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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on: 11/07/2019

Judgment Delivered on : 05/09/2019

Writ Petition (C) No. 1405 of 2018

Steel Authority of India Ltd., A Government Company registered under Companies Act 1956, Through Its Chief Executive Officer, Bhilai Steel Plant, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Versus

1.State of Chhattisgarh, through its Secretary, Department of Geology & Mining, Indravati Bhawan, Block- IV, Naya Raipur Chhattisgarh.

2.State of Chhattisgarh, through its Secretary, Department of Forests, Naya Raipur, Chhattisgarh.

3. Additional Principal Chief Conservator of Forests (L.M.), Office of The Principal Chief Conservator of Forests, Aranya Bhawan, Sector-19, North Block, Capital Complex, Naya Raipur - 492002

4. Divisional Forest Officer, Forest Division-East Bhanupratappur, Bhanupratappur, District North Baster, Kanker Chhattisgarh.

5. Union of India, through Secretary to the Government of India, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi-110003.

6. Director (Forest Conservation Division) Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jorbagh Road, New Delhi - 110003

---- Respondents

For Petitioner	:	Shri M.S. Ganesh, Senior Advocate with Shri K.Sheshacharya and Shri Ankit Singhal, Advocates
For Respondent/State	:	Shri Siddharth Dubey, Deputy Government Advocate
For Respondent-UoI	:	Shri B. Gopa Kumar, Assistant Solicitor General

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Goutam Bhaduri, Judge

C.A.V. Order

Per P.R. Ramachandra Menon, Chief Justice

1. Whether the Petitioner-Steel Authority of India Limited (for short 'the SAIL'), a Central Government undertaking, is justified in evading the payment of 'Net Present Value' (*for short 'the NPV'*) in respect of the entire forest area covered by their lease (procured for mining purposes from the State of Chhattisgarh) which, in fact is sought to be imposed based on the orders of the Apex Court (particularly, as per the decision ***T.N. Godavarman Thirumulpad v. Union of India & Others*** [(2006) 1 SCC 1]; to preserve and protect the forest and ecology facilitating regeneration, contending that it amounts to 'tax' and that there is no law to sustain the collection, is the point for consideration in this writ petition.

2. The Petitioner-Company (earlier known as Hindustan Steels Limited), has set up a Steel Plant known as 'Bhilai Steel Plant' in the State of Chhattisgarh and had entered into a mining lease with the State (then part of Madhya Pradesh)over an area of 938.059 hectares situated in the villages of Kalwar and Nagur for a period of 30 years, as per the lease deed dated 01.04.1975. The iron ore from these mines is for the captive use of its Bhilai Steel Plant and hence, Forest Clearance (*for short 'the FC'*) was sought for and it was granted by the 1st Respondent-State for a period of 10 years in respect of an extent of 70 hectares, facilitating diversion of the said forest

area (out of the total lease covered area) in April 1993. By April, 2002, since the initial period of 30 years of lease was to come to an end, renewal was sought for by the Petitioner for FC of 70 hectares. After completing the procedural formalities, the Ministry of Environment, Forest and Climate Change, (MoEF) granted Stage II FC for diversion of the forest land to an extent of only 17 hectares (out of the total leased area) on 07.01.2008.

3. In the meanwhile, the question about the conservation, preservation and protection of forest and ecology when the forest land is used for non-forest purposes and the measures which are required to be taken to compensate for the loss of forest land and to make up for the effect on the ecology, came to be considered by the Apex Court in ***T.N.Godavarman*** (supra). The point considered was, whether before diversion of the forest land for non-forest purpose and the consequential loss of benefits accruing from the forest, should not the beneficiary/user of such land be required to make up for the diversion and if so, should not the beneficiary/user of such land be required to make payment of 'NPV' of such diverted land, so as to utilise the amounts so received for getting back the benefits which are lost by such diversion in the long run. The Apex Court also considered as to what should be the guidelines for determination of the NPV and should they apply uniformly to all and how to calculate the same, besides the question whether some projects should be exempted from the payment of NPV. After detailed deliberation, the Apex Court answered the question of liability to be cast upon the beneficiaries/users of such diverted land in the

'positive', summing up the conclusion in paragraph 90 of the said judgment; followed by appropriate directions issued as contained in paragraph 99.

4. In January 2015, the Mines and Minerals (Development and Regulations) Act, 1957 (*for short 'the MMDR Act'*) was amended by Amendment Act, 2015 (Act 10 of 2015), by virtue of which the tenure of all mining leases which stood granted before the date of commencement of the Amendment Act, 2015 were declared to be having a life of 50 years. In the said circumstance, though the lease granted to the Petitioner was only for a period of 30 years from 1975, by virtue of the statutory provisions, the lease in favour of the Petitioner for Kalwar and Nagur mines got extended for 50 years *i.e.,* upto the year 2025.

5. While so, the MoEF issued Annexure P/4 proceedings dated 01.04.2015 prescribing certain guidelines for diversion of forest land for non-forest purpose under the Forest (Conservation) Act, 1980 (for short 'the FC Act'). Shortly thereafter, the Central Government gave shape to the Compensatory Afforestation Fund Act, 2016 to procure necessary funds for building up the forest by way of aided regeneration and such other means, based on the finding rendered by the Apex Court that it required substantial investment. The said Act received the assent of the President on 03.08.2016. In the meanwhile, the Petitioner was served with a copy of the letter dated 30.09.2016 (Annexure P/8) issued by the MoEF and addressed to the Principal Chief Conservator of Forest, Chhattisgarh as well as the Principal Secretary, Department of Mining and Geology, Chhattisgarh, pointing out that

by virtue of Annexure P/4 guidelines dated 01.04.2015, the Petitioner was to deposit NPV for the entire leased area of 938.059 hectares; failing which the Petitioner/user agency had to surrender the balance forest area and that the mining lease was to be revised and signed only for the area which stood diverted under the FC Act. This made the Petitioner to write to the MoEF as per Annexure P/9 dated 06.10.2016 that the Petitioner had already deposited NPV for 17 hectares of forest land already diverted and that the question of payment of NPV for the 'entire land' was pending with the Ministry. However, the MoEF, as per Annexure P/4 dated 30.11.2016 reiterated the contents of Annexure P/4 guidelines dated 01.04.2015. The Petitioner, in the said circumstance, sent Annexure P/11 letter dated 28.12.2016 to the MoEF requesting to consider and grant the Environmental Clearance (for short 'the EC') expeditiously, without linking it with payment of NPV for the entire forest land covered under the leased area, particularly since the requirement of iron ore in its Bhilai Steel Plant was extremely imminent and essential. This was followed by a reminder dated 07.02.2017 as well. On 03.05.2017, the Divisional Forest Officer, Bhanupratappur, required the Petitioner, as per Annexure P/1, to deposit a sum of Rs. 96,27,55,537/- with the Compensatory Afforestation Fund Management and Planning Authority (for short 'the CAMPA'), over and above the sum of Rs. 1.56 Crores (approximate) already deposited by the Petitioner towards the NPV for 17 hectares of the forest land diverted for non-forest use i.e. for mining purpose. The Petitioner also wrote a letter to the Additional Principal Chief Conservator of Forest, Chhattisgarh, as per Annexure P/16 dated 24.06.2017 pointing out that the demand for payment of NPV for the 'entire forest area' was contrary to law.

6. A meeting was held by the Joint Secretary to the MoEF with regard to the status of the FC in respect of the Petitioner's lease area on 18.12.2017 which was attended by the Additional Chief Secretary, Chhattisgarh, Inspector General (FC), MoEF, and the General Manager of the Petitioner-SAIL and others. On forwarding the draft minutes of the meeting, the Petitioner sent its comments/objections on 02.01.2018, pointing out that the issue of FC/EC should not be linked with payment of NPV, which request however was turned down by the MoEF and an Office Memorandum was issued on 22.01.2018 finalising the minutes of the meeting held on 18.12.2017. It was accordingly that the 3rd Respondent directed the Petitioner, as per the proceedings dated 13.02.2018 (Annexure P/2), to make the payment of Rs.96.06 Crores (approximate) towards the NPV for the entire forest area of 938.059 hectares. On the basis of the request made by the Petitioner, the Secretary to the Ministry of Steel intervened and wrote to the MoEF on 15.02.2018 to expedite the steps for granting EC in respect of the area concerned, to the Petitioner. This was followed by a reminder dated 20.03.2018 (Annexure P/20) requesting the MoEF not to link the issuance of EC with the payment of NPV for the entire forest land covered by the lease and that Annexure P/4 guidelines dated 01.04.2015 might be suitably amended to make it in conformity with Section 2(iii) of the FC Act.

