

BEFORE THE NATIONAL GREEN TRIBUNAL WESTERN ZONE**BENCH, PUNE AT PUNE****ORIGINAL APPLICATION NO. 146 OF 2024 (WZ)**

Babasaheb Mahadev Patil

...

Applicant

V/s.

M/s. Shikshan Mararshi
Dnyandeo Mohekar Agro
Industries Ltd. & Ors

...

Respondents

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PUNE

DATE: 03/02/2025



ADVOCATE FOR RESPONDENT No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

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Industries Ltd. & Ors

... Respondents

REPLY ON BEHALF OF
RESPONDENT No.1

MAY IT PLEASE THE HON'BLE TRIBUNAL
THE RESPONDENT NO.1 MOST RESPECTFULLY
SUBMITS THAT :-

1. At the outset, it is submitted that, the present Original Application has been filed by the Applicant for an ulterior motive to harass the Respondent No.1 and the same may kindly be rejected in toto. Nothing shall be deemed to be admitted by the present Respondents except so far as it is expressly admitted herein under. It is submitted that the present Original Application is nothing but an exercise to

harass the present Respondents and indulge into the extortion and trying to blackmail the present Respondents.

PRELIMINARY OBJECTIONS

2. The Respondent No.1 submit that the Applicant is neither an aggrieved person in the eyes of law nor has made out the case of substantial questions relating to environment as mandated u/s 2 (m) of the National Green Tribunal Act, 2010.
3. The Respondent No.1 submit that no substantial issue has been made out for the adjudication before this Hon'ble Tribunal. The Respondent No.1 further submits that the Applicant herein has no locus to file present Original Application and is also not an aggrieved party to the present proceedings. The factory of the Respondent No.1 is in the village Moha, Osmanabad, Maharashtra and the Applicant is residing at Chinchwad, which is approximately around 277 km from the factory of the Respondent No.1. The Hon'ble Supreme Court has held that , the issue of locus of Applicant is to be decided by this Hon'ble Tribunal. The Hon'ble Supreme Court in the Judgement of '*Uday Welfare Trust Vs. State of U.P.*' has clearly held that, this Hon'ble Tribunal has to consider the bonafide of the litigant approaching the Hon'ble Tribunal as the question of operation of Industry and employment of numerous employees is depending on the

order of this Hon'ble Tribunal. Hereto annexed herewith and marked as ANNEXURE - R-1 is the copy of the Judgment of the Hon'ble Supreme Court in the Judgement of '*Uday Welfare Trust Vs. State of U.P.*'. The Hon'ble Supreme Court in another case of *Anand Gram Society* has also held that the locus of the Applicant has to be verified by the Hon'ble Tribunal. Hereto annexed herewith and marked as ANNEXURE - R-2 is the copy of the Judgment of the Hon'ble Supreme Court in *Anand Gram Society* case.

FACTS OF THE CASE

4. The unit of the Respondent No.1 has received Consent to Operate from the Respondent No.2 under Orange category on 28.11.2019 which is valid till 31.10.2029.
5. The present Application has been filed by the Applicant, alleging that, the Respondent No.1 and 2 are operating illegally and have caused loss to the environment. It is submitted that the Applicant has not brought anything on record that demonstrates the destruction to the environment and is indulging in fishing and rowing enquiry vide present Application.
6. As per point 5.A of Original Application, the Applicant has stated that the Respondent No.1 has started the production of

molasses and using Borewell water, but the Respondent No.1 denying the same and also in the affidavit by Respondent Nos.2 and 3 has not mentioned any of these non-compliances.

7. As per point 5.B of Original Application, , the Applicant has stated that the Respondent No.1 have not provided adequate & suitable pollution control devices and arrangements to the Wastewater & Air Pollutants generated from its production activities. But the Respondent No.1 denying the same and also in the affidavit by Respondent Nos.2 and 3 has not mentioned any of these non-compliances.
8. As per point 5.C of Original Application, the Applicant has stated that the Respondent No.1 has failed to provide adequate and suitable pollution control arrangements, But the Respondent No.1 denying the same and also in the affidavit by Respondent Nos.2 and 3 has not mentioned any of this non-compliance.
9. As per point 5.D of Original Application, the Applicant has stated that the aeration system is inadequate and poor, But the Respondent No.1 denying the same and also in the affidavit by Respondent Nos.2 and 3 has not mentioned this non-compliance.
- 10.As per point 5.F of Original Application, the Applicant has stated that the There is no provision for scientific disposal of

inadequate treated effluent and stored into Katcha Pit, the Respondent No.1 denying the same and also in the affidavit by Respondent Nos.2 and 3 has not mentioned this non-compliance.

11. A visit was conducted by the Respondent No.3 and proposed direction were issued to the Respondent No.1 on 26.01.2024, to which Respondent No.1 has issued reply letter to the Respondent No.3 on 27.02.2024, in this reply letter following points were mentioned-

- The ETP of the Respondent No.1 is running and it has been improved as per the instructions of the Respondent No.3.
- The pipeline carrying untreated water is as per the rule of Respondent No.3. The pipeline supplying water to the orchards and other trees in the premises was damaged by JCB while work was being carried out, and due to which water leakage of untreated water was inspected. It was observed left in the tank.
- The holding storage tank also been repaired.
- As per the rules of MPCB, the Respondent No.1 has set up the proper equipment under the guidance of

Scrubber Expert Officer, and the results wet scrubber are also good.

