

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,**  
**WESTERN ZONE BENCH PUNE AT PUNE .**

**ORIGINAL APPLICATION NO. 44 OF 2023 (WZ)**

**ARYAVART FOUNDATION**

... **APPLICANT**

VERSUS

**M/s LOTE PARSHURAM CO-OPERATIVE  
SOCIETY LTD. AND OTHERS**

... **RESPONDENTS**

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PUNE

DATE : 21/11/2023



ADVOCATE FOR THE APPLICANT

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**WESTERN ZONE BENCH PUNE AT PUNE .**

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**ARYAVART FOUNDATION .. APPLICANT**

**V/s**

**M/s LOTE PARSHURAM CO-OPERATIVE  
SOCIETY LTD. AND OTHERS .. 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, the Respondent No.1 in the present proceedings denies everything that is contrary what is stated therein and/or inconsistent therewith as if the same is set out in extenso and traversed. The Respondent No.1 submits that, nothing not expressly admitted herein ought to be taken as admitted by the Respondent No.1 or be deemed to have been admitted by the Respondent No.1 for want of specific traverse. The Respondent No.1 states that for the purpose of gravity, the Respondent No.1 is not denied each and every allegation, statement and contention of the Applicant which is ex-

facia contrary to the contention of Respondent No.1 and its stand in the present case except to the extent that such allegation, statement or contention necessitate, cogent, warrant or reply.

### **PRELIMINARY OBJECTION**

2. The Respondent No.1 submits that the present Application has been filed by the Applicant, which in its description of Parties states that, it is located at Surat in the State of Gujarat. The present case pertains to the area of Lote Parshuram MIDC, which is situated in the Ratnagiri district in State of Maharashtra and is located at a distance of 501 KMs from the Applicant herein. The Applicant in the entire Original Application has failed to make out a case that how it is aggrieved by the operation of the Respondent No.1. The Applicant is neither an aggrieved party nor residing within the vicinity of the Respondent No.1 and thus, 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 Judgment of the Hon'ble Supreme Court was considered by this Hon'ble Tribunal at its Eastern Bench in the case of '*Ajay Jha*', wherein the Appeal came to be dismissed on the ground of maintainability as the locust of the Applicant therein was challenged by the said Respondent. Hereto annexed herewith and marked as ANNEXURE 'R-2' is the copy of the Judgment of the Hon'ble Tribunal at Eastern Bench in the case of '*Ajay Jha*'. It is trite law that the Coordinate Benches of the Tribunal cannot give different opinions.

3. The Applicant herein has filed the present Original Application on the basis of information received by it under RTI Act, 2005. It is pertinent to mention herein that the Application under the RTI Act was made by the Applicant on 27.07.2022 and the same was replied by the Respondent No.2 on 23.8.2022. The Respondent No.1 is in existence since 2003 and has been commissioned in the same year. This Hon'ble Tribunal in the Judgment of '*Ajay Jayawantrao Bhosale Vs. Union of India*' has held that an application under the RTI Act does not give the cause of action to the litigant to approach this Hon'ble Tribunal. The Hon'ble Tribunal ought to have appreciated that the principle ingredient of an Application U/s 14 r/w

16 of the National Green Tribunal Act, 2010 is that the cause of action, which needs to have arisen first before filing an Application before this Tribunal. In the present the Applicant has failed to justify the same and hence, the Hon'ble Tribunal does not have the jurisdiction to try and entertain the present Original Application. Hence, it needs to be dismissed on this ground alone. Hereto annexed herewith and marked as ANNEXURE 'R-3' is the copy of the Judgement of this Hon'ble Tribunal in the case of '*Ajay Jayawantrao Bhosale Vs. Union of India*'

4. It is further submitted that, the Hon'ble Tribunal had an occasion to hear the present Application on 17.04.2023, wherein, it has admitted the said Application. The Respondent No.1 further submits that besides admitting the present Original Application, the Hon'ble Tribunal was pleased to constitute a Joint Committee consisting of Respondent Nos. 2 and 3. It is submitted that, the Hon'ble Tribunal has passed the said order without hearing or without issuing the notice to the present Respondent, which is totally against the principles of natural justice and against the procedure laid down in the NGT Act, 2010 and more specifically u/s 19 of the said Act, which says that, the principles of natural justice ought to be followed while passing an order by this Hon'ble Tribunal. This Hon'ble

Tribunal by constituting the Joint Committee of the Members, who are more or less interested parties in the present proceeding have allowed the said Respondents to be the Judges in their own cause. The Hon'ble Tribunal in the order dated 17.6.2023 has come to a conclusion that the present Respondent has indulged in the alleged environmental pollution and without hearing the present Respondent No.1 has proceeded to constitute a Joint Committee and hence, the present order is required to be recalled.

#### **FACTS OF THE CASE**

5. The Respondent No.1 submits that, the Respondent No.1 is a Co-operative Society, formed and constituted under the provisions of Maharashtra Co-operative Societies Act, 1960. The Respondent No.1 has started to in existence in the year 2000. At present, there are 228 members(78 Discharging Members, 15 ZLD members, 135 only members) of the Respondent No.1 Society, operating and managing the Industries in the Lote Parshuram MIDC. The members of the Respondent No.1 sought to construct, built and operate a Common Effluent Treatment Plant (CETP) having capacity of 4.5 MLD in the year 2003. The decision was taken to upgrade and expand the said CETP from 4.5 MLD to 10 MLD and the project was completed in the year 2018. The Respondent No.1 was

operating and managing the said CETP until 2018 wherein, the subsequently, the Respondent No.4 has taken charge of operation and management and handed over the same to M/s Acquachem Environment Engineers Pvt. Ltd. The Respondent No.1 has received valid Consent to Operate dated 29.3.2023, which is valid and subsisting till 31.12.2028.

