



BEFORE V.N. AMBADE, I.F.S., THE DEPUTY DIRECTOR
GENERAL OF FORESTS AND HEAD OF REGIONAL OFFICE
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE
CHANGE, NAGPUR

Appeal no. 3/2023-24

Date of Institution: 10/08/2023

Date of Decision: 08/10/2023

IN THE MATTER OF:

1. Adv. Vijay G. Chauhan, R/o Doctors Colony, Plot No. 10, Sneha Apartment, Nagpur

-----Appellant

Versus

1. State Level Committee, through its Member Secretary, Van Bhavan, Nagpur, Dist. Nagpur.
2. Sharda R. Gadekar, R/o Pimpalner Tq. Parner, Dist. Ahmednagar.
3. Siddheshwar Prakriya Udyog, Gut No. 3302, Siddheshwarwadi Road, Near Siddheshwar Mandir, Parner Tq. Parner Dist. Ahmednagar

----- Respondents

ORDER

APPEAL UNDER PARAGRAPH NO. 9 OF THE WOOD-BASED INDUSTRIES (ESTABLISHMENT AND REGULATION) GUIDELINES, 2016 (AS AMENDED FROM TIME TO TIME)

Brief facts of the case are that the Appellant had filed an appeal on 09.08.2023 against the Respondents under paragraph No. 9 of the Wood-Based Industries (Establishment and Regulation) Guidelines, 2016, as amended from time to time, (hereinafter referred to as "the Guidelines"), that are made by Ministry of Environment, Forest and Climate Change ("MoEF&CC") vide Resolution dated 22/09/2016 in compliance of directions contained in the Order dated 5th October, 2015 of the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202 of 1995 in the matter of T.N. Godavarman Thirumulpad vs. Union of India and others, feeling aggrieved against the decision of State Level Committee (hereinafter as "SLC") for Maharashtra State which is constituted by the Hon'ble Supreme Court of India vide order dated 5th October, 2015 in Writ Petition No. 202/95 read with Government of Maharashtra, Revenue and Forest Department Resolution dated 19th January, 2016, where under the SLC in its 22nd meeting dated 03/05/2023 finalized on 21.06.2023 whereby the proposals of sandalwood cutting and processing were approved by the respondent no.1 without there being any "Timber Availability Report" for the State of Maharashtra. Further, the Appellant has alleged that the said

decisions of the SLC are against the Guidelines and the Orders passed by Hon'ble Supreme Court in WP (Civil) No. 202/1995 dated 12/12/1996, 04/03/1997 and 05/10/2015.

2. That the Appellant has prayed that the order passed by the Respondent No. 1 (SLC) in its 22nd meeting dated 03.05.2023 finalized on 21.06.2023 approving licenses to the Respondent No. 2 and 3 for setting up Wood based Industry to cut and process sandalwood from their own farms be quashed and set aside.
3. That the Respondent No. 1 has filed its reply through its Member Secretary, SLC and Conservator of Forest (FR), Nagpur. The Respondent No. 2 and 3 both have filed their replies and the same have been taken on record.
4. In brief, the Respondent Nos. 2 and 3 have denied to have violated above mentioned Rules/Guidelines/Orders/allegations and have submitted that they have made sincere efforts to fulfill their obligations and have discharged their functions within the framework of statutory provisions and MoEF&CC Guidelines, with a prayer to reject the appeal.
5. That the Appellant was given the opportunity to file rejoinder to the said Respondents' reply. However, no rejoinder was filed by the Appellant. Both the parties were requested to appear before the Appellate Authority for final arguments on 06.10.2023. It is noted that there was no representation from the side of the appellant. However he informed via email that his absence may be condoned due to his ill health, and that his written notes of arguments may be taken on record. His request was considered and his absence was condoned. The Respondent No. 1 marked his presence through their representative, i.e Shri Nitesh Deogade, Member Secretary, SLC and Conservator of Forests (FR), and Respondent No. 2 and 3 along with their representative Shri Rajendra Vinayak Gode (retd. DCF) for the final arguments.
6. Accordingly, arguments put forth by the Respondents on the said appeal were taken on record along with the documents submitted by them. All the Respondents have submitted their oral and well as written submissions that the present Appeal has no merit, therefore needs to be rejected with cost, as the appellant is not an aggrieved party as mentioned in the appeal.
7. On the basis of admissions and denials of parties and on bedrock of oral submission of parties and other pleadings and documents as produced, following considerable issues have been formulated.