The Respondent No.3, in their affidavit has stated that the Respondent No.1 has not responded to their proposed direction, which is a false statement. The Respondent No.1 has issued reply letter to the Respondent No.3 on 27.02.2024. Copy of the said letter dated 27.02.2024 is annexed herewith and marked as **ANNEXURE - R-3.**

12. As per the point no.07 of the Original Application, the Applicant has stated that Respondent No. 1 have installed machinery for expansion of industry without obtaining Consent to establish for expansion from the Respondent No.3. To which our contention is that last year on the date of 10.03.2023, the Respondent No.1 applied for Consent to Establish for Khansari project at sub regional office, Latur. (UAN No. MPCB-CONSENT-0000164731)

13. As per the point no.08 and 09 of the Original Application, the Applicant has stated that the Respondent No.1 has violated the Standards for Emission of Air Pollutants and Respondent No.1 has been discharging the Effluent Characteristics exceeding the Standards, to which the Respondent No.1 contention is that the Respondent No.1 denies the above allegations.

14. The same Applicant had filed the Original Application No. 73 of 2022 before this Hon'ble Tribunal against the Respondent no.01, and Further this Hon'ble Tribunal directed that, the Respondent No. 1 to deposit the Environmental Compensation amount of Rs. 12,62,340/- within a period of one month with MPCB. And the above Original Application was disposed of. In the point no.11 of the current Original Application, the Applicant has stated that the Respondent No.1 is continuously violating and damaging the environment, which is vague and without any substantial proof.

After this, the Respondent No.1 has always shown its intents to follow the guidelines of the MPCB.

15. The Respondent No.1 states that the Respondent Nos.2 & 3 had issued order dated 18.11.2024 for closure of the activities. The Respondent No.1 vide its detailed response dated 25.12.2024 replied to the issues raised by the Respondent Nos.2 & 3. Copy of the reply dated 25.12.2024 is annexed hereto and marked as **ANNEXURE – R-4**. The Respondent No.3 thereafter has carried out the visit on 26.12.2024 and has noted that the issues raised in the order of closure stand complied. Copy of the visit report dated 26.12.2024 is annexed hereto and marked as **ANNEXURE -R-5**. The

Respondent No.3 has carried out the latest visit on 01.02.2025 and that visit also records satisfaction of the overall functioning of the Respondent No.1. Copy of the visit report dated 01.02.2025 is annexed hereto and marked as **ANNEXURE – R-6**.

16.The Respondent No.1, submits that the Respondent No.1 has submitted an application for revocation of closure order dated 25.12.2024, which is pending consideration on account of the present case pending before the Hon'ble Tribunal. It is requested that the Respondent Nos.2 & 3 be directed to process the application of the Respondent No.1 and revoke the order of closure.

17.It is therefore prayed that the present application may kindly be dismissed with costs.

Pune

Date : 03/02/2025



Advocate for Respondent No.1



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

AT PUNE

ORIGINAL APPLICATION NO. 146 OF 2024 (WZ)

Babasaheb Mahadev Patil ... Applicant

V/s.

M/s. Shikshan Mararshi
Dnyandeo Mohekar Agro
Industries Ltd. & Ors ... Respondents

A F F I D A V I T

MAY IT PLEASE THE HON'BLE TRIBUNAL:

I, Santosh Madake, adult, Occu.: business, having office at Gat No.623, 647, Post Moha, Taluka Kallam, District Dharashiv do hereby state on solemn affirmation as under: -

I am the Managing Director of the Respondent No.1 above named and responsible for day to day administration of my business. As such, I have gone through the Reply and annexure thereto being filed today. I find that the contents therein are true and correct to the best of my knowledge and belief and which may be treated as part and parcel of the present affidavit.

WHATEVER STATED ABOVE is true and correct to the best of my knowledge and belief. In witness whereof I have signed hereunder at 3 on Feb day of February 2025

NOTED AND REGISTERED AT
SERIAL NUMBER 300

03 FEB 2025

2025

[Signature]
DEPONENT



BEFORE ME

[Signature]

Ulka Babasaheb Ingawale
NOTARY GOVT OF INDIA
Shivaji Nagar, Pune-05

ANNEXURE-R-1

2022 SCC OnLine SC 1469

In the Supreme Court of India
(BEFORE B.R. GAVAI AND B.V. NAGARATHNA, JJ.)

Civil Appeal Nos. 2407-2412 of 2021
State of Uttar Pradesh and Others ... Appellant(s);
Versus
Uday Education and Welfare Trust and Others ... Respondent(s).
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

Civil Appeal Nos. 2407-2412 of 2021, 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 and Civil Appeal Nos. 3147-3149 of 2022

Decided on October 21, 2022

The Judgment of the Court was delivered by

B.R. GAVAI, J.:— A 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 v. 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 v. 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 v. 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. Prerna 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 Civil Procedure Code, 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 v. Union of India*¹, *Mantri Techzone Private Limited v. Forward Foundation*², *Municipal Corporation of Greater Mumbai v. Ankita Sinha*³ and *Pragnesh Shah v. Dr. Arun Kumar Sharma*⁴.

