CITATION NO. 2025:MPHC-JBP:8363

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE,
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
&
HON'BLE SHRI JUSTICE VIVEK JAIN
ON THE 1st OF MARCH, 2025

WRIT PETITION No. 13864 of 2019

VIVEK KUMAR SHARMA
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anshuman Singh – learned counsel for the petitioner.

Shri Amit Seth – Addl. Advocate General for the respondent/State.

Shri Sanjay Agarwal – Senior counsel with Shri Rahul Gupta, Shri Aditya Khandekar, Shri Akshay Sapre and Shri Mukhtar Ahmad, learned counsel for the respondent/Interveners.

Shri Kaushalendra Nath Pethia, learned counsel for the respondent No.5/N.H.A.I.

WITH

WRIT PETITION No. 26802 of 2018

ANAND
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Anuvad Shrivastava – learned counsel for the petitioner.

Shri Amit Seth – Addl. Advocate General for the respondent/State.

"Reserved on : 09.01.2025"

"Pronounced on : 01.03.2025".

ORDER

Per*: *Hon'ble Shri Justice S.A.Dharmadhikari

A. BACKGROUND FACTS LEADING TO PRESENT REFERENCE TO FULL BENCH

1. The State of Madhya Pradesh, in exercise of powers available under **Sec. 41(3)** issued the impugned Gazette notification on 24.09.2015, through which around initially 53 species of forest produce (used interchangeably for trees & plants) were exempted from the operation of the rigours of regulatory provisions under the Transit Rules. This notification initially comprised 53 species of forest produce, which included a large number of those species, which are stated to be present in abundance in the dense forests of Madhya Pradesh in various districts. Subsequently through another notification dated 11.04.2017, the aforesaid notification was amended to exclude another 9-10 species of forest produce from the rigours of Transit Rules.

2. A writ petition came to be instituted before the Indore Bench of this Court titled as *'Anand vs State of M.P. and Ors.'* (W.P. No. 26802/ 2018), laying challenge to the impugned notification dated 24.09.2015 exempting 53 species. In the said writ petition, when the State failed to file a reply timely, this Court stayed the operation and effect of impugned notification dated 24.09.2015. Subsequently, however on application for modification instituted at the instance of certain parties (private paper mills), the aforesaid stay order was modified subsequently vide dated 14.08.2019, permitting the applicant paper mill company to transit the forest-produce required for production of the finished materials (paper and paper products) in the same fashion as it was being done earlier prior to the issuance of the impugned notification.

3. Subsequently in a separate writ petition instituted before the Principal seat of this Court (*Vivek Kumar Sharma v. The State of Madhya Pradesh & Ors.,* WP

No. 13864 of 2019), vide its order dated 12.04.2022, a similar challenge was laid to the impugned exemption notification. In view thereof vide its **order dated 12.04.2022**, writ petition pending before the Indore Bench was transferred to this Court, with the direction for analogous hearing of all the writ petitions. Resultantly before us are the following writ petitions for consideration, all of which revolve around the validity or interpretation of impugned notification dated 24.09.2015 : W.P. No. 26802/ 2018 (*Anand v. State of M.P. and Ors.)*, W.P. No. 13864 of 2019 (*Vivek Kumar Sharma v. The State of Madhya Pradesh & Ors.).*

4. A Division Bench of this Court, presided by Hon'ble the then Chief Justice vide its **order dated 04.12.2024** posted the present dispute for consideration before the larger Bench, in view of **order dated 13.01.2016** passed by the Indore Bench of this Court in an earlier petition styled as WP No. 7491/ 2015, relying upon the orders and directions of the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad v. Union Of India & Ors., AIR 1997 SC 1228*.

5. Pertinently in the aforesaid **order dated 13.01.2016** passed by the Division Bench, the validity of impugned notification was never delved into nor adjudicated on merits. Thus the present reference is constituted ***squarely*** for determining the constitutionality and validity of the impugned notification dated 24.09.2015. The Court shall also examine the validity of amending notification issued subsequently to the impugned notification in April 2017, wherein 9 more species of trees/ forest produce were included over and above 53 species, taking the tally of exempted species to **'62 species'**. Though the amending notification of April 2017 has not been challenged, however since the original notification is assailed, it will torpedo the amending notification if quashed by this Court.

"दशकूपसमा वापी दशवापीसमो ह्रदः ।

दशह्रदसमः पुत्रो दशपुत्रसमो द्रुमः ॥"

A pond equals ten wells, a reservoir equals ten ponds,
A son equals ten reservoirs, and a tree equals ten sons !!!

- Extracted from Verse No. 512, Chapter 154 of Matsya Purana.

A tree therefore is stated to give life to ten families.

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"The damages due to climate change or the adverse effects pose an existential threat, and it's not that it is far away, its right now looming on our heads; if unattended, it can cause immense, irreversible damage in the foreseeable future."

- **Mr. Justice K.V. Viswanathan**, Judge, Supreme Court of India in the **4th Justice H.R. Khanna Memorial National Symposium** held on 07th July 2024 organized by Dharmashastra National Law University (DNLU), Jabalpur.

B. FOREST COVER IN MADHYA PRADESH: SUMMARY OF FSI REPORTS FROM 2019-2023

6. Before moving ahead to discussion on various constitutional and environmental paradigms, a brief reference can be made to the facts and figures recorded by **Forest Survey of India** in its biannual reports on status of forest cover in India, with State wise descriptions. Forest Survey of India (*for short,* **'FSI'**) is a nodal organization established under the Ministry of Environment and Forests, Government of India (*for short,* **'MoEF'**) whose principal mandate is to conduct survey and assessment of forest resources in the country. Started in the year 1965 on a smaller scale, it was formally

reorganized in the year 1981, succeeding its predecessor Pre-Investment Survey of Forest Resources (PISFR).

7. Therefore the reports which we shall be making reference to hereinafter of FSI possesses an element of authenticity in as much they have been prepared under the umbrella and oversight of the MoEF itself. The policies and reports of MOEF have attracted a lot of engagement and attention of this court, as also subject matter of emphatic arguments by various contesting parties.

8. **Madhya Pradesh** is a forest-rich State ranking first in the country in terms of the Recorded Forest Area (*for short,* **'RFA'**), stretching over a total of **94,689 sq. km** of the total geographical land area of the State (30.72 percent of its total geographical area). Out of this **61,886 sq. km** is reserved forest, whilst **31,098 sq. km** is protected forest and **1705 sq. km** is unclassified forest as in the year 2019. 10 national parks, 25 wildlife sanctuaries and 8 tiger reserves along with 19 notified Eco-sensitive Zones are comprised in this forest cover of the State. However the actual forest cover (that under self-sustaining tree plantation with biodiversity, flora and fauna) as per the FSI Report of 2019 is **77,482.49 sq. km,** which is **25.14** percent of the State's geographical area.

9. The eastern patch of Madhya Pradesh from southern to southeastern and to eastern portions, comprising the districts between Harda, Hoshangabad at the bottom to Tikamgarh, Chhatarpur at the top possesses the major forest cover of the state, housing majority of national parks, sanctuaries and reserved forests. To the contrary, the western part of Madhya Pradesh, comprising districts like Ujjain, Shajapur, Indore, Ratlam, etc. and areas bordering Rajasthan and Gujarat have a very scarce forest cover. The areas of northern Madhya Pradesh comprising districts falling in the Chambal division of

Gwalior, Shivpuri, Shivpur, etc., have discrete patches of Moderate Dense Forest (*for short,* **'MDF'**) spread sporadically.[1]

10. **The distribution of density of forest in the State of MP is as follows:**

a. **6676.02 sq. km** under very dense forest;

b. **34,341.40 sq. km** under moderately dense forest (MDF); and

c. **36,465.07 sq. km** under open forest.