6. The Respondent No.1 vide the said upgradation has undertaken various measures, which has been pointed to the Respondent No.4 from time and again. The Respondent No.1 has prepared a presentation on the CETP which is operational and managed at the site.

#### **PARAWISE REPLY**

7. With respect to contents of Para Nos.1 to 3, this Respondent No.1 has already raised the preliminary objection regarding maintainability of the present Original Application on the ground of locus of the Applicant.
8. With respect to contents of Para Nos.4 and 5, the contents therein are denied by the Respondent No.1.
9. With respect to contents of Para Nos.6, the Respondent No.1 has already raised the preliminary objection pertaining to the

maintainability of the Original Application on the basis of information received under the RTI Act, 2005.

10. With respect to contents of Para Nos.7 to 9, the same are partially correct and the present Respondent does not wish to offer any comments in this regard.
11. With respect to contents of Para Nos.10 to 12, the contents therein are partially correct and the Respondent No.1 would like to respond the said allegations. It is true that, the Respondent No.2 had issued Show Cause Notice dated 22.7.2022 to the Respondent No.1 herein. However, the Applicant has failed to produce before this Hon'ble Tribunal a detailed response, which was filed by the Respondent No.1 to the said Show Cause Notice on 25.7.2022, wherein, all the issues, which were raised by the Respondent No.4 in the said Show Cause Notice were duly intimated and complied with by the Respondent No.1. It amounts to suppressing of material facts from this Hon'ble Tribunal as the Applicant has conveniently annexed only those documents to prejudice the Hon'ble Tribunal and withheld the necessary documents, which are necessary for the adjudication of the present dispute. Hereto annexed herewith and marked as ANNEXURE 'R-4' is the copy of the Reply dated 25.7.2022. Furthermore, it is submitted that the Respondent No.1 has

also received Show Cause Notice dated 14.10.2022. The Respondent No.1 has responded to the said Show Cause Notice by pointing out the compliances as well as the response to the issues in the said Show Cause Notice. Hereto annexed herewith and marked as **ANNEXURE 'R-5'** is the copy of the Reply dated 03.11.2022.

12. With respect to contents of Para Nos.13 to 17, it is submitted that, the Applicant herein has conveniently reproduced the contents which suits the case of the Applicant. The contents therein are false and incorrect. The Respondent No.1 has prepared a tabular chart of the Analysis Report along with the Sampling Analysis Report handed over by the Respondent No.1 from time to time. Bare perusal of the said Reports, demonstrate that the Respondent No.1 has not breached the consented parameters, as given by the Respondent No.4 in the Consent to Operate dated 29.3.2023. The Applicant in the present Para of the Original Application is praying for directions for the payment of environmental compensation by the Respondent No.1 herein. However, the Applicant has failed to substantiate the case and point out that under what provisions and more specifically the formula derived by the Respondent No.3 in the case of 'Paryavaran Suraksha Manch' as to how the Respondent No.1 is liable to pay the environmental compensation.

13. With respect to contents of Para Nos.18 and 19, it is submitted that the Respondent No.1 has already dealt with the contents of Show Cause Notice dated 22.7.2022 and has filed a detailed response to the Respondent No.2 On the basis of the said Reply, the Respondent No.2 did not initiate any further action against the Respondent No.1, which clearly demonstrates that, the Respondent No.2 is satisfied with the reply given by the Respondent No.1 to the said Show Cause Notice. Be that as it may, the Rule 4 of the Environment (Protection) Rules, 1986 states that any act which has to be initiated under the said Rules, has to be concluded within a period of 45 days and as such, the present Notice issued on 22.7.2022 and was duly responded by the Respondent No.1 clearly demonstrates that the Respondent No.2 did not intend to take any action against the present Respondent No.1 and thus, the issue stands concluded. The Applicant cannot raise the said issue before this Hon'ble Tribunal, as the same is barred under law.
14. With respect to contents of Para No.20, the contents raised in this Para are denied by the present Respondent. The Respondent No.1 states that, it has already produced on record the Sampling Results and tabular form to demonstrate inlet and outlet parameters of the Analysis done by the Respondent No.2 of the Effluent discharged

from the Member Industries of the Respondent No.1. It is submitted that, on the basis of bare perusal of the said parameters, the Respondent No.1 is not in violation of breach of any of the said parameters.

15. With respect to contents of Para Nos. 21 to 23, the contents therein are false and denied in toto. The Respondent No.1 further states that the Applicant has merely on this surmises proceeded to file the present OA without substantiating its case and pointing out the specific instances of pollution on the part of the Respondent No.1. The Applicant is merely proceeded to file this OA on the basis of information received by it under RTI Act and that has failed to carry out the research on his part and file the present case. The Applicant has miserably failed to make out the case of alleged pollution against the present Respondent.
16. With respect to contents of Para No.24 the present Respondent No.1 does not wish to offer any comments as the said details have been sought by the Applicant under the RTI Act. However, the Applicant has failed to mention therein at what instance the Applicant sought to ask the specific questions under the RTI without diverging any details of the issue as stated in the present Application before Hon'ble Tribunal.