37. Shri Dhruv Mehta, relying on the judgment of this Court in the case of *Ankita Sinha* (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 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.

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 8 × 4 × 6, 8 × 4 × 12, 8 × 4 × 15, 4 × 4 × 7, 4 × 4 × 10. A 8 × 4 × 10 capacity press can produce upto 10 plywood pieces of 8' × 4' size per hour whereas a 8 × 4 × 15 capacity press can produce upto 15 plywood pieces of 8' × 4' 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 8 × 4 × 10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8 × 4 × 10 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. District-wise 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:

$$\text{Yield} = 2\text{GS}/\text{R}$$

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 Agro-Climatic 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 v. 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 decision-maker must understand correctly the law that regulates his decision-making 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 A.C. 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 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 300-350 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* (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 v. State of A.P.*⁸, a three-Judge Bench of this Court after referring to the earlier judgment in the case of *State of H.P. v. Ganesh Wood Products*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. v. Halar Utkarsh Samiti*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 v. Union of India*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 v. State of Maharashtra*¹² reference was made to *Glanrock Estate Private Limited v. 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.

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 Thirumulpad v. Union of India*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(j) 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.

¹ (2017) 9 SCC 499

² (2019) 18 SCC 494

³ 2021 SCC OnLine SC 897

⁴ 2022 SCC OnLine SC 79

⁵ (1997) 3 SCC 312

⁶ (2008) 16 SCC 337

⁷ (1994) 6 SCC 651

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

¹⁴ (1997) 2 SCC 267 : AIR 1997 SC 1228

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.7313-7314 OF 2019

ANAND GRAM SOCIETY HANSENS DISEASE (LEPROSY)
REHABILITATION CENTRE

... APPELLANT

Versus

DY. CONSERVATOR OF FOREST, PUNE & ORS.

... RESPONDENTS

O R D E R

1. Anand Gram Society Hansens Disease (Leprosy) Rehabilitation Centre is in appeal before us challenging judgment dated 26.05.2017 and order dated 23.01.2018, passed by the National Green Tribunal, Western Zone, Pune (for short, 'the Tribunal') in Application No. 115/2015 and OA No. 120/2017.

2. It may be mentioned that the first order dated 26.05.2017 was passed by the Tribunal in Application No. 115/2015 (WZ). The said order was passed at the instance of a resident of Pune, who claimed forest land was being destroyed due to encroachments. The application apparently referred to some survey numbers of different villages where encroachments like (i) construction of road; (ii) construction by Pricast India Infrastructure Pvt. Ltd.; (iii) road made on the forest land; (iv) road for goods transportation and houses; and (v) stone mines for construction of RCC used for building houses were existing.

3. Regardless of the categorical stand taken by some of the respondents that they have nothing to do with the forest land and

have not encroached upon it in any manner, the Tribunal, without assigning any reason, and without any discussion on the issues jumped to a conclusion and issued a sweeping direction to the (i) Principal Chief Secretary (Forest) (ii) Principal Chief Conservator (Forest), (iii) Chief Conservator of Forest, and (iv) Collector, Pune "to take steps to remove all the said encroachments within three weeks in accordance with law and reconstitute the environment". The other respondents were directed to extend full cooperation.

4. Thereafter, it seems that some proceedings akin to contempt proceedings, through O.A. No. 120/2017, were initiated and when the matter was taken up for hearing on 23.01.2018, one Dy. Conservator of Forest was present, who did not have complete instructions on facts, for which the case was passed over. Subsequently, a direction was issued to the Chief Conservator of Forest to conduct spot inspection/survey of the area along with District Collector and submit a report about the factual aspects of the structures built on the land in question. The Director General of Police was directed to provide police assistance to remove the structures etc.

5. The appellant is an NGO, which runs a Public Charitable Trust at Dudulgaon, Pune, Maharashtra and has been working for the welfare and rehabilitation of leprosy patients since 1965. The total area acquired by the appellant-Society is three acres with a 6 meter wide access road of 500 meters length. Since the appellant-Society has also been directed to remove the structures where leprosy patients are being treated for decades, the instant appeals were filed, in which we directed to maintain *status quo* at the

site, vide order dated 13.09.2019.

6. We have heard learned counsel for the parties and carefully perused the material placed on record.

7. We are constrained to highlight that the Tribunal has failed to observe the principles of natural justice and has passed sweeping directions without determining as to whether the subject area is a forest land and if so, whether it has been duly notified under the relevant statutes. Similarly, no opportunity was granted to the bonafide users of the site like the appellant-Society to establish as to whether the Leprosy Cure Centre was being run with or without prior permission of the concerned authorities.

8. The issue as to whether the strict parameters are liable to be relaxed in a case of extraordinary circumstances has not been considered by the Tribunal. What is the purpose of the Charitable Trust, whether it is being run for the welfare of the leprosy patients and providing them timely medical treatment, and whether the Leprosy Cure Centre also deserves to be uprooted from the site treating like any commercial venture, are several factors which the Tribunal ought to have kept in mind before issuing the omnibus directions.