Class	Area	% of GA
VDF	6,676.02	2.17
MDF	34,341.40	11.14
OF	36,465.07	11.83
Total	**77,482.49**	**25.14**
Scrub	6,001.91	1.95

11. These are figures which may vary to certain extent in reports of other environmental and wildlife institutes (government or private), but for lending authenticity to our judgment, we have picked up and referred to extracts from FSI Reports.

12. The forests in Madhya Pradesh are broadly classified under the headings of *'tropical moist deciduous forest', 'tropical dry deciduous forests', 'tropical thorn forests'*, *'littoral swamp or hill forests'.* This description is being offered to show the stretched expanse of and incalculable biodiversity of trees, plants, shrubs and herbs in different types/ classes of forests of Madhya Pradesh.

13. Cumulative & combined reading of **FSI Reports from 2019 to 2023** prepared biannually demonstrates that between 2019 and 2023, there had

[1] Figure no. 11.15.3 at page 146 of SFI report 2019

been a net reduction of **420 sq. kms** of forest cover in the State of Madhya Pradesh. This figure encapsulates within itself an increase of **363 sq. km** of very dense forest area, but corresponding severe/ sharp decrease of **630 sq. km approx** and decrease of **104 sq. km approx** of moderate dense forest and open forest area, which takes the net figure to **420 sq. km**. Correspondingly there has been an increase of non-forest areas of **3,200 sq. km** area approx in the non-forest area of the State. These figures clinchingly point out that where on one hand every year forest cover is admittedly shrinking swiftly, on the other hand non-forest area is getting compounded by stretching its arms in the State of M.P.

14. The reasons that were attributed for the loss of forest cover and increase of non-forest area in various FSI reports have been highlighted as follows:

- The Harvesting of short rotation plantations,
- Shifting cultivation practices,
- Human activities such as encroachment, and excessive felling & cutting of trees for timber and wood inside the forest areas.
- Natural calamities like storms, floods, and landslides, Titles given to beneficiaries under the Forest Rights Act 2006.

15. From the above, therefore both human intervention, activities as well as natural processes are reasons behind the fast-decreasing forest cover of MP. It is estimated that if the forest cover keeps decreasing at the pace it is happening in Madhya Pradesh, then in the next 50 years, almost half of the current forest cover would be wiped off/ disappear from the notified forests of the State of M.P. Judicial notice can therefore be taken of the above facts and it can be safely assumed that the *spectre of environmental* degradation is *'existential'* and *'not futuristic'*; it is right in front of the current generation, staring at us eye to eye, sounding an alarming call that the environment has to

be at the forefront and priority, whilst framing or implementation of any of the developmental policies by the State.

C. ISSUES FOR CONSIDERATION IN THE PRESENT REFERENCE

16. Issues for consideration, ancillary and incidental to the principal issue of validity of the impugned notification, which this Court shall be answering, are broadly as follows**:**

a.) Whether the challenge to the impugned notification can be repelled on the grounds of delay and laches for belated challenge after 4 years of its issuance?

b.) Whether the scheme of Section 2(4) of the Forest Act permits to separate exemption differentially for government as well as the private lands?

c.) What is the interrelation between Articles 41(1), (2) on one hand and 41(3) on the other; the nature and character of powers of exemption available under Section 41(3)?

d.) Whether the impugned notification dated 24.09.2015 is valid and Constitutional; the impact of Reports, Recommendations and Policies of MoEF and MoA, Government of India on the validity of the same?

e.) Whether the impugned exemption notification suffers from the vice of *'manifest arbitrariness'*, resultantly being unconstitutional and invalid?

f.) Whether the annulment or quashing of the impugned exemption notification would lead to revival of previously issued exemption notifications of 2005 and 2007; the directions in respect thereof;

D. CONTENTIONS OF VARIOUS PARTIES AND INTERVENERS:

17. It would be condign to point out that though there was a potent contest made to the impugned notifications before the Indore Bench in W.P. No. 26802 of 2018 (*Anand v. The State of Madhya Pradesh)* on behalf of the PIL petitioner and some of the intervener environmentalists before it, however after the aforesaid writ petition was transferred to Jabalpur, there has been no representation on behalf of various environmentalists, petitioners before this Court. This is despite the fact that public notice about the reference proceedings was disseminated widely by also being placed on the homepage of the official website of the High Court. We restrain ourselves from delving into the reasons for the same, which may be attributable also to lack of financial wherewithal of the PIL petitioners to contest the matter at Jabalpur, instead of Indore.

18. Apart from the environmentalists and public-spirited citizens, certain proceedings by way of intervention applications and writ petitions have also been taken out by the farmers owning private lands (Bhumiswamis) and companies engaged in agroforestry. (Orient paper mill).

19. The contentions of the private landowners, intervener industrial houses and companies in support of the impugned notification are briefly as follows:

    a. The impugned notification dated 24.09.2015 simply expands its ambit from previously exempted 9 species, exempted earlier in 2005 to 53 in the year 2015, without changing the nature and colour of exemption. Since there is no challenge laid to the previously issued notifications of 2005 and 2007, under **Sec. 41(3)**, the same will immunise any challenge to the subsequently issued notification of 2015. It is the contention of the farmer petitioners and corporate interveners that therefore challenge to impugned notification cannot sustain.

b. The State has issued the exemption notification in exercise of its statutory powers delegated under **Sec. 41(3)** of the Forest Act, which it is when competent to notify and therefore in the absence of any challenge to the constitutionality of **Sec. 41(3)** of the Act or the Transit Rules, 2000, the baby of the parent (i.e. impugned notification) cannot be challenged. The Forest Act is an enactment relatable to **Entry 17A of List III** under Schedule VII and thus well within the legislative competence of the State to enact and legislate. In view thereof, the challenge to notification is feeble and not well advised;

c. The challenge to impugned notification is grossly barred by ***delay and laches***, as the notification was issued as early as in the year 2015, but the petition came to be filed in 2019, after a delay of 4 years and thus the petition is not maintainable. The petition is a sponsored litigation, with the petitioners being set up by certain competitor companies for creating hurdles in the business of transit, trading and transportation of forest produce by private landowners and corporate houses in and from the State of Madhya Pradesh;

d. In the MoEF report by a High Powered Committee (*for short,* **'HPC'***)* headed by Shri A.K. Bansal ADG (FC), titled as *'The Regulatory Regime Regarding Felling & Transit Regulation for Tree Species Grown on Non Forest/ Private Lands'*, coupled with recommendations of the MoEF, titled as 'Guidelines for felling and transit regulations' of November 2014 (*for short,* **'MoEF recommendations of 2014'**), the State of M.P. has simply acted upon the said reports and recommendations. Whilst issuing the impugned notification all those species of trees have been exempted, the plantation of which and forest produce generating from which are utilised widely by the farmers for

their business, trade and earning, as also supplied to the various corporate and industrial houses for manufacturing of processed products like paper, rubber, etc. many such consumable and end products;

e. The impugned notification draws its sustenance from the A.K. Bansal report of 2012 as well as the MoEF recommendations of 2014 of liberalising the regulatory regime pertaining to transit and transportation of forest produce of all those trees and timbers, which are of foreign origin, are grown on private lands and used for local businesses and earnings by small farmers and corporate/ industrial houses;

f. Even if the impugned notification of 2015 is set aside by this Court exempting 53 species, the result is the revival of previous notifications of 2005 and 2007, permitting exemption of 9-12 species from the ambit and applicability of Transit Rules framed by the State. Therefore no useful purpose will actually be served by quashing the 2015 notification, except the fact that the number of species exempted by the State Government shall be reduced again from 53 in number to previously existing 9 -12 in number as issued in 2005/ 2007.