7. On 05.04.2018, the 1st Respondent required the Principal Chief Conservator of Forest, Chhattisgarh to set a deadline of 30.04.2018 for payment of NPV by the Petitioner, based on which the 3rd Respondent issued Annexure P/3 proceedings dated 11.04.2018 to the Petitioner asking them to deposit a sum of Rs. 96.06 Crores (approximately) on or before 30.04.2018 in the CAMPA account. This made the Petitioner to challenge the proceedings and in particular, Annexure P/4, seeking to declare it *ultra vires* to the Constitution of India, besides such other reliefs. The prayers raised in the writ petition are in the following terms:

> "10.1 That this Hon'ble court may pleased to hold, declare and strike down the following executive orders/instructions/ guidelines (by whatever name called) issued by the respective Respondents as being:
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> (a) Without legislative and/or executive competence, and
>
> (b) Ultra vires Arts. 14, 73(a), 162 and 265 of the Constitution of India, and
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> (c) Ultra vires S. 2(iii) of the Forest (Conservation) Act, 1980;
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> 1. Letter No. Ma.Chi./3028 dated 03.05.2017 issued by Respondent No. 2 to the Petitioner (Annexure P/-1);
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> 2. Letter No. Khanij/21/473 dated 13.02.2018 from Respondent No. 1 to the Petitioner (Annexure P-2);
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> 3. Letter No. Bhu/Prabandh/Khanij/21/1155 dated 11.04.2018 issued by the Respondent No. 1 (Annexure P/3)
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> 4. Guidelines bearing letter No. F.No.11-599/2014-FC dated 1st April 2015 issued by Respondent Nos. 3 and 4 (Annexure P-4);
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> 10.2 That this Hon'ble Court may be pleased to issue a writ of Certiorari or an appropriate writ, order or direction in the

nature of certiorari quashing the communications mentioned in prayer (i) above;

10.3 That this Hon'ble Court may be pleased to issue a writ of Mandamus or an appropriate writ, order or direction in the nature of Mandamus directing the Respondents 1 to 6 not to exact the impugned demands for payment of Net Present Value (NPV) and forbidding them from taking any coercive steps in any manner for recovery of the said impugned demands;

10.4 That this Hon'ble Court may be pleased to issue a writ of Mandamus or an appropriate writ, order or direction in the nature of Mandamus directing the Respondents 1 to 6 to restitute and refund to the Petitioner the amount earlier paid towards Net Present Value in respect of the lease area together with interest at 12% p.a. from the date of payment.

10.5 That respondents be restrained from levy of the Net Present Value from the petitioner till any legislation is enacted for levy of it.

10.6 That Hon'ble Court may award costs of this petition.

10.7 That Hon'ble Court may pass any such other relief or reliefs as deems fit and proper in the facts and circumstances of the case."

8. It was pointed out by the Petitioner before this Court that there was a threat from the part of the State of terminating the lease for non-payment of NPV for the entire forest area. When the matter came up for consideration before this Court on 11.09.2018, the stand taken by the Petitioner, a Central Government undertaking, fighting against the Central Government and challenging its proceedings, was deprecated by this Court and the desirability of attempting to resolve the issue by convening a meeting of all concerned by the MoEF was expressed; simultaneously; interdicting the coercive proceedings for the time being. Relevant portion of the said order reads as follows:

"Before proceeding with the matter any further, one thing which doesn't go unnoticed by this Court is that the present litigation which has been initiated by SAIL is also a limb of the Union of India, because it is a Company wholly owned by Government of India and this Court does not appreciate that a creature of Government of India has to litigate against Government of India or the State of Chhattisgarh on an issue which ought to have been initially entertained and an answer should have been found by appropriate authority.

The Court is informed that the issue being agitated by SAIL before us was also taken up by the Ministry of Steel and appropriate correspondences and inputs were provided by them to the Ministry of Environment. However, nothing came out of it and in the mean time because of the pressure built by the State Government, making extraordinary demands under the head of the NPV, which is being questioned in the present writ application became the subject-matter of dispute.

In the above, context and keeping in mind that decades ago the Hon'ble Supreme Court had occasion to opine that the different limbs of the Government cannot be seen to be in conflict to each and there is need for resolution of such disputes at the level of the Seniors Officers of the various Ministries.

This Court would therefore direct the Secretary, Ministry of Environment Forest & Climate Change, Government of India, to convene a meeting of all the stake holders who will be free to nominate a nominee at their level to present their arguments and submissions on the issue so that a opinion emerges at the level of the Ministry of Environment keeping in mind that it is one of their letters dated 1st of April, 2015, copy of which is Annexure P/4, which instigated the State of Chhattisgarh to issue the impugned notices or demands.

The writ application will remain pending awaiting the response of the Secretary, Ministry of Environment of Forest & Climate, Government of India. In the meant time, no demands which have been raised against the Steel Authority of India Limited would be enforced against them till further order.

List this case after 8 weeks."

9. An additional affidavit dated 08.03.2019 has been filed by the Petitioner referring to the subsequent developments, pursuant to the order dated 11.09.2018 passed by this Court. The said affidavit refers to a meeting held on 27.11.2018 under the Chairmanship of the Secretary to the MoEF which was attended also by the Petitioner. This was followed by a second meeting dated 22.01.2019 under the Chairmanship of the Secretary to the MoEF. According to the Petitioner, the grievance of the Petitioner was not properly adverted to, and the provision for satisfying the NPV with reference to the 'entire forest land' covered the mining lease, was never let to be modified; despite the fact that the Petitioner-SAIL and its flagship unit, Bhilai Steel Plant in Chhattisgarh have made significant contribution in the national infrastructure development, by supplying the cleanest rail steel of different grades, including long rails for Indian Railways and also meeting export orders, supplying special grade customized steels required for making boilers, heavy earth moving equipments, mega bridges, high tension transmission towers, ocean going vessels, besides the entire steel supplied for fabricating the hull of the country's first indigenously built Aircraft Carrier 'INS Vikrant' and a range of warships.

10. It is the case of the Petitioner that the Petitioner is a major contributor of tax to the State and the Central Government, to the tune of Rs.1900 Crores per annum and that, it is at an advanced stage of completion of its modernisation and expansion programme. It is pointed out that the existing iron ore mines of Bhilai Steel Plant under iron ore complex,

Dallirajhara in Chhattisgarh have been exploited since 1960 and are presently under an advanced stage of depletion; by virtue of which it is necessary to expedite winning of ore from Kalwar and Nagur mines. The Writ Petitioner contends that the Bhilai Steel Plant has already made an investment of about Rs.19000 (Nineteen Thousand) Crores for its modernisation and expansion, in anticipation of the development of its Kalwar and Nagur mines project, for which it has submitted all required plans and documents to the MoEF. It is contended that there is nothing in the FC Act or any other legislation, that makes the deposit of NPV for the 'entire forest land' in the leased area, to be a condition precedent for granting EC.

11. An affidavit dated 19.03.2019 has been filed on behalf of the Union of India/Respondents No. 5 and 6, wherein details as to the convening of the meeting by the MoEF pursuant to the order passed by this Court on 11.09.2018 have been given. Particulars of the meeting held on 27.11.2018 are given in paragraph 7, while that of the second meeting held on 22.01.2019 are given in paragraph 8; which are reproduced below for easy reference:

> "7. That in compliance of the order of the Hon'ble Court, a meeting was held on 27.11.2018 under the Chairmanship of Secretary, MoEF&CC in Indira Paryavaran Bhawan, MoEF&CC and following decision was taken in the meeting:
>
> i. SAIL may analyze its resources and plans, and take a decision whether to keep the entire forest areas under lease by complying the order / demand of the state Government, or to surrender the forest area under lease for which it does not want to pay NVP or is not in a position to use.

ii. It is not in good taste that a Government entity, rather than making efforts to resolve a matter at Government level, has been challenging the actions of Government in court of law.

iii. National resource should not be kept unused indefinitely by any authority / organizations, whether owned by Government or not.

iv. Payment of NPV for an entire area for which lease is granted is legal requirement.

v. The ministry will find out such authorities/ organizations, which have been granted mining lease over forest areas, but have not applied for FC withing 10 years of lease execution, and will take up the matter for further action.

vi. SAIL should submit the detailed plan of action in 10 days.

A Copy of the minutes of meeting dated 30.11.2018 is annexed as Annexure I.

8. That thereafter a second meeting was held on 22.01.2019 under the Chairmanship of Secretary, MoEF&CC wherein the final decision was taken. The decision of the meeting is as follows:

1) SAIL need to pay NPV for the whole lease areas, or surrender the remaining area for which necessary statutory approval under different provisions of FCA, 1980 has not been obtained.

2) However, State government in consultation which SAIL may take decision on the request of SAIL related to diversion of forest areas within the lease under section 2 (ii) of FCA 1980. Once this is settled at the State level, MoEF&CC will take further decision as per the procedure laid in the provisions of FCA 1980.

3) The status of lease and option for possible extension beyond 2025 may also be decided at State level and the same may be conveyed to MoEF&CC for further decision.

A Copy of the minutes of the meeting dated 22.01.2019 is annexed as Annexure II."

12. The Respondents No. 5 and 6 assert in paragraph 9 of the affidavit that the Petitioner has to pay NPV for the 'entire leased area' or it should

surrender the land for which it does not want to pay the NPV. The State and the authorities under the State (Respondents No. 1 to 4) have filed their return dated 05.04.2019 referring to the sequence of events, the particulars of the lease, the relevant provisions of law and such other aspects. It is stated in para 1-E that the Petitioner had initially agreed to pay the NPV of Rs. 96.06 Crores (approximate) and sought for some time to pay the aforesaid amount, vide their letter dated 23.02.2018, which was considered and extension of time was granted till 30.04.2018 by the State as per the letter dated 05.04.2018, copies of which have been produced as Annexure R-1 (collectively). The concept of NPV has been highlighted, which is to compensate for the loss of tangible as well as intangible benefits flowing from the forest lands which have been diverted for non-forest use and that it is not levied because of any property rights of the State, besides adding that the money received towards the NPV is used for natural/assisted regeneration, forest management, protection, infrastructural development, wildlife protection, management and other allied activities. It is also pointed out that the payment of NPV is based on the ruling rendered by the Apex Court in ***T.N.Godavarman*** (supra) which highlighted the 'Public Trust Doctrine' and that a Division Bench of this Court has also upheld/affirmed the order of a Single Bench directing payment of money for compensatory afforestation and NPV in the light of the ruling rendered by the Apex Court cited supra, as borne by Annexure R/3. The said Respondents point out that, as borne by the minutes of the second meeting held on 22.01.2019, pursuant to the order of passed by this Court, the Petitioner-Company stated that <u>it required only</u>

17 hectares of forest land for mining. It is contended that the Petitioner is attempting to get the EC for the entire 938.059 hectares of forest land without getting FC and further that, as made clear by the Apex Court in Annexure R/7 order dated 03.02.2017, unless approval under the FC Act is obtained, a mining lease containing forest area cannot be renewed. It is stated by the learned counsel that since the FC was obtained only in respect of '17 hectares' of land, automatic renewal of the mining lease pursuant to the amendment of the statute in the year 2015 would stand confined only to such extent and never beyond.