17. With respect to contents of Para No.25, it is submitted that formula stated in the case of Paryavaran Suraksha Manch, the Respondent No.1 has clearly stated that, the factors, which has to be considered are missing in the contents of the present Original Application and that the Applicant is trying to enter into fishing and rowing enquiry by trying to gather an information from the Respondent No.2 and the present Respondent to make case for adjudication before this Hon'ble Tribunal.
18. With respect to contents of Para No.26 of the Application,, in which, the grounds taken by the Applicant are hereby denied by this Respondent No.1.
19. With respect to contents of Para No. 27, the Respondent No.1 has already in the preliminary objection stated that as to how this Application is not within limitation and thus, ought not to be entertained by this Hon'ble Tribunal and be dismissed in liminy.
20. With respect to contents of Para No.28, the Prayers need not be granted by this Hon'ble Tribunal, as the Applicant has failed to substantiate the case before this Hon'ble Tribunal.
21. The Respondent No.1 submits that the Respondent No.1 is constantly engaging itself into the operation and maintenance of the said Plant with the co-operation of Respondent No.4. The

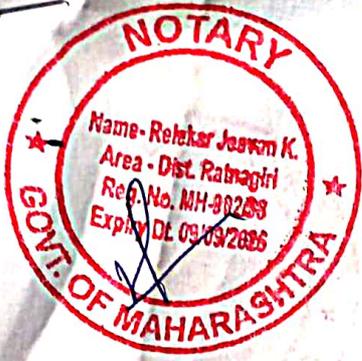
Respondent No.4 has taken responsibility of the operation and management of the ECTP and that is getting desired results in according to the consented parameters. There are no complaints against the Respondent No.1 with respect to any sort of pollution and no action has been initiated by the Respondent No.2 in that regard, which clearly demonstrates that, the plant of the Respondent No.1 is functioning within the consented parameters.

22. It is therefore, submitted that, nothing survives in the present OA and the allegations made by the Applicant were without any merits and the present Applicant needs to be dismissed of.
23. Affidavit in Support of this, is filed herewith

PUNE  
DATE - 21/11/2023



ADVOCATE FOR RESPONDENT NO. 01



**BEFORE THE HON'BLE NATIONAL GREEN  
TRIBUNAL, WESTERN ZONE BENCH PUNE AT PUNE.**

**ORIGINAL APPLICATION NO. 44 OF 2023 (WZ)**

**BETWEEN**

**ARYAVART FOUNDATION .. APPLICANT**

**AND**

**M/s LOTE PARSHURAM ENVIRONMENT CO-  
OPERATIVE  
SOCIETY LTD. AND OTHERS**

**... RESPONDENTS**

**AFFIDAVIT TO THE REPLY ON BEHALF OF  
RESPONDENT NO.01**

**MAY IT PLEASE THE HON'BLE COURT:**

I, Bhushan Ramchandra Shinde, Age 53 years,  
Occu.: Service, the Respondent No.1 herein above, do  
hereby state on solemn affirmation as under:-

01. That the Respondent No.01 is filing the reply to the present Original Application. The facts and circumstances are well set out in the main body of the Reply. The Respondent No.01 adopts,

*[Handwritten signature]*



Solemnly affirmed and duly executed in my  
Presence by Shri Bhurhan R. Thube  
of Chiplun who is identified by  
Shri Jeevan K. Relekar of \_\_\_\_\_  
Whom I know personally

*Jeevan K. Relekar*  
Jeevan K. Relekar  
Advocate & Notary  
Regd. No. MH902  
Chiplun





maintains, confirms, repeats and reiterate whatever has been stated in the main body of the reply and for the sake of brevity, convenience and in order to avoid repetition, craves leave of this Hon'ble Tribunal to treat the statements, averments and submissions in the main body of the Reply as part and parcel of this Affidavit as if the same are reproduced herein ad-seriatim, with a view to avoid repetition and for the sake of brevity.

02. I say that whatever stated in the Reply and the present Affidavit is true and correct to the best of my knowledge, information and belief and the legal advice, which I believe to be true.

Solemnly affirmed at Chiplun, on 21<sup>st</sup> day of November, 2023.

LOTE-PARSHURAM Environment  
Protection Co-Op Society Ltd

**AFFIANT**



Manager  
M/s LOTE PARSHURAM  
ENVIRONMENT CO-  
OPERATIVE SOCIETY LTD.

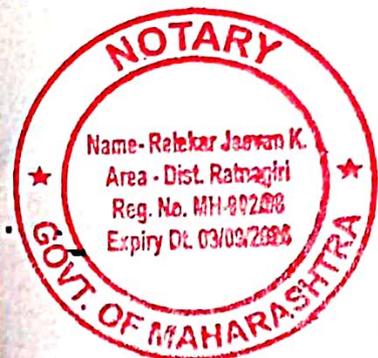
I know the Affiant  
ADVOCATE

**BEFORE ME**

**JEEVAN K. RELEKAR**  
NOTARY STATE OF MAHARASHTRA  
CHIPLUN, DIST. RATNAGIRI

**Noted & Registered**  
**at Serial Number 3008**

21-11-2023



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 18<sup>th</sup> 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 1<sup>st</sup> 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 18<sup>th</sup> March 2020, 2<sup>nd</sup> December 2020, and 21<sup>st</sup> 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 1<sup>st</sup> 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 5<sup>th</sup> 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 11<sup>th</sup> 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 4<sup>th</sup> 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 7<sup>th</sup> 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 12<sup>th</sup> December 2018 for grant of licenses to various WBIs for the establishment of WBIs in 8 categories. Between 12<sup>th</sup> December 2018 and 31<sup>st</sup> 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 1<sup>st</sup> 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 28<sup>th</sup> 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 1<sup>st</sup> 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 3<sup>rd</sup> August 2019. Vide order dated 6<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 6<sup>th</sup>