20. The contentions on behalf of the State Government led by the Additional Advocate General (*for short,* **'AAG'**), Mr. Amit Seth, Senior Advocate in defence of the impugned notification were broadly as follows:

a. The exemption notification is issued in exercise of delegated powers under **Sec. 41(3) r/w Rule 3** of the Transit Rules, and till the constitutionality of both is challenged specifically, the challenge to impugned notification cannot survive and should be rejected on the said ground itself;

b. Referring to the departmental note sheets showing internal deliberations within the forest department of senior-level officers of the Government, it is stated that exemption notifications have not been issued mechanically, but after deliberations upon the A.K. Bansal Report, the MoEF Recommendations of 2014 & the National Agro-forestry Policy. Only those species have been exempted, which in the '*informed opinion'* and *'satisfaction*' of the State Government were of such nature, of which private cultivation, plantation and removal be encouraged by private landowners, farmers and Bhumiswamis. The State had also taken into consideration the **National Agroforestry Policy** framed by the Ministry of Agriculture in Cooperation, Government of India in 2014, and the **National Forest Policy, 1988**. These 53 species have been exempted with the objective of encouraging and expanding tree plantation in complementarity and integrated manner with crops and livestock to improve productivity, employment, income and livelihood of rural households, especially the small tenure holder farmers.

c. Placing reliance upon the A.K. Bansal Report, it was stated that liberalisation and relaxation from regulatory transit regime ensures facilitative role by the Government and all those species which farmers can easily grow on their land in non-forest areas for making an earning for themselves have been liberated from the regulatory checks by the State. This has been done after a lot of deliberations, consultations and after calling for views from multiple stakeholders for effectively utilizing ***non-forest private lands*** for afforestation and plantation purposes.

d. The writ petitions are based on misplaced presumptions and assumptions that owing to impugned notification exempting various species, forests

are being cut on large scale deforestation is being encouraged by the State Government and illegal trading is being encouraged. To the contrary, the exemption is operational strictly in ***non-forest private lands***, and not within or from the notified forest area.

e. Referring to detailed status report filed with the reply, it has been stated that there is sufficient manpower, resource control and management, strict regulation and checking being undertaken of any forest produce originating within the notified forest area and the State has ensured that illegal felling of trees doesn't happen for the purposes of illegal transportation of forest produce from within the forest area.

f. The exemption in its ***operation and effect*** meant only for transportation and transit outside the forest areas of the State, within the rural and urban areas, qua the forest produce generated out of plantation affected on private lands, by private landowners and farmers. Therefore the writ petition makes a false cry about illegal deforestation or illegal felling of trees, when forests of the State are completely insulated and immunized from outside interference by unscrupulous traders or offenders engaging in deforestation activities.

E. MAINTAINABILITY OF THE INSTANT WPs ON GROUND OF DELAY & LACHES

21. A preliminary objection was raised about delay on the part of PIL petitioners and environmentalists interveners in challenging the impugned notification of September, 2015 through writ petitions filed after inordinate delay of more than 3 years. In the same breath, it was also argued that the Indore bench had already repelled the challenge to the said notification earlier through its judgment dated 13.01.2016 Passes in W.P. No. 7491/ 2015 (*Satyadev Singh*

Tiwari v. The State of Madhya Pradesh & Ors.), which was well known publicly and therefore petitioner deliberately waited for 2 to 3 years to file a similar writ petition with the same reliefs for reasons best known to them.

22. We have had an occasion to glean through the judgment passed by the Indore bench of this Court in W.P. No. 7491/2015 (*Satyadev Singh Tiwari v. The State of Madhya Pradesh & Ors.*). The said judgment nowhere deals with the validity or tenability of the impugned notifications exempting 53/62 species from the ambit of the provisions of the FCA, 1980. The constitutionality or otherwise of the impugned notification from the standpoint of the assail being premised upon it being ultra vires the Transit Pass Rules or the Forest Act, 1927 has not at all been examined in the aforementioned judgment. To the contrary, the judgment simply disposed of the writ petition directing the State to issue transit passes following the guidelines laid down by the Supreme Court laid down in the proceedings of ***T.N. Godavarman Thirumulpad v. Union of India,*** **AIR 1997 SC 1228**. This summary disposal was despite a specific relief sought for quashing of the impugned notification prayed for in the writ petition. Therefore the aforesaid order of Indore Bench cannot be any impediment to infer any delay or laches on the part of the petitioner, as the said judgment never delved into or adjudicated the same. Besides the petitioners were also not a party to the said writ petition, nor has the State contested this factual position of adjudication of the *vires* on merits.

23. However, even otherwise we must pen down our reasons why in a case like the present, even if delay and laches are alleged to be existing in the institution of the writ petition, the same would not deter this Court from entertaining the petition. Our reasons flow as follows.

24. Principles of Limitation Act, 1963 do not apply to the constitutional Courts like High Court exercising original inherent jurisdiction conferred under

Article 226 of the COI. Delay is not an inviolable legal rule, but a rule of practice, which must be supplemented with sound exercise of judicial discretion after an individualized analysis of each case and entertaining claims whilst scrutinizing the competing interests of justice. The Supreme Court has on occasions more than one held in umpteen judgments that in cases where the litigant is incapacitated to approach the Courts, has no easy access to the doors of justice or the cause is one (like 'cause of environment' in the present case), which needs two broad shoulders to be carried onto, the Courts in all such cases must be liberal in overlooking delay and laches in the institution of writ petitions. Especially in cases of environmental injury, consideration of justice demands that there must be adjudication on merits by the Court, rather than a summary dismissal based solely on procedural grounds of delay. The Constitution Bench of the Supreme Court in the matter of ***Kashinath G. Jalmi (Dr) v. The Speaker,*** **(1993) 2 SCC 703**, after analyzing several precedents held that the delay and laches cannot be used to expel a claim made on behalf of the public. The Courts must be driven and governed by the objective of promoting the larger public interest and ought to examine the merits of the matter, where it is found that consideration on merits might have a cascading effect on a sizeable section of citizens. Recently the Constitution Bench of the Supreme Court in the matter of ***In Re: Sec. 6A of the Citizenship Act 1955,*** **2024 SCC OnLine SC 2880** had an occasion to examine the maintainability of writ petition (a petition pertaining to validity of **Sec. 6A** of the Citizenship Act, 1955) in the face of preliminary objections about delay and laches, raised by the Union, on the premise that after decades, the law was laid challenged to by the writ petitioners, when it has withstood the test of time. Carving out an exception in petitions involving vires/ constitutionality of a statute or the Rules enacted thereunder, especially in the backdrop of constitutional provisions, the Court held that a rigid

approach should not be adopted by the Courts as changing social dynamics and societal circumstances necessitate reconsideration of even a *status quo*, even when the challenge is brought after a considerable lapse of time. **Paras 65 and 66** from the judgment of the Constitution Bench in the matter of ***In Re: Sec. 6A of the Citizenship Act 1955*** **(supra)** can be quoted thus:

> *"**65.** Another vital circumstance where the doctrine of delay and laches would not be applicable strictly is in matters where the vires of a statute are challenged vis-à-vis the Constitution. This Court has, in the due course of time, accepted the idea of transformative constitutionalism, which conceptualizes the Constitution not as a still document cast in stone at the day of its formation but as a living and dynamic body of law, capable of constant updation and evolution as per changing societal mores. Should this Court deny a constitutional challenge solely based on delay, it would effectively establish an arbitrary cut-off beyond which laws could no longer be re-examined in light of changing circumstances. Such a rigid approach cannot be countenanced as changing societal circumstances sometimes necessitate a reconsideration of the status quo—even when the challenge is brought after a considerable lapse of time.*
>
> ***66.** To instantiate, a Constitution Bench of this Court in Navtej Singh Johar v. Union of India, held Section 377 of the Penal Code, 1860 to be ultra vires of the Constitution, regardless of the fact that the provision was a part of the statute for over a century. The Court took note of the norms of contemporary society and declared them to be unconstitutional. **If the doctrine of laches were to be applied strictly, time would run in favour of a constitutionally invalid statute, which***

cannot be allowed in the larger interests of justice and the transformative nature of the Constitution."