13. The Petitioner has filed separate rejoinder in respect of the return filed by the Respondents No. 1 to 4 and also to that of the Respondents No. 5 and 6, virtually reiterating the contentions taken in the writ petition.

14. We have heard Shri M.S.Ganesh, learned Senior Advocate appearing for the Petitioner-Company, elaborately on the subject on different dates. The sum and substance of the main points raised by the learned Senior Counsel can be summarised as below:

(a) that, there is no legal sanction for levying NPV and it violates Article 14, 265 and 2(iii) of the FC Act;

(b) that, the amount sought to be realised, though labelled as 'NPV', it virtually amounts to compensatory taxation, which is not possible in view of the ruling rendered by the Apex Court in ***Jindal Stainless Ltd. v. State of Haryana*** [(2017) 12 SCC 1];

(c) that, there is absolutely no rhyme or reason for demanding NPV for the entire area of 938.059 hectares covered by the mining lease, as the Petitioner has taken possession of only '17 hectares' as on date;

(d) that, levying of NPV cannot be sustained with reference to any provisions in the FC Act, MMDR Act or the Environment (Protection) Act, 1986 (for short 'the EP Act') and that the above enactments do not have any charging provisions;

(e) that NPV, which virtually amounts to a 'tax' can never be collected without any authority of law, by virtue of the settled position in this regard, as supported by authoritative judicial precedents;

(f) that, Annexure P/4 dated 01.04.2015, is only an executive order and it is not a 'law', which cannot override the statutory prescription and it cannot be a law for imposing a tax in the form of NPV.

(g) that, the area covered by the mining lease stands virtually reserved to be used in the public sector and it was accordingly, that the Bhilai Steel Plant was set up, which serves the nation in different ways.

(h) that, the decision to grant the mining lease itself was consented by all the Ministries concerned and that the development of mines is in the best interest of the nation and to meet the public interest which cannot be curtailed or hindered in any manner by imposing oppressive/prohibitive restriction like NPV, making it payable for the 'entire forest area' under the lease agreement, without any regard to the actual area of the diverted forest land;

(i) that, out of the total extent of 938.059 hectares of forest land, only an extent of '17 hectares' stands physically handed over to the Petitioner; for which the Petitioner has already satisfied the NPV. As such, the instruction to surrender the balance land is out of question, as there cannot be any surrender of land which is not actually given, more so when Annexure P/4 dated 01.04.2015 does not speak about surrendering of any part of the lease area;

(j) that, the realisation of the NPV by the State Government virtually amounts to unjust enrichment and that the NPV already remitted in respect of 17 hectares of forest land is liable to be refunded with interest;

(k) that, absolutely nothing has been pleaded in the returns filed by any of the Respondents as to the utilisation of the compensatory afforestation funds and hence, further collection of amount in the form of NPV is not correct or sustainable and is liable to be interdicted.

15. During the course of hearing, the learned Senior Counsel for the Petitioner made a hair-split analysis on the legal aspects with reference to the legislative competence, substantive law, whether the public trust doctrine and allied principles are 'law', the difference between the substantive law (primary legislation) and the rules of law *etc*. The above submissions were sought to be supported by placing reliance of various judicial precedents like ***District Mining Officer v. Tata Iron and Steel Co.*** [(2001) 7 SCC 358 (paragraphs 18 and 19)]; ***Gulf Goans Hotels Company Ltd. v. Union of India*** [(2014) 10 SCC 673 (paragraphs 19 to 21 and 25 to 27)]; ***Executive Engineer, Dhenkanal v. NC Budharaj*** [(2001) 2 SCC 721 (paragraph 23)]; ***Bharat Aluminium Co. (BALCO) v. Kaiser Aluminium Technical Services Inc***. [(2012) 9 SCC 552]; ***Hanuman Laxman Aroskar v. Union of India*** [2019 (5) SCALE 484 (paragraphs 124 to 140)]; ***Natural Resources Allocation, In re*** [(2012) 10 SCC 1 (paragraphs 88 to 93)]; ***M.C.Mehta v. Kamal Nath*** [(1997) 1 SCC 388], and ***M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu*** [(1999) 6 SCC 464].

16. In support of contention that levy of NPV by an executive order is *ultra vires* to Article 14 and 265 of the Constitution of India, the learned counsel sought support from the ruling of the Apex Court in ***CIT v. Mc Dowell & Co. Ltd.*** [(2009) 10 SCC 755 (paragraph 21 and 22)]; which was stated as affirmed in ***Jindal Stainless Ltd.*** (supra) (paragraph 20). It was

pointed out that a compulsory exaction by way of impost should satisfy four conditions: firstly, that it should reveal taxable event, secondly, that it should indicate a taxable person, thirdly, that it should specify the rate of tax and fourthly, the measure or value to which the levy will be applied for computing the tax liability. The learned counsel cited ***CIT v. Vatika Township (P) Ltd.*** (2015) 1 SCC 1; and ***Federation of Indian Mineral Industries v. Union of India*** (2017) 16 SCC 186; besides referring to the verdict passed by the Apex Court in ***Mineral Area Development Authority & Others v. M/s. Steel Authority of India & Others*** (2011) 4 SCC 450; (whereby a reference has been made to a Bench of 9 Judges on 11 questions of law, one of which is with regard to the true nature of royalty/dead rent payable on minerals produced/mined/extracted from the mines and whether royalty under Section 9/15(3) of the MMDR Act is in the nature of tax). The learned Senior Counsel {also citing ***Thressiamma Jacob v. Geologist, Department of Mining and*** Geology (2013) 9 SCC 725 (paragraph 6); and ***Dalmia Cement (Bharat) Ltd. v. State of Tamil Nadu*** (2014) 2 SCC 279 (paragraphs 31.3, 32, 34 and 35); submits that the impugned demand of NPV on forest land in a mining lease that is yet to be diverted for non-forest use, is not sustainable and is liable to be interdicted lacking any legislative/executive competence and being *ultra vires* to Article 14, 73(a), 162 and 265 of the Constitution of India. According to the learned counsel, the observation/declaration made by the Apex Court in ***T.N.Godavarman*** (supra) (paragraph 62) must be treated as '*per incuriam'* or else *'obiter dicta'*, for the reason that the Constitution no where contemplates the revenue received by the Government of a State to be an essential element of fee that it should be credited to a separate fund and not to a consolidated fund. This is more so, according to the learned counsel, in the light of the language used in Article 266 of the Constitution, by virtue of which it is not possible for the State Government to keep the fee realised in a separate fund other than the consolidated fund of the State. Reliance is sought to be placed on ***Sreenivasa General Traders v. State of Andhra Pradesh*** [(1983) 4 SCC 353 (paragraphs 31 and 32)]; which is stated as affirmed in ***State of Himachal Pradesh v. Shivalik Agro Poly Products*** [(2004) 8 SCC 556 (paragraphs 9 and 10)]; adding that neither of these two decisions was adverted to by the Apex Court while making the remarks/ declaration in ***T.N.Godavarman*** (supra) (paragraph 62).

17. The learned Senior Counsel proceeded further as to the 'proper reading and understanding' of the Supreme Court judgments and their binding character, also placing reliance on ***Gajraj Singh v. State of UP*** (2001) 5 SCC 762; as followed in ***Hamdard (Wakf) Labs v. Dy. Labour Commissioner*** (2007) 5 SCC 281; besides citing ***Union of India v. K.S. Subramanian*** (1976) 3 SCC 677; and ***A.R.Antulay v. R.S.Nayak*** (1988) 2 SCC 602; and adding that the judgment under consideration {***Godavarman's*** case (*supra*)} cannot be and should not be construed in a manner inconsistent with the provisions of the relevant legislations or as an order contrary to the provisions of the Act, as stated in ***Ravindra Singh v. Phool Singh*** [(1995) 1 SCC 251 (paragraph 7)]. It is contended that the High Court is not absolved of the obligation and responsibility to find out the ratio of the

Supreme Court verdict and ascertain the law, if any, so declared from a careful reading of the decision concerned and only thereafter can proceed to apply it appropriately to the case under consideration. ***Delhi Administration v. Manoharlal*** [(2002) 7 SCC 222 (paragraph 5)]; is cited in this regard, besides making a reference to ***P. Ramachandra Rao v. State of Karnataka*** [(2002) 4 SCC 578 (paragraphs 22 to 27)]; ***Divisional Manager, Aravali Golf Club v. Chander Hass*** [(2008) 1 SCC 683 (paragraphs 20 to 27)]; and ***Common Cause v. Union of India*** [(2008) 5 SCC 511 (paragraphs 19 to 21)]; pointing out that 'it' would not have been actually intended by the Bench in ***T.N. Godavarman*** *(supra).* It is contended that the impugned guidelines or demand notice are without legislative and executive competence and imposition and levy of NPV can be done only by a taxing statute.