9. The other danger which *quasi* Tribunals like, the National Green Tribunal, must keep in mind is the bonafides and locus of the person who approaches it. In a given case, if the applicant has not come to the Tribunal with clean hands and the entire object of his application is to grind an axe and to settle scores, it is the bounden duty of the Tribunal to accord a reasonable opportunity of being heard to the parties likely to be affected and give an

opportunity to enable them to demonstrate that the concerned applicant has not approached the Tribunal with bonafide intention.

10. In the case in hand, the applicant appears to have approached the Tribunal on one fine morning without even disclosing that the structure by the Society came to be raised way back in the year 1960. Unfortunately, the officers of the Forest Department also did not disclose the correct facts leading to immense hardship to the appellant-Society.

11. For the reasons aforesaid, we allow these appeals; set aside the impugned order of the Tribunal *qua* the appellant and or other similarly affected persons except that the Tribunal shall be at liberty to proceed against those who have encroached upon the forest land for commercial gains.

12. The applicant shall be at liberty to pursue his remedy against all such entities in accordance with law.

13. It is further directed that no order adverse to a party shall be passed without giving a reasonable opportunity of being heard.

14. As a result, the pending interlocutory applications also stand disposed of.

.....J.
(SURYA KANT)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
DECEMBER 17, 2024.

ITEM NO.7

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s).7313-7314/2019ANAND GRAM SOCIETY HANSENS DISEASE (LEPROSY)
REHABILITATION CENTRE

Appellant(s)

VERSUS

DY. CONSERVATOR OF FOREST, PUNE & ORS.

Respondent(s)

IA No. 228300/2023 - APPLICATION UNDER ORDER V RULE 20 CPC FOR
EFFECTING SERVICE THROUGH PUBLICATIONIA No. 133812/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 133813/2019 - EXEMPTION FROM FILING O.T.

IA No. 133815/2019 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

IA No. 133814/2019 - STAY APPLICATION)

Date : 17-12-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE UJJAL BHUYAN

For Appellant(s) Mr. Sudhanshu S Chaudhari, Sr. Adv.
Mr. Mahesh Prakash Shinde, Adv.
Mr. Vatsalya Vigya, AOR
Ms. Pranjal Chapalgaonkar, Adv.
Ms. Gautami Yadav, Adv.For Respondent(s) Mr. Adarsh Dubey, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AORMr. Shivaji M. Jadhav, AOR
Mr. Brij Kishor Sah, Adv.
Mr. Adarsh Kumar Pandey, Adv.
Mr. Vignesh Singh, Adv.
Mr. Aditya S. Jadhav, Adv.
Mr. Ankit Sahu, Adv.
Mr. Amit Kumar Gupta, Adv.Mr. Pai Amit, AOR
Ms. Pankhuri Bhardwaj, Adv.
Mr. Kushal Dube, Adv.

UPON hearing the counsel the Court made the following

120

6

O R D E R

The appeals are allowed in terms of the signed order.

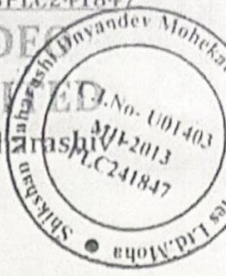
As a result, the pending interlocutory applications also stand disposed of.

(SATISH KUMAR YADAV)
ADDITIONAL REGISTRAR

(Signed order is placed on the file)

(PREETHI T.C.)
ASSISTANT REGISTRAR





Contact No.9850111169
Email- smdmagro@gmail.com

Outward No - smdm/agro/23-24/027

Date:27/2/2024

To,
Regional Officer
Maharashtra Pollution Control Board
Chatrapati Sambhaji Nagar - 431210

ANNEXURE-R-3

Sub :- Regarding extension of time to reply to your letter dated 26/01/2024

Reference :- your postal letter dated 26/01/2024

Respected sir,

With respect to above subject we have received the Proposed direction to our industry on dated.26 -01-2024 and we are submitting the reply as below with compliance,

- Our company's e t p plant is running. It has been improved as per our instructions.
- In the said show cause notice, it is stated that there is no such thing as untreated water being discharged into the nearby lake.
- The pipeline carrying untreated water is as per our rules. The pipeline supplying water to the orchards and other trees in the premises was damaged by JCB while the work was being carried out due to which the water leakage was not repaired due to which the company inspects the untreated water at the time. It was observed that it was left in the lake.
- There is a holding tank for storing the treated waste water.
- The h l storage tank has also been repaired.
- As per the rules laid down by mpcb we have installed proper equipments last year under the guidance of wet scribe expert officers. The result of the



122 Reg. No. U01403MH2013PLC241847

SHIKSHAN MAHARSHI DNYANDEO
MOHEKAR AGRO INDUSTRIES LIMITED

Gat No :623/647 At. Post MohaTq. Kallamb, Dist. Dhule, Maharashtra
413507

Contact No.9850111169
Email- smdmagro@gmail.com

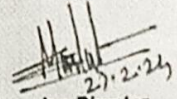


Outward No

Date:27/02/2024

said wet scribe is also good. We have been using it properly since we started the galap season till today.