S. No.	Issues	Findings
1.	Is the sandalwood assessment study carried out by the Assistant Conservator of Forests and Deputy Conservator of Forests (T) Ahmednagar Forest Division valid and as per the Guidelines?	Negative
2.	Is the impugned decision taken by the SLC in its 22 nd Meeting dated 03.02.2023 finalized on 21.06.2023 against the Guidelines is liable to be quashed?	Affirmative

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DETERMINATION & ANALYSIS OF ISSUES WITH REASONS

8. Issue no. 1

Is the sandalwood assessment study carried out by the Assistant Conservator of Forests and Deputy Conservator of Forests (T) Ahmednagar Forest Division valid and as per the Guidelines?

Sandalwood (*Santalum album* L.) is considered as a valuable tree in Indian culture. It is the second most expensive wood in the world. The heartwood of the tree is treasured for its aroma and is one of the finest natural materials for carving. Sandalwood oil is used in perfumes, cosmetics, aromatherapy and pharmaceuticals. The monopoly of sandalwood trade by the Governments of Karnataka, Tamil Nadu and Kerala and its consequences have resulted in severe exploitation, pushing sandalwood into the vulnerable category of the IUCN Red List. Over 70 years ago, nearly 90% of the natural sandalwood populations occurred in the southern part of Karnataka and northern part of Tamil Nadu. Excessive harvesting without replenishment of this invaluable re-source has substantially reduced the sandalwood industry, resulting in global shortage and soaring of market prices. Extensive research has shown that sandalwood exhibits considerable genetic diversity for different traits. However, information pertaining to heartwood and oil content is meagre mainly because of non-availability of sandalwood plantations.

Vide Order dated 13.02.2012 the Hon'ble Supreme Court in the matter of **T.N. Godavarman Thirumulpad vs Union of India & Ors** for conservation of sandalwood and regulation of sandalwood based industries has observed that,

"We are in this case concerned with the question whether sandalwood (Santalum album Linn) stated to be an endangered species, be declared as a "specified plant" within the meaning of Section 2(27), and be included in the Schedule VI of The Wild Life (Protection) Act, 1972."

Further, noteworthy observations and directions made by the Hon'ble Supreme Court in the above said Order is reproduced below:

MoEF in its affidavit dated 24th October, 2010 has stated as follows:

"The Ministry supports the contention that all illegal sandalwood oil units should be closed down. As far as closing of sandalwood units in non-sandalwood growing States is concerned the Ministry has "No Objection" in allowing the legal private entrepreneur from setting up sandalwood oil units in non-sandalwood producing States provided that only legally sourced sandalwood for which Certificate of Origin has been obtained, is



used and the regulatory enforcement mechanisms, set up by the State for detection, control and action against proceedings of illegal units are well in place."

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The CEC, however, in its report dated 2.9.2009 maintained the following stand:

"In the light of the facts highlighted above the CEC is unable to agree with the contention of the Applicants that they should be permitted to establish /continue the sandalwood oil units in non- sandalwood producing States under appropriate supervision and regulations and that the imported sandalwood is a substitute for Indian sandalwood. The CEC is of the considered view that if the present state of affairs is allowed to continue, sandalwood, so unique and a special gift of nature to India would become extinct in the not too distant future. The protection of sandalwood forest is simply not possible without first ensuring that the establishment / functioning of sandalwood oil units are severely restricted / regulated in the country particularly when the sandalwood has become an almost extinct commodity. One is duty bound to protect in public interest whatever sandalwood forests are left.

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MoEF however in its latest affidavit dated 6.9.2011 expressed the apprehension that the inclusion of the sandalwood species in Schedule VI in the Wild Life Protection Act, 1972 would alienate people from growing the species on a large scale and hence it is of the view that an "All India Sandalwood Legislation" would be an adequate solution, in the event of which it was stated the species would be fully protected within the country and at the same time trade could also be regulated.

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Article 48A of the Constitution introduced by the Constitution (42nd Amendment) Act 1976 states that the State shall endeavour to protect and improve the environment and safeguard the forest and wild life of the country. Article 51A(g) states that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. By the same constitutional amendment Entry 17A "forest" and 17B "protection of wild animals and birds" were included in List III - Concurrent List so that the Parliament as well as the States can enact laws to give effect to the Directive Principles of State Policy as well as various international obligations.

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Father of the Nation Mahatma Gandhi has also taught us the same principle and all those concepts find their place in Article 51A(g) as well. The intrinsic value of the environment as we have already indicated also finds a place in



various international conventions like, Convention for Conservation of Antarctic Living Resources 1980, The Protocol to Antarctic Treaty on Environmental Protection 1998, The Bern Convention on Conservation of European Wildlife and Natural Habitats 1982, CITES, and CBD etc. CBD in its preamble states as follows:

"The Contracting Parties, Conscious of the intrinsic value of biological and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.