18. It is the further the case of the Petitioner that the Respondents are in fact questioning their own guidelines and demand notices impugned in the writ petition and that the Respondents to the writ petition cannot be allowed to attack its own order as a Respondent. Support is sought for from the law declared in ***State of Assam v. Raghava Rajagopalachari*** [1972 SLR 44 (paragraph 13)]; which was stated as followed in ***Indian Leaf Tobacco Dev. Co. Ltd. v. Union of India*** [(1984) 16 ELT 234 MAD (paragraph 17)]. Referring to the submission made on behalf of the State Government by its counsel on 19.06.2019 that (i) *the imposition and levy of NPV requires enactment of a legislation as indicated by the Supreme Court in Godavarman case (para 64)* and *(ii) NPV can be charged for forest land in a mining lease*

only when it is diverted for non-forest (mining) use, the learned Senior Counsel tried to explain the legal implications of the concessions, simultaneously adding that apart from the concession, authoritative declaration of the correct position of law is necessary. It is in this context, that reference has been made to the rulings of the Supreme Court in ***Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd*** [(1983) 1 SCC 147]; and ***New Delhi Municipal Committee v. State of Punjab*** [(1997) 7 SCC 339].

19. In relation to the contention that levy of NPV is an instance of unjust enrichment by the State, the learned Senior Counsel for the Petitioner submits that in taxing statutes, it is well settled that the tax payer is entitled to get refund, when a levy is void, in absence of any statutory provision. It is contended, a person cannot claim or retain undue benefit, as held by the Apex Court in ***Mafatlal Industries Ltd. v. Union of India*** [(1997) 5 SCC 536]; and ***Sahkari Khand Udyog Mandal Ltd. v. Commissioner of Central Excise & Customs*** [(2005) 3 SCC 738]. Some foreign judgments are also cited in this regard. The sum and substance of the contention is that ***T.N. Godavarman*** (supra) shall not be treated as the basis for imposition of NPV and it cannot be a binding precedent, to have any force as the law of the land envisaged under Article 141 of the Constitution of India.

20. Shri Siddharth Dubey, learned Deputy Government Advocate representing the State/Respondents No. 1 to 4 submits that, though the lease deed was executed in respect of a total extent of 938.059 hectares in the year 1975 for a period of 30 years, it was renewed in the year 2003 only for

10 years. Even though, by virtue of the Amendment Act, 2015, there was an automatic/statutory renewal of the mining lease for a total period of 50 years i.e. till 2025, the Petitioner had obtained the FC from the Central Government only for 17 hectares and as such, by virtue of the law declared by the Supreme Court, the mining lease will be valid only subject to FC and hence the automatic renewal will stand confined only to the above 17 hectares and never beyond. FC being mandatory for renewal of the mining lease and since FC has been given by the Ministry only for 17 hectares, the extension/renewal of the lease to 50 years from the date of execution in the year 1975 will now stand confined <u>only for 17 hectares</u>. As it stands so, it is open for the State to proceed with further steps to alter/modify the mining lease, which covers a total extent of 938.059 hectares, so as to take back the rest of the forest land. This is more so, when it is not stated as needed or required by the Petitioner by satisfying the NPV for the entire extent. The stand of the Petitioner is paradoxical, when they contend on one hand that they are having possession of only 17 hectares of the forest land and hence cannot pay NPV for the entire land covered by the mining lease; while on the other hand, that the entire land is necessary for expansion of the project.

21. The learned counsel for the State submits that there is no dispute to the proposition that there cannot be any tax without authority of law and that there is no legislation, as on date, stipulating for payment of NPV. But the verdict passed by the Apex Court in ***T.N.Godavarman*** (supra) explains the context and concept of NPV and the burden on the part of the

beneficiaries/users of the forest land to satisfy the same, irrespective of the nature of the entity, whether it be in the Government sector or not. The only exemption granted by the Apex Court is in respect of the projects which are rather of public utility in nature and are in the non-revenue generating segment. According to the learned Government Counsel, the law declared by the Supreme Court in ***T.N.Godavarman*** (supra) was considered in various subsequent/incidental proceedings/cases at different points of time. The declaration made by the Apex Court as to the onus to satisfy the NPV by the beneficiaries/users of the forest land is the 'law of the land' and it is on the basis of the said declaration/law, that Annexure P/4 has been issued by the competent authorities of the Central Government/MoEF, followed by the demand notice issued by the State. The learned counsel also made submissions as to the necessity for realising the NPV for the entire area covered by the mining lease, with reference to Annexure P/4 and such other materials on record. The source of power is as discussed and declared by the Apex Court in paragraphs 51 to 64 in ***T.N.Godavarman*** (supra) and reference is also made to subsequent ***Godavarman*** case (2014) 6 SCC 150 (paragraphs 16, 19 and 20). The learned Government Counsel made reference to a recent order passed by the Apex Court on 22.04.2019 as well ***In Re: T.N. Godavarman v. Union of India,*** asserting that satisfaction of NPV is obligatory for the beneficiary/user.

22. Shri B. Gopa Kumar, the learned Assistant Solicitor General representing the Union of India/Respondents No. 5 and 6 virtually supports

the submissions made by the learned Deputy Government Advocate representing the State/ Respondents 1 to 4 in this regard. It is pointed out that the litigation being pursued by the Petitioner, who is a Central Government undertaking, against the policy and prescriptions of the Central Government and without any regard to the clear verdict/declaration/direction given by the Apex Court in ***T.N.Godavarman*** (supra) is not liable to be sustained under any circumstance. It is submitted hat, the concept of NPV has been highlighted by the Apex Court and appropriate measures have been framed, as to how it is to be calculated. A Committee was constituted in this regard and the report of the Committee has been stated as accepted. It is also brought to the notice of the Court that, insofar as the Petitioner-Company wants to retain the entire extent of 938.059 hectares mentioned in the lease deed, it has to pay NPV for the entire lease area as per Annexure P/4 guidelines. The EC can be given only subject to satisfaction of the said terms. It is not for the Petitioner to contend that no details have been furnished either by the State or the Central Government as to the utilisation of the "Contributory Afforestation Fund" and hence NPV is not payable. The said contention does not form part of the pleadings; by virtue of which the Respondents are not called upon to answer the same. That apart, the various heads under which substantial expenditure has to be made, have been specifically adverted to by the Apex Court in ***T.N.Godavarman*** (supra) and that the Petitioner being a Central Government undertaking, has necessarily to discharge the duty in satisfying the due amount, which ultimately comes to the consolidated fund, to be appropriated in different manner and to different extents. The fund remitted by the Petitioner-Company, a Central Government Undertaking, will naturally come to the hands of the Government and the Government, in turn, will be utilising the same for various purposes to preserve and protect the forest, the flora and fauna, the environment and the natural wealth. As such, it will only be a 'cycling process' and the Petitioner need not feel aggrieved in any manner.

23. Coming to the circumstance under which Annexure P/4 was issued by the MoEF on 01.04.2015, it is revealed therefrom, that the Ministry had earlier issued a letter dated 01.02.2013 on the said subject, to the Principal Secretary/Forest Department of all the States/Union Territories, whereby it was informed, among other things, that in case of mines where approval under the FC Act for diversion of only a part of the forest land located within the mining leases has been obtained, after two years from the date of issue of the said letter, mining will be allowed only if the user agency either obtains approval under the FC Act for the 'entire forest land' located within the mining lease or surrenders such forest land for which approval under the FC Act has not been obtained and executes a revised mining lease for the reduced lease area. But on issuance of the said letter, the Ministry received several representations from different corners pointing out that it was practically not possible to obtain approval under the FC Act for diversion of the entire forest land in two years and that it may take more time. Accordingly, the Ministry was requested to issue revised guidelines to prevent disruption of the ongoing mining operations. This was considered by the Ministry in

consultation with the Department of Legal Affairs, Ministry of Law and Justice, based on which revised guidelines were issued as per Annexure P/4 dated 01.04.2015, in supersession of the letter dated 01.02.2013, with the following stipulations:

"(i) Henceforth in case of mining leases, including those of Government Authorities, having forest land in part or in full, approval of Central Government under Section-2 (iii) of the FC Act, for the entire forest land located within a mining lease shall be obtained before execution including by way of renewal of a mining lease in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and the Rules framed thereunder.

(ii) User agencies while submitting application to obtain prior approval under Section 2 (iii) of the FC Act, if they so desire, may also seek prior approval of Central Government under Section 2 (ii) of the FC Act for use of the whole or a part of the forest land located within the mining lease for mining and allied non-forest activities. Area of forest land for which approval under Section 2 (ii) and 2 (iii) is sought shall separately be indicated in the proposals submitted by the user agencies. Where at the time of execution of the mining lease prior approval of Central Government under Section 2 (ii) of the FC Act for the whole or a part of the remaining forest land falling within the mining lease, as and when such forest land is proposed to be utilised for mining and allied 'non-forest' activities.

(iii) Central Government after examination of a proposal and after such other enquiry as it may consider necessary, may accord approvals under Section 2 (iii) and 2 (ii) of the FC Act for assigning on lease and to utilize for mining and allied non-forest activities respectively, such areas of forest land, as it may consider expedient, or reject the same.

(iv) Prior approval of Central Government under Section (iii) of the FC Act shall be subject to payment of Net President Value (NPV) of the forest land allowed to be assigned on mining lease. Similarly, prior approval of Central Government under Section 2 (ii) shall allowed to be utilised for mining and other allied non-forest activities.