(emphasis supplied)

25. In the present case, applying the above tests, the present PILs & petitions raise vital questions touching upon the environmental concerns which are relatable to life of every citizen of the State (at least, if not the whole country), as it relates to barrier free, unbridled permission for movement of 62 species of trees, plants whose forest produce are completely liberated from regulatory control of the State, having the potential of adversely affecting forest cover of the State. There is a perceived threat of a glaring nature to the pristine and virgin forest cover of the State, if regulatory control over such large number of species is lifted and therefore instead of being an *in personam* dispute between two warring parties, questions raised in the present proceedings directly or indirectly affects a large section of people.

26. The present petition also raises ***vital public policy issues having wide environmental ramifications***; balancing of the necessity of promoting tree plantation and agroforestry over private lands on one hand; whilst ensuring that it doesn't lead to unchecked felling of trees in the forest areas, using the impugned exemption notification as a shield by the commercial traders, timber merchants and other entities having vested financial interests in the business of forest produce. Therefore doctrine of laches ought not to be applied strictly to throw out the present claim at the very threshold, especially when the Division Bench of the Indore Bench in the matter of *Satyadev Singh Tiwari v. The State of Madhya Pradesh & Ors.* (supra), never attempted even to delve in the said issue, despite the validity of the exemption notification being expressly put under challenge.

27. In view of the above, **the Court is inclined to overrule the preliminary objections of delay and laches** raised by the defendants and various intervenors in unison & we do so.

F. FUNDAMENTAL RIGHTS, DPSP's & ENVIRONMENTAL LAW

28. **Art. 21** enjoins every person residing in the country with the 'right to life'. **Art. 48A** of the Constitution of India is an illuminating constitutional provision and a harbour of environmental principles which have developed in the country over the last few decades. It reads thus:

> "***Article 48A.*** *The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."*

29. Avoiding reference to multiple precedents on the above provisions, reference may be made to certain judgments at the core of the dispute before us about interrelation of a healthy environment, forests, wildlife with the *right to life* of the citizens of the country.

30. In ***A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) & Ors.*****, (1999) 2 SCC 718,** the Supreme Court equated environmental concerns with human rights concerns, tracing both of them to **Article 21** as environmental aspects concern life of any human being. The Court pronounced it to be its bounden duty to render justice by taking all aspects into consideration, whenever environmental breach is alleged in any human activity being undertaken. With a view to ensure that there is neither danger to the environment nor to the ecology and at the same time sustainable development is ensured, it was held that the ***Court can refer scientific and technical aspects for investigation and opinion to expert bodies created under various enactments, or to committees of experts constituted by it comprising senior,***

experienced and imminent individuals from the society having exposure to environmental issues.

31. The aforesaid view has been followed consistently and taken forward recently in the two landmark judgments of ***Himachal Pradesh Bus-Stand Management and Development Authority v. Central Empowered Committee and Ors.*****, (2021) 4 SCC 309** and ***M.K. Ranjitsinh & Ors. v. Union of India & Ors.*****, (2024) 3 S.C.R. 1320**. In the latter judgment, tracing India's commitment under international conventions, especially **The United Nations Framework Convention on Climate Change (UNFCCC),** it was stated that India under international treaties, conventions and various agreements is bound to enforce and effect obligations pertaining to environmental conservation and protection. Underscoring, the spirit behind **Article 48A**, it was stated that even though being one of the Directive Principles of State Policy under **Chapter IV** of the Constitution, non-justiciable in nature, nonetheless it indicates and acknowledges the importance of the natural world and five elements of nature constituting it. The thought that originates from **Article 48A** attains immortality under **Article 21** and thus **Article 48A, 21 and 14** have assumed the importance of providing a fundamental right to a clean environment and the ***fundamental right against the adverse effects of climate change***. Climate change is a serious threat and people have a right against the adverse effects of climate change. The inability of underserved communities to adapt to climate change or cope with its effects violates the right to life as well as the right to equality under **Article 14**. If environmental degradation leads to acute food and water shortages in any particular area, it is the poorer communities and the backward citizens who suffer the most as richer ones always have resources arranged around them in such exigencies. In such circumstances, the right to equality therefore undoubtedly becomes

vital for the poorer communities and backward citizens who have to lay a fight everyday for arranging two square meals a day.

32. The Supreme Court in the matter of ***M.K. Ranjitsinh & Ors. v. Union of India & Ors.*** **(supra)** accordingly whilst propounding the State's affirmative obligation to prevent environmental harm and to ensure overall well-being stated that it is a constitutional compulsion for the States to ensure that legislative and policy decisions are being taken in such a well-deliberated, well anticipated and calibrated manner that citizens are protected against adverse effects of climate change and that any negative impact of human activity/ development is mitigated to the maximum on the environment. ***Vide*** **Paras 26, 27, 29 & 35**, the Supreme Court held thus:

> ***"26.*** *The right to equality may also be violated in ways that are more difficult to remedy. For example, a person living in say, the Lakshadweep Islands, will be in a disadvantageous position compared to person living in say, Madhya Pradesh when sea levels rise and oceanic problems ensue. Similarly, forest dwellers or tribal and indigenous communities are at a high risk of losing not only their homes but also their culture, which is inextricably intertwined with the places they live in and the resources of that place. In India, the tribal population in the Nicobar islands continues to lead a traditional life which is unconnected to and separate from any other part of the country or world. Indigenous communities often lead traditional lives, whose dependence on the land is of a different character from the dependence which urban populations have on the land. Traditional activities such as fishing and hunting may be impacted by climate change, affecting the source of sustenance for such people. Further, the relationship that indigenous communities have with nature may be tied*

to their culture or religion. The destruction of their lands and forests or their displacement from their homes may result in a permanent loss of their unique culture. In these ways too, climate change may impact the constitutional guarantee of the right to equality.

27. *The right to equality under Article 14 and the right to life under Article 21 must be appreciated in the context of the decisions of this Court, the actions and commitments of the state on the national and international level, and scientific consensus on climate change and its adverse effects. From these, it emerges that there is a right to be free from the adverse effects of climate change. It is important to note that while giving effect to this right, courts must be alive to other rights of affected communities such as the right against displacement and allied rights. Different constitutional rights must be carefully considered before a decision is reached in a particular case.*

29. *Of late, the intersection between climate change and human rights has been put in sharp focus, underscoring the imperative for states to address climate impacts through the lens of rights. For instance, the contribution of the UN High Commissioner for Human Rights to the 2015 Climate Conference in Paris emphasized that climate change directly and indirectly affects a broad spectrum of internationally guaranteed human rights. States owe a duty of care to citizens to prevent harm and to ensure overall well-being. The right to a healthy and clean environment is undoubtedly a part of this duty of care. States are compelled to take effective measures to mitigate climate change and ensure that all individuals have the necessary capacity to adapt to the climate crisis.*

> ***35.*** *India faces a number of pressing near-term challenges that directly impact the right to a healthy environment, particularly for vulnerable and indigenous communities including forest dwellers. The lack of reliable electricity supply for many citizens not only hinders economic development but also disproportionately affects communities, including women and low-income households, further perpetuating inequalities. Therefore, the right to a healthy environment encapsulates the principle that every individual has the entitlement to live in an environment that is clean, safe, and conducive to their well-being. By recognizing the right to a healthy environment and the right to be free from the adverse effects of climate change, states are compelled to prioritize environmental protection and sustainable development, thereby addressing the root causes of climate change and safeguarding the well-being of present and future generations. It is imperative for states like India, to uphold their obligations under international law, including their responsibilities to mitigate greenhouse gas emissions, adapt to climate impacts, and protect the fundamental rights of all individuals to live in a healthy and sustainable environment."*
>
> (emphasis supplied)

33. Therefore the interdependence and interrelation of fundamental rights of human beings and environmental concern arising out of any governmental policy decision is well established and embedded in Indian jurisprudence. Any policy framed by the government must withstand strict scrutiny of judicial review - of being the least damaging policy for the environment and giving environment primacy over interests of humans, apart from balancing the same equally.