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CITES and CBD highlight the following principles:- The State is bound to initiate measures to identify threatened species.

The State is obliged to initiate measures to conserve and protect such threatened species.

The State is also required to formulate policies, legislation and appropriate laws to curb those practices (including trade) that result in extinction of species.The State is obliged to undertake in-situ conservation of biological diversity as it is not sufficient that a species is cultivated elsewhere. It, ought to be protected in its natural habitat.

Indian sandalwood (Santalum album Linn) is not seen included in the species listed in Appendix-II of CITES, however red sandalwood (Pterocarpus Santalinus) is seen included in Appendix-II. At the same time International Union for Conservation of Nature (IUCN) which is an international organization dedicated to finding pragmatic solutions of our most pressing environment and development challenges has included Santalum album Linn in its Red List of threatened species as "vulnerable" and red sandalwood (Pterocarpus Santalinus) in the Red List as "endangered". Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as "threatened with extinction", "endangered".

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Sandalwood as such we have already indicated finds no place in CITES but it is included in the Red List of IUCN as "vulnerable" and hence call for serious attention by the Central Government, considering the fact that all the sandalwood growing states have stated that it faces extinction. Section 61 of the Act empowers the Central Government to add or delete any entry to or from any schedule if it is known that it is expedient so to do. Section 5 deals with the constitution of National Board for Wildlife (NBWL) which is headed by the Prime Minister as Chairman. Section 5C deals with the functions of the NBWL which states that it shall be the duty of the National Board to promote the conservation and development of wildlife and forests by such measures as it thinks fit. Section 5C(ii)(a) states that the measures may provide for promoting



policies and advising Central Government and State Governments on the ways and means of promoting wildlife conservation and effectively controlling poaching and illegal trade of wildlife and its products and also for reviving from time to time the progress in the field of wildlife conservation in the country and suggesting measures for improvement thereto. Various other powers have also been conferred on the National Board which consists of experts in the field of environment. In such circumstances rather than giving a positive direction to include sandalwood in Schedule VI we are inclined to give a direction to the Central Government to examine the issue at length in consultation with NBWL and take a decision within a period of six months from today as to whether it is to be notified as a specific plant and be included in Schedule VI of the Act.

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"We are also inclined to give a direction to the Central Government to formulate a policy for conservation of sandalwood including provision for financial reserves for such conservation and scientific research for sustainable use of biological diversity in sandalwood. Central Government would also formulate rules and regulations under Section 3 and 5 of Environmental Protection Act 1986 for effective monitoring, control and regulation of sandalwood industries and factories and that it should also formulate rules to ensure that no imported sandalwood is sold under the name of Indian sandalwood and adequate labelling to this effect be mandated for products manufactured from or of import of sandalwood. States are directed to immediately close down all un-licensed sandalwood oil factories, if functioning and take effective measures for proper supervision and control of the existing licensed sandalwood oil factories in states."

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We are also of the view that time has also come to think of a legislation similar to the Endangered Species Act, enacted in the United States which protects both endangered species defined as those "in danger of extinction throughout all or a significant portion of their range" and "threatened species", those likely to become endangered "within a foreseeable time."

It is clearly seen from the above Order that the conservation of sandalwood and regulation of sandalwood based industries has been on top most priorities of the Hon'ble Apex Court. It is pertinent to mention that the Hon'ble Apex Court has laid stress on scientific research for sustainable use of biological diversity in sandalwood. Further, all unlicensed sandalwood oil factories have been directed to be closed. It is not known what the State Government of Maharashtra has done in compliance to the above Order. Does the State Government have a list of all sandalwood growers in the State? Does the State Government know how much area is under sandalwood cultivation along with year of plantations? It has come to the notice of this Appellate Authority that Amravati and Yavatmal forest circles have natural sandalwood in the forest areas. Has the State government made any effort to enumerate, conserve and protect the

sandalwood? The growth and development of heartwood of sandalwood depends on various factors like soil, topography, rainfall, etc. It means sometimes even 15 years old plantations may not have well-developed heartwood. Moreover, vide various Research Papers it has been found that heartwood develops in favourable climatic and topographic conditions only after 20-25 years for optimum sandalwood oil extraction. Therefore, assessment of availability of sandalwood for sandalwood based industries has to be purely on scientific lines in order to protect the already vulnerable and threatened species from extinction from the forest areas.