August 2019 and the order dated 1<sup>st</sup> October 2019. Vide order dated 18<sup>th</sup> December 2019, the learned NGT issued directions to the State Government to provide certain data. Subsequently, vide the impugned order dated 18<sup>th</sup> February 2020, the learned NGT allowed the said Original Applications and quashed and set aside the notice dated 1<sup>st</sup> 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 26<sup>th</sup> October 2020, this Court dismissed the said appeals as withdrawn with a liberty to file review application before the learned NGT. Vide orders dated 18<sup>th</sup> March 2020, 2<sup>nd</sup> December 2020, and 21<sup>st</sup> 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 18<sup>th</sup> May 2007 and 5<sup>th</sup> 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 18<sup>th</sup> 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 12<sup>th</sup> December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15<sup>th</sup> 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 12<sup>th</sup> 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 18<sup>th</sup> April 2007, accepted by this Court vide its order dated 18<sup>th</sup> 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 4<sup>th</sup> 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 7<sup>th</sup> 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 11<sup>th</sup> September 2019 and 20<sup>th</sup> 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 20<sup>th</sup> July 2012, the State of Uttar Pradesh had notified 7 species of trees in the prohibited category. However, vide another Notification dated 31<sup>st</sup> 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 11<sup>th</sup> 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 7<sup>th</sup> 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*<sup>1</sup>, *Mantri Techzone Private Limited v. Forward Foundation*<sup>2</sup>, *Municipal Corporation of Greater Mumbai v. Ankita Sinha*<sup>3</sup> and *Pragnesh Shah v. Dr. Arun Kumar*

Sharma<sup>4</sup>.

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 12<sup>th</sup> 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 4<sup>th</sup> March 1997<sup>5</sup>, 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 9<sup>th</sup> 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 29<sup>th</sup> October 2002<sup>6</sup>, 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 1<sup>st</sup> 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 3<sup>rd</sup> 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 18<sup>th</sup> 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 29<sup>th</sup> 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 30<sup>th</sup> 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 26<sup>th</sup> 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 5<sup>th</sup> 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 5<sup>th</sup> October 2015, the MOEFCC issued 2016 Guidelines on 11<sup>th</sup> 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  $8 \times 4 \times 10$  capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a  $8 \times 4 \times 10$  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 17<sup>th</sup> May 2017. Vide Notification dated 11<sup>th</sup> 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 4<sup>th</sup> 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 7<sup>th</sup> 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 26<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> September 2006, the SLCs were constituted. The permissions were to be granted on the recommendations of the CEC. Vide order dated 18<sup>th</sup> May 2007, this Court had also accepted the recommendation of the CEC. Vide another order dated 30<sup>th</sup> 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 5<sup>th</sup> 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 17<sup>th</sup> 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 7<sup>th</sup> January 2020 issued by the Government of Uttar Pradesh provides that the prohibited trees shall not be felled till 31<sup>st</sup> 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 19<sup>th</sup> 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 18<sup>th</sup> May 2007.

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28<sup>th</sup> 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 3<sup>rd</sup> August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18<sup>th</sup> December 2019, another detailed affidavit was filed on behalf of the State Government on 21<sup>st</sup> 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 18<sup>th</sup> 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 4<sup>th</sup> May 2018, it was decided to get the assessment done by IPIRTI, the SLC in its meeting dated 7<sup>th</sup> 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 7<sup>th</sup> 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 29<sup>th</sup> 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*<sup>2</sup>, 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 5<sup>th</sup> 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.*<sup>8</sup>, 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*<sup>9</sup> 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 Samit*<sup>10</sup>, 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*<sup>11</sup> 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*<sup>12</sup> reference was made to *Glanrock Estate Private Limited v. State of Tamil Nadu*<sup>13</sup> 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*<sup>14</sup> wherein this Court enunciated the definition of “forest” in the following words:

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

102. Though we find that for the sustainable development of the State and on account of the availability of the timber, sanction of granting licenses can be permitted to continue, however, as a responsible State, it needs to ensure that environmental concerns are duly attended to. We, therefore, direct the State Government to ensure that while granting permission for felling trees of the prohibited species, it should strictly ensure that the permission is granted only when the conditions specified in the Notification dated 7<sup>th</sup> 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.

<sup>1</sup> (2017) 9 SCC 499

<sup>2</sup> (2019) 18 SCC 494

<sup>3</sup> 2021 SCC OnLine SC 897

<sup>4</sup> 2022 SCC OnLine SC 79

<sup>5</sup> (1997) 3 SCC 312

<sup>6</sup> (2008) 16 SCC 337

<sup>7</sup> (1994) 6 SCC 651

<sup>8</sup> AIR 1997 SC 3297 : (1997) 8 SCC 191

<sup>9</sup> (1995) 6 SCC 363

<sup>10</sup> (2004) 2 SCC 392

<sup>11</sup> (1996) 5 SCC 281

<sup>12</sup> (2011) 15 SCC 616

<sup>13</sup> (2010) 10 SCC 96

<sup>14</sup> (1997) 2 SCC 267 : AIR 1997 SC 1228

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Item No.04

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Appeal No.05/2021/EZ  
(I.A. No.78/2021/EZ)

