BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION 287/2022

IN THE MATTER OF:

Amit Kishore & Ors. . .. Applicants

VERSUS

Uttar Pradesh Pollution Control Board & Others …Respondents

WRITTEN SUBMISSION ON BEHALF OF RESPONDENTS NO. 6 TO 48

1. Respondents No. 6 to 48 are street vendors who were engaged in vending activities in front of CWR for the last many years; on 21.10.2021 were allotted Kiosks (Temporary Structure) of 2 * 2 meters (6* 6 Feet) in dimensions on payment of Rs. 1,29,800/- to the fabricator in front of CWR(Clean water Reservoir) Sector-15 Vasundhara, Ghaziabad Uttar Pradesh (**Para 15 /Pg 228)** pursuant to identification and approval by the Town Vending Committee meeting dated 18.02.2021, chaired by Municipal Commissioner /Project Director DUDA (District Urban Development Authority) under the provisions of Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 & U.P. Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2017.
2. It is submitted that Kiosks to Respondents were allotted in front of the boundary of CWR at Sec-15, on the Road Margin beyond the Shoulder on 45 meter road running across the Vasundhara Scheme from Sector 1 to Sector 19. The 45-meter road components are as under:- **(Rough Map pager 240 & Para 16 Pg 228)**
   a. Sewerage Drain on both sides 1.65 m in front of CWR and 1.35 m on another end of the road.
   b. Green Belt Divider of 11m acting as a median
   c. Metallic road of 7.5 meter on both side.
3. It is submitted that area in front of CWR wherein the Respondents were allotted a place for setting Kiosks is not a green belt in the GDA master Plan for 2021 and Proposed Master Plan 2031 and is not a green belt even on the Layout of the U.P. Housing Development Board. It is pertinent to mention that site Kiosk has been admitted to be in front of CWR by the applicants also and Municipal Commissioner**. (Certified copies of Maps placed on record during the hearing are relied on, which are annexed in reply of respondents on Page77-79)**
4. Applicants have filed the present application for the serving private purpose and not for any other reason, and the same is established by the following facts:-

a. Plan for Kiosks was approved on 18.02.2022 by DUDA.

b. Applicant son Abhay Tyagi, Son of applicant No. 3, was allotted a shop by UPHDB on the same site where Kiosk was established by DUDA on **07.08.2021**. **(Page 73 of the reply by Respondents)**

c. Kiosks allotted by DUDA are in front of the shops allotted to Applicant No. 3 son's allotted shop, therefore at the instance of Applicant No. 3 by Applicant No. 2 on **22.09.2021 (Pg. 45 & 46 of O.A).** Similarly, Complaints were filed with respect to Kiosks by applicants on 12.11.2021 **(Pg.50),** 20.12.2021 **(Pg.53),** 27.12.2021 **(Pg. 54) and** thereafter, the present O.A was filed on April 2022.

It is pertinent to mention that the Applicants have been aware of the proposed vending Zone since 18.02.2021. However, they did not make any complaints. All the complaints are made after the allotment of the shop to Applicant No. 2 Son on misleading and wrong facts. Further, as per the averment of the applicants, the green belt runs from Sector1 to 19 **(Para-4 of O.A)** in O.A; however, they made prayer for the restoration of the green belt only with respect to Sec.-15 **(Pg. 11 O.A)** which does not exist as per the layout and master plan. It is also pertinent to mention that allotment of shops at the CWR site is not denied by UPHDB and applicants, and therefore the same is admitted fact. Therefore the credential of the Applicants are malafide and they have invoked the jurisdiction of this Court for oblique purposes in connivance with officials of UPHDB. Reliance is placed on the Judgment of the Hon'ble Supreme Court **(The State of Uttar Pradesh & ors versus Udhay Education and Welfare Trust & Anr)** with respect to the bonafide and credentials of Applicants before passing orders. In the present case the credentials of the Applicants are malafide. It is pertinent to mention that Applicant No. 2 is contesting the municipal elections. **(Pg. 75 & 76)**

5. It is pertinent to mention that area in front of CWR Sector-15 is not in the list of parks and open spaces handed over to the Ghaziabad Nagar Nigam. **(para-8, Page 227) & Report of GNN)**

6. It is submitted that the eviction of respondents No. 6 to 48 was done by Municipal Commissioner at the behest of the order dated 27.09.2022 passed by this Tribunal. It is also pertinent to mention that the aforesaid eviction, which has been done purportedly under an order dated 27.09.2022, has severally affected the livelihood of Respondents No. 6 to 42, who belong to low strata of society and have taken loans for the purchase of the Kiosks. Though it is correct that this Hon'ble Tribunal has not directed for the eviction of the Respondents, the

Respondents Municipal Commissioner had evicted them without due process of law only after passing of the order dated 27.09.2022 for the submitted report before this tribunal wherein it has been averred that the place has been restored to its status as exited in 2002 i.e date of handover.

7. It is pertinent to mention that the eviction without one month's notice is in clear violation of Rule 20 of the U.P. Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2017. **(Page 94 & 107 of the reply by R-6 to 42)**

8. It is submitted that Court held that no one shall suffer by an act of the Court. The factor attracting the applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party suffering an impoverishment which it would not have suffered but for the order of the Court and the act of such party. There is nothing wrong in the parties demanding to be placed in the same position in which they would have been had the Court not intervened by its interim order, when at the end of the proceedings, the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the Court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the Court would be restored to or conferred on the party by suitably commanding the party liable to do so. Thus the Court held the successful party to be entitled to compensation in terms of money at the end of litigation – **South Eastern Coalfields Ltd. Vs State of M.P. & Ors., AIR 2003 SC 4482: 2003 (8) SCC 648: 2003 Supp 4 SCR 651.**

9. It is therefore prayed that the O.A. be dismissed with cost, Respondents be granted compensation and status Quo ante as exited on 02.11.2022 be restored.

Manish Raghav

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For Respondent No. 6 to 42

MANU/SC/1376/2022

IN THE SUPREME COURT OF INDIA

Civil Appeal Nos. 2407-2412 of 2021, 3144-3146, 3132-3134, 3135-3137, 3138, 4061-4062, 3141 of 2022, 2547-2548 of 2020, 3142-3143 of 2022 and 3147-3149 of 2022

Decided On: 21.10.2022

Appellants: **The State of Uttar Pradesh and Ors.**
Vs.
Respondent: **Uday Education and Welfare Trust and Ors.**

Hon'ble Judges/Coram:
B.R. Gavai and B.V. Nagarathna, JJ.