(v) In case of existing mining leases having forest land in part or in full, where approval under Section 2 of the FC Act for a part of the forest land has only been obtained, Central Government hereby accords general approval under Section 2 (iii) of the FC Act for remaining area of the forest land falling within such mining leases, subject to following conditions:

   (a) State Government shall, within a period of one year from the date of issue of letter, realize from the user agency, NPV of the entire forest land falling in the mining lease, in case NPV of such forest land has not already been realised;

   (b) In case State Government fails to realize from the user agency, NPV of the entire forest land falling in a mining lease within a period of one year from the date of issue of this letter, this general approval in respect of such mining lease, shall be kept in abeyance, and shall be deemed to have been kept in abeyance, and all mining activities in such mining lease shall be stopped, till such time, the NPV of such forest land is realised by the State Government;

   (c) The general approval shall be valid for a period co-terminus with the period of mining lease in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, as amended, and the Rules framed thereunder;

   (d) This general approval does not, in any manner, exempt a user agency from obtaining prior approval under Section 2(ii) of the FC Act in regard to such area of forest land which is to be used for non-forest purpose;

   (e) Grant of this general approval under Section 2 (iii) does not, in any manner, create any right or equity in favour of the user agency for grant of approval under Section 2 (ii) of the FC Act and decision on proposals under Section 2 (ii) will be taken purely on the merit of each case;

   (f) This general approval will not be applicable to the forest land for which Central Government before the issue of this letter has already declined approval under Section 2 of the FC Act; and

(g) Grant of this general approval does not in any manner, exonerate the concerned authorities in the State Government or in any other Authority, from the proceedings under Section 3A and 3B of the FC Act, liable to be initiated for violation, if any, of the FC Act committed by them by assigning such forest land on mining lease without obtaining prior approval of Central Government under Section-2 of the FC Act.

(vi) The user agency shall be responsible for protection of the forest land located in a mining lease for which prior approval of Central Government under Section 2 (iii) of FC Act, including by way of the afore-mentioned general approval, has only been obtained. However, administrative and management control of such forest land will remain with State Forest Department or other forest land owning agencies and the forests will be managed in accordance with the approved management plan till such time it is not diverted for non-forest purpose, i.e., mining and remains unbroken."

24. With regard to the question whether Annexure P/5 could be treated as law or could it have any binding effect, for want of proper legislation as contended by the Petitioner, the specific answer given by the Respondents is that, it has been issued based on the verdict passed by the Apex Court in ***T.N.Godavarman*** (supra). As mentioned already, the first and foremost challenge raised by the Petitioner in the instant case is with regard to the absence of any legislation to realise NPV, and it is in support of the said contention and other aspects in connection therewith, that reliance was sought to be placed by the learned Senior Counsel for the Petitioner on various rulings rendered by the Apex Court as adverted to in the earlier paragraphs. At the same time, it is conceded by the learned counsel for the Respondents that no legislation has been made to realise NPV. It cannot be a matter of dispute, that no tax can be collected without the authority of law

as envisaged under Article 265 of the Constitution of India. As it stands so, no judicial precedent is necessary to assert the said legal position further. For the very same reason, this Court does not find it necessary to refer to each and every judgment cited from the part of the Petitioner in connection with this issue and the incidental issues arising therefrom. The only point to be considered is whether Annexure P/4 issued by the Ministry is having any legal sanctity or not?

25. In the above context, it will be worthwhile to have a complete scrutiny of the background on which the decision was rendered by the Apex Court in ***T.N.Godavarman*** (supra). After observing in the opening paragraph that natural resources are the assets of the entire nation and it is obligatory for all concerned, including the Union and the State Governments, to conserve this natural resource and the duty cast upon the State under Article 48A of the Constitution to endeavor to protect and improve the environment and to safeguard the forests and wildlife in the country, and also after making reference to Article 51-A dealing with the fundamental duty of every citizen to protect and improve the natural environment, forest, lakes, rivers and wildlife, it was noted in paragraph 2 that the question involved in the case was about the conservation, preservation and protection of the forest and ecology; besides what were the measures to be taken to compensate for the loss of forest land and to compensate for the effect on the ecology, when forest land is used for non-forest purposes. The learned Judges highlighted the importance of forests as a vital component to sustain the life support system

on the Earth, the depletion of forest wealth in India over a period of time, the necessity to rebuild the same and to strike a balance between the economic development and the environmental protection, which were to go hand in hand. The Court observed in paragraph 4, that the point in issue was whether before diversion of the forest land for non-forest purposes and consequential loss of benefits accruing from the forest, should not the user agency of such land be required to compensate for the diversion and if so, should not the user agency be required to make payment of NPV on such diverted land so as to utilise the amount received for getting back in the long run, the benefits which are lost by such diversion? What guidelines should be issued for determination of NPV, should the guidelines apply uniformly to all, how to calculate NPV, should some projects be exempted from payment of NPV, were also some of the main questions which were noted as relevant to be examined by the Apex Court, in the backdrop of various legislations.

26. In the course of the proceedings, the Apex Court observed from the statement filed from the part of the Central Government as to the cases approved for diverting the forest lands, stipulation for compensatory afforestation under the FC Act, the compensatory afforestation done, funds to be utilised and actually utilised *etc.* with the result that, there was a shortfall to an extent of 36% of the total afforestation. It was further noted that, though funds had been realised by all the States in connection with such afforestation, large number of States had spent only 50% or less on afforestation, and hence, taking *suo moto* action, notices were issued to the

States mentioned in the order dated 17.04.2000, to explain as to why the amounts realised have not been spent for carrying out afforestation. The MoEF was directed to formulate a Scheme, as noted in paragraph 10, providing that whenever any permission is granted for change of the use of forest land for non-forest purpose, one of the conditions of the permission to be that there should be compensatory afforestation. Then the responsibility of the same should be that of the user agency, who should be required to set apart a sum of money for doing the needful. A Scheme was accordingly formulated and submitted by the MoEF on 22.03.2002.

27. The Central Empowered Committee (for short 'the CEC'), after considering all the relevant materials including the Scheme, submitted its report containing the recommendations dated 09.08.2002. The recommendations have been extracted in 'paragraph 12' of the judgment in ***T.N.Godavarman*** (supra), which are in the following terms:

> "(*a*) In addition to the funds realised for compensatory afforestation, net present value of the forest land diverted for non-forestry purposes shall also be recovered from the user agencies, while according approval under the Forest (Conservation) Act, 1980.
>
> (*b*) A “Compensatory Afforestation Fund” shall be created in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, catchment area treatment plan funds, etc., shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment and Forests with the concurrence of the Central Empowered Committee within one month.

(*c*) The funds received from the user agencies in cases where forest land diverted falls within protected areas i.e. area notified under Section 18, 26-A or 35 of the Wild Life (Protection) Act, 1972, for undertaking activities related to protection of biodiversity, wildlife, etc., shall also be deposited in this fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective State/UT.

(*d*) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the State/UT or any amount that is yet to be recovered from the user agency shall also be deposited in this fund.

(*e*) Besides artificial regeneration (plantations), the funds shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site-specific plans should be prepared and implemented in a time-bound manner.

(*f*) The user agencies, especially the large public sector undertakings such as Power Grid Corporation, NTPC, etc., which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing special-purpose vehicles. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by MoEF with the concurrence of the Central Empowered Committee.

(*g*) Plantations must use local and indigenous species since exotics have long-term negative impacts on the environment.

(*h*) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilisation of funds."

28. The Apex Court observed in 'paragraph 13', that there was a general consensus among the States and the Union Territories that the existing practice of concentrating only on 'artificial regeneration' through plantation should be dispensed with, as it did not compensate the loss of

natural forest and that a part of the fund should also be used for 'assisted natural regeneration'. It was also noted, that for the loss of tangible as well as intangible benefits flowing from the forest land which have been diverted for the non-forest use, the NPV of such land was being recovered from the user agency in the States of Madhya Pradesh, Chhattisgarh and Bihar. The different rates on which NPV was being recovered in above States, depending upon the quality and density of the forest land diverted for non-forestry use was noted and it was observed that the underlying principle for recovery of NPV was that the plantations raised under the Compensatory Afforestation Scheme could never adequately compensate for the loss of natural forest, as the plantations required more time to mature, and even then, they were a poor substitute to a natural forest. The report mentioned that the States/Union Territories as well as the MoEF were of the view that in addition to the funds realised for compensatory afforestation, NPV of the forest land being diverted for the non-forestry purposes should also be recovered from the user agency and the MoEF had accepted, in principle, the recommendations of the CEC. Noticing that no other State had filed any response to the report of the CEC, the Apex Court presumed that the State Governments were also not opposed to the said report and they had accepted the same in the same manner as the Union of India. After meticulous scrutiny of the report, the recommendations of the CEC were accepted and the Union of India was directed to frame comprehensive rules with regard to the constitution of a body and management of the compensatory afforestation funds, in concurrence with the CEC.

29. As noted by the Apex Court in 'paragraph 14', it was directed that the compensatory afforestation funds which had not yet been realised by the States shall be transferred to the aforesaid body by the respective States and the user agencies within six months of its constitution. The Court also held that, in addition, while according approval under the FC Act for change in user, the user agency shall also pay into the said fund, the NPV of forest lands diverted for non-forest purpose at the rate as mentioned therein and that the amount was subject to upward revision by the MoEF in consultation with the CEC, as and when necessary, adding further that the aforesaid recommendations of the CEC were accepted.

30. In 'paragraph 16', the Supreme Court referred to the notification dated 20.03.2004 issued by the MoEF in exercise of the powers conferred by sub-section (3) of Section 3 of the EP Act constituting an authority known as Compensatory Afforestation Fund Management and Planning Authority (CAMPA) for the purpose of management of money towards compensatory afforestation, NPV and any other money recoverable in pursuance to the Apex Court's order and in compliance with the conditions stipulated by the Central Government while according approval under the FC Act for the non-forestry uses of the forest land. Management of the fund is provided under 'clause 6.3'; while disbursement of the fund is in 'clause 6.4' of the notification. Clause 6.4 dealing with disbursement of the fund is relevant and it is extracted below:

> "6.4. *Disbursement of funds.*—(*i*) The money received for compensatory afforestation, additional

compensatory afforestation may be used as per the site-specific schemes received from the States and Union Territories along with the proposals for diversion of forest land under the Forest (Conservation) Act, 1980.