G. THE 'PRECAUTIONARY PRINCIPLE' AS FACET OF ARTS. 21 AND 48A OF THE CONSTITUTION OF INDIA

34. We have discussed how **Art. 21** guarantees a pollution-free environment, and that presence of forests is necessary for enabling the citizens to enjoy their ***'right to life'*** in a pollution-free environment in the preceding section. **'Precautionary Principle'** has been accepted as one of the insegregable facets of environmental jurisprudence, whereunder the **State is mandated** to protect, improve the environment and safeguard the forests. It requires the government to **anticipate**, **prevent**, **preempt** and **remedy or eradicate** all the possible causes of environmental degradation including to act sternly against the violators. Recently the Supreme Court whilst examining whether lands covered under special order issued by the Government of Haryana under **Sec. 4** of Punjab Land Preservation Act, 1900 can be treated as 'forests lands' had an occasion to discuss the contours of 'Precautionary Principle' in the matter of ***Narinder Singh vs. Divesh Bhutani,*** **(2022) 15 S.C.R. 1066.**

35. The roots and origins of **'**Precautionary Principle' were elaborately explained earlier in the judgment of ***A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors.*** **(supra)**, which replaced the previously existing 'assimilative capacity concept'. The 'assimilative capacity concept' assumed that science could provide policymakers with the information and means necessary to avoid environmental harms, which were predictable and that cure was always available for any possible environmental harm. However in the **11th principle of the UN General Assembly Resolution on World Charter for Nature**, the emphasis got shifted to 'Precautionary Principle'. This was reiterated in the **Rio Conference of 1992** *vide* **Principle No. 15** and thereafter being followed and adhered to consistently, invariably and has been

now embedded as one of the basic determining prescriptions in environmental and forest cases.

36. The Precautionary Principle encapsulates within itself the ***special principle of burden of proof*** in environmental disputes, where it is upon the proponent of change (who proposes to change the status quo) to show and prove that the State actions proposed do not lead to injurious effects on the environment. Also termed as ***reversal of the burden of proof*** in environmental cases, the proponents of any action having adverse environmental implications are required to shoulder the evidentiary burden of showing that their proposal doesn't harm the environment in incurable, irreparable and irreversible ways. ***Even if the environmental risk arising out of the proposed action by its proponents are uncertain, but 'non-negligible', then 'Precautionary Principle' warrants and justifies implementation of regulatory action***. It is towards this end that the Government, various policy makers and even the Courts exercising the judicial review must always be geared to. 'Precautionary Principle' therefore mandates Constitutional Courts to predict the 'non-negligibility' of the environmental harm and ***to encourage regulatory action if the 'non-negligibility' is manifest/ foreseeable in such an environmental harm*** arising out of any human activity or governmental decision. The governance by the State must also be sufficiently indicative of adoption of 'Precautionary Principle' in their approach.

37. The purpose of undertaking such an extensive discussion about 'Precautionary Principle' in the present proceedings is to highlight whenever the Court is called upon to choose one of the two possible views, one tilting towards the *'environmental perspectives'* and other towards the *'rights perspective'* (exercise of fundamental/ constitutional rights by the citizens) then by virtue of 'Precautionary Principle', the Court is constitutionally

obligated and mandated under **Art. 21 r/w 48A** to lean towards the former (environmental view), as opposed to the latter. ***Courts must encourage implementation of all such regulatory actions that are designed at facilitating precaution and prevention in matters of environment***. If timely precaution and prevention is resorted to in environmental concerns, then the possibility of a desperate quest for remedies and solutions to environmental damage at a later stage is always averted. The oft quoted saying 'Prevention is always better than cure', we keep hearing at a doctor's place in the context of human health applies on all fours to the environment as well. ***Prevention is always preferable over post-problem solutions***.

H. PUBLIC TRUST DOCTRINE & OBLIGATION OF THE STATE AS 'ETERNAL TRUSTEE' OF ALL THE NATURAL RESOURCES

38. Other than 'Precautionary Principle', another doctrine that firmly embedded its feet over the years especially in the last few decades is the 'Public Trust Doctrine'. The State holds all the natural resources, including the natural elements present on earth (soil, water, land, fire, forests and flora, fauna) as a trustee, and not as the owner on behalf of each of its residents, inhabitants and citizens. The duty to preserve and judiciously use the natural resources in a way that they are always available in their pristine and purified form for the posterity is the responsibility of the State as a trustee of all these natural resources. Though discussion shall be undertaken separately about the scheme of Forest Act, 1927 hereinafter in the later part of the judgement, however it is condign to mention that **Sec. 41(1)** of the Forest Act makes the Parliamentary intent luminescent that forests, forest produce, trees and all the natural resources comprised therein are held by the State as a trustee and not as an owner. **Sec. 41(1)** reads thus:

"41. Power to make rules to regulate transit of forest produce.—(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the [State Government], and it may make rules to regulate the transit of all timber and other forest-produce."

39. The Constitution Bench of the Supreme Court in the matter of ***Natural Resources Allocation, In re, Special Reference No. 1 of 2012,*** **(2012) 10 SCC 1,** had an occasion to expand upon the Doctrine of Public Trust, duties and responsibilities of the State as a **'perpetual trustee'** of the same. It was held that natural resources have not been placed under the ownership of the sovereign State: because they neither belong to one State nor to any individual, but they belong to the whole community at large, with the entire human race as its ultimate beneficiary. Loss of natural resources is a collective loss of the whole community and advantages of their preservation and conservation ensures also to the whole community and not to any single individual. It was held that the doctrine enjoins upon the Government to protect the natural resources for the enjoyment of the general public rather than to permit their use for ***private ownership or commercial purposes***. The following restrictions on the State and governmental authority are ingrained by virtue of public trust doctrine:

a. The property subject to the trust must not only be used for a public purpose, but must be held available for use by the general public and for the futuristic generations;
b. The property may not be sold, even for a fair cash equivalent or for private commercial interests, even if the revenue generated for the State is extremely alluring;

c. The property must be maintained to protect the people's common heritage like streams, lakes, marshlands, forests, and surrendering this right to private entities/ individuals only in those rare cases where abandonment of the right is consistent with the purposes of the Trust.

40. In the landmark judgments of ***M.C. Mehta v. Kamal Nath and Ors. (1997) 1 SCC 388, Intellectuals Forum v. State of A.P., (2006) 3 SCC 549, and Fomento Resorts and Hotels Ltd. v. Minguel Martins, (2009) 3 SCC 571,*** the Supreme Court held time and again that natural resources like forests have such a great importance to the people as a whole that it would be ***wholly unjustified to make them a subject of private ownership***. In cases involving environmental issues, the Public Trust Doctrine has a much wider and broader application warranting strict judicial review of attempts by the sovereign State of parting with natural resources for private or commercial gains. The judiciary therefore acts as the bulwark whenever private interests for their commercial pursuits start staring for the utilization or exploitation of natural resources. The Public Trust jurisprudence has therefore come a long way over the last few decades and has become deeply embedded in the environmental jurisprudence of our country.

41. The discussion undertaken above therefore leads us to the inescapable conclusion that impugned notification granting exemption from regulatory control to large number of species, which are found equally in abundance in the natural deciduous forests of the State must be tested strictly on the anvil of the aforementioned 'Precautionary Principle' and from the standpoint of State as a 'trustee' on behalf of its citizens.

I. THE BACKGROUND AND SCHEME OF THE FOREST ACT 1927 AND FOREST CONSERVATION ACT 1980

42. The scale of deforestation had increased substantially during the British Rule in India, as export business of various categories of forest produce and timber had received a fillip during the British regime. Also because development in the form of laying down of railway tracks, digging of mines, underground constructions, etc. were being undertaken in the whole peninsula of the Indian colony, therefore forests in India were the softest target with trading of wood in large amounts for various construction and developmental activities. However when the hue and cry against deforestation increased, the first national forest policy was announced by the English Government in October 1894 for protecting the fast depleting forest cover in the country.