Counsels:
For Appearing Parties: Aishwarya Bhati, ASG, Archana Pathak Dave, Suhasini Sen, Nitin Choudhary P., Poornima Singh, Advs., Gurmeet Singh Makker, AOR, Vikas Singh, Sr. Adv., P.S. Patwalia, Sr. Adv., Rana Mukherjee, Adv., Kamlendra Mishra, AOR, Ashiwan Mishra, Vaidhruti Mishra, Advs., V. Giri, Sr. Adv., Rajeev Kumar Dubey, Adv., Saroj Tripathi, AOR, U.K. Uniyal, Sr. Adv., Dinesh Kumar Garg, AOR, Abhishek Garg, Dhananjay Garg, Ishaan Tiwari, Advs., Vinay Navare, Sr. Adv., Gaurav Varma, Neeraj Dutt Gaur, Advs., Waseem Qadri, Sr. Adv., Md. Rashid Saeed, AOR, Md. Zaid, Aashi Arora, Farha Naaz, Ali Mushtaq, Saba Mirza, Advs., V.K. Shukla, Sr. Adv., Ajay Singh, Ram Kumar, Ajay Kumar Rai, Advs., Satyajeet Kumar, AOR, Rajesh Srivastava, AOR, Prerna Singh, Adv., Guntur Pramod Kumar, AOR, A. Lakshminarayanan, AOR, Ankolekar Gurudatta, AOR, Vivek Gupta, AOR, Mrinmay Bhattmewara, Ankit Verma, Advs., Namit Saxena, AOR, Ansar Ahmad Chaudhary, AOR, Iduddin, Rashid Hasan, Shehla Chaudhary, Advs., Alok Kumar, AOR, S.K. Verma, AOR, Lokesh K. Choudhary, AOR, Zulfiker Ali P.S., AOR and Vinod Kumar Tewari, AOR

Case Category:
APPEAL AGAINST ORDERS OF STATUTORY BODIES - TRIBUNALS

JUDGMENT

B.R. Gavai, J.

1. For the reasons stated in the applications for impleadment/intervention, the same are allowed.

2. This bunch of appeals challenges the order dated 18th February 2020, passed by the learned National Green Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the learned NGT") in Original Application Nos. 313, 335 and 396 of 2019, thereby quashing and setting aside the notice dated 1st March 2019 issued by the State of Uttar Pradesh for establishing new wood based industries (hereinafter referred to as "WBIs") and also setting aside all the provisional licenses given in pursuance thereof.

3. The appeals also challenge the orders dated 18th March 2020, 2nd December 2020, and 21st December 2020 vide which the review applications filed by the State of Uttar Pradesh and the provisional license holders have been rejected.

4. Civil Appeal Nos. 2407-2412 of 2021 are filed by the State of Uttar Pradesh. The rest of the Civil Appeals are filed by the provisional license holders, who were granted

licenses in pursuance of the notice dated 1st March 2019, issued by the State of Uttar Pradesh.

FACTUAL BACKGROUND

5. For the sake of convenience, we will refer to the facts as found in Civil Appeal Nos. 2407-2412 of 2021 filed by the State of Uttar Pradesh.

6. There are series of orders passed by this Court and the Central Empowered Committee (hereinafter referred to as "CEC") appointed by this Court, issuing various directions for prohibiting/regulating the felling of trees as well as the establishment of WBIs. We will refer to them extensively in the subsequent paragraphs.

7. In pursuance of the order passed by this Court dated 5th October 2015 in Writ Petition (Civil) No. 202 of 1995 (T.N. Godavarman Thirumalpad 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) : MANU/ENVT/0206/2016 dated 11th November 2016.

8. Subsequent to the 2016 Guidelines, timber assessment for Trees Outside Forest ("TOF" for short) in the State of Uttar Pradesh for WBIs was done for the period between February 2017 and December 2017 by the Forest Survey of India ("FSI" for short). The FSI thereafter submitted its report, which contains district wise, species wise and diameter class wise number of stems (trees), volume and annual potential production of timber from TOF in rural areas of all the districts of the State.

9. In pursuance of the 2016 Guidelines, the matter was placed before the State Level Committee ("SLC" for short) for grant of licenses to various WBIs. The SLC in its meeting held on 4th May 2018, considered the matter about the grant of licenses to various WBIs after taking into consideration the availability of wood in the State of Uttar Pradesh for determining the amount of timber available for new WBIs. In the said meeting, it was also decided that, in order to determine the correct number of new licenses to be issued to WBIs under different categories against the timber available in the State, a reassessment may be done by the Indian Plywood Industries Research and Training Institute ("IPIRTI" for short).

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

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

12. Being aggrieved thereby, Original Application No. 313 of 2019 came to be filed by Uday Education and Welfare Trust before the learned NGT in March 2019. Vide order dated 28th March 2019, the learned NGT directed the State Government to submit a

report from the Joint Committee comprising of the representative of Principal Secretary (Forest), U.P. and the Principal Chief Conservator of Forest, U.P. to examine the issues.

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

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

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

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

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

SUBMISSIONS

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

19. Shri Vikas Singh, learned Senior Counsel, submitted that the decision of the State Government to establish WBIs is in accordance with the 2016 Guidelines issued by the MOEFCC. He submits that the timber requirement by 1215 new WBIs, which were issued provisional licenses is only 12.35 lakh cubic meters per year, whereas the total timber available in the State is 80.30 lakh cubic meters per year. It is, therefore, submitted that, as such, the requirement is not even 20% of the total availability of timber. Learned Senior Counsel submitted that the only authorized agency in the country to conduct a survey of the forest as well as TOF is FSI. It is submitted that the object of IPIRTI is not to conduct a survey of either forest or TOF. It is submitted that, as a matter of fact, the learned NGT itself has directed such a study to be conducted by FSI,

who has already undertaken similar studies for many States like Punjab, Maharashtra and others. It is submitted that when the survey with regard to availability of timber in the State of Uttar Pradesh was done by the very same agency, the learned NGT fell in gross error in again directing the State Government to conduct such a survey through the FSI.

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

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

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

23. Shri Vinay Navare, learned Senior Counsel, submitted that the timber used in the WBIs is from the trees which are agro-based. He submits that though the State of Uttar Pradesh had adopted an elaborate procedure right from June 2018 till the grant of licenses, the applicants before the learned NGT had taken no steps. Shri Navare submits that only after the provisional licenses were issued and 632 out of 1215 WBIs provisional license holders had already been established and commenced operations, the applications were entertained and the orders were passed to the prejudice of the WBIs. It is submitted that Section 19(1) of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") mandates following of the principles of natural justice. It is submitted that though the applications for impleadment were made by the WBIs, the applicants were not granted an opportunity of being heard.

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

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

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

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

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

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

30. Shri Dhruv Mehta submits that this Court vide order dated 12th December 1996 has specifically prohibited the felling of trees in any forest, public or private. He further relies on the report of CEC dated 15th March 2005 to buttress his submission that WBIs can be permitted only if they exclusively use timber derived from poplar and eucalyptus species or agriculture waste products. It is submitted that the said guidelines also specifically provided that if the unit is found to have used any timber other than poplar and eucalyptus whether from a legal source or otherwise, the license granted to the unit shall be liable to be cancelled. He further relies on the report of CEC dated 12th October 2006. He submits that an assessment has to be done on the basis of the district-wise survey about timber availability from the TOF category. He submits that the said report of CEC itself would reveal that the assessment of the State is much less than what was initially projected by the State Government. He submits that unless the timber availability for the new WBIs is assessed and the SLC examines and recommends its approval, it is not permissible to establish new WBIs.