(*ii*) The money received towards net present value (NPV) shall be used for natural-assisted regeneration, forest management, protection, infrastructure development, wildlife protection and management, supply of wood and other forest-produce saving devices and other allied activities.

(*iii*) Monies realised from the user agencies in pursuance of the Hon'ble Supreme Court's order or decision taken by the National Board for Wildlife involving cases of diversion of forest land in protected areas shall form the corpus and the income therefrom shall be used exclusively for undertaking protection and conservation activities in protected areas of the States and the Union Territories and in exceptional circumstances, a part of the corpus may also be used subject to prior approval of CAMPA.

(*iv*) CAMPA shall release monies to the State and Union Territory concerned in predetermined installments through the State Level Management Committee as per the annual plan of operation (APO) finalised by the State and the Union Territory concerned.

(*v*) The monies received in CAMPA from a State or the Union Territory as per para 6.2 and the income thereon after deducting expenditure incurred by CAMPA on its establishment cost, monitoring and evaluation on a pro rata basis shall be used only in that particular State or the Union Territory."

31. The question of guiding principle to be laid down for determining the NPV was discussed by the Apex Court in 'paragraph 23' of the said verdict in ***T.N. Godavarman*** *(supra)*, which is as given below:

"23. Now, we come to the question of the guiding principle to be laid for determining the NPV. Reference was made to opinions of various experts laying down as to what is the concept of NPV and how it is to be calculated. The question is also about the legal and jurisdictional basis to levy NPV. Most of the States did not object to the recovery of the NPV from the user agency but strenuously urged that since the land under the forest belongs to the State, the amount deposited by the user agency as NPV shall be paid to them. It was also contended on behalf of the States that there should be no NPV on degraded forest. The further submission was that all public utility projects should be exempted from payment of NPV. On the other hand, relying upon the principles of intergenerational equity and sustainable development, Mr Harish Salve, learned Senior Counsel and amicus curiae contended that the forest is a part of ecosystem and, therefore, the value to be put and calculated is not only on trees and leaves but the basis has to be the preservation of biodiversity. It is submitted that NPV is to be levied and collected not because property rights of the States are affected but on account of the effect on ecology by conversion of forest land for non-forest purpose. Further, Mr Salve submits that the basis for calculation of NPV should be the economic value, spread over a period of 50 years, which would be the regenerational value for forest regeneration to be taken into account as opposed to restoration value i.e. financial value. Regarding the legal and jurisdictional basis to levy NPV, Mr Salve contended that there are various legal principles which act as a source of power to levy NPV. In this regard, reference has been made to provisions of the FC Act, EP Act and the Forest Policy of 1988. It is contended that these enactments and the policy are the measures taken by the legislature and the Government to discharge the constitutional obligation to protect the environment. Reliance is also placed upon the doctrine of public trust, which learned counsel submits is a constitutional doctrine."

32. While considering the meaning of NPV and to determine what is NPV, the Bench made the following observations in 'paragraph 26':

"**26.** Forestry is a public project. It is important to bear in mind that a benefit received today is worth more than that received later. The benefit received today is in fact “cost-incurred” today. Time value of the cash inflow/outflow is important in investment appraisal. NPV is a method by which future expenditures (costs) and benefit are levelised in order to account for the time value of money. The object behind NPV is to levelise costs. What is the value of rupee today would not be the

> value of rupee say 50 years later. For example, let us have the starting point of value of rupee in India in the year 2005 and analyse it with the value of rupee that may be in the year 2050. Costs incurred or to be incurred in 2050 have to be discounted by using appropriate parameters like rate of discount, gestation period, ratio of deflators to GDP. Therefore, expenses incurred in each year between say 2005 and 2050 have to be brought down to their present values by using appropriate discount rate in the NPV."

33. After elaborate discussion in the subsequent paragraphs, including as to how does one value the 'intangibles' under several methods, such as opportunity cost, replacement cost, travel cost, contingent value method (CVM) and Social Benefit Cost Analysis (SBCA); the Apex Court observed in 'paragraph 34' that SBCA could be applied to the evaluation of the environmental impacts of forestry projects, also observing that the environmental outputs from forests appeared as public goods; for which there was no market and that the various environmental outputs could be classified into this category were namely: flood control benefits, water production, soil conservation, outdoor recreation, biodiversity and conservation, habitat and air purification.

34. Accordingly, the Apex Court observed in 'paragraph 37' that the discussion made would reveal that the NPV helps to level the cost of public projects like forestry. It is an important tool of SBCA. Under SBCA, benefits from each of the above environmental outputs are identifiable and hence applying NPV, one can allocate levelised cost, according to the contribution of each project in the total revenue. The Court observed in 'paragraph 48' that, it would be for the experts to examine and assist the Court as to the

model to be adopted for valuation and it would be for the experts to tell the Court as to what NPV should be applied in case of mines and different types of forests. The Apex Court also considered in 'paragraph 51' onwards as to the contention made by Shri K.K.Venugopal (the learned counsel appearing for the State of Kerala) that the State had no objection to levy the NPV, but the amount so received should come to the State. After referring to various provisions in the Constitution of India, the Apex Court observed in 'paragraph 64' as follows:

> "**64.** Thus reading Entry 47 with Entry 20 of the same list, the imposition of NPV is a charge or a fee which falls within Entry 47 read with Entry 20 of List III of the Seventh Schedule to the Constitution. The fund set up is a part "of economic and social planning" which comes within Entry 20 of List III and the charge which is levied for that purpose would come under Entry 47 of List III and, therefore, Article 110 is not attracted."

Accordingly, it has been specifically held in 'paragraph 68' that, for the discussion made in the preceding paragraphs, natural resources are not in the ownership of any one State or individual, but the 'public at large' is its beneficiary and therefore, the contention made on behalf of the State concerned that the amount of NPV shall be made over to the State Government, cannot be accepted.

35. The Apex Court referred to the basic objectives leading to laying down the National Forest Policy, 1988 and observed that, it has a statutory flavour and that the strategy under the Forest Policy is to have a minimum of one-third of the total land area of the country under the forest or tree cover, with emphasis in the hills and mountain regions, aiming to maintain two-third

of the area under such cover, in order to prevent erosion and land degradation, to ensure stability of the fragile ecosystem. After making an indepth analysis, it was observed in 'paragraph 78' that the discussion made was to demonstrate that the object of the amount of NPV was to utilise the fund to conserve the ecology, without in any manner affecting the proprietary rights of the State Government over the land, timber or the minerals and that damage to the environment was a damage to the country's assets as a whole. After making reference to the 'Public Trust Doctrine' in 'paragraphs 89' and '90', it was held in 'paragraph 91', that the question as to what amount of NPV was required to be paid to achieve the said objects was a matter to be gone into by the experts, adding that the amounts shall have to be updated time to time, after every three years. It was also stipulated that, for grant of approval under Section (2) of the FC Act, besides payment of NPV as being then calculated by MoEF, the user agencies shall have to give undertaking to pay the remaining amount, if any, pending finalisation of determination by the experts.

36. The Apex Court proceeded to consider the question of granting exemption to certain projects like Government Hospitals, Dispensaries, non-commercial Government ventures like Schools, Rain water harvesting tanks *etc*. There was a submission that the Governmental undertakings, though in the commercial sector, might be spared from satisfying the NPV; which plea was repelled by the Apex Court. The discussion in this regard in 'paragraphs 92, 93, 94' and '95' are relevant and hence, they are reproduced below:

"**92** Turning now to the grant of exemption to certain projects, learned Solicitor General submitted that government hospitals, dispensaries, non-commercial government ventures like schools, rainwater harvesting tanks, sewer lines, village roads, etc. are projects meant for public welfare and have no adverse impact on environment as such and, therefore, these cases deserve to be granted exemption. Learned amicus curiae has no objection to non-commercial and non-revenue-earning government public welfare projects being treated differently and granted exemption from the purview of the payment of NPV. Submission was also made by learned counsel appearing for some of the parties that other projects like irrigation, hydroelectricity or other similar projects engaged in public welfare and public utility activities too deserve to be similarly treated and granted exemption. On behalf of the National Hydro Project Corporation Ltd. (NHPC), it was submitted that dams/hydroelectric projects and other similar projects are undertaken in public interest and these will also not create environmental pollution and mere fact of these being revenue-earning projects should not be taken as a ground to treat them differently. Reliance has been placed on observations made in *Narmada Bachao Andolan* v. *Union of India* [(2000) 10 SCC 664] to contend that such a project is not a pollution industry. This decision is not relevant for determining the question about levy and payment of NPV. The question is not only about these and projects referred by the Solicitor General not creating pollution but is about diversion of forest land for non-forest purpose, thereby depleting forest so as to utilise land area in setting up these projects. A distinction has to be maintained between a project set up for providing public utility but which is revenue-earning, the category to which the project of NHPC falls and the government projects of the nature above-referred like hospitals, schools, etc., non-revenue-earning projects. A balance is required to be maintained in the development and protection of environments. As already noted, the development has to be based on sustainability. If NHPC uses the forest land for non-forest purposes, the payment of NPV is to protect the ecological and biodiversity having regard to the doctrines above-referred. Generally speaking, projects like NHPC are commercial ventures.

93. What we have stated above is also applicable to submissions made on behalf of Grid Corporation of Orissa (GRIDCO), the State of Uttaranchal and the State of Madhya Pradesh. We are unable to accept the submission that wherever the Government is the user agency in a notified forest area, protected forest/reserved forest, etc., NPV should not be charged. Such a submission cannot be accepted in the teeth of Section 2 of the FC Act and other environmental laws noticed hereinbefore.