The Appellant in his appeal has submitted that the impugned decision of the SLC taken in its 22nd meeting is in blatant violation of orders of the Hon'ble Supreme Court dated 12.12.96, 4.3.1997 and 5.10.2015 and against the Guidelines as all the provisions have a common motto that no new wood based industry or enhancement of capacity of existing wood based industry is permissible in absence of Timber Availability Report. On this point, the Respondents have argued that the wood assessment study was carried out by the Assistant Conservator of Forests and the Range Staff. Afterwards it was checked and the site visit was done by the Deputy Conservator of Forests (T) Ahmednagar Forest Division. The appellant has submitted the contents of the report presented by the Chief Conservator of Forests, Nashik Circle before the SLC wherein it has been reported that the farm of Smt Sharda Gadekar (Respondent No. 2) has about 11 years of raw sandalwood and Siddheshwar Prakriya Udyog (Respondent No. 3) has sufficient sandalwood for 4 years on his own private farm. Further, it has been argued by the respondents that the assessment done by the ACF and DCF is valid because the SLC is empowered to assess the availability of timber in the State by way of an appropriate study on demand and supply as and when it decides; and that the SLC can devise suitable mechanism for sustainable use of timber in a way that does not affect the forests of the area adversely; and that the raw material is being procured from the private farms of the respondents and hence no forest area will be affected.

The importance of assessment of legally available timber for regulation of wood-based industries has been highlighted by the Apex Court in several rulings. Following are various other orders/judgments of Hon'ble Supreme Court and the wisdom mentioned in National Forest Policy, 1988 which speak of the importance of assessment of timber:

1. The Hon'ble Supreme Court in WP (Civil) No. 202/1995 dated 05/10/2015 directed the MoEFCC to issue appropriate guidelines to assess the availability of timber. The relevant part is produced below:

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

2. The Hon'ble Supreme Court of India in Writ Petition (Civil) No. 171 of 1996 dated 12/12/1996 held that:



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

(i) the sustainable capacity of the forests of the State qua saw mills and timber based industry;

(ii) the number of existing saw mills which can safely be sustained in the State; the optimum distance from the forest, qua that State, at which the saw mill should be located".

3. The Hon'ble Supreme Court in WP(Civil) No. 202/1995 dated 04/03/1997. Hon'ble Court held that:

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

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The Central Government shall dispose of all such applications within six weeks of their being received. Where the grant of final clearance is delayed, the Central Government may consider the grant of working permissions as per existing practice.

General directions. It is made clear that the order passed by this Court in these matters, including the order dated 12/12/1996 and the present order shall be obeyed and carried out by the Union Government as well as the State Governments, notwithstanding any order or direction passed by a Court, including a High Court or Tribunal, to the contrary."

4. The Hon'ble Supreme Court of India in Writ Petition (Civil) No. 171 of 1996 dated 15-01-1998 held that:

"Number of wood based industries shall be determined strictly within the quantity of timber which can be felled annually on sustainable basis as determined by the approved working plans from time to time. If it is found that units after relocation in industrial estate have excess. excess capacity then their capacities shall be reduced pro rate to remain within the sustainable levels

5. Even the National Forest Policy, 1988 has highlighted the need for assessing the availability of timber. The relevant part is reproduced below:

"4.9 Forest-based Industries The main considerations governing the establishment of forest-based industries and supply of raw material to them should be as follows:

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- a. *As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.*
- b. *No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of the local population should not be sacrificed for this purpose."*

Accordingly, the MoEF&CC issued the Guidelines for the regulations of Wood-based industries. It is pertinent to mention that paragraph No. 4 of the Guidelines requires the SLC to satisfy itself with availability of legal timber before granting fresh licenses or before enhancing the capacity of existing licenses. The said Guidelines have been made to enforce the Order passed by the Hon'ble Supreme Court in WP (Civil) No. 202/1995 dated 05.10.2015. The relevant Guideline with its amendment is reproduced below

"4. Powers and Functions of State Level Committee:

The State Level Committee shall:

- (i) *Assess the availability of timber for wood based industrial units in the State/UT every five years.*
- (ii) *Approve the name of wood based industrial units which may be considered for grant of fresh license or enhancement of the existing licensed capacity in case the committee is satisfied that timber is available legally for the said new Wood Based industry (such as Trees outside forest, Forests etc.) '.*

The said Guidelines were Amended on 11.09.2017 as under: (relevant part only)

"The entries under Para-4 of these Guidelines are substituted with the following:
4. The State Level Committee shall:

- ii. *Assess the availability of timber in the State by way of appropriate study on demand and supply as and when it decides. SLC shall devise a suitable mechanism for sustainable use of timber in a way that does not affect the forests of the area adversely.*
- iii. *Approve the name of wood based industries which may be considered for grant of fresh license or enhancement of the existing licensed capacity in case the SL is satisfied that timber is available legally for the said new Wood Based Industries (such as Trees outside forests, Forests etc.)".*