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

32. Shri Mehta submits that when SLC in its meeting dated 4th May 2018 had decided to get a report from IPIRTI, there was no occasion for it to review its decision in its

subsequent meeting dated 7th September 2018. He submits that the Senior Officer of the Forest Department of the rank of Chief Conservator of Forest, Kanpur Division, Kanpur recommended that the report from IPIRTI should be obtained before deciding to issue the new licenses. It is submitted that the letters of the said officer dated 11th September 2019 and 20th April 2018 have been ignored by the SLC.

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

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

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

36. The learned Senior Counsel further submits that FSI, while conducting the survey, has not taken into consideration the rotation period and, therefore, the survey is erroneous on the said count also. Learned Senior Counsel, in support of his submissions, relies on the judgment of this Court in the cases of Common Cause v. Union of India and Ors. MANU/SC/0930/2017 : (2017) 9 SCC 499, Mantri Techzone Private Limited v. Forword Foundation and Ors. MANU/SC/0315/2019 : (2019) 18 SCC 494, Municipal Corporation of Greater Mumbai v. Ankita Sinha and Ors. MANU/SC/1076/2021 and Pragnesh Shah v. Dr. Arun Kumar Sharma and Ors. MANU/SC/0077/2022.

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

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

EARLIER ORDERS OF THIS COURT

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

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

> **6.** Each State Government should within two months, file a report regarding-
>
> (i) the number of saw mills, veneer and plywood mills actually operating within the State, with particulars of their real ownership;
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> (ii) the licenced and actual capacity of these mills for stock and sawing;
>
> (iii) their proximity to the nearest forest;
>
> (iv) their source of timber.
>
> **7.** Each State Government should constitute within one month, an Expert Committee to assess:
>
> (i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;
>
> (ii) The number of existing saw mills which can safely be sustained in the State;
>
> (iii) The optimum distance from the forest, qua that State, at which the saw mill should be located.

41. Vide subsequent order dated 4th March 1997 MANU/SC/2110/1997 : (1997) 3 SCC 312, this Court directed thus:

> **6.** All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and the State of Uttar Pradesh are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mill, veneer and plywood industry and it shall also not grant any fresh permission/licence for this purpose. The Chief Secretary of the State will ensure strict compliance of this direction and file a compliance report within two weeks.

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

43. Vide order dated 29th October 2002 (2008) 16 SCC 337, this Court further directed thus:

> **44.** No State or Union Territory shall permit any unlicensed sawmills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any sawmills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure

strict compliance with this direction. There shall also be no relaxation of Rules with regard to the grant of licence without previous concurrence of the Central Empowered Committee.

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

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

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

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

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

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

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

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

It has also assessed the units into four categories.

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

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

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

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

The matter relates to the manufacturing of Medium Density Fiber board (MDF) and Particle Board in the States of Punjab, Uttarakhand and Karnataka. CEC has

filed its report and stated that there is a growing trend to use more and more MDF/Particle Board in place of industrial timber. The MDF/Particle Board help in reducing the pressure on natural forests. The lops and tops and small wood available from the plantations of eucalyptus, poplar, etc. raised on the non-forest can be used by MDF/Particle Board plants.

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

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

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

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

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

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

CATEGORY I - MATTERS RELATING TO WOOD BASED INDUSTRIES:

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

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

industries;

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

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

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

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

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

MOEFCC GUIDELINES

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

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

> The Indian Plywood Industry Research and Training Institute (IPIRTI), Bangalore an autonomous body under the Ministry of Environment, Forest and Climate Change has assessed the timber requirement per unit for peeling length of 4 feet and 8 feet size in the plywood/veneer units as 5 cu.mt. and 11 cu.mt. respectively per day on an average of 8 working hours per day. By assuming that the peeling units work for 8 hours per day on an average for 300 days in a year the normal timber requirement of the peeling length of 4 feet size in veneer units is 1500 cu.mt. The total timber requirement for the stand alone veneer units may be assessed by calculating the equivalent number of 4 feet length machines and by taking its normal installed capacity as 1500 cu.mt. per annum.
>
> The timber requirement of a plywood unit may be taken as 'nil' on the ground that the round timber is used as timber in the veneer units only and that the plywood units are the secondary users which use the veneer as the raw material produced by the veneer units. The plywood units use presses of various sizes such as 8x4x6, 8x4x12, 8x4x15, 4x4x7, 4x4x10. A 8x4x10 capacity press can produce upto 10 plywood pieces of 8'x4' size per hour whereas a 8x4x15 capacity press can produce upto 15 plywood pieces of 8'x4' size per hour and so on. The normative installed capacity of the plywood units will accordingly depend upon the number and the type of presses. This number and type of presses installed in each of the plywood unit may be assessed and thereafter equivalent number or presses of 8x4x10 capacity may be calculated. The normative annual timber requirement for a integrated plywood unit having a 8x4x10 capacity press may be taken as 2000 cu.mt. per annum, and accordingly the total requirement of timber for the plywood units should be calculated.

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

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

61. Subsequently, in accordance with the 2016 Guidelines, the SLC assessed the availability of timber for WBIs in the State of Uttar Pradesh, through the FSI. For assessing the availability of timber, the FSI conducted a survey and arrived at the annual potential production of timber from TOF in rural areas of all the districts of the State. FSI assessed the annual potential production from TOF at 77.74 lakh cubic meters. Subsequent to the survey and assessment, the SLC in its meeting dated 4th May 2018 considered the matter for grant of license to various WBIs. The SLC decided to get

the reassessment done by IPIRTI to determine the correct number of new licenses to be issued to WBIs under different categories against the available timber. However, subsequently, the SLC, in its meeting dated 7th September 2018, found that IPIRTI had not done any new study/assessment of the consumption of timber by various WBIs in any State/Union Territory. It was also found that the State of Haryana had adopted the timber consumption figures based on the CEC figures of 2007. It was therefore unanimously resolved by the SLC that there was no need for any fresh study/assessment for the consumption of timber by WBIs to be conducted by IPIRTI and to adopt the figures for WBIs as were referred to in the 2016 Guidelines. It further found that the CEC in its meeting dated 26th May 2010 had reduced the annual consumption of timber of sawmills upto 10 Horse Power or less HP to 270 cubic meters from 540 cubic meters.

62. On the basis of the decision of the SLC, e-lottery was held. After following the procedure, provisional licenses were issued to 1215 successful applicants in 8 categories of WBIs in February and March 2019. After the issuance of provisional licenses, on 1st March 2019, the State Government issued a Notice with regard to grant of provisional licenses to the newly selected WBIs which came to be challenged before the learned NGT by way of filing the aforesaid Original Applications by the Respondents. The learned NGT after passing various interlocutory directions finally passed the impugned order and quashed and set aside the notice dated 1st March 2019 issued by the State Government and provisional licenses given in pursuance thereof. As such we are required to examine the correctness of the decision of the learned NGT.