94. The submission made on behalf of the Federation of Indian Mineral Industries about calculation of NPV at the rate of 10 per cent for major mineral and 5 per cent for minor mineral as already noted cannot be accepted. The question is not of the value of the mineral or it being high value and low volume and mineral of high volume and low value, the question is about use of the forest areas and need to protect the environments in the manner abovestated. A larger public interest has to be the guiding principle and not the present interest of user agency only.

95. We are of the view that the question as to which class of projects deserve to be exempted can first be examined by experts having regard to principles laid down in this judgment and on receipt of the report from them, this Court would further examine the matter and issue appropriate directions. However, prima facie we feel that revenue-earning projects do not deserve similar treatment as non-revenue-earning public welfare projects."

37. The conclusions reached by the Apex Court, holding that the NPV shall be paid by the projects concerned, are given in 'paragraph 98' and the directions given are as contained in 'paragraph 99'. The said paragraphs are also relevant and are extracted below:

"**98.** In view of the aforesaid discussion, our conclusions are:

1. Except for government projects like hospitals, dispensaries and schools referred to in the body of the judgment, all other projects shall be required to pay NPV though final decision on this matter will be taken after receipt of expert committee report.

2. The payment to CAMPA under notification dated 23.4.2004 is constitutional and valid.

3. The amounts are required to be used for achieving ecological plans and for protecting the environment and for the regeneration of forest and maintenance of ecological balance and ecosystems. The payment of NPV is for protection of environment and not in relation to any proprietary rights.

4. The fund has been created having regard to the principles of intergenerational justice and to undertake short-term and long-term measures.

5. NPV has to be worked out on economic principles.

99. In view of the above, we issue the following directions:

A. An expert committee comprising of three experts including Ms Kanchan to be appointed within a period of one month by the Institute of Economic Growth (North Campus).

B. The committee of experts would examine the following issues:

(*i*) To identify and define parameters (scientific, biometric and social) on the basis of which each of the categories of values of forest land should be estimated.

(*ii*) To formulate a practical methodology applicable to different biogeographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.

(*iii*) To illustratively apply this methodology to obtain actual numerical values for different forest types for each biogeographical zone in the country.

(*iv*) To determine on the basis of established principles of public finance, who should pay the costs of restoration and/or compensation with respect to each category of values of forests.

(*v*) Which projects deserve to be exempted from payment of NPV.

C. The user agencies shall give undertakings for the further payment, if any, as may be determined on receipt of report from the expert body.

> D. The special-purpose vehicle shall be established with the permission of the Court.
>
> E. The Institute shall send report of committee of experts within a period of four months.
>
> F. The various clauses of CAMPA shall be suitably modified in terms of this judgment within a period of one month.

38. In this context, the subsequent orders passed by the Apex Court as well, in various proceedings, with reference to the said case ***T.N.Godavarman*** (supra) are also to be noted. These are: ***T.N.Godavarman Thirumulpad (57) v. Union of India*** [(2008) 16 SCC 337]*;* ***T.N.Godavarman Thirumulpad (104) v. Union of India*** [(2008) 7 SCC 126]*;* ***T.N.Godavarman Thirumulpad (105) v. Union of India*** [(2008) 7 SCC 133]*;* ***T.N.Godavarman Thirumulpad (101) v. Union of India*** [(2006) 5 SCC 59]*;* ***T.N.Godavarman Thirumulpad v. Union of India*** **[**(2009) 16 SCC 481]*;* and ***T.N.Godavarman Thirumulpad v. Union of India*** [(2014) 6 SCC 150].

39. 'Paragraph 13' of the verdict reported in ***T.N.Godavarman Thirumulpad v. Union of India*** [(2014) 6 SCC 150]; is important and hence, it is reproduced below:

> "**13.** The report of CEC was accepted and this Court made [*T.N. Godavarman Thirumulpad (57)* v. *Union of India*, (2008) 16 SCC 337] the following recommendations: [*T.N. Godavarman Thirumulpad (57) case* [*T.N. Godavarman Thirumulpad (57)* v. *Union of India*, (2008) 16 SCC 337] , SCC pp. 345 47, para 35]
>
> > "(*a*) The Union of India shall within eight weeks from today frame comprehensive rules with regard to the constitution of a body and management of the Compensatory Afforestation Funds in concurrence with the Central Empowered

Committee. These rules shall be filed in this Court within eight weeks from today. Necessary notification constituting this body will be issued simultaneously.

(*b*) Compensatory Afforestation Funds which have not yet been realised as well as the unspent funds already realised by the States shall be transferred to the said body within six months of its constitution by the respective States and the user agencies.

(*c*) In addition to above, while according transfer under the Forest Conservation Act, 1980 for change in user agency from all non-forest purposes, the user agency shall also pay into the said fund the net value of the forest land diverted for non-forest purposes. The present value is to be recovered at the rate of Rs 5.80 lakhs per hectare to Rs 9.20 lakhs per hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. This will be subject to upward revision by the Ministry of Environment and Forests in consultation with the Central Empowered Committee as and when necessary.

(*d*) 'Compensatory Afforestation Fund' shall be created in which all the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value of forest land, Catchment Area Treatment Plan Funds, etc. shall be deposited. The rules, procedure and composition of the body for management of the Compensatory Afforestation Fund shall be finalised by the Ministry of Environment and Forests with the concurrence of the Central Empowered Committee within one month.

(*e*) The funds received from the user agencies in cases where forest land diverted falls within protected areas i.e. area notified under Sections 18, 26-A or 35 of the Wildlife (Protection) Act, 1972, for undertaking activities related to protection of biodiversity, wildlife, etc. shall also be deposited in this fund. Such monies shall be used exclusively for undertaking protection and conservation activities in protected areas of the respective States/Union Territories.

(*f*) The amount received on account of compensatory afforestation but not spent or any balance amount lying with the States/Union Territories or any amount that is yet to be recovered from the user agency shall also be deposited in this fund.

(*g*) Besides artificial regeneration (plantations), the fund shall also be utilised for undertaking assisted natural regeneration, protection of forests and other related activities. For this purpose, site-specific plans should be prepared and implemented in a time-bound manner.

(*h*) The user agencies especially the large public sector undertakings such as Power Grid Corporation, NTPC, etc. which frequently require forest land for their projects should also be involved in undertaking compensatory afforestation by establishing special purpose vehicle. Whereas the private sector user agencies may be involved in monitoring and most importantly, in protection of compensatory afforestation. Necessary procedure for this purpose would be laid down by the Ministry of Environment and Forests with the concurrence of the Central Empowered Committee.

(*i*) Plantations must use local and indigenous species since exotics have long-term negative impacts on the environment.

(*j*) An independent system of concurrent monitoring and evaluation shall be evolved and implemented through the Compensatory Afforestation Fund to ensure effective and proper utilisation of funds."

40. The Apex Court held in 'paragraph 23' that, in accordance with the directions given by the Court, the money already received as well as the money being received towards the NPV *etc.* have been transferred to the *ad hoc* CAMPA and invested in fixed deposit with the National Banks and that the money lying with the ad hoc CAMPA towards the NPV etc. received from the States (principal amount) and the interest received on the fixed deposit

(cumulative interest) has substantially increased over a period of time; and as on date, it was about Rs. 30,000 Crores. The course of action with regard to the release of funds for the various purposes, as dealt with in 'paragraph 25, 26 and 27', are as given below:

> **"25.** By order dated 10-7-2009 [*T.N. Godavarman Thirumulpad* v. *Union of India*, (2009) 16 SCC 481] this Court directed that the guidelines and structure of the State CAMPA as prepared by MoEF may be notified and implemented. The Court also permitted the ad hoc CAMPA to release about Rs 1000 crores per year for the next five years, in proportion of 10% of the principal amount pertaining to the respective States/Union Territories, inter alia, subject to the condition that the State Accountant General shall carry out, on annual basis, the audit of the expenditure incurred every year out of the State CAMPA funds. It was further directed that an amount up to 5% of the amount released to the State CAMPA i.e. up to Rs 50 crores per annum, may also be released and utilised by the National CAMPA Advisory Council constituted under the chairmanship of the Ministry of Environment and Forests for monitoring and evaluation and for the implementation of the various schemes as given in the State CAMPA Guidelines.
>
> **26.** The State CAMPA has been constituted for each State/Union Territory. It has a three-tier structure. The Executive Committee functions under the chairmanship of the Principal Chief Conservator of Forests and is responsible for the Annual Plan of Operation (APO) for various works planned to be undertaken during each year. The Steering Committee under the chairmanship of the Chief Secretary is responsible for approving the APO for each year. The Chief Minister is the Chairman of the governing body which is responsible for overall guidance and policy issues. The ad hoc CAMPA releases the funds to each of the State CAMPAS as per the approved APO. At present, a total sum of Rs 1000 crores is permitted to be released to the State per year. The Statewise accounts of the principal amounts and cumulative interest be maintained by the ad hoc CAMPA. The funds are not permitted to be utilised for any purpose other than those authorised by the Court. The administrative expenses of CAMPA are incurred by CEC.
>
> **27.** With the establishment of the ad hoc CAMPA, huge sums of money have accumulated which can be released to the State CAMPA for utilisation, for protection and for the improvement of the national environment. Now the aforesaid applications have

> been filed by different States seeking release of some funds for completing the task of compulsory afforestation, as directed by this Court from time to time. The relief claimed in all the applications is almost identical. We shall make a reference to the averments made in IA No. 3618 of 2013 for the purpose of deciding all the applications."