**IN THE MATTER OF:**

**Anand Kumar Jha**

Son of Shri Bhalchandra Jha,  
Resident of Type-B, Dakra,  
Dakra Colliery,  
Ranchi

.....Appellant(s)

**Versus**

**1. Union of India,**

Through its Secretary,  
Ministry of Environment, Forests and Climate Change,  
Indira Paryavaran Bhawan, Jor Bagh Road,  
New Delhi-11003;

**2. Jharkhand State Pollution Control Board,**

Through its Member Secretary,  
H.E.C., Dhurwa,  
Ranchi-834004;

**3. State of Jharkhand,**

Through Chief Secretary,  
Project Bhawan, Doranda,  
Ranchi-834002;

**4. Damodar Valley Corporation (DVC),**

Through its Chairman-cum-Managing Director DVC Towers,  
VIP Road, Kolkata-700054

.....Respondent(s)

Date of hearing: 15.05.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s) : Mr. Kaustav Dhar, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Apurba Ghosh, Advocate for R-1,  
Mr. Ashok Prasad, Advocate for R-2 (in Virtual Mode),  
Ms. Aishwarya Rajyashree, Adv. for R-3 (in Virtual Mode),  
Mr. Sanjay Upadhyay, Advocate a/w  
Mr. Prasun Mukherjee, Advocate and  
Mr. Deepak Agarwal, Advocate for R-4

**ORDER**

1. This Appeal has been filed by the Appellant seeking quashing of the Environmental Clearance dated 28.04.2021 granted to the Respondent No.4, Damodar Valley Corporation (DVC), for Tubed Coalmine Project of 6 MTPA in the District of Latehar, Jharkhand.
2. The contention of the Appellant is that the said mining block is located in an area of 460 ha; the EIA report of the project does not estimate the background concentration of Mercury (Hg) and Chromium (Cr) in Particulate Matter as required by Standard ToR No.15; there is no detailed timeline, maps etc. provided in the EIA report with respect to Additional ToR No.15; no details have been given in the EIA report regarding ecological restoration and mine reclamation plan prepared with local/native species found in the area as was required by Additional ToR No.3; the Palamau Tiger Reserve and other Protected areas are in close proximity to the site of the Tubed Coalmine Project and there is no presence of Schedule-I species which appears to be unlikely.
3. In the present Appeal the Environmental Clearance dated 28.04.2020 is under challenge, as such the Tribunal raised a preliminary objection regarding limitation.
4. Learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court dated 23.09.2021 in *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 03 of 2021; Re: Cognizance for Extension of Limitation*. It is mentioned therein that the limitation period has itself been extended by the Hon'ble Supreme Court by the said judgment in cases where limitation would have expired during the period from 15.03.2020 till 02.10.2021.

5. The Respondent No.4, Damodar Valley Corporation, has filed counter-affidavit dated 26.04.2022 wherein a preliminary objection of limitation has been taken. The second ground of objection is whether the Appellant can be permitted to maintain the present Appeal as an 'aggrieved person'.
6. We will first take up the second issue namely as to whether the Appellant can be said to be an aggrieved person within the meaning of Section 16 and 18 of the National Green Tribunal Act, 2010 to entitle him to maintain the present Appeal. Section 16 of National Green Tribunal Act, 2010, reads as under: -

**“16. Tribunal to have appellate jurisdiction-**

*Any person aggrieved by, -*

*(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);*

*(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);*

*(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State*

*Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);*

*(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);*

*(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);*

*(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);*

*(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);*

*(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),*

*may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:*

*Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.*

7. Section 18 of the National Green Tribunal Act, 2010 reads as under: -

**18. Application or appeal to Tribunal-**

*(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.*

*(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--*

*(a) the person, who has sustained the injury; or*

*(b) the owner of the property to which the damage has been caused; or*

*(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or*

*(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or*

*(e) any person aggrieved, including any representative body or organization.”*

8. In the paragraph-1 under the heading ‘Facts’ in the Memo of Appeal the Appellant has described himself as a resident of Village Dakra in Ranchi District of Jharkhand and he *“is stated to be concerned by the environmental impact of the mining activities of the Respondent No.4 in the State of Jharkhand”*. It is stated that the Appellant has been observing for the past several years that the air quality in various parts of the State of Jharkhand especially in the region around the coal mines has severely deteriorated due to large number of coal mines in Jharkhand. The Appellant is stated to have observed that due to pollution being caused, there is an

increase in the respiratory illness in the persons residing in the region and he has been raising the issue of pollution and other environmental issues due to coal mines in electronic and other media. It is also stated that the Appellant being a resident of Jharkhand is concerned by the grant of Environmental Clearance to Tubed Coal Mines Project of Respondent No.4 and hence has filed the present Appeal.

9. In our opinion, merely saying that he is concerned with pollution in Jharkhand, the Appellant cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010. The Tubed Coal Mines Project of the Respondent No.4 is located in Latehar District of Jharkhand. The Appellant is not a resident of Latehar District nor has he stated that he is a resident of any of the villages which may fall within the area of operation of the Tubed Coal Mines Project of the Respondent No.4. The Project Proponent in its counter-affidavit has stated that the place of residence of the Appellant is about 200 km from the Project site.
10. Among the various issues raised for assailing the grant of Environmental Clearance to the Respondent No.4 one of the grounds taken by him is that 'Public Consultation' was not conducted as per the EIA Notification, 2006 and that the process of 'public consultation' has not been done in the present case while granting Environmental Clearance to the Project of Respondent No.4.
11. Nowhere in the body of the Appeal has the Appellant claimed that he had sought hearing during public consultation as a matter of right but was not given such opportunity. None of the persons who

live in the vicinity of the villages covered by the Tubed Coal Mines Project of the Respondent No.4 are present before this Tribunal to complain that they were not provided opportunity of public hearing and that public consultation was not held as per the EIA Notification, 2006.