43. This policy framework of the British eventually led to the enactment of Indian Forest Act, 1927, the primary objective of which was to implement the envisioned policy of 1894. The aims, objective and purpose of the Forest Act states that the Act has been enacted to consolidate the law relating to forests, ***the transit of forest-produce*** and the duty leviable on timber and other 'forest-produce'.

44. We shall refer to and discuss Sec. 2 in the next part of the judgment. Proceeding ahead, **Sec. 5** titled as **"Bar of accrual of forest rights"** puts an absolute embargo over any fresh clearings for cultivation ***or for any other purpose*** in any forest area, after the issuance of notification under **Sec. 4**, notifying the land as a reserved forest. In the same vein, **Sec. 26** titled as **"Acts prohibited in such forests"**, with **Sec. 26(1)(a)** prohibiting any fresh clearing and treating such an activity as an offence punishable with both imprisonment as well as fine. **Sec. 30** titled as **"Power to issue notification reserving trees, etc."** also vests the power with the State Government to prohibit the removal of any forest-produce in the notified forest area. **Sec. 39** occurring under **Chapter VI** titled as of the **"Power to impose duty on**

timber and other forest-produce", empowers the Central Government to levy/ impose duty on timber and other forest produce, whereunder the Central Government has been authorised to levy and realise duties on all timber or other forest produce. This is followed by **Chapter VII** titled as **"Of the control of timber and other forest-produce in transit"**, which empowers the State Government to make Rules to regulate transit of forest produce. It is in this chapter, Sec. 41 occurs which we shall be discussing separately.

45. **Sec. 45** occurring under **Chapter VIII** titled as "**Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly***",* by way of a deeming fiction treats all timber and wood present within the boundaries of the forest area as the property of the Government, unless and until any person establishes his right entitled thereto as provided in the chapter. **Sec. 52** which occurs under **Chapter IX** titled as **"Seizure of property liable to confiscation"** is a penal provision, enacted for checking illegal transportation or illegal trading of *'forest-produce'* against the provisions of Forest Act, 1927. It reads thus:

> *"**52. Seizure of property liable to confiscation**.-- (1) When there is reason to believe that a forest-offence has been committed **in respect of any forest-produce**, such produce, together with all tools, boats, carts or cattle used in committing any such offence, maybe seized by any Forest-officer or Police-officer.*
>
> *(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:*

Provided that, when ***the forest-produce with respect to which such offence is believed to have been committed is the property of Government****, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior."*

46. The aforesaid provision has been enacted as a deterrent measure for checking illegal transportation, storage or trading of 'forest-produce', where under each and every equipment and means used for such illegal use of 'forest-produce' is seized and eventually confiscated. The enactment of this provision is indicia of the Parliamentary intent of according high sanctity to reservation and protection of 'forest-produce'. There are other penal provisions of like nature pertaining to confiscation, prosecution of the offenders dealing illegally with 'forest-produce' or timber and woods enacted under the Forest Act, which all speak abundantly against the illegal movement of timber and wood, being watched strictly by various authorities. ***The scheme of the Forest Act therefore is not only limited to the preservation and conservation of the forest area as notified under the enactment, but also each and every ingredient constituting such a forest, viz. the 'forest-produce', 'timber', 'wood and trees' present within its confines.***

47. **Sec. 69** occurring under **Chapter IX**, titled as **"Presumption that forest-produce belongs to Government"** reads thus:

*"**69. Presumption that forest-produce belongs to [Government].**— When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the [Government], such produce shall be presumed to be the property of the [Government] until the contrary is proved."*

The interpretation of the Transit Rules therefore cannot be in any manner inconsistent with the larger scheme of the Forest Act, 1927.

48. The Supreme Court had an occasion to test and interpret the scheme of various penal and confiscatory provisions of the Forest Act, 1927 in the matter of ***State of Madhya Pradesh vs Uday Singh, (2020) 12 SCC 733.*** Whilst examining the powers of confiscatory authorities under **Secs. 52, 52A, 52B, 54 to 60** and the legislative intent behind them, it was held that various amendments affected by the State of Madhya Pradesh to the Forest Act are infused with a salutary public purpose, *viz.* protection of forests against degradation, a goal mandated by **Article 48A r/w 21** of the Constitution of India. The diversity of penal measures serves as a stringent deterrent against all those activities that threaten the pristine existence of forests in Madhya Pradesh, and therefore the provisions under **Chapter IX** titled as **"Penalties and Procedure"** must receive a purposive interpretation. This is to suppress grave evils that happen within the confines of forests and natural environments posing serious danger to them and an outcome of avarice of humankind. Statutory interpretation made by the Courts must therefore remain eternally vigilant to the ***daily assaults on the environment***. This chord of interpretation sounded by the Supreme Court in the matter of ***State of MP v. Uday Singh (Supra)*** is the guiding light for this Hon'ble Court, whilst interpreting various statutory provisions of the forest act and the Transit Rules involved in the present matter, especially when human intervention is involved. **Para 30** of the above judgment reads thus:

> *"**30.** The Madhya Pradesh amendments to the Forest Act, 1927 are infused with a salutary public purpose. Protection of forests against depredation is a constitutionally mandated goal exemplified by Article 48-A of the Directive Principles and the fundamental duty of every*

citizen incorporated in Article 51-A(g), By isolating the confiscation of forest produce and the instruments utilised for the commission of an offence from criminal trials, the legislature intended to ensure that confiscation is an effective deterrent. The absence of effective deterrence was considered by the legislature to be a deficiency in the legal regime. The State Amendment has sought to overcome that deficiency by imposing stringent deterrents against activities which threaten the pristine existence of forests in Madhya Pradesh. As an effective tool for protecting and preserving environment, these provisions must receive a purposive interpretation. ***For, it is only when the interpretation of law keeps pace with the object of the legislature that the grave evils which pose a danger to our natural environment can be suppressed. The avarice of humankind through the ages has resulted in an alarming depletion of the natural environment.*** *The consequences of climate change are bearing down on every day of our existence. Statutory interpretation must remain eternally vigilant to the daily assaults on the environment."*

Forest Conservation Act, 1980

49. Whereas the predominant purpose of Forest Act, 1927 was to regulate the transit and trading of 'forest-produce' with the realization of revenue from the same, when its provisions were found inadequate in meeting increasing deforestation in the post-independence decades, the Parliament enacted Forest Conservation Act, 1980 as an independent legislation aimed primarily at conservation of forests and all matters connected therewith or ancillary, incidental thereto. **Sec. 2** titled as **"Restriction on the dereservation of forests or use of forest land for non-forest purpose"** reads thus:

> *"**2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.—** Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—*
>
> *(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*
>
> ***(ii) that any forest land or any portion thereof may be used for any non-forest purpose.***
>
> *Explanation.—For the purposes of this section* ***"non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation."***

50. **Sec. 2(ii)** accompanied with the Explanation is a widely worded clause, which includes any purpose of clearing of any forest land which treats the activity of clearing of any forest land as an activity aimed at 'non-forest purpose'. Therefore it would be safe for the Court to presume that unnatural felling of trees or timber, ***unnatural extraction or generation of forest-produce within the forest areas clearly constitutes 'non-forest purpose'*** under **Sec. 2(ii)** of the FCA, 1980. The Act is a short enactment of only five sections and therefore any non-forest activity can be read in only within the meaning of **Sec. 2(ii)**.