- It is not said that expansion has been done without taking the permission of mpcb office.
- Last year Dated 10/03/2023 UAN No. MPCB – CONSCNT- 0000164731 we through our sub regional office Latur have asked you for consent to establish for setting up the Khandsari project.


27.2.24

Managing Director
Shikshan Maharshi Dnyandev
Mohekar Agro Industries Ltd. Moha





SHIKSHAN MAHARSHI DNYANDEO MOHEKAR AGRO INDUSTRIES LIMITED

Gat No :623/647 At. Post Moha Tq. Kallamb, Dist. Osmanabad-413507

GSTIN: 27ABACS0230N1ZF

Contact No.9850111169

Email- smdmagro@gmail.com

Outward No:

ANNEXURE-R-4

Date:25/12/2024

To

The Hon'ble Chairman Sir,
Maharashtra State Pollution Control Board (MPCB),
Kalpataru Point 3rd Floor, Sion Mumbai

**Subject: Reply to Closure Directions & Request for Restart of Manufacturing Activities –
Jaggery & Jaggery Powder Production.**

Reference:

1. Board's Closure Directions vide dtd. 18.11.2024 to M/s. Shikshan Maharshi Dnyandeo Mohekar Agro Industries Ltd. Gat No. 623, 647 A/P Moha Tal. Kallam Dist. Dharashiv.
2. Board's granted consent to operate to this Jaggery & Jaggery powder unit vide dtd. 28.11.2019 valid upto 31.10.2029.
3. Compliance made by the industry based on Closure Directions.
4. Board Official visit to verify the compliance of Closure Directions on 20.12.2024

Respected Sir,

We, M/s. Shikshan Maharshi Dnyandeo Mohekar Agro Industries Ltd., situated at Gat No. 623, 647, A/P Moha, Tal. Kallam, Dist. Dharashiv, are engaged in the manufacturing of Jaggery and Jaggery powder from sugarcane. Our operations are critical not only for our business but also for the local farmer's dependent on the sugarcane crushing process for their livelihood.

We acknowledge the closure directions issued by your esteemed Board concerning the issue of air pollution. As per the directions, we halted all manufacturing activities and have taken immediate steps to address the concerns raised by the MPCB.

We have upgraded our pollution control system in compliance with the consented terms and conditions. An official from your department visited our facility, inspected the compliance measures, and confirmed that manufacturing activities are currently halted, and the electricity supply has been disconnected by MSEDCL.

In this regard, we are submitting herewith the point-wise reply to the Closure Directions issued to our unit in a tabulated format for your kind perusal and consideration for the resumption of operations as below:

Sr. No.	Issue/Direction	Action Taken	Details
1	You have provided inadequate effluent treatment plant	We have upgraded the water pollution control systems –ETP to meet the consented limits. We have made provisions of Bar Screen chamber, Oil and Grease Chamber, Equilization Tank, Buffer Tank, Primary Clarifier, Aeration Tank, Secondary Clarifier, Sludge Drying beds sand Filter and Carbon Filter	<p>We have thoroughly taken review of the system and done proper repairing & maintenance work of ETP with provision of addition of chemical electrolytes resulting into best settling for further treatment.</p> <p>In secondary treatment system, we have made provision to develop best culture/MLSS to the sufficient quantity by adding Urea/ DAP and specific culture, if required.</p> <p>We have increased the number of diffused aerators for best aeration and enhanced the capacity of Blower from 25HP to 50 HP.</p> <p>We have replaced sand and charcoal media filters of the tertiary treatment system.</p>
2	You have not provided dedicated Closed Pipeline system to transfer of effluent from source to ETP	We have provided the Closed conduit system for to carry trade effluent.	We have provided PVC pipelined in closed conduit loop from source to the ETP to avoid any leakage and same has verified by the Board Official.
3	You have not provided treated effluent holding tank of adequate capacity storage of treated effluent	We have provided treated effluent tank with 100 CMD capacity to hold the treated effluent.	We will also monitor the treated effluent which has hold in treated tank of 100 CMD capacity to check the BOD and COD level for corrective measures, if any.
4	You have not submitted design details/adequacy report of air pollution control system provided.	We were provided the scrubber pack column as air pollution control system. Considering the compliant issue, we have replaced the same by installing venturi scrubber.	<p>Venturi scrubber is adequately assured with 99 % effectiveness and to control particulate matter (PM).</p> <p>Design details of the Air pollution control system is enclosed herewith, please.</p> <p>We are also ready to submit the adequacy report of Air Pollution Control System and Effluent Treatment Plant either from Government College of Engineering Chh. Sambhaji Nagar or Environment Department, Dr. Babasaheb Ambedkar Marathwada University, Chh. Sambhaji Nagar</p>

Sr. No.	Issue/Direction	Action Taken	Details
5	You have installed machinery for expansion of industry without obtaining consent to establish for expansion from MPCB Board	We have already applied for consent to the Board for Khandasari installation and as per instructions machinery installation work was stopped immediately.	We assure that, we will not take any further work regarding Khandasari till to obtain consent, please.