CONSIDERATIONS

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

(1) that the WBIs can be allowed to operate only after ensuring timber and raw material availability to sustain such industries and this has to be determined in actual terms and not on mere assumptions;

(2) that it is difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain the new WBIs;

(3) that it is the stand of the State of Uttar Pradesh that the total potential availability of timber per year in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 lakh cubic meters from the Government forests and 77.74 lakh cubic meters from TOF. Out of 80.30 lakh cubic meters, 71.8 lakh cubic meters were stated to be available from 22 species and 8.50 lakh cubic meters from the other species. Out of 22 species, there are 10 species that are prohibited from felling and as such, 20.75 lakh cubic meters from these 10 species are liable to be excluded;

(4) that the major contribution is from Eucalyptus (28 lakh cubic meters) and Poplar species (15 lakh cubic meters), a total of which is 43 lakh cubic meters. Thus, the figure is not actual but presumptive;

(5) that the standard error percentage adopted by the FSI is not correct and is much higher;

(6) that the total availability of timber for consumption including that from the government forests would not be more than 40-45 lakh cubic meters per year;

(7) that the potential availability of 77.74 lakh cubic meters from TOF as given in the affidavit has been overestimated.

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

65. One of the duties which was cast upon the SLC was to assess the availability of timber for wood based industrial units in the State. The SLC was to assess the availability of timber by commissioning studies, preferably in collaboration with institutes/universities of repute, once in five years. In accordance with the 2016 Guidelines, the FSI conducted the survey and submitted its report in March 2018. It will be relevant to refer to the relevant part of the Foreword of the said report of the FSI.

> In the recent past, a number of requests were received for establishment of wood based industries in the state for which the raw material would come from outside the forest areas. Since accurate assessment of TOF is needed for effective planning & management, Uttar Pradesh Forest Department requested FSI to make Agro-Climatic zone wise assessment on the basis of inventory already done during its regular course of inventory conducted in the State. As per the final report, the total stems as estimated from the study is 299.43 million with a volume of 79.40 m. cum. The total yield in the Uttar Pradesh is estimated 7.8 million cum.
>
> The report gives an assessment of the growing stock existing outside state forest reserves. The report has also indicated district-wise, species-wise and girth class-wise number of stems and volume in each Agro-Climatic Zone wise of inventoried districts. I am confident that this report would provide useful data for arriving at informed policy and programme interventions to give a fillip to forestry sector in the state besides providing benchmark data for tree crop in non-forest area.

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

> The data processing was carried out independently for all the inventoried districts of Uttar Pradesh. Estimates of stems per ha and volume per ha were generated according to species and diameter class for block, linear and scattered stratum under each district. Estimated stems and their volumes were generated according to species and diameter class by aggregating stem per

hectare and volume per hectare over the entire Rural CNF Area of each stratum for each district by combining the estimated stems and volumes under block, linear and scattered stratum. By aggregating the estimates of stems and volume of all the three strata, the estimates of stems and volumes according to species and diameter class has been prepared for Rural area separately.

67. The FSI had also divided the State of Uttar Pradesh into 9 Agro-climatic zones to generate the estimate of growing stock and annual potential production. 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:
>
> Yield= 2GS/R
>
> Where GS: Growing Stock
>
> R: rotation period
>
> Using the information of timber value, growing stock and rotation period in the above mentioned formulae species wise yield were calculated. The 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 socio-economic lives of people both in rural and urban areas of the country by enriching the people and society at large economically as well as ecologically. The management of TOF assumes high significance in the country for realizing much higher potential which it offers in generating wood based economy and ecosystem services including carbon sequestration. Periodic assessment of TOF resources including its spatial distribution is prerequisite for its scientific management in the country. FSI is mandated with this task however there is need for continuous improvement in the methodology and inclusion of more number of variables in the assessment. The organization will have to be further strengthened particularly in terms of man power, to address the emerging information needs on TOF. There has been regular refinement in methodologies in the last three decades to quantify TOF resources using various statistical designs and estimates with better precision. The advancement of technologies in the field of remote sensing, satellite image processing and availability of high resolution satellite data made the methodology much precise and easier. The progression of science may further refine the existing method of TOF assessment in near future.
>
> TOF also act as an important source for timber and fuel wood to meet the demands of fast growing population of the country. There is a need to put focus on increasing the growing stock per hectare or yield of TOF by better management and planning. There is also a need for a separate policy on TOF to ensure its expansion and sustainable management for multiple ecological benefits, timber production, carbon sequestration and for obviating pressure from the natural forests.
>
> Occupying nearly 9% of the geographical area of the country, TOF are significant natural, renewable resource which make vital contribution to the agro-ecology, socio-economy of the rural areas, environmental amelioration in

> the urban areas and feed wood based industries with the raw material and thus generate significant employment. TOF form a nearly 38% of the carbon sink in forest & tree cover of the country. TOF offers the path for achieving the national policy goal of 33% of forest & tree cover in the country. Through expansion of TOF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of NDC and LDN by 2030.

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

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

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

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

78. It is further to be noted that in pursuance of the order of the learned NGT dated 28th March 2019, a Committee of Experts [Joint Committee comprising of representative of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P.] had submitted its report on 3rd August 2019. Not only this, but in pursuance of the directions issued by the learned NGT on 18th December 2019, another detailed affidavit was filed on behalf of the State Government on 21st January 2020, giving therein the details about the availability of timber. It was specifically stated in the said affidavit that eucalyptus and poplar are the main species of TOF and 80% of the wood is derived therefrom. It was further pointed out that the farmers in the State of Uttar Pradesh were not getting remunerative prices and are forced to sell their produce at a very cheap rate mainly to middlemen. It was also pointed out that there would be an expected investment of about Rs. 3000 crore in the State with the establishment of new WBIs. The same would employ more than 80000 people, mostly in the rural areas of the State. However, all these factors have been ignored by the learned NGT.

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

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

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

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

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

83. It can thus be seen that the decision of the SLC for not getting the assessment done by the IPIRTI is based on sound reasons. When the 2016 Guidelines itself provided for the consumption of timber by WBIs based on the report of the IPIRTI, there was no purpose to again get the assessment done by IPIRTI. The scope of judicial review has been succinctly explained by this Court in the case of Tata Cellular v. Union of India MANU/SC/0002/1996 : (1994) 6 SCC 651, 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 [MANU/UKHL/0008/1991 : (1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention.