12. In this view of the matter, we hold that the Appellant is not a person aggrieved within the meaning word “any person aggrieved” under Section 16 and Section 18 of the National Green Tribunal Act, 2010.
13. Mr. Sanjay Upadhyay, learned Counsel for the Project Proponent submitted that it is also not disclosed in the body of the Appeal other than what has been reproduced hereinabove and which is based upon the Appellant’s own disclosure, to show what are his credentials and *bonafides* in approaching the Tribunal. Reliance has been placed on the judgment of the Hon’ble Supreme Court in *Civil Appeal No.2407-2421 of 2021, State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr.*
14. The Hon’ble Supreme Court in *Civil Appeal No.2407-2412 of 2021, The State of Uttar Pradesh & Ors. Etc. Etc. vs. Uday Education and Welfare Trust & Anr. Etc. Etc.* and connected cases, has held that when issues and objections to the credentials and *bonafides* of litigants approaching the National Green Tribunal are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the Applicants must be tested. The Hon’ble Supreme Court, therefore, laid stress

that when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to affect the rights of many, the National Green Tribunal should ensure the *bonafides* and credentials of such litigants. The Hon'ble Supreme Court also observed that the Tribunal must examine questions as to what were the aims and objectives of the Applicants and what are their sources of funding etc. Merely filing some Public Interest Litigations in the past would not suffice. Paragraphs-96 to 99 of the said judgment read as under: -

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

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

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

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

15. In the present case, nothing has been indicated by the Appellant as to why he is **only** concerned by the environmental impact of the mining activities of the 'Respondent No.4' in the State of Jharkhand as stated by him in paragraph-1 of the **“FACTS”**. What is his source of funding to maintain the Appeal or to take up such

environmental issues has not been disclosed. Assailing the Environmental Clearance, several scientific and technical facts and documents have been referred to by the Appellant; what is his source of funding and source of obtaining such documents, has not been disclosed. Not a single person who may be said to be a resident of any village affected by the mining operation of the Tubed Coal Mines Project of the Respondent No.4 is before us. Therefore, a serious shadow of doubt is cast upon the credentials and *bonafides* of the Appellant to maintain the present Appeal and in our considered view he cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010 and, therefore, this Appeal is not maintainable at the behest of the Appellant.

16. The next preliminary issue raised by the Respondent No.4 is with regard to limitation. The Tribunal even on the first date while entertaining the Appeal had raised the issue of limitation and the same had been kept open for decision.
17. Mr. Sanjay Upadhyay, learned Counsel for the Respondent No.4, Damodar Valley Corporation, submitted that though the Environmental Clearance was granted to the Respondent No.4 on 28.04.2020 for 06 million tonnes per annum of the Tubed Coal Mines Project and uploaded on the Website of DVC ([www.dvc.gov.in](http://www.dvc.gov.in)) under the head 'Business' sub-heading 'mining', the recommendations for grant of Environmental Clearance was made in the 51<sup>st</sup> Meeting of Expert Appraisal Committee on 05.12.2019, the Minutes of which were uploaded on the portal and, therefore, the decision of the Expert Appraisal Committee was already in public domain and, therefore, in the knowledge of the

Appellant whereas the present Appeal has been filed after a delay of almost one and half years challenging the Environmental Clearance granted to Respondent No.4.

18. The learned Counsel has also referred to the provisions of Paragraph-8 of the MoEF&CC Notification dated 14.09.2006 also known as 'EIA Notification, 2006' and submitted that Paragraph-8 provides that the regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environmental Impact Assessment Report, and where Environmental Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents.
19. Reference has also been made to Paragraph-8 (ii) which provides that the regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement and intimation of this decision shall be simultaneously conveyed to the Applicant.
20. Paragraph-8 (i) & (ii) of the EIA Notification, 2006, read as under: -

**“8. Grant or Rejection of Prior Environmental Clearance (EC)-**

*(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.*

*(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.”*

21. According to the Respondent No.4, the recommendations for Environmental Clearance was made in the 51<sup>st</sup> Meeting of the Expert Appraisal Committee on 05.12.2019, Minutes of which were uploaded on the website/portal on 13.12.2019. Under sub

paragraph-(i) of paragraph-8 of the EIA Notification, 2006, the period of hundred and five days (105) would end on 28.03.2020. The period of limitation has been extended by the Hon'ble Supreme Court in view of the outbreak of COVID-19 pandemic in *Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, Re: Cognizance for Extension of Limitation* and connected cases, and on 23.03.2020 the Hon'ble Supreme Court directed extension of the period of limitation in all proceedings pending before the Courts and Tribunals with effect from 15.03.2020 till further orders and which has been further extended till 28.02.2022. The present Appeal was filed on 08.10.2021 i.e. within the extended period of limitation and, therefore, the same cannot be said to be barred by limitation.

22. However, since we have already held the Appeal to be not maintainable considering the *bonafides* and credentials of the Appellant we dismiss this Appeal as not maintainable.
23. In view of the above, the Appeal No.05/2021/EZ is dismissed.
24. Interlocutory Applications, if any stand disposed of accordingly.
25. There shall be no order as to costs.