J. PARLIAMENTARY INTENT OF 'FOREST PRODUCE' UNDER SEC. 2(4) OF THE FORESTS ACT

51. **Sec. 2** titled as **'Interpretation Clause'** is the definition clause of the enactment, whereunder **Secs. 2(4) and 2(6)**, defines 'forest-produce' and timber as follows:

> "*2. Interpretation clause.—In this Act, unless there is anything repugnant in the subject or context, —*
>
> *(1) ....*
>
> ***(4) 'forest-produce'** includes—*
>
> *(a) **the following whether found in, or brought from, a forest or not, that is to say**:— **timber**, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds [kuth] and myrabolams, and*
>
> *(b) the following **when found in, or brought from, a forest**, that is to say:—*
>
> *(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,*
>
> *(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,*
>
> *(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and*
>
> *(iv) peat, surface soil, rock, and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries);*
>
> ***

> ***(6)*** *"**timber**" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and"*

52. From the above definition, it is thus clear that **there are two categories of *'forest-produce'*** included under the enactment of the Forest Act, 1927, being as follows:

    a. Those mentioned under **Sec. 2(4)(a)**, *viz.* timber, charcoal, caoutchouc, etc., whose source or origin is irrelevant for being treated as a forest-produce. Implying that irrespective of the forest-produce having originated from the notified areas of forest or not, they shall be treated as '*forest-produce'* regardless of the fact that they are grown even on private land.

    b. The second category of 'forest-produce' under **Sec. 2(4)(b)** is that which shall be treated as such, only when the source and origin of the said produce is from the forest, like trees, leaves, flowers, plants, wild animals, etc. If this category as specified under **Sec. 2(4)(b)** has not originated from within the forest area, then it shall not be treated as a 'forest-produce'.

53. Likewise the definition of timber under **Sec. 2(6)** is also an inclusive one, which includes all categories of trees and woods, irrespective of their source or origin, regardless if they have been brought from within the forest area or not.

54. As stated above in the previous section, there are two different categories of forest produce mentioned under **Sec. 2(4)** : ***first***, which are treated so irrespective of their source or origin and the ***second***, which are treated so only when their source or origin is shown to be from within the forest area

and not otherwise. **Sec. 2(4)(b)** employs the phrase **'that is to say'** whilst defining both the categories of forest produce. The expression **'that is to say'** is a vital phrase, which indicates that the definition of forest produce is not exhaustive, but enumerative and wide enough to encompass everything whatever is incidental or ancillary to the words/ expressions that make up the definition of forest produce.

55. The phrase **'that is to say'** has been employed at many places in the Constitution of India, especially in the entries of Schedule VII and a common expression employed for defining inclusive generic terms. In the matter of ***Bhola Prasad v. The King-Emperor,*** **(1942) 4 FCR 17**, the Federal Court (in the pre-independence period) was called upon to interpret the said phrase, as occurring under the Entry 31 of the Provincial List in the GOI Act, 1935. Entry 31 of the Provincial list, that fell for interpretation, read thus 'Intoxicating liquors and narcotic drugs, ***that is to say***, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs.' It was held that **the phrase 'that is to say' has been employed with the intent of making the definition explanatory or illustrative and not delimiting or restricting the scope of the phrase with only the words that are employed thereunder**. In other words, the said phrase cannot be interpreted to circumscribe the scope of the definition, nor can the definition be limited to the words used in the definition clause. Recently the Constitution Bench of the Supreme Court made the following observations in the context of interpretation of the phrase 'that is to say' employed by the statute or the constitutional provision in the matter of ***State of U.P. v. Lalta Prasad Vaish*****, 2024 SCC OnLine SC 3029**. ***Vide*** **paras 54 and 55,** the Court held as follows:

"***54.*** *The next question is whether the phrase 'that is to say' used in Entry 8 limits or explains the scope of the entry. The interpretation of the phrase 'that is to say' has fallen for the consideration of this Court earlier in numerous cases. This Court has adopted both views. Benches have interpreted the expression as a limiting as well as an explanatory device. In Bhola Prasad v. The King Emperor, the Federal Court dealt with the meaning of the phrase 'that is to say' in Entry 31 of the Provincial List in the 1935 Act. Entry 31 of the Provincial List read as "Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs." The issue was whether the Provincial Government had the competence to issue a notification prohibiting the possession of intoxicating liquor. The Federal Court held that the Provincial Government had the competence to prohibit though Entry 31 does not expressly grant the power to 'prohibit'. The Court noted that the words that follow the phrase 'that is to say' were explanatory or illustrative and not words of either amplification or limitation. However, in other judgments dealing with taxing provisions, this Court has held that the expression 'that is to say' is employed to exhaustively enumerate. While interpreting the expression 'that is to say', it must not be lost that it features in the legislative list which must be interpreted widely and to include all ancillary items. The interpretation of taxing statutes (which must be construed strictly) and legislative entries in the Seventh Schedule(which are required to be construed widely and liberally) cannot be the same. This was noticed by the Constitution Bench in State of Bombay v. Bombay Education Society (1954) 2 SCC 152.*

> ***55.*** *In State of Punjab v. Devans Modern Breweries (2004) 11 SCC 26, the levy of tax on the import of potable liquor manufactured in other States was challenged. Justice SB Sinha in his dissenting opinion, considered the scope of the words 'that is to say' in Entry 8 of List II. Relying on the decisions in CST v. Popular Trading and Indian Aluminium Co. Ltd. v. Assistant Commissioner of Commercial Taxes (Appeals), the learned Judge held that the expression 'that is to say' in Entry 8 of List II is descriptive, enumerative and exhaustive and circumscribes the scope of the said entry to a great extent." However, the opinion did not consider the decisions in Bhola Prasad (supra) and State of Bombay v. Bombay Education Society and instead referred to the interpretation of the expression in taxing statutes. For the above reasons, the expression 'that is to say' in Entry 8 of List II cannot be interpreted to circumscribe the scope of the entry. The words that follow 'that is to say' are illustrative and explanatory of the scope of the provision. The expression does not limit the scope of the entry. Thus, the scope of Entry 8 of List II cannot be limited to the 'production, manufacture, possession, transport, purchase and sale' of Intoxicating Liquor."*
>
> (emphasis supplied)

56. The coalesce of the above discussion is that *'forest produce'* shall include everything which may have the characteristics or attributes of the various defining words/ expressions employed thereunder. Illustratively if any material or product has the characteristics of wood-oil or resin or natural varnish or bark, even though not having the same nomenclature, it shall fall within the definition of forest produce. Any material existing or found within the confines of the forest having the characteristics of Mahua

flowers, Mahua seeds, Myrobalans, etc. shall be treated as forest produce, even if they have a different nomenclature or scientific name. The definition of *'forest produce'* therefore cannot remain confined to the various nomenclatures specified or mentioned under the definition clause, but goes much beyond.

57. The interpretation of **Sec. 2(4)** defining forest produce fell for interpretation before the Division Bench of the Orissa High Court in the matter of ***Kasi Prasad Sahu v. State of Orissa & Anr.,*** **AIR 1963 Ori 24**, wherein validity of the Orissa Timber and Forest Produce Transit Rules, 1958 requiring a permit from the authorised forest officials for transit of mahua flowers and other forest produce was challenged. Explaining the scheme of **Sec. 2(4)**, the Division Bench of the High Court held that the Parliament has made it absolutely clear that Mahua flowers shall be ***deemed to be forest produce*** under the Forest Act, regardless whether they were brought from a forest land or not and even if grown on private lands, they would still be treated as a forest produce. Once it is a forest produce, the Government therefore possesses ample powers under **Sec. 41** to regulate by rules the transportation, storage and transit of forest produce as defined under the Forest Act, even though the said produce may not have *stricto sensu* generated or originated from within the confines of the forest. Rebuttable presumption under **Sec. 69** of the Forest Act also gets attracted to such 'forest produce' wherein it is presumed to be treated as a government property.

58. The contention of the various parties of attempting to distinguish between the forest produce grown on private land *vis-à-vis* that originating or generated from within the forest areas, therefore sans substance. In the context of **Sec. 2(4)(a)**, such a distinction is completely irrelevant and in the

case of **Sec**. **2(4)(b)**, the burden/ onus is upon the person claiming that it is not a forest produce to show that the said material or product has not originated or generated from within the forest areas.