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

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

86. That leads us to consider the contention of the Respondents that this Court has repeatedly emphasized the principles of sustainable development, the precautionary 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 and Ors. (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. and Ors. MANU/SC/1325/1997 : AIR 1997 SC 3297 : (1997) 8 SCC 191, a three-Judge Bench of this Court after referring to the earlier judgment in the case of State of H.P. and Ors. v. Ganesh Wood Products and Ors. MANU/SC/0038/1996 : (1995) 6 SCC 363 observed that, even while considering the grant of renewal of mining leases, the provisions of the Forest (Conservation) Act, 1980 and the Environment (Protection) Act, 1986 would apply. This Court held that the MOEF and all the States have a duty to prevent mining operations affecting forests. It further observed that, whether mining operations are carried on within the reserved forest or other forest area, it is their duty to ensure that the industry or enterprise does not denude the forest to become a menace to human existence nor a source to destroy flora and fauna and biodiversity. It has further been held that if it becomes inevitable to disturb the existence of forests, there is a concomitant duty upon the State to reforest and restore the green cover and to ensure adequate measures to promote, protect and improve both man-made and natural environment, flora and fauna as well as biodiversity. It further held that there can be no distinction between government forests and private forests in the matter of forest wealth of the nation and in the matter of environment and ecology.

(b) In the case of Essar Oil Ltd. v. Halar Utkarsh Samiti and Ors. MANU/SC/0037/2004 : (2004) 2 SCC 392, 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 and Ors. MANU/SC/1189/1996 : (1996) 5 SCC 281 were quoted as under:

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

(c) In the case of Maharashtra Land Development Corporation and Ors. v. State of Maharashtra and Anr. MANU/SC/0940/2010 : (2011) 15 SCC 616 reference was made to Glanrock Estate Private Limited v. State of Tamil Nadu MANU/SC/0689/2010 : (2010) 10 SCC 96 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 Thirumulkpad v. Union of India and Ors. MANU/SC/0278/1997 : AIR 1997 SC 1228 wherein this Court enunciated the definition of "forest" in the following words:

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

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

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

104. Pending applications, if any, shall stand disposed of. No costs.

MANU/SC/0807/2003

Equivalent Citation: AIR2003SC4482, (2003)8SCC648, [2003]Supp4SCR651

IN THE SUPREME COURT OF INDIA

Civial Appeal Nos. 5282, 5283-5287, 5288-5301, 5321, 5353, 5355, 5357, 5359, 5362, 5419, 5434, 5436, 5437, 5459, 5460, 5513 and 5532 of 2002

Decided On: 13.10.2003

Appellants: **South Eastern Coalfields Ltd.**
Vs.
Respondent: **State of M.P. and Ors.**

Hon'ble Judges/Coram:
R.C. Lahoti and Ashok Bhan, JJ.

Counsels:
Mukul Rohatgi, Additional Solicitor General, R.F. Nariman, P.K. Jaiswal, A.K. Chitale and S. Ganesh, Sr. Advs., Ajit Kumar Sinha, Shriniwas R. Khalap, E. Venu Kumar, A.K. Sanghi, Anip Sachthey, Niraj Sharma, Jai Mangalwadi, Prach Khare, S.K. Agnihotri, Anil Kumar Pandey, W.A. Nomani, Sakesh Kumar, Rohit Kumar Singh, U.A. Rana, Gaurav Sinha, Ashok Bhan, Satbir Singh Pillania, Sunita Sharma, Ajay Sharma, Rekha Pandey, D.S. Mahra, R.K. Maheshwari and T.N. Singh, Advs

Case Note:

Constitution - Mines and minerals (Regulation & Development) Act - Section 4, 9, 13 - Both the coalfields are Govt. companies and are holding mining lease under the state govt. -Payment of interest - Central Govt. can make provision for payment of interest on the amount of royalty for the period of delay in payment - Mining lessees are bound to pay interest as per terms of mining leases - Appeal dismissed

JUDGMENT

R.C. Lahoti, J.

1. M/s. South Eastern Coalfields Ltd. and M/s. Western Coalfields Ltd. are Government Companies operating various coal mines in the State of Madhya Pradesh, holding mining leases granted to them by the State Government under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, hereinafter 'the Act', for short. Coal is a major mineral and the said companies, hereinafter collectively called as 'coalfields', have the exclusive right for extraction of coal under the lease deeds held by them.

2. Sub-section (3) of Section 9 of the Act empowers the central Government to enhance or reduce the rate at which royalty shall be payable in respect of any mineral including coal w.e.f. such date as may be specified in the notification published in the official gazette in that behalf. In exercise of the power so conferred, the Union of India enhanced the royalty payable on coal to Rs. 120/- per ton from Rs. 6.50 per ton, which was the rate prevailing till then. So far as the State Government is concerned, it is entitled to collect the royalty including the enhanced royalty from the lessees, i.e. the coalfields, and the coalfields can, in law, pass-on the burden of royalty to the purchasers/consumers of coal by including the amount equivalent to royalty in the price

of the coal. Coal is a controlled commodity and governed by the provisions of the Essential Commodities Act, 1956 and the Coal Control order issued thereunder. Inasmuch as the State Government took steps for recovering the royalty on coal at the enhanced rates from the lessees and the lessees in their turn proposed to enhance the rate at which the coal was supplied to the purchasers/consumers, about 60 writ petitions came to be filed in the High Court of Madhya Pradesh by different consumers who were to bear the burden of enhancement ultimately. In the writ petitions, the enhancement of royalty on coal was sought to be impugned on two grounds: firstly, that Section 9(3) of the Act itself was ultra vires the Constitution; and secondly, that the notification dated 1st August, 1991 issued by the Central Government under Section 9(3) of the Act was unconstitutional being arbitrary, unreasonable and lacking in bona fides. The High Court of Madhya Pradesh by its decision dated 17.12.1993 upheld the vires of Section 9(3) of the Act but quashed the notification dated 1.8.1991 enhancing the rate of royalty on the ground that it was arbitrary and lacking in bona fides.

3. It is pertinent to note that the coalfields did not lay any challenge to the enhancement. All the writ petitions in the High Court were filed by the consumers/purchasers. The coalfields were impleaded as respondents. When the State of Madhya Pradesh filed appeals by special leave in this court impugning the judgment of the High Court, the coalfields Joined as appellants with the State of Madhya Pradesh. A batch of appeals was decided by this Court on February 1, 1995 (decision reported as ***State of M.P.*** v. ***Mahalaxmi Fabric Mills Ltd. and Ors.***, MANU/SC/0440/1995 : [1995]1SCR756). This Court allowed the appeals, set aside the decision of the High Court of Madhya Pradesh and directed the writ petitions filed in the High Court to be dismissed.

4. The writ petitions in the High Court were filed on different dates. The High Court had, on a prayer made by the respective writ petitioners, passed orders protecting the writ petitioners from the recovery of enhanced royalty. Chronologically, the first of the interim orders which has been brought to our notice is dated 20.8.1992 passed in CWP No. 3239 of 1992. The order is so worded :-

> ". .... It is directed that the respondents shall not charge royalty on coal from the petitioners at the enhanced rate but the old rate as it was prevalent before 01.08.1991 until further orders."

5. Several interim orders so made remained in operation during the pendency of the writ petitions in the High Court, on special leave petitions being filed in this Court against the final judgments of the High Court dated 10.12.1993, this court, vide order dated 6.11.1993, directed the operation of the judgment of the High Court to remain stayed. The result of the interim stay granted by this Court was that the notification dated 1.8.1991 became operative and the enhancement in rate of royalty made thereby became operational and the enhanced royalty became recoverable.