In the amended provision, it has been mentioned that the SLC shall assess the availability of timber in the State by an appropriate study, as and when it decides. Further, the SLC has been authorized to approve a wood-based industry for the grant of fresh licence or for the enhancement of existing licensed capacities if the SLC is satisfied that the timber (sourced from Trees outside Forests or Forests) is legally available in the State for establishment of the said new wood-based industries (i.e. a freshly licenced industry or freshly enhanced existing licence). That is to say if a decision for granting fresh license or enhancement of existing licenced capacity is to be undertaken, the SLC should be satisfied that the timber is legally available in the State by way of undertaking an appropriate study. Now the question whether the scope of such a study can be restricted to farmers' field or has to be for the entire State is required to be carefully analyzed.

The issue can be best determined by first discussing in detail as to why regulation of wood-based industries is important based on a correct assessment of legal timber in the State. Wood-based industries can be roughly compared to the concept of watershed. Watershed is a geo-hydrological unit draining to a common point. Small streams drain into big streams, which drain into rivers, which finally drain into the sea. Likewise, a wood-based industry is the 'draining point' of all wood-based activities- both legal and illegal. Once the raw material reaches a sawmill and is sawn, it becomes very difficult to ascertain the origin of the raw material unless an effective system is in place to record the same. The journey of the raw material from its 'origin' to its 'draining point' is precisely what the principle of sustainable development is trying to focus at. The raw material is a finite resource. We cannot have infinite wood-based industries based on a finite resource. Distributing sawmill licenses without assessing the available legal timber in a State, and expecting the system to keep a check on illegal origin if any, is like distributing driving licenses to all people irrespective of the driving skills and expecting that accidents will not take place. We cannot endlessly beat around the concept of encouraging agroforestry activities to justify the non-requirement of assessment of timber precisely because of the principle of sustainable development and the Precautionary principle. The Hon'ble Supreme Court in Writ Petition (civil) No. 4677 of 1985 titled '**M. C. Mehta vs Union of India and Ors**' dated 18/03/2004 observed that:

"The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and peoples' life, health and property, the principles of accountability for restoration and compensation have to be applied. The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by this Court in T.N. Godavarman's case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of



full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a straight jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is stopped, there may be irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. **Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment**".

Upon perusal of various Rulings of the Hon'ble Apex Court in WP (Civil) No. 202/1995 dated 12.12.1996, 04.03.1997 and 05.10.2015, the sole purpose of assessment of legally available raw material for new wood-based industries is to ensure implementation of the Principle of Sustainable Development of environmental law. The Hon'ble Supreme Court in WP(Civil) No. 202/1995 dated 30.10.2002 has observed that:

"Duty is cast upon the Government under Article 21 of the Constitution of India to protect the Environment and the two salutary principles which govern the law of environment are: (i) the principles of sustainable development and (ii) the precautionary principle. It needs to be highlighted that the Convention on Biological Diversity has been acceded to by our country and, therefore, it has to implement the same. As was observed by this Court in Vishaka and Ors. vs State of Rajasthan and Ors. (1997) (6) SCC.

The raw material is a finite resource. We cannot have infinite wood-based industries based on a finite resource. Distribution of sawmill licenses without assessing the available legal timber in a State, and expecting the understaffed and overburdened administrative system to keep a check on illegal origin, if any, is like distributing driving licenses to all people irrespective of their driving skills and expecting that accidents will not take place. We cannot endlessly beat around the concept of encouraging agroforestry activities to justify the non-requirement of assessment of timber precisely because of the Principle of Sustainable Development and the Precautionary Principle.

That is to say, for the purpose of achieving sustainability in the sector of wood-based industries, the capacities of wood-based industries need to be adjusted vis-à-vis the available raw material. The determination of such capacities can be derived only from correct assessment. There cannot be infinite capacities, as it will be directly against the Principle of Sustainable Development. There can be two approaches for carrying out the said assessment- a macro approach and a micro approach. A macro approach would require the SLC to carry out assessment for the entire State and then determine the number of wood-based industries that can be sustained on the available raw material. Since the assessment is available for the entire State, the SLC will be able to fix the capacity of each industry within sustainable levels. If the quantity of available raw material goes up in few years, a new assessment can be carried out, based on which the number of wood-based industries as well as their capacities can be increased. Whereas in the micro-approach, for every new applicant of the wood-based industry, the SLC would be required to carry out specific study on the availability of raw material for that particular industry. In the micro-approach, the SLC may not be able to fix the capacity of each industry within the sustainable levels, as the available raw material for each individual industry may vary. The Guidelines too do not prescribe any species-