We assure you that we have taken all necessary steps to meet the prescribed environmental standards and are committed to operating in compliance with the regulations set by the MPCB.

We respectfully request you to kindly review our submission and grant permission for the restart of our manufacturing activities at the earliest to alleviate the economic hardships faced by our business and the local farmers. We remain committed to ensuring that our operations contribute positively to both the environment and the community.

Thank you for your kind attention and support.

Yours sincerely,



Anil Mohekar,

Director Technical & Administrator
M/s. Shikshan Maharshi Dnyandeo
Mohekar Agro Industries Ltd. Moha,
Tal. Kallam, Dist. Dharashiv

Copy Submitted to:

1. Hon'ble Member Secretary, M.P. C. Board, Mumbai.
 2. Regional Officer, M.P. C. Board, Chh. Sambhaji Nagar.
- with a request not to refuse the consent, as we have complied all the conditions of closure direction



भारतीय स्टेट बैंक
State Bank of India

जमा / जमापर्ची
DEPOSIT/PAY IN SLIP
Branch : Kallam

Date / दिनांक 30 08 / 2022

ब. / घा. / आ.ज. / ओ / न. ऋण / मि. / मां. लोन खाता क्र. / क्रेडिट कार्ड
SB/CA/RD/OD/CC/TL/DL/AC/No./Credit Card No.

33874078751

नाम / Name Maharashtra Polution

पे. / टेल. / Tel.No / Mob.No Control Board

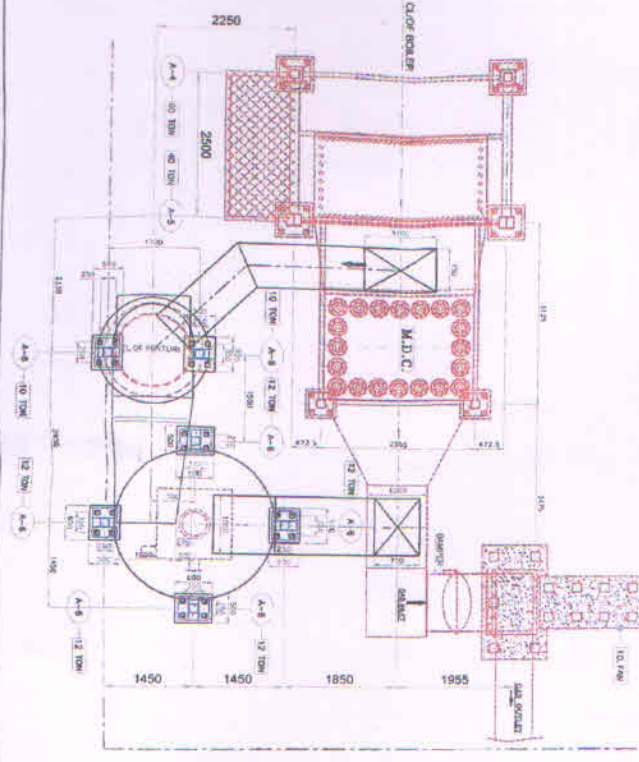
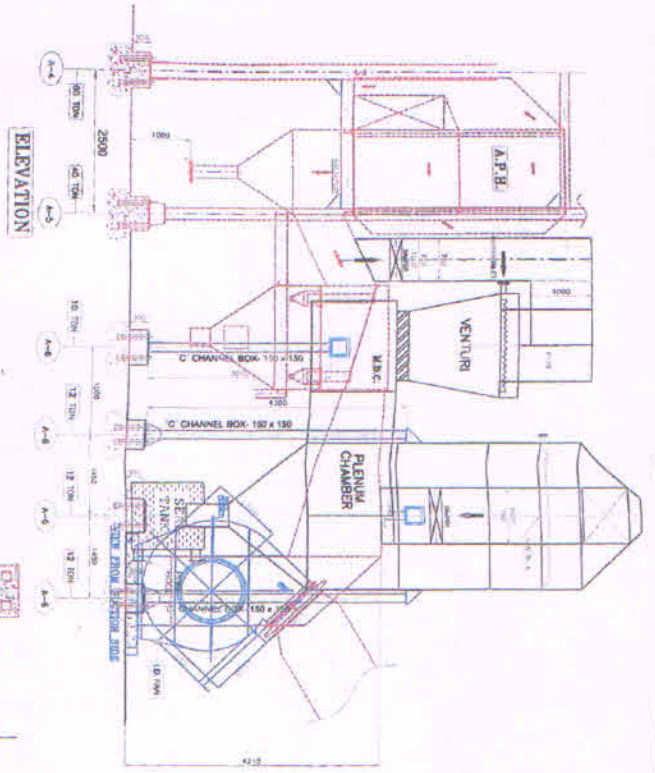


₹./Rs. 225000/- ₹/Ps.