41. In 'paragraph 34', further directions have been given by the Apex Court, modifying some of the directions given earlier and directing that the ad hoc CAMPA was permitted to release annual amount equal to 10% of the principal amount lying to the credit of each State/Union Territory, out of the interest receivable by it *w.e.f.* the Financial Year 2014-2015 onwards and it shall be subject to the conditions mentioned already. It is also brought to the notice of this Court that the Apex Court had occasion to consider the various orders passed by the Court ***In Re: T.N.Godavarman Thirumulpad v. Union of India*** while considering and passing orders on 22.04.2019 in Writ Petition (C) No. 202/1995. Any interpretation of law or judgment given by the Apex Court is a 'Law' as per the scheme of the Constitution and as explained by the Apex Court (by a three member Bench) in ***Som Mittal v. Government of Karnataka*** (2008) 3 SCC 574. In the said circumstances, the contention to the contrary that the declaration and the directions given by the Apex Court in ***T.N.Godavarman*** (supra) and Annexure P/5 issued by the MoEF based on ***T.N.Godavarman*** (supra) do not have the sanctity of law, as put forth by the Petitioner, is only to be repelled.

42. From the above discussion, it is clear point blank, that the issuance of Annexure P/5 guidelines by the MoEF stipulating to satisfy NPV in the manner specified therein <u>is having the sanctity of law</u>, it being based on the law declared by the Apex Court in (2006) 1 SCC 1. The contention raised to

the contrary, on behalf of the Petitioner, is repelled. The Apex Court has laid down the law, as to the necessity to satisfy the NPV and the directions contained therein is the 'law' in all respects, having binding force in terms of Article 141 of the Constitution of India.

43. The Petitioner has already satisfied NPV in respect of '17 hectares' of forest land forming part of the lease deed, which is stated as the actual extent of land for mining in their physical possession as on date. Coming to the leftover area of 921.059 hectares (forming part of the total extent of 938.059 hectares of land covered by the mining lease) it is to be noted that the extent of land actually required for the mining purpose was apparently included in the lease deed, as required by the Petitioner Company. It has been asserted by the Petitioner in Annexure P/5 dated 14.12.2018 addressed to the Secretary to the Government of India, MoEF, New Delhi (produced along with the Additional affidavit dated 08.03.2019 and filed before this Court on 11.03.2019) that they have worked out a plan for utilizing the entire area of 938.059 hectares covered by the mining lease; adding that the exploration and survey will be completed by 2022-2023 and that, by the year 2028, the mines will be taken to a level of 2.5 MTPA. The relevant portion of Annexure P/5 is extracted below, for easy reference :

> "During the meeting on 27th November, 2018, SAIL was advised to examine its requirement and submit a detailed plan of action w.r.t. Kalwar-Nagur lease to MoEFCC as to whether they require the entire area of 938.059 Hectares or would they like to surrender some area.
>
> Notwithstanding the fact that the meeting called by MoEFCC at the behest of the direction of Hon'ble Chhattisgarh High Court was to discuss on the applicability of guidelines dated 01.04.2015 of MoEFCC on SAIL, which is owned, managed

and controlled by the Government of India, but SAIL was advised to prepare a detailed plan for utilisation of lease.

As decided in the meeting, SAIL has worked out a detailed plan through in-house consultant Centre for Engineering and Technology (CET) for working in the complete area of 938.059 Ha. Since the area is not fully explored except the geomagnetic and geophysical survey, therefore, the plan of action has 3 major components:

(a) Mining in the area of 17 Ha for which FC stage II already exists and once the EC is granted mine development shall start. SAIL intends to develop a 1 MPTPA mine.

(b) Exploration shall be carried out to G1 & G2 level in the area which is not yet explored. The plan is to complete the exploration by 2022-23.

(c) The opening of the complete mineral bearing area after the grant of statutory clearance (Stage II FC and EC) shall be continued by the 10th-11th year (2028), SAIL intends to take this mine to a level of 2.5 MTPA.

This intended capacity of 2.5 MTPA is tentative and arrived at based on the details available as of now. The area shall be further explored to arrive at a more accurate realistic figure."

44. This shows that the Petitioner is actually desirous of having the entire extent of forest land covered by the lease deed dated 01.04.1975; more so, when they assert that the Bhilai Steel Plant was set up, considering the potential in the area and also as consented by all the Ministries and authorities concerned, to make available the said extent of land. When the Petitioner contends on one hand that they have been given the actual physical possession of only '17 hectares' of forest land and hence they are liable to satisfy the NPV only in respect of the said diverted extent of land, they go on asserting on the other hand that they want to expand their project further, by making use of the balance land as well. In other words, the Petitioner has not mentioned anywhere in clear terms that they do not want to

have the balance land and will be satisfied only by the '17 hectares' of forest land. It is for the Petitioner, a Central Government Company, to take a firm decision as to whether they want to have the remaining extent of 921.059 hectares of forest land as covered by the mining lease. This is more so in view of the transactions recorded in the minutes of the meeting dated 27.11.2018 held at the instance of the MoEF, pursuant to the order passed by this Court on 11.09.2018, recording that the Petitioner would like to pursue further steps for obtaining EC in respect of the balance land as well.

45. As mentioned already, the concept of NPV was visualised/ envisaged and brought into effect taking note of the huge investment to be made, to build up the forest wealth by 'assisted regeneration and afforestation', also providing such other ways and means to replenish the forest wealth already lost, with intent to contribute something more in favour of future generation. It was never with reference to any payment in relation to the property value of the State, but with reference to the necessity to preserve and protect the ecological and environmental aspects. Yet another aspect to be noted is that, when mining activities take place in a given extent of land, say 5 hectares, it cannot be said that the 'flora and fauna' in the extent of 5 hectares alone will be affected. The natural habitats of the wild animals/birds will get changed and they will be driven out to far away places, adversely affecting their feeding and breeding habits and habitats. It also goes without saying that, when blasting or such other exercise take place in a mine, in the course of extraction of minerals, it will cause 'tremors' and such

other adverse impacts on the surrounding land as well and it will not be confined to the area within which the mining operation is permitted. If there is any adverse impact in the surrounding areas as well, because of the act pursued by the lessee in the exact mining area, the lessee cannot be heard to say that the liability to satisfy the NPV should be restricted to the actual extent where the mining operation is being carried on.

46. The elaborate discussion on the facts has been enumerated in the order under challenge. Admittedly, as on date, there is no legislation for levying of NPV, but it has been declared and directed by the Supreme Court in case of ***T.N.Godavarman*** (supra). The primary object is to protect the forest as also to ensure the sustainable development i.e. when the forests are disturbed and destroyed, to restore the same. It is on the basis of the direction given by the Supreme Court, that the NPV is being charged. If the legislation is to take its own time to be promulgated, the object of direction given by the Supreme Court cannot be made porous since the case of ***T.N.Godavarman*** (supra) was decided way back in the year 2006. The fact that no legislation has been made in this field cannot be a ground to allow the Petitioner to lens the source, to avoid the payment of NPV. This Court also cannot lose sight of the fact that though the actual extent of forest land left in the physical possession of the Petitioner is only 17 hectares, it is a part and parcel of the entire forest land of 938.059 hectares which is covered by the mining lease. The extent of damage by the mining can have an effect of major magnitude of disturbance of ecology and the forest over and above 17

hectares as blasting and excavation would be carried out for mining. Therefore, the mining operation not only affects that part of the forest wherein the mining is done, but also the other parts as well. Even the payment of NPV with respect to only 17 acres of land cannot be treated as a patch work solution to the object as laid down in case of ***T.N.Godavarman*** (supra).

47. Considering the totality of the facts and circumstances, it can be seen that fixation of NPV has been effected by experts, taking into account various parameters including the total extent of forest land covered by the mining lease, as one among the different yardsticks to work out the actual liability. The obligation to satisfy the said amount is more on the part of the Petitioner, being a Central Government Undertaking and acting as a role model; who is supposed to give effect to the policies formed and sought to be implemented by the Central Government. The attempt to evade the payment, despite its being a Central Government Company, may give some better figures in their 'Profit and Loss Account' which however cannot but be deprecated, for acting against the laudable cause sought to be implemented by the Central Government (MoEF) based on the directions given by the Apex Court in ***T.N. Godavarman*** (supra) from time to time.

48. In the above facts and circumstances, the following directions are given:

(i) The Petitioner shall take a decision of their own, as to whether they want to retain the entire extent of 938.059 hectares covered by the mining lease, to be made use of for future development or will they be satisfied with the actual extent of '17 hectares' which is already left in their physical possession.

(ii) The decision in this regard shall be taken and communicated to the Respondents, and in particular, the MoEF and also to the State Government and authorities of the Forest Department within one month.

(iii) The Respondents concerned shall proceed with further steps in accordance with law, on the basis of the decision so to be taken and communicated by the Petitioner, with regard to the satisfaction of the NPV for the remaining forest land as well for their future expansion, for which steps are being pursued; and shall finalise the proceedings for issuance of 'EC' within a further period of one month thereafter.

(iv) If, for any reason, the Petitioner does not act as aforesaid in conveying its decision with regard to the remaining extent of 921.059 hectares covered by the lease deed within the time as mentioned above, or if the Petitioner confirms the requirement of mining area confining it to '17 hectares' of the forest land, it goes without saying that it will be open for the 1st Respondent/State Government to take appropriate proceedings for modifying the scope and extent of the lease dated 01.04.1975, in accordance with law after affording an opportunity of hearing to the Petitioner.

(v) Once the requirement of the mining area is restricted or limited as to '17 hectares' of the forest land, the Respondents concerned shall record it and 'EC' for the said area shall be granted to the Petitioner within one month from the relevant date, in view of the satisfaction of the full NPV for that area to be treated as the total forest land diverted for non-forest purpose; for the time being.

49. The writ petition stands disposed off with the declaration and directions as above.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Goutam Bhaduri)
CHIEF JUSTICE	**JUDGE**

Amit