specific or farm-specific assessment, as it will not give a correct figure on sustainable levels. Moreover, the Guidelines have come up to regulate wood-based industries in a larger perspective. The spirit of all Rulings of the Hon'ble Supreme Court is also tilted at adopting a larger approach when it comes to fixing a limit on the growth of wood-based industries for the sake of ensuring sustainability. Therefore, the SLC (which is a committee at the level of State) is also expected to carry out studies following a larger perspective, because the mandate of the SLC is for the entire State. While deciding the appeal against the assessment of timber availability in the State of Maharashtra by IWSST the following direction was issued vide Order dated 4th March 2022.

“Respondent No. 1 is directed to do away with the faulty and error-prone demand-supply approach of assessing the timber availability and switch over to the species-wise growing stock-based assessment by keeping in view the harvestable/non-harvestable/desirable growing stock related to the wood-based industries, preferably by adopting a customized design and methodology with the help of the experts working/worked in the FSI or otherwise.”

But in the instant case, the SLC has followed a micro-approach of assessment which is beneficial only for a few individuals and not for the entire State. If macro-approach of assessment is followed, the SLC can fix the capacity of every industry that is aspiring to set up their units. The micro-approach of assessment adopted by respondent No. 1 may open Pandora's Box when people may start applying for a new wood-based industry based on timber available in their farms. For instance, a teak grower may apply for a new sawmill praying that he will use teak only from his farm to feed his sawmill. Although the situations of teak and sandalwood industries may not be comparable, but the yardstick of granting licenses to new wood-based industries based on the sandalwood scenario may be utilized (or misutilized) by other growers. Moreover, it is a well known fact that the State Forest Department does not have adequate manpower to check malpractices that may take place at every new-wood based industries licensed based on micro-approach of wood assessment.

Hence, the assessment of timber before the grant of licences is an integral part of the Guidelines, that has emanated from the Order passed by the Hon'ble Supreme Court and therefore cannot be escaped. The States are bound to obey the Orders passed by the Hon'ble Supreme Court, and in turn, the Guidelines framed by the Central Government. Moreover, Article 13 of the Constitution defines the expression “law” to be any Ordinance, Order, Bye-Law, Rule, Regulation, Notification, Custom or Usage having the force of law in the territory of India or any part thereof. Further, as per Article 141 of the Constitution of India, the Orders of the Hon'ble Supreme Court are bound to be obeyed by all the Courts, statutory authorities, including the State Governments within the territory of India. The Guidelines issued by MoEF&CC are applicable to the whole of India, including all the States and Union Territories.

While deciding the appeal against the assessment of timber availability in the State of Maharashtra by IWSST the following methodology of assessment was suggested vide Order dated 4th March 2022:

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Respondent No. 1 could have designed a methodology either by filtering-out non-harvestable and undesired growing stock or by customizing sampling design and methodology as suggested below:

Available Timber distributed over a period of 10 years = (Total growing stock – (minus) The non-harvestable growing stock –(minus) The growing stock not desired by wood-based industries) X 50 %. [Note: 50% for the sake of sustainability].

OR

Available Timber distributed over a period of 10 years = (Growing stock desired by wood-based industries assessed by a customized sampling design and methodology in both forest as well as TOF) X 50 %. [Note: 50% for the sake of sustainability. A customized design may be used if we do not wish to go into a laborious exercise of estimating entire growing stock].

So, the argument put forth by respondents that the assessment carried out by the Assistant Conservator of Forests and the Deputy Conservator of Forests (T) Ahmednagar Forest Division is not tenable as the wood assessment was carried out only for a particular area and not for the entire State of Maharashtra. The wood assessment was required to be undertaken for the entire State of Maharashtra in order to ascertain the wood availability in the State and only on the basis of the said study, the proposals of the Respondent Nos. 2 and 3 were to be approved by the SLC. Thus, the argument put forth by the Respondents that wood assessment study was carried out and consumable Sandalwood is available with Respondent no. 2 and 3 in their own private farms stands rejected. Hence, the issue no. 1 is decided in favour of the Appellant.

9. Issue No. 2

Is the impugned decision taken by the SLC in its 22nd Meeting dated 03.05.2023 finalized on 21.06.2023 against the Guidelines is liable to be quashed?

