complainant is not willing to pay. Hence offence U/s 384 IPC stand registered.

13 Action Taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2.

(a) Registered the case and took up the investigation or

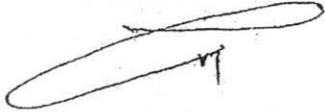
(b) Directed (Name of I.O.) THERRON SUNNY D COSTA Rank Inspector No. to take up the Investigation or

(c) Refused investigation due to or

(d) Transferred to P.S. District on point of jurisdiction

F.I.R. read over to the complainant / informant, admitted to be correctly recorded and a copy given to the complainant / informant, free of cost.

R.O.A.C.

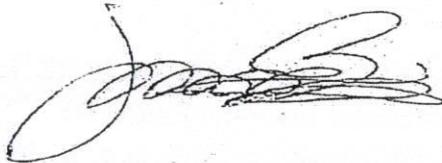

Signature of Officer in charge, Police Station

Name RAHUL TUKARAM PARAB

Rank Inspector

No.

14 Signature / Thumb impression of the complainant /informant



15 Date of dispatch to Court

Joe Mathias

07th April, 2022

To
The Superintendent of Police,
Crime Branch,
Ribandar - Goa.

Sub: Extortion by Mr. Prakash Agrawal.

Sir,

The undersigned is the Managing Director of M/s. Mathias Construction Pvt. Ltd., with its registered office at House No. C-13/156, Mathias House, Campal, Panaji - Goa, engaged in the business of real estate. One of the projects undertaken by us is Mathias Ocean Park - Sector I at Dona Paula Goa which is constructed in part of property bearing Survey No. 249/1-A of Village Taleigao, which is completed and more than 150 families are residing in the complex.

Sometime in October 2021 a gentleman named Mr. Prakash Agrawal approached my office at Campal to purchase a flat at the Mathias Ocean Park and met my son Mr. Julian Mathias as he handles sales. Upon discussions between Mr. Agrawal & Mr. Julian Mathias, the former agreed and finalized to purchase Flat No. 703, 3 BHK flat in building La Gomera, subsequent to which upon payment of the entire consideration the possession of the flat was handed over to Mr. Agrawal in October 2021 and the Sale Deed was executed on 01/02/2022 and the same was registered on 04/02/2022.

Subsequent to the execution and registration of the sale deed, Mr. Agrawal started requesting for information regarding the permissions of the project, accounts of Mathias Ocean Park Association, etc, the details of which were handed over to him. On 30th March 2022 Mr. Agrawal visited my office stating that there are shortcomings and problems in the project, no clarity in the ownership of the property, etc. Mr. Agrawal also handed over to me a bunch of papers wherein he had made complaints to various departments in Delhi and Goa regarding the project Mathias Ocean Park. At his request, Mr. Agarwal again visited my office on


"MATHIAS HOUSE"

.. 2 ..

05th April, 2022 and he informed me that there is someone who has obtained all the documents pertaining to the project and will file complaints to various forums, harass me, etc., and in order to sort out this entire issue that person wants Rs. 20 Crores and he (Mr. Agrawal) wants monies separately from me for assisting me to sort out these issues and stop them from taking any further action. I have also been informed by Mr. Agrawal that if I do not pay him and his friend the amounts quoted/demanded they will complain to various authorities/Courts and not let me complete the remaining part of the project which is yet to be developed.

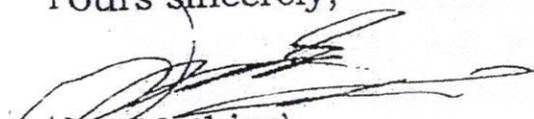
The project has been constructed by obtaining the required permissions and licenses from the concerned departments. Despite having shown Mr. Agrawal all the permissions and licenses, he repeatedly states that there are shortcoming, etc., in the project and time and again induces fear in me by stating that I will be jailed, legal proceedings will be initiated against me, etc., which has caused me tremendous stress and tension. I am a law abiding senior citizen, 73 years of age and suffering from various serious illnesses for the last 5 years.