.....  
**B. Amit Sthalekar, JM**

.....  
**Dr. Arun Kumar Verma, EM**

May 15, 2023  
Appeal No.05/2021/EZ  
(I.A. No.78/2021/EZ)  
MN



Item No. 4

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 63/2019(WZ)  
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&amp;CC &amp; Ors.

....Respondent(s)

Date of hearing: 01.12.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Nitin Lonkar, Advocate

Respondent(s) : Ms. Manasi Joshi, Advocate for R-1, 6 & 7  
Mr. Aniruddha Kulkarni, Advocate for R-3 to 5  
Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC  
Mr. Saket Mone along-with Mr. Abhishek Salian,  
Advocates for R-11/PP**ORDER**

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.
2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent-Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

**I.A. No. 86/2021(WZ)**

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors.* [MANU/GT/0006/2017], where-in relevant para no. 11 is as follows:-

*“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and*

*Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.”*

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors.* [(2017) SCC Online NGT 1098], where-in relevant para nos. 11 to 13 are as follows:-

*“11. Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure ‘I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*

*12. In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as ‘cause of action’ but the actual act or its consequence constitutes ‘cause of action’ in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

**13.** *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

**“18.25.** *I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

7<sup>th</sup> May, 2015”, reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

“24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

**18.26** Further I state that, the **Forward Foundation** Judgment was challenged before the Hon'ble Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5<sup>th</sup> March, 2019 and has confirmed the said judgment

of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

*"In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"*

*The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"*

*"The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment."*

*"Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."*

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para



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**LOTE PARSHURAM ENVIRONMENT PROTECTION CO-OP SOCIETY LTD.**

P-30, Lote Parshuram MIDC, Khed, Ratnagiri (Maharashtra)  
(RTG/KHD/GNL.(O)105/2000-2001/Year 2000)

**ANNEXURE-R-4**

Email : cetp\_lote@rediffmail.com Telephone : 02356 - 272113 / 9822492524

LPEPS/2022-23/199

Date: -25 .07.2022

To,  
The Regional Office Kolhapur,  
Maharashtra Pollution Control Board  
Udyog Bhavan,  
Near Collector Office,  
Kolhapur 416003

**Subject:** - Reply to the show cause notice no. MPCB/RO/KOP/SCN 2207220014 dtd.22.07.2022

Dear Sir,

With reference to above subject we have noted all points and our compliance reply is as follow.

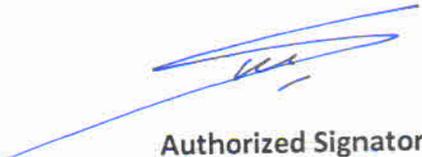
1. **You have not provided adequate measures to control foul smell nuisance. At the time of visit smell noticed in CETP Premises.**
  - We have made arrangements of Fogger for sprinkling the Spray. This spray is capable to remove the odour and smell. We will increase the dosing so as to remove the total smell.
  
2. **You have not provided operation existing effluent treatment plant scientifically & disposing substandard effluent into karbavane Creek.**
  - The operation and maintenance part is handled by MIDC. They have recruited the Aquachem engineers which are expert in the operation and maintenance of CETP. The average COD disposed to the Creek is of below 250mg/L
  
3. **During visit, the treated effluent outlet is discharged into creek observed brownish colour while effluent stored in online probe chamber is colourless. It may be misleading to conditions imposed in Board consent.**
  - The effluent which discharge to the creek is somewhat faint brown in colour. This effluent passes through the Continuous Online Monitoring System.
  
4. **It is informed by CETP Management that inlet COD of CETP exceeding the consent standard, (Refer condition imposed in your CETP consent), it seems that member industry disposing high COD/substandard effluent to CETP, it affect on O & M of existing CETP.**
  - The COD received at the inlet of CETP are always well within the Consented limit so that it goes upto the 2200 mg/L. But the present CETP is capable to take the load of the parameter COD. We are having lock and Key arrangements along with the strainer at every discharge point of member industry.

5. You have not provided Environment, Health & Safety precautions to prevent the environment issues; it may cause serious harm to Environment and to human being also.
- We have provided fully fledged Primary, Secondary and tertiary Effluent Treatment systems to treat the effluent received from the Member industry.
  - To avoid the odour nuisance the spray/foggers are installed on the sludge drying bed.
  - The acoustic is provided as APCS to D.G set.
  - We have installed Air Quality Monitoring System in CETP premises to check ambient air quality.
  - To avoid fire incidences, Fire extinguisher are installed.
  - And also work is going on to set up/install boards w.r.t. environment and safety at various points.

We request you not to take any Legal action against us.

Thanking You

For Lote Parshuram Environment Protection Co-Op Society Ltd



Authorized Signatory

Copy to:

- 1) Sub Regional Officer, MPC Board, Chiplun.



(Page No. 2)

**MAHARASHTRA POLLUTION CONTROL BOARD**  
**REGIONAL OFFICE, KOLHAPUR.**

<p>Tel. No. (0231) 2652952, 2660448 Fax No. (0231) 2652952. E-mail: <a href="mailto:rokolhapur@yahoo.com">rokolhapur@yahoo.com</a></p>	 "Your Service is Our Duty"	<p>Udyog Bhavan, Near Collector Office, Kolhapur - 416 003. Website: <a href="http://mpcb.mah.nic.in">http://mpcb.mah.nic.in</a></p>
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MPCB/RO/KOP/SCN/ 2207220014

Date: 22/07/2022

To,  
M/s. LOTE PARSHURAM ENVIRONMENT PROTECTION CO-OP.SOCIETY LTD.  
P - 30, LOTE PARSHURAM MIDC,  
TAL. KHED, DIST. RATNAGIRI.