The issue of incorrect assessment of available wood based on which the SLC's decision can be quashed is already covered above. During the hearing held on 06.10.2023, the respondent No. 2 and 3 argued that the decision taken by the SLC in its 22nd Meeting dated 03.05.2023 finalized on 21.06.2023 against the Guidelines is not liable to be quashed because there is an exemption clause in the Guidelines that explains why sandalwood processing industries should be out of the purview of the Guidelines and the SLC. The relevant para is produced below:

The entries under Para- 8 of the Guidelines are substituted with the following:-

- i. No license to a wood based industry shall be granted or renewed without obtaining prior approval of the SLC. However, a SLC may delegate the power of renewal of license to a wood based industry to the Divisional Forest officers of the concerned Forest Divisions.*
- ii. Following industries/processing plants not using round logs of domestic origin or operating without a hand saw or re-saw or circular saw of more than thirty centimeter diameter shall not require license:*

Industries/processing plants which use:

2

- However, SLC of the concerned State may allow installation of circular saw of diameter upto 60 centimeter in such industries having specialized requirement. Such industries shall be registered with the Forest Department of the concerned state/UT and shall be regulated, details of which are to be prescribed by the concerned state/UT*

Based on the above provision, the assessment of sandalwood processing industries is as done below:

Sr. No.	Criteria for exemption	Whether the criterion is fulfilled or not	Remarks
1	Industries/processing plants NOT using round logs of domestic origin OR Industries/processing plants operating without a hand saw or re-saw or circular saw of more than thirty centimeter diameter	No Yes	Sandalwood processing plants use round logs of domestic origin in the initial phase of processing. As per the study conducted by the SLC and information provided by the respondents, there is no hand saw or re-saw or circular saw more than 30 cm diameter used in the sandalwood processing units. The trees are cut and chopped by axe.

2	Round log/timber from species declared as agro-forestry/agricultural crops. AND/OR Exempted from the purview of the felling and transit regime in the concerned state/UT, and procured from legitimate sources	No No	Sandalwood is not declared as agro-forestry crop in any Government notification. Sandalwood is exempted from felling regime but not exempted from transit regime.

The above analysis clearly shows that the sandalwood processing industries do not fall in the exemption criteria.

Further, it is to be noted that vide letter dated 07.08.2023, the SLC has communicated the Agenda items to be discussed in the 23rd Meeting of the SLC which was held on 11.08.2023. That, the Agenda Item No.1 is regarding the sandalwood processing permission w.r.t the decision taken in the 22nd meeting wherein the SLC has itself raised that the CCF (T) Nashik vide his letter dated 18.07.2023 has requested SLC to allow these two units of respondent No. 2 and 3 to procure sandalwood from outside their farms.

In addition to this, in the Agenda note circulated by the SLC has stated that “The proposal if accepted may lead to increase in sandalwood plantation and employment opportunities. However, there is no Timber Availability Report” for the State of Maharashtra to support the proposal. Furthermore there has been no assessment of Sandalwood availability for Ahmednagar district or any other district in the state. Thirdly it might lead to mixing of illegal sandalwood timber in garb of farmer’s sandalwood.”

This undoubtedly shows that the Respondent No. 1, the SLC has itself accepted that neither there is Timber Availability Report” for the State of Maharashtra to support the proposal nor there is any assessment of Sandalwood availability for Ahmednagar district or any other district in the State. Moreover, it was the argument of all the Respondents that the sandalwood is being procured from the farms of the respondent No. 2 and 3 and no outer source was being relied upon. The CCF Nashik’s request made vide letter dated 18.07.2023 depicts a contradictory picture as to the reliable sources for procuring the sandalwood for the purpose of assessment.

During the hearing held on 06.10.2023, the respondent No. 2 and 3 argued that the decision taken by the SLC in its 22nd Meeting dated 03.02.2023 finalized on 21.06.2023 against the Guidelines is not liable to be quashed because due to the said decision given by the SLC, they have invested a



significant sum of money into purchasing of equipments and machinery required for installation of sandalwood processing unit; and that if the decision is quashed, they may suffer a heavy financial loss. This argument is not tenable as the SLC was well aware of the requirement of a correct assessment of the availability of legal timber in the State vide earlier orders passed by this Appellate Authority. Moreover the representative of the Regional Office, MoEF&CC has been raising dissent on the issue of timber availability report. In spite of knowing everything, the SLC resorted to issuing licenses to new wood-based industries without there being a correct assessment of available timber.

When the rules are unambiguous, when the orders passed by Hon'ble Supreme Court have a clear intent, it is quite surprising that the SLC is repeatedly disobeying the Order of the Hon'ble Apex Court. Deliberate disobedience of the Orders of Supreme Court amounts to a total disregard shown to the rule of law. The Hon'ble Supreme Court in Contempt Petition (Civil) 83 of 2005 dated 10/05/2006 in the matter of **'T.N. Godavarman Thirumulpad Through Amicus Curiae vs Ashok Khot and Anr.'** has observed the following:

"In our democratic polity under the Constitution based on the concept of 'Rule of Law' which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system. THE LAW IS SUPREME.

Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.

Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our Constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with."

Further, the respondents have argued that the appellant is not aggrieved by the decision of the SLC and hence does not have any *locus standi*. The Guidelines have clearly mentioned in paragraph 9 that anyone who is aggrieved by the decision of the SLC may file an appeal before the Regional Office of the Ministry. The word 'Any Person' is not restricted to stakeholders of wood-based industries alone. It covers all citizens of India. The judgments relied upon by the Appellant are hereby accepted and the same has been reproduced below:

1. The Honorable NGT in Appeal No. 9/2014 in the matter of **Anil V. Tharthare Versus Secretary and Ors.** has observed in para No. 29 and 30 relying upon the case of M.C. Mehta has said that, *"it is now settled that meaning of word "aggrieved person" or "person aggrieved" shall receive very liberal interpretation and shall not be hyper technical to exclude bonafide individual to seek redressal at the hands of tribunal to protect environment in the large interest of the*



society".

2. Vide Order dated 06.05.2009, the Hon'ble Delhi High Court in ***Prafull Samantra -V/s- Ministry of Environment and Forest*** has observed in para number 18 that, *"the world as we know is gravely imperiled by mankind's collective folly. Unconcerned to the environment has reached such damaging levels which threatens the very existence of life on this planet. If standing before a special Tribunal created to assess impact of projects and activities that impact, or pose potential threats to the environment or local communities is concerned narrowly, organizations working for the betterment of environment whether in the form of NGOs or otherwise, would be effectively kept out of the discourse, that is so crucial an input in such proceedings. Such association of persons as long as they work in the field of environment possess a right to oppose and challenged all actions, whether of the State or private parties that impair or potentialimpairs the environment. In cases where complaints, appeals etc. are filed by bonafide public spirited interested persons, environmentalactivists or other such voluntary organizations working for the betterment of community as a whole, they are to be construed as "aggrieved person" within the meaning of that expression under section 11 (2) (c) of the Act"*.

Based on the issue no.1 discussed above and the relevant Supreme Court Orders, the impugned decision of the SLC in its 22nd meeting dated 03.02.23023 finalized on 21.06.2023 whereby licenses to the sandalwood processing units of respondent no. 2 and 3 were granted by the respondent no.1 have been found to be violative of the provisions laid down in the Guidelines and also the orders passed by the Hon'ble Supreme Court of India in WP (Civil) No. 202/1995 dated 12.12.1996, 04.03.1997 and 05.10.2015, as the proposals have been approved without carrying out a correct wood assessment for the entire State of Maharashtra as prescribed by the Guidelines and mandated by the Hon'ble Supreme Court in its various orders. Hence, the issue no. 2 is decided in favour of the Appellant.

10. Final Order

In view of above facts and circumstances, the said decision of the SLC taken in its 22nd Meeting dated 03/05/2023 finalized on 21/06/2023 granting licenses to the sandalwood processing units of the respondents no. 2 and 3 is quashed and set aside with immediate effect. The SLC is directed to issue appropriate directions to all concerned in this regard. Further directions are as follows:

- a. The SLC is directed to carry out correct assessment of available timber in the State of Maharashtra as directed in the previous order dated 04/03/2022 for general timber species and for sandalwood, in the light of the direction of the Hon'ble Supreme Court issued vide Order dated 13.02.2012
- b. It is not understood as to why the SLC is repeatedly ignoring the requirement of assessment of legally available timber in the State of Maharashtra for the regulation of wood-based industries; and resorting to issuing licenses to new wood based industries without the said assessment. The State Government of Maharashtra was earlier directed to set up an inquiry in this regard. The State Government of Maharashtra is directed to issue directions to the SLC for undertaking correct assessment of legally available timber



in the State in the light of provisions laid down in the Guidelines and also the orders passed by the Hon'ble Supreme Court of India in WP (Civil) No. 202/1995 dated 12.12.1996, 04.03.1997, 13.02.2012 and 05.10.2015.

- c. Respondent No. 2 and 3 may approach appropriate forum for compensating losses accruing due to impugned decision issued by the SLC in its 22nd Meeting dated 03.05.2023 and finalized on 21.06.2023

Pronounced on this 8th day of October 2023.



208/10/2023
V. N. Ambade, IFS

Deputy Director General of Forests (Central)

Regional Office,

Ministry of Environment, Forest and Climate Change, Nagpur