6. It seems that at some stage of the proceedings, under orders of the court, the consumers had furnished bank guarantees for payment of differential amount of royalty in the event of their liability being uphold by the Court. On the operation of the judgment of the High Court having been stayed by the Supreme Court, the Coalfields issued notices demanding payment of differential royalty and on account of the bank guarantees being available, the differential amount of royalty was paid in full and the bank guarantees furnished by the parties were released.

7. In the year 1997 the Director, Mines and Geology, Government of Madhya Pradesh,

issued letters to the Coalfields demanding payment of Interest at the rate of 24% per annum for the period for which the payment of the enhanced amount of royalty was delayed. The Coalfields in their turn raised bills on their consumers/Buyers demanding payment or similar interest from them for the period for which they had delayed the payment of amount equivalent to differential royalty to the Coalfields. At this point of time the several consumers as also the Coalfields filed several writ petitions seeking quashing of the demand raised on account of interest, A batch of writ petitions was disposed of by a Division Bench of the High Court of Madhya Pradesh on 3.9.1998 by allowing relief in part to the several writ-petitioners. The High Court has directed interest to be paid at the rate of 12% per annum instead of 24% per annum if paid within a month of the date of the order failing which the liability to pay interest at the rate of 24% per annum shall stand. The reasoning which has prevailed with the High Court is that it was on account of the various interim orders passed by the High Court restraining the recovery of royalty at the enhanced rate that the Coalfields were prevented from recovering the royalty at the enhanced rate from the consumers, and, as they could not collect the amount of royalty they in their turn could not pass on the amount of royalty to the State. The interim orders of the Court cannot be construed as wiping out the liability to pay, even temporarily, for the period for which the interim order of the Court remained in operation, so as to permit a plea being raised that where there be no demand there can be no liability to, pay interest. The demand was there; the liability too was there; only its enforcement was suspended. The Interim orders of the Court can neither prejudice the right of the State to recover interest from the Coalfields nor the right of the Coalfields to recover interest from the consumers/buyers. However, placing reliance on ***Gursharan Singh and Ors.*** v. ***New Delhi Municipal Committee and Ors.*** MANU/SC/0313/1996 : [1996]1SCR1154 the High Court held that levy of interest at the rate of 24% per annum would be too harsh and the interest of justice demanded the rate of interest being reduced to 12% per annum which it did. So far as the State is concerned the High Court held that it was entitled to recovery from the Coalfields which could, in their turn, recover the amount of interest from the consumers either by filing suits or by stopping their supplies for the future unless the dues were paid. The consumers and Coalfields have come up in appeal by special leave disputing their liability to pay interest. The State of Madhya Pradesh has also come up in appeal by special leave staking its claim for recovery of interest at the rate of 24% per annum in place of 12% per annum as directed by the High Court.

8. We have heard S/Shri R.F. Nariman, P.K. Jaiswal, A.K. Chitale and S. Ganesh, Senior Advocates for the consumers, S/Shri Ajit Kumar Sinha and Anip Sachethey, Advocates for the Coalfields and Shri Satish Kumar Agnihotri, Advocate for the State of Madhya Pradesh. We have also heard Shri Mukul Rohtagi, the learned Additional Solicitor General for the Union of India.

9 . The questions arising for decision in this batch of appeals may, for facilitating discussion, be grouped into two, as under:

(i) The liability of Coalfields to pay interest to the State Government;

and

(ii) The liability of the consumers/purchasers to pay interest to the Coalfields

(a) for the period for which there was no restraint order on recovery passed by the Court, and

(b) for the period for which the restraint order passed by the Court remained in

operation.

Liability of Coalfields to pay interest to the State

10. It is not disputed that the mining rights have been leased to the Coalfields by the State Government under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. Under Section 4 of the Act no mining operation in any area shall be undertaken except under and in accordance with the terms and conditions of a mining lease granted under the Act and the rules made thereunder. Rule making power has been conferred on the Central Government by Section 13 of the Act. The relevant part of Section 13 is extracted and reproduced hereunder:-

> **13. Power of Central Government to make rules in respect of minerals. -**
>
> (1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of [reconnaissance permits, prospecting licenses and mining leases] in respect of minerals and for purposes connected (sic)
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all of any of the following matters, namely:-
>
> (a) to (f) xxx xxx xxx
>
> (g) the terms on which, and the conditions subject to which, any other [reconnaissance permit, prospecting licences or mining leases] may be granted or renewed;
>
> (h) xxx xxx xxx
>
> (i) the fixing and collection of fees for [reconnaissance permits, prospecting licences or mining leases] surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall De payable;]
>
> (j) to (qq) xxx xxx xxx
>
> (r) any other matter which is to be, or may be, prescribed under this Act.

11. In exercise of the powers conferred by the abovesaid Section 13, The Mineral Concession Rules, 1960 have been framed. Once an application for the grant of a mining lease has been sanctioned by an order for the grant of such lease, a lease dead in Form 'K' appended to the said RULES is required to be executed under Rule31, The following two clauses of the lease deed are relevant and hence are reproduced hereunder:-

> **Part V - Rents and Royalties reserved by this lease**
>
> **Clause 3.** Subject to the provisions of Clause 1 of this Part, the lessee/lessees shall during the subsistence of this lease pay to the State Government at such times and in such manner as the State

> Government may prescribe royalty in respect of any mineral/minerals removed by him/them from the leased area at the rate for the time being specified in the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957.

Part VI - Provisions relating to the rents and royalties

> **Clause 3.** Should any rent, royalty or other sums due to the State Government under the terms and conditions of these presents be not paid by the lessee/lessees within the prescribed time, [the same, [together with simple interest due thereon at the rate of [twenty four per cent] per annum] may be recovered] on a certificate of such officer as may be specified by the State Government by general or special order, in the same manner as an arrear of land revenue.

Rule 64A provides as under :

> 64A. The State Government may, without prejudice to the provisions contained in the Act or any other rule in these rules, charge simple interest at the rate of [twenty-four per cent] per annum on any rent, royalty or fee (other than the fee payable under Sub-rule (1) of Rule 54) or other sum due to that Government under the Act or these rules or under the terms and conditions of any prospecting licence or mining lease from the sixtieth day of the expiry of the date fixed by that Government for payment of such royalty, rent, fee or other sum and until payment of such royalty, rent, fee or other sum is made.

12. It is not disputed that the Coalfields have executed lease deeds in Form 'K' wherein the abovesaid two clauses, i.e., Part V Clause 3 and Part VI Clause 3 are both incorporated. There is the statutory rule providing for payment of simple interest at the rate of 24% per annum on the amount of any royalty or other sum which remains unpaid. Also, the contract in the statutory form entered into between the parties contains a recital consistent with Rule 64A obliging the coalfields to pay such interest. Thus, the liability of the Coalfields to pay interest to the State is statutory as well as contractual.