Sub: **Show Cause Notice for non-compliances of consent conditions**

Ref: 1. Complaint received from President Dabholkhadi Parisar Sangharsh Samiti.  
2. Visit of Board Officials dated 15/07/2022.  
3. Proposal received from SRO Chiplun.

**WHEREAS** you are operating your industry in 'Pollution Prevention Area' declared under Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981 & Hazardous Waste (M & TM) Rules, 2008 as amended.

**AND WHEREAS** it was obligatory on your part to obtain valid consent from the Board for appropriate products and to provide adequate water and air pollution control devices, so as to prevent any sort of pollution in the surrounding area and to achieve the standards laid down under the provision of Environment (Protection) Act 1986.

**AND WHEREAS**, Board Officials visited on 15.07.2022 to CETP and observed following non compliances.

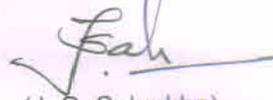
1. You have not provided adequate measures to control foul smell nuisance. At the time of visit smell noticed in CETP Premises.
2. You have not provided operating existing effluent treatment plant scientifically & Disposing substandard effluent into karbavane Creek.
3. During visit, the treated effluent outlet is discharged into creek observed brownish colour while effluent stored in online probe chamber is colourless. It may be misleading to conditions imposed in Board consent.
4. It is informed by CETP Management that inlet COD of CETP exceeding the consent standard, (Refer condition imposed in your CETP consent), it seems that member industry disposing high COD / substandard effluent to CETP, it affect on O & M of existing CETP.
5. You have not provided Environment, Health & Safety precautions to prevent the environmental issues, it may cause serious harm to Environment & to human being also.

J.F.

**Therefore,** you are now directed to show cause as to why legal action under provisions of the Water (P &CP) Act, 1974 & Air (P &CP) Act, 1981 & Hazardous Waste (Management, Handling & Transboundry Movement) Rules, 2008 shall not be initiated against your unit.

**Your reply/** objection should reach this office within 7 days' time, failing which; the Board will have no option than to initiate appropriate further action as deem fit in your case, which may please be noted.

FOR AND ON BEHALF OF THE BOARD



(J. S. Salunkhe)  
Regional Officer,

Maharashtra Pollution Control Board, Kolhapur.

**Copy to:**

1. Director of Industries, Safety & Health (DISH) Officer, Ratnagiri.
2. Sub-Regional Officer, M.P.C. Board, Chiplun.  
- He is directed to serve the direction to the industry, and keep vigil & report the compliance accordingly.



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

ORIGINAL APPLICATION NO.44 OF 2023 (WZ)

ARYAVAT FOUNDATION

APPLICANT

Versus

M/s LOTE PARSHURAM ENVIRONMENT PROTECTION  
COOPERATIVE SOCIETY LTD & Ors.

RESPONDENTS

**VAKALATNAMA**

KNOW ALL, to whom these present shall come that we (**LOTE PARSHURAM ENVIRONMENT PROTECTION COOPERATIVE SOCIETY LTD**), the above named **RESPONDENT No.1** do hereby appoint:

Saurabh Kulkarni,  
Advocate

Prashant Bhat  
Advocate

M/s.D.V. Kulkarni & Co., Advocates  
420, Shaniwar Peth, Near Ahilya Devi School,  
Next to Bank of Maharashtra, Pune – 411 030.  
Ph(O) 24459027  
(Email) [sdkadvocate@gmail.com](mailto:sdkadvocate@gmail.com)

Lotesh Parshuram Environment  
Protection Co-Op. Society Ltd

Hereinafter called the Advocates to be **Respondent No.1'** (**LOTE PARSHURAM ENVIRONMENT PROTECTION COOPERATIVE SOCIETY LTD**) Advocates in the above noted case & authorize them:

To, act appears and plead in the above noted case in this court or in any other court in which the same may tried or heard.

To sign file, verify and present pleadings, appeals, cross-objections or petitions see executions review, revision, withdraw compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the execution of the said case in all its stages.

To file and take back document, to admit &/or deny the document of opposite party

To take execution proceedings.

To appoint and instruct any other Legal practitioner or person authorizing him to exercise the power and authority hereby conferred upon the Advocate whatever they may think fit to do so & sign the power of attorney on.

And I the undersigned do hereby agree to ratify and confirm all acts done by the Advocates or their substitute in the matter as my/our own acts, as if done by me/us intents and purposes.

AND I/We undertake that I/We or My/Our duly authorized agent would appear in court on all hearing & will inform the Advocate for appearance when the case is called

And I/We undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whatever ordered by the Court shall be of the Advocate he shall receive and retain for himself.

And I/We the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above court for a period of three years only. I/we hereby agree that once the fee is paid I/We will not be entitled for the refund of the same in any case whatsoever.

IN WITNESS WHEREOF we do hereunto set our hand to their presents the contents of which have been understood by us on this 17<sup>th</sup> day of June 2023

  
ADVOCATES



Lote Parshuram Environment  
Protection Co-Op. Society Ltd.

  
Manager

Signature

**I am not a member of Advocates Welfare Fund and therefore stamp of Rs.2 is not affixed herewith.**