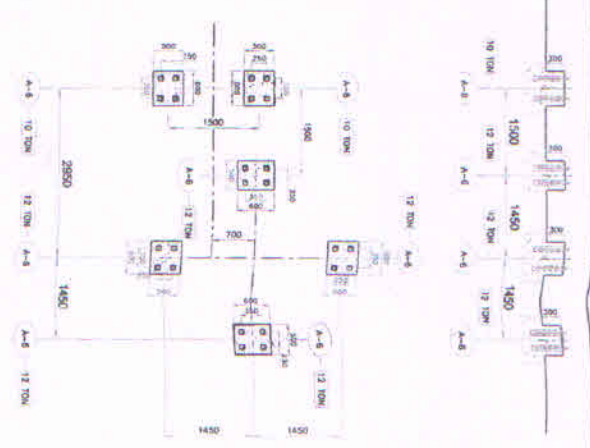
Words Two lakh Twenty Five Thousand only.

चेक संख्या दिनांक / बैंक का नाम और शाखा /
Cheque No./Date/Name of Bank & Branch

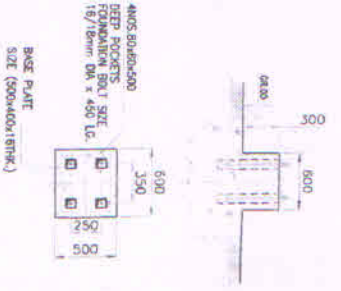
Cheque No.	Name of Bank	₹./Rs.	₹/Ps.
<u>597979</u>	<u>SBI</u>	<u>225000/-</u>	
<u>223348205</u>		<u>225000/-</u>	



WET SCRUBBER FOUNDATION



DETAILS OF COLUMN



TECHNICAL DETAILS FOR VENTURI TYPE SCRUBBER SYSTEM

S.No.	Description	Design Details
1	Boiler Capacity	12000 kg/hr.
2	Inlet Gas Volume	41500 m ³ /hr.
3	Inlet Gas Temperature	160°C to 180°C
4	Outlet Gas Temperature	130°C to 140°C
5	Inlet Gas Pressure	280mmwg
6	Gas Density	0.783 kg/m ³
7	Efficiency	99%
8	Inlet Dust Loading	5200 mg/Nm ³ (Maximum)
9	Outlet Dust Loading	100 mg/Nm ³ (Maximum)

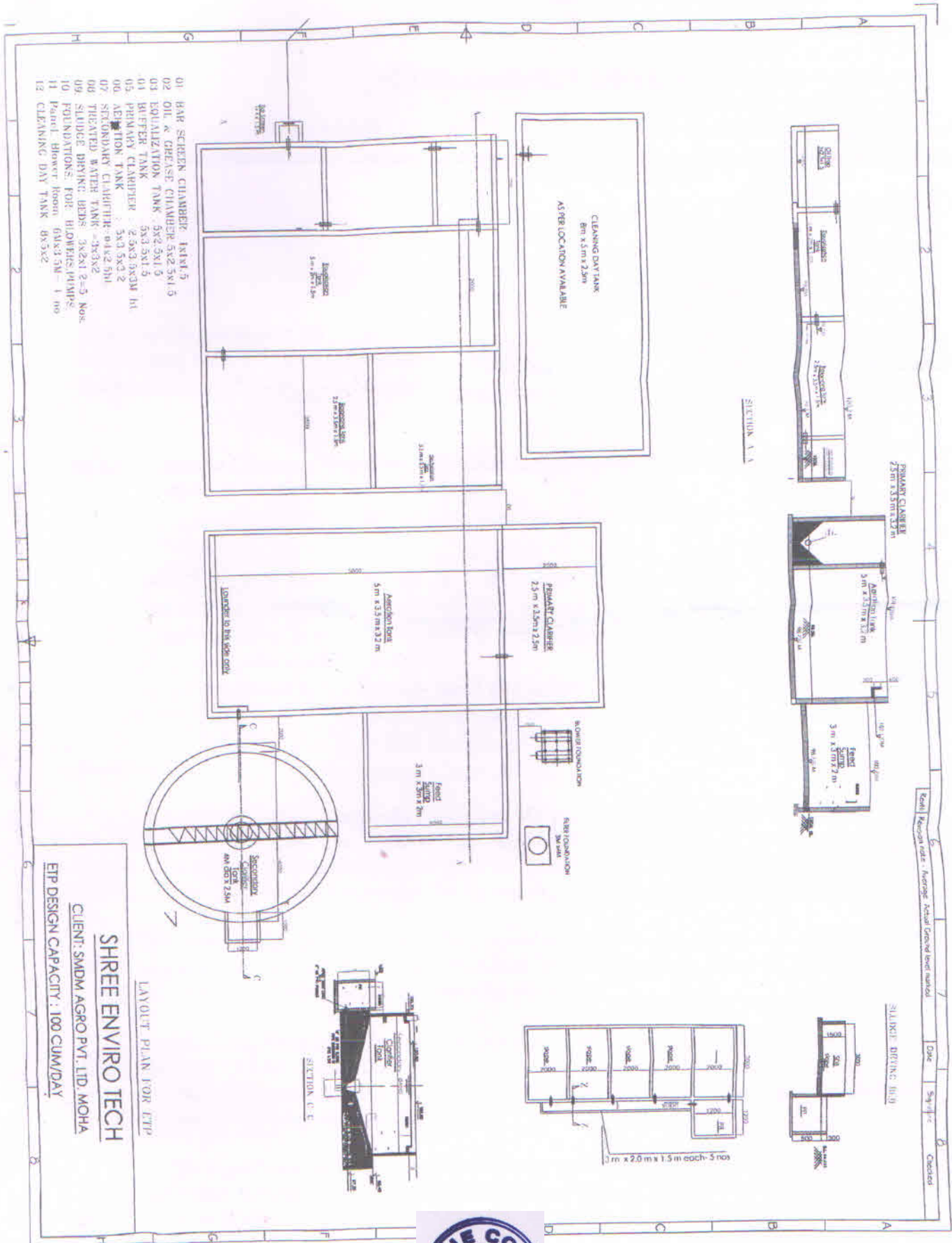
ALL DIMENSIONS ARE IN MILLIMETERS UNLESS OTHERWISE STATED. DIMENSIONS TO BE SPECIFICALLY CHECKED