13. Shri S. Ganesh, the learned senior counsel made an ingenious submission that the liability to pay Interest on the amount of royalty to be statutory should have been provided for by the Act itself, and as the Act does not make any provision for payment of interest the Central Government could not have, in exercise of delegated power of legislation, made provision for interest on overdue royalty. He further submitted that the liability to pay interest or the right to levy interest can be brought into being only by a substantive provision of law; liability to pay interest cannot be left to be created by procedural law. Even if the constitutional validity of Rule 64A has not been put in issue, yet the consumers, upon whom the burden of paying the amount of interest would ultimately be passed on, are entitled to dispute the levy of interest on the ground that the same is not supported by the provisions of the Act. He further submitted that there being no provision in the Act for payment of interest, a mere incorporation of a term to that effect in the lease deed executed by the Coalfields in favour of the State Government, in the pro-forma appended to the Rules, creating a liability in excess of those created by the Act Itself, cannot be relied on by the state Government to support its claim for interest. Reliance was placed on the decisions of this court in ***India Carbon Ltd. and Ors.*** v. ***State of Assam*** - MANU/SC/0790/1997 : AIR1997SC3054 ,

V.V.S. Sugars v. ***Govt. of A.P. and Ors.*** - MANU/SC/0321/1999 : [1999]2SCR925 and ***Vikrant Tyres Ltd.*** v. ***First Income Tax Officer, Mysore*** - MANU/SC/0100/2001 : (2001)166CTR(SC)1 .

14. We have carefully perused all the three decisions. All these decisions relate to recovery of tax whereon interest was sought to be levied for delayed payment. The Court chose to assign a literal meaning to the provisions of the substantive law as opposed to a liberal interpretation, and held that to empower levy of interest for delayed payment of tax there must be a substantive provision in the taxing statute. All the cases relied on by Shri S. Ganesh, the learned senior counsel, are such cases wherein the levy of interest was sought to be justified by reference to some provision made in the rules, which provision was held to be beyond the rule making power as delegated by the parent statute and the statute itself did not make a provision for payment of interest. The levy of such interest was held to be ultra vires the power of the authority levying the interest. Such is not the case before us. Here it is clear from the several provisions of the Act and the rules quoted hereinabove, no mining operation is permissible except In accordance with the terms and conditions of a mining lease and the rules made under the Act. The rules clearly provide for payment of interest. The lease deed executed by the coalfields incorporates a recital for the payment of interest. It is one of the terms and conditions of obtaining a mining lease that any delay in payment of royalty, referable to a period beyond the sixtieth day of the expiry of the date fixed by the Government for payment of such royalty, shall carry a liability to pay simple interest calculated at the rate of 24% per annum on such amount of royalty. Rule 64A has been framed in exercise of the powers conferred on the Central Government by Section 13 of the Act. The terms for payment of royalty, and for payment of interest for the period of delay, are authorized by the power to make rules for regulating the grant of mining lease. That apart, Interest is included within the expression 'other charges' - the phrase as employed in Clause (i) of Sub-section (2) of Section 13 of the Act. A decision by a Division Bench of Andhra Pradesh in ***Suvarna Cements Ltd. and Anr.*** v. ***Union of India and Ors.***, MANU/AP/0917/2002 has been brought to our notice. The Division Bench has held -- "It cannot be said that the term 'charges' occurring in Section 13(2)(i) does not include 'Interest'. Undoubtedly, interest payable by a lessee for delayed payment is a financial liability on the lessee and, therefore, a debt. It may also be construed as a cost or price or compensation payable to the contracting State authority for delay in payment of dues such as cess, royalty, etc.". We find ourselves in respectful agreement with the view of the law so taken by the High Court.

15. The Central Government can, in exercise of delegated power of legislation, make provisions for payment of interest on the amount of royalty for the period of delay in payment, Rule 64A has been validly enacted. The mining lessees, that is the Coalfields, having entered into mining lease contracts with full knowledge of terms and conditions thereof and having taken advantage thereunder of operating the mines, they cannot be subsequently allowed to wriggle out of the contractual obligations incurred by them, including the one for payment of interest, by executing the mining leases. The proposition is so well-settled that it hardly needs any authority in support thereof. Yet, reference may be had to ***Har Shankar and Ors.*** v. ***Dy. Excise and Taxation Commissioner and Ors.***, MANU/SC/0321/1975 : [1975]3SCR254 and ***State of Haryana and Ors.*** v. ***Lal Chand and Ors.***, MANU/SC/0033/1984 : [1984]3SCR715 , end the several decisions cited therein.

16. In sum, we are of the opinion that the Coalfields, i.e., the mining lessees, are bound to pay interest as per the terms of mining leases incorporating the clause for payment of interest consistently with Rule 64A of the Mineral Concession Rules, 1960.

Liability of the consumers/purchasers to pay interest to the Coalfields :

(a) (for the period for which there was no restraint order on recovery passed by the Court)

17. It cannot be denied that the sale of minerals by Coalfields to the consumers/purchasers is a sale of goods. Section 61 of the Sale of Goods, 1930 provides as under :

"61. Interest by way of damages and special damages. -

(1) Nothing in this Act shall affect the right of the seller or the buyer to recover interest of special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

(2) In the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price-

(a) to the seller in a suit by him for the amount of the price - from the date of the tender of the goods or from the date oh which the price was payable;

(b) to the buyer in a suit by him for the refund of the price in a case of breach of the contract on the part of the seller -from the date on which the payment was made.

18. What Section 61 Incorporates is a rule of equity, Justice and sound logic. The buyer should not unduly benefit by holding the goods bought in one hand and yet retaining in the other hand the money equivalent to the price or goods due and payable by him to the seller. Similarly, the seller should not unjustly enrich by retaining the money received in advance as price in full or part of the goods forming subject matter of the contract, and retaining in the other hand the goods legitimately due for delivery to the buyer. It was submitted on behalf of the consumers/purchasers that Section 61 does not create any right in the seller (that is, the Coalfields) by itself; it only confers power on the Court to award interest at such rate as it thinks fit. In the present case, the Coalfields are demanding interest without having recourse to any court for recovery and that too in the absence of a contract in that regard. We are not impressed by the submission. Though, Section 61 may not in terms apply yet the principle underlying the provision can very well be relied on for the purpose of settling the rights of the parties in a just manner.

19. It was submitted that the royalty as payable is not a constituent of price agreed upon between the lessee and the consumer. A few decisions were cited in support of such submission but they are in a different context and do not have any applicability to the issue arising for resolution before us. The royalty is paid as royalty by the mining lessee to the State. However, the burden of royalty is specifically allowed to be passed on by the mining lessee to the consumer/purchaser of the mining products. The amount which is recovered by the mining lessee from the buyer is obviously a part of the price agreed upon in the sense that the amount is incurred as a cost towards recovering the minerals offered for sale. In any case, the amount of royalty is recovered by the seller and paid by the buyer along with and as part of the price of the mineral. In either case, it would attract the applicability of Section 61 of the Sale of Goods Act.