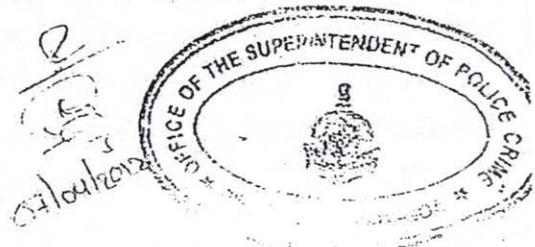
extort huge sums of monies from me for no reason and also cause me stress and harassment. Mr. Agrawal has confirmed that he will be coming to my office at Mathias House, Campal today (07/04/2022) at 4.00 p.m. to collect some part of the monies which I do not wish to pay, as I am being extorted by him & his friend.

It will be highly appreciated if you could kindly look into the matter and take appropriate steps in restraining the wrong doers from such kind of exploitation and extortion.

Thanking you.

Yours Sincerely,


(Joe Mathias)





Super Goenkar

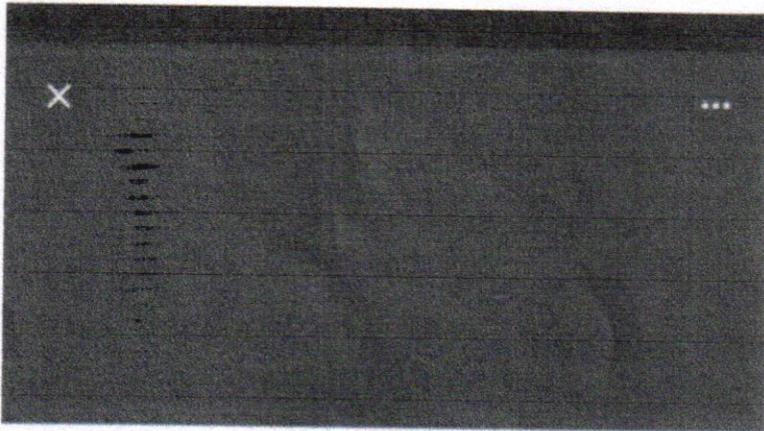
2171

Ey ...

4 d · 🌐

Assagao Assagao - has the administration forgotten this Delhi Extortionist who's in Goa ? What's happened to the case ? Silenced by the Cops too ??