K. ANATOMY OF SEC. 41 OF FORESTS ACT

59. **Sec. 41** in the above backdrop may be quoted thus:

*"**41. Power to make rules to regulate transit of forest produce.—***

***(1)** The **control of all** rivers and their banks as regards the floating of timber, **as well as the control of all** timber and other forest-produce in transit by land or water, **is vested in the [State Government]**, and it may make rules to regulate the transit of all timber and other forest-produce.*

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

(a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within 7 [the State];

(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefore;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit, in respect

of which there is reason to believe that any money is payable to the 8 [Government] on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

***(3)** The State Government **may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.**]"*

(emphasis supplied)

60. The subject matter of regulatory powers of the State Government available under **Sec. 41** is therefore *'forest produce'*, as defined under **Sec. 2(4) r/w 2(6)**. The regulatory powers of the State Government are very wide and encompass every material or a product having the attributes or characteristics of a forest produce, irrespective of it having been cultivated, grown on a private land or not. The regulatory powers of the State Government would within their ken include the *'power to prohibit'* as well. This is in line with the elaborate discussion undertaken by us about the role of the State as a trustee on behalf of the public at large of all the natural resources under **Sec. 41(1)** of the Forest Act. As a trustee forest (& forest produce) under **Sec. 41(1)**, the State is therefore obliged to put in place all the regulatory measures enshrined under **Sec. 41(2)**.

61. For the aforementioned reasons**,** we hold that **Sec. 41(3)** is ***in the form of an exception*** to the dispensation under **Secs. 41(1) and 41(2)**. Exception because it empowers the State Government to exempt any specified class of timber or other forest-produce or to any specified local area. Being an exception to the norm, **Sec. 41(3)** must therefore be interpreted strictly and rigidly. This is

because the State in a way is absolving itself of the role of a trustee by liberating the exempted class of forest produce or timber completely from its regulatory control.

62. We hold that ***there are two inbuilt limitations on the exercise of powers of exemption available with the State Government under Sec. 41(3):***

a. The power is discretionary and such a discretion cannot be invoked ordinarily, but exceptionally and sparingly, when the necessity for exercise of such discretion of exemption exists. The existence of power to exempt is one thing and exercise that power is entirely different when exigencies for its exercise exist;

b. The usage of word *'may direct'* indicates the mandatory precondition of existence of the exigency, *viz*. compelling circumstances as a precursor to exercise of discretion of exempting any timber or other 'forest produce' from the rigour of the Rules enacted by the State.

63. Apart from being interpreted rigidly or strictly, the Court can always read in the ***requirement of necessary material and existence of compelling reasons for exercise of exceptional powers to exempt any forest produce or timber*** from the operation of regulatory provisions framed under **Secs. 41(1) and 41(2)** by the State. The decision of the State must be guided by sufficient data, survey research & empirical study, coupled with circumstances born out by record that warrant liberation of any specified class of forest-produce or timber from its regulatory regime. If **Sec. 41(3)** is not interpreted in the manner as above stated, then it will become a fountain of unbridled, unfettered powers vested with the State Government of exempting any/ every timber or forest produce from its regulatory control and supervision as has happened in the present case. Therefore an interpretation which serves the Parliamentary intent and purpose behind the

enactment of the Forest Act must be preferred over an interpretation which defeats the objective of its enactment.

L. TRANSIENT CHARACTER AND TEMPORARY NATURE OF THE EXEMPTIONS GRANTED UNDER SEC. 41(3)

64. Having discussed the scheme of the Forest Act, 1927, we also propose to examine the nature of the exemption provision of **Sec. 41(3)**. As stated above **Sec. 41(3)** is in the form of an exception to the general scheme of the Forest Act, as an specific standalone provision enabling the State to grant exemption to various species of timber or forest produce from the application of the Rules. Even if the argument of the State is accepted that the expression 'any Rules' employed under **Sec. 41(3)** shall be construed as 'all' and 'every', by applying the principle of literal interpretation, even then it is all the more reason to construe the limited scope of **Sec. 41(3)** as exception to the norm of regulation of forest produce by the State.

65. Apart from being an exception, the powers under **Sec. 41(3)** possess a clearly ***'transient character'***, to be exercised for achieving a '***temporal objective'***. Meaning thereby that whatever exemption is being granted by the State, it is presumed to be existential only for a limited duration, for meeting a temporary necessity, which requires some immediate resolution. By necessary corollary, therefore the exercise of powers of exemption under **Sec. 41(3)** ***cannot be allowed to assume permanency or perpetuity as permanency*** or be allowed to become generalised in nature.

66. Besides, we also hold that ***there are two prongs for invocation of exemption*** powers under **Sec. 41(3)** which can be read implicitly in the scheme of **Sec. 41.** They are *firstly* the ***necessity for granting an exemption*** and *secondly* the ***causal connection of the necessity*** with the purpose for which relaxation from regulatory control by the State is granted.

67. ***'Necessity Test'*** : Whenever exemption is proposed to be granted, the burden lies on the State to justify the compelling reasons, exigencies and circumstances that require exemption of certain species of trees, plants or timber. This necessity is further subclassified into two different considerations. ***Firstly,*** the timeframe for which such an exemption is conceived of and ***secondly,*** the necessity of such exemption is premised upon a rational reason reasonably justifying the exemption of such trees or timber for being so exempted. Sans this necessity & rational basis completing the State to resort to **Sec. 41(3)**, the State clearly cannot cryptically, without any application of mind proceed to exclude any tree, plant or timber from the applicability of the plenary Rules enacted under the Act. In short, therefore the State must meet the *'necessity test'* before resorting to exemption powers under **Sec. 41(3),** whenever such a decision is being subjected to judicial review by the Constitutional Courts.

68. '***Causal connection of such a necessity with the ultimate decision of exemption'***: Whereunder not only the State must demonstrate the necessity, but it must also demonstrate that the ***only redress*** available to the State for meeting such a necessity or addressing the compelling circumstances (say the demand in the market or problems being faced by the private landowners) is to grant exemption in place of regulation envisaged under **Sec. 41(2)**; the 'causal connection test' must show that the regulation under **Sec. 41(2)** may be more injurious to the cultivation, trading and transportation of the forest produce then exempting it altogether. The advantages and disadvantages have to be weighed wisely & judiciously in a way that the necessity for exemption outweighs entirely the necessity of regulation of such forest produced by the State as its eternal trustee.

69. That both the prongs or preconditions as discussed above must be shown to be existing premised upon a tangible material or data produced by the State before the Court reviewing its decision of exempting the species. The State cannot wash off its hands from justifying its decision of exemption under **Sec. 41(3)**, especially from the standpoint of the above two prongs/ preconditions; the necessity test and its causal connection with the decision of exemption as the only available redress to the problems being faced by the State. In the absence of the above, clearly the decision of the State would fail to withstand judicial scrutiny taken under **Sec. 41(3)**.

70. Apart from the above, even if the decision of exemption is reasonable, meeting both the preconditions of its exercise as discussed above, ***such an action can't have a permanent character, but will be purely transient (short lived) in nature***. It may be reasonable on the date of its issuance, but cease to be so after a particular frame of time, when either one of the two prongs/ preconditions disappear with the passage of time. For example there may be a necessity at a particular point of time to grant exemption to the 'forest produce' of Mahua trees by the State from its regulatory regime owing to abundance of Mahua in any particular region during any timeframe and its demand in the market. However the said necessity may disappear after two-three years in the very same region, very same locality owing to shortage of or depletion of Mahua trees in the forest areas of the said region/ localities or for the pressing demands of preservation of the said species of tree.

71. Ergo, an exemption which may be justifiable today, necessary and reasonable, may become the inverse after a certain passage of time. Therefore, by its very nature the powers available under **Sec. 41(3)** are volatile in nature and not everlasting. If such a transient character and temporal reasonableness is not attributed to powers of exemption exercisable

under **Sec. 41(3),** then it will override and defeat the very purpose of enactment of **Secs. 41(1) and 41(2) r/w Sec. 69,** whereby State as a public trustee has the primary responsibility to subject all the categories of forest produce as defined under **Sec. 2(4)** to its regulatory control and keep their transportation, trading under a complete check and supervision. It is only by interpreting the exemptions granted under **Sec. 41(3)** to be transient and temporal as against being permanent or perpetual that