Super Steamboiler

SUPER STEAM BOILER ENGINEERS PVT.LTD.

MAINT. BUILDING

DATE	NAME	SCALE	DATE	DESCRIPTION
10/12/2022	SS-512	1:24	10/12/2022	CLIENT: M/s. Saksham Mechanical Engg. works
10/12/2022	MAAZI	1:24	10/12/2022	Address: Apsara Industrial Estate, Malviya, Madhya Pradesh
10/12/2022	MAAZI	1:24	10/12/2022	TITLE: GALVANIZATOR (17 TON) BOILER WET SCRUBBER



MAHARASHTRA POLLUTION CONTROL BOARD

Website: http://mpcb.gov.in		Sub Regional Office
E-mail: santosh.chavan@mpcb.gov.in		Plot No. P-10
		Latur District Udyog Samuh Building
		MIDC Latur-413531

Visit Report

Date: 26/12/2024

- 1. Name & Address of the Industry :- M/s. Shri Shikharan Maharashtra
Pravara Maheshwar Agency Ltd
G. No. 623, 612, 4P, Moha.
Kalam Dist. Dhule.
- 2. Industry Representative :- Anil Maheshwar, Director (Tech & Admin)
- 3. Contact details :- Phone No. :-
E-mail :- smtmagro@gmail.com
- 4. Consent Status :- 01/10/2024. For Jaggery.

Observations:

- 1. Visit is made with respect to the closure directions issued by the Board of compliances made by the industry.
- 2. During the visit, ~~xxxxxx~~ Manufacturing activities were not observed, maintenance work found in operation.
- 3. M&EOCL has dis connected the electric power supply.
- 4. SP has ~~been~~ upgraded the existing STP by provision of Bar screen chamber, oil & grease chamber, Equalization tank, Buffer tank, Primary clarifier, Aeration tank, secondary clarifier, sludge drying beds, sand filter & carbon filter.

(Santosh L. Chavan)
Field Officer



continued SMD Mohakar 2012/2013

- ③ They have provided closed PVC pipeline for transfer of effluent from the source to ETP.
- ④ They have provided treated effluent holding tank with 100 CMD. capacity.
- ⑤ PP has produced design details of Air pollution control system of ETP.
- ⑥ PP has assured not to take any further effective steps towards expansion without prior from the board.



Amohakar

(Anil D. Mohakar)
Director (Technical & Administrative)



(Santosh B. Chavan)
Field Officer
M.P. C.B
Latur.

MAHARASHTRA POLLUTION CONTROL BOARD

Website: http://mpcb.gov.in		Sub Regional Office
E-mail: santosh.chavan@mpcb.gov.in		Plot No. P-10
		Latur District Udyog Samuh Building
		MIDC Latur-413531

Visit Report

- Date: 01/02/2025
1. Name & Address of the Industry :- **Ms. Shikshan Maharashtra Dyandeo,**
Mohakan Agro Inds. Ltd. G. No.
623, 647, A/P. Moha Pa. Kallamb
Dist. Dhavashir.
2. Industry Representative :- **Santosh Madake.**
3. Contact details :- Phone No. :-
 E-mail :-
4. Consent Status :- **8110/2029, Taggery f Taggery**
founder.
- Observations:

1. Visit is made with respect to the order passed by Honble MPT (WA) in OA No. 146/2024 dated. 10/12/2024.
2. During the visit unit/manufacturing activities were not observed.
3. Electric power supply found disconnected by MSRDCh.
4. Authority has completed the upgradation work of ERP.
5. They have provided, bar chamber, oil & Grease chamber, Equalization Tank,

(P.O.)
 →

continued SMDM Agro alterations

Primary classifier, Aeration tank, secondary classifier, Sand filter, carbon filter & Sludge drying beds.

62. Provision of closed PVC pipeline to carry untreated effluent to the ERP is completed.


7. They have stopped expansion activities.

8. Maintenance work of machines found in process.

9. They have submitted request letter to MPCB for restart directions. on 25/12/2024.


(Santosh Madake)

Managing Director
Shikshan Maharshi Dnyandeo
Mohekar Agro Industries Ltd. Moha


(Santosh K. Chavan)
Field Officer
M.P.C.B. H. Kar.