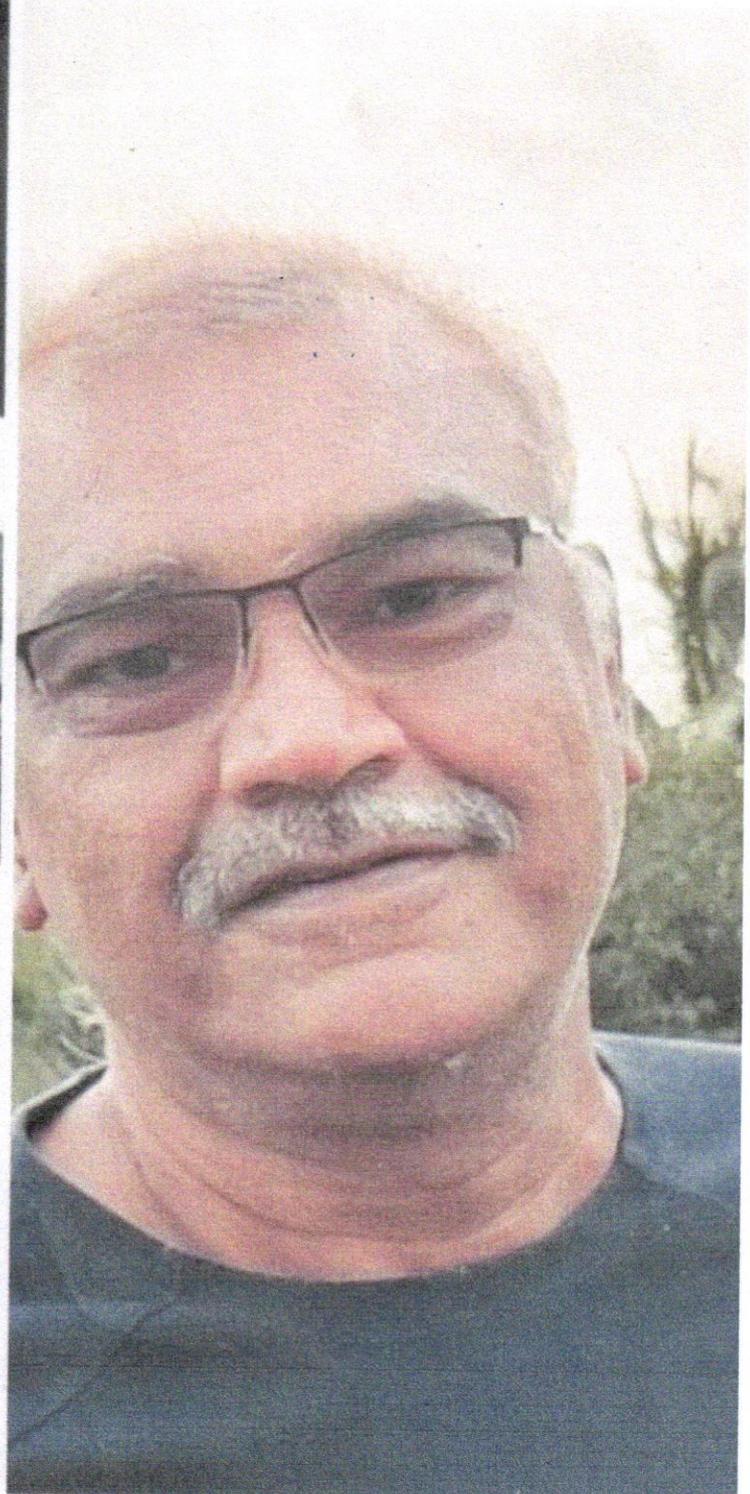
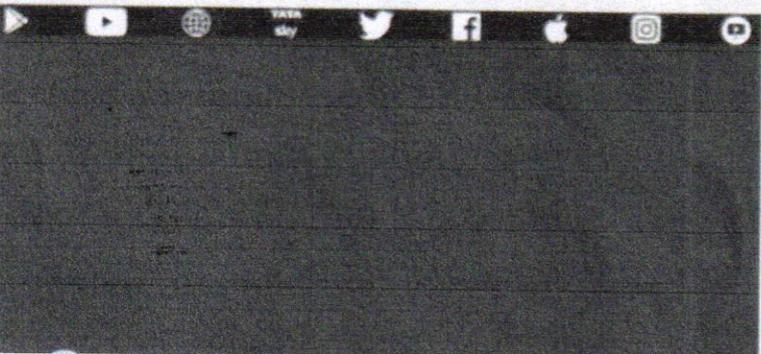
Dr. Pramod Sawant Vishwajit P RANE Atanasio Monserrate @YuriAlemao Adv. Carlos Alvares Ferreira Rohan Khaunte



PRUDENT BREAKING



Crime Branch arrests Prakash Govindlal Agrawal (62) r/o Dona Paula red handed while accepting extortion amount of Rs 20 crore by cheque from a real estate businessman, the accused was threatening the complainant builder to file various complaints before various authorities with intention to obstruct his project at Taliegao if extortion amount is not paid



PRUDENT BREAKING

PRUDENT BREAKING



Crime Branch arrests Prakash Govindlal Agrawal (62) r/o Dona Paula red handed while accepting extortion amount of Rs 20 crore by cheque from a real estate businessman, the accused was threatening the complainant builder to file various complaints before various authorities with intention to obstruct his project at Taliegao if extortion amount is not paid



ARRESTED WHILE ACCEPTING EXTORTION AMOUNT OF ₹ 20 CR

22 hours ago



Extortion case



Crime branch arrest suspected accused Prakash Agrawal for accepting extortion money of 20 crore by cheque from a builder. Accused had allegedly threatened the builder to file complaint against him and obstruct his projects