20. Interest is also payable in equity in certain circumstances, me rule in equity is that interest is payable even in the absence of any agreement or custom to that effect though subject, of course, to a contrary agreement (See : Chitty on Contracts, Addition 1999, Vol. II, Part 38-248, at page 712). Interest in equity has been held to be payable on a market rate even though the deed contains no mention of interest. Applicability of the rule to award interest in equity is attracted on the existence of a state of circumstances being established which justify the exercise of such equitable jurisdiction and such circumstances can be many.

21. We may refer to the decision of this Court in ***Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors.*** v. ***N.C. Budharaj (Deceased) by Lrs. and Ors.***, MANU/SC/0016/2001 : (2001) 2 SCC 721, wherein the controversy relating to the power of an arbitrator (under the Arbitration Act 1940) to award interest for pre-reference period has been settled at rest by the Constitution Bench. The majority speaking through Doraiswamy Raju, J., has opined that the basic proposition of law that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation by whatever name it may be called, viz., interest, compensation or damages and this proposition is unmistakable and valid; the efficacy and binding nature of such law cannot be either diminished or whittled down. It was held that in the absence of anything in the arbitration agreement, excluding the jurisdiction of the arbitrator to award interest on the amount due under the contract, and in the absence of any other prohibition, the arbitrator can award interest.

22. Under the English Law, generally speaking, a seller cannot recover interest when the buyer is in default of paying the price, nor can the buyer recover it when claiming a refund of the purchase price. Yet special damages have been held permissible to be awarded in respect of Interest paid by the plaintiff as due to the defendant's breach subject to the rule of remoteness. The English Law caused considerable debate in India as well, but the matter was set at rest by the enactment of Section 61 of the Sale of Goods Act, 1930. Recovery of interest by way of damages is permissible under Sub-section (2) of Section 61 (See Mulla on Sale of Goods Act, Sixth Edition, pp.61-62). Power to award interest by way of damages at a reasonable rate if there be no contract rate specified, or at the contract rate as specified, flows from Section 61 of the Act.

23. We are, therefore, of the opinion that in the absence of there being a prohibition either in law or in the contract entered into between the two parties, there is no reason why the Coalfields should not be compensated by payment of interest for the period for which the consumers/purchasers did not pay the amount of enhanced royalty which is a constituent part of the price of the mineral for the period for which it remained unpaid. The justification for award of interest stands fortified by the weighty factor that the Coalfields themselves are obliged to pay interest to the State on such amount. It will be a travesty of justice to hold that though the Coalfields must pay the amount of interest to the State but the consumers/purchasers in whose hands the money was actually withheld be exonerated from liability to pay the interest.

Liability of the consumers/purchasers to pay interest to the Coalfields :

(b) (for the period for which the restraint order passed by the Court remained in operation)

24. On the principle which we have upheld just hereinabove, it would not have been necessary to enter into this aspect of the issue; however, it becomes necessary to deal therewith inasmuch as it was submitted on behalf of the consumers/purchasers that

their non-payment of enhanced amount of royalty was protected by judicial orders, though of interim nature, passed by the courts, and therefore they should not be held liable for payment of interest so long as the money was withhold under the protective umbrella of the court order. Merely because the writ petitions were finally held liable to be dismissed, it cannot be urged that the interim orders passed by the Courts were erroneous. Soon on dismissal of their writ petitions, the payment of the enhanced amount of royalty which was disputed earlier was promptly cleared by the writ petitioners and, therefore, their act was bona fide. We find no merit in this submission either.

25. In our opinion, the principle of restitution takes care of this submission. The word 'restitution' in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution or decree or order or the court or in direct consequence of a decree or order (See : ***Zafar Khan and Ors.*** v. ***Board of Revenue, U.P., and Ors.***, MANU/SC/0251/1984 : [1985]1SCR287 . In law, the term 'restitution' is used in three senses; (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another.

(See Black's Law Dictionary, Seventh Edition, p.1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that 'restitution' is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done. "Often, the result in either meaning of the term would be the same. ..... Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortuous misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."
The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 of the C.P.C. speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the Court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of final decision going against the party successful at the interim stage. Unless otherwise ordered by the Court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the Court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing, wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.

26. Section 144 of the C.P.C. is not the fountain source of restitution; it is rather a

statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the Court has inherent jurisdiction to order restitution so as to do complete justice between the parties. In ***Jai Berham*** v. ***Kedar Nath Marwari*** MANU/PR/0085/1922 : (1923)25BOMLR643 , their Lordships of the Privy council said: "It is the duty of the Court under Section 144 of the Civil Procedure Code to place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed. Nor indeed does this duty or jurisdiction arise merely under the said section. It is inherent in the general jurisdiction of the Court to act rightly and fairly according to the circumstances towards all parties involved. Cairns, L.C., said in ***Rodger*** v. ***Comptoir d'Escompte de Paris***, (1871) L.R. 3: "One of the first and highest duties of all Courts is to take cars that the act of the Court does no injury to any of the suitors and when the expression, the act of the Court is used, it does not mean merely the act of the primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole from the lowest court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case". This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it, ***A.A. Nadar*** v. ***S.P. Rathinasami***, MANU/TN/0311/1970 : (1971)1MLJ220 . In the exercise of such inherent power the Courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

27. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the 'act of the court' embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the Court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise corned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the set of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced, we are, therefore, or the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court

withholding the release of money had remained in operation.

28. Once the doctrine of restitution is attracted, the interest is often a normal relief given in restitution. Such interest is not controlled by the provisions of the Interest Act of 1839 or 1978.

29. So far as the appeal filed by the State of Madhya Pradesh seeking substitution of rate of interest by 24% per annum in place of 12% per annum as awarded by the High Court is concerned, we are not inclined to grant that relief in exercise of our discretionary jurisdiction under Article 136 of the Constitution especially in view of the opinion formed by the High Court in the impugned decision. The litigation has lasted for a long period of time. Multiple commercial transactions have taken place and much time has been lost in between. The commercial rates of interest (including bank rates) have undergone substantial variations and for quite sometime the bank rate of interest has been below 12%. The High Court has, therefore, rightly (and reasonably) opined that upholding entitlement to payment of interest at the rate of 24% per annum would be excessive and it would meet the ends of justice if the rate of interest is reduced from 24% per annum to 12% per annum on the facts and in the circumstances of the case. We are not inclined to interfere with that view of the High Court but make it clear that this concession is confined to the facts of this case and to the parties herein and shall not be construed as a precedent for overriding Rule 64A of the Mineral Concession Rules, 1960. It is also clarified that the payment of dues should be cleared within six weeks from today (if not already cleared) to get the benefit of reduced rate of interest of 12%; failing the payment in six weeks from today the liability to pay interest @24% *per annum* shall stand.

30. For the forgoing reasons, all the appeals are held liable to be dismissed and they are dismissed accordingly. Needless to say the interest shall be calculated for the period commencing from the sixtieth day of the expiry of the date fixed by the State Government for payment of such royalty consistently with Rule 64A till the date of actual payment. The demands shall be worked out accordingly. No order as to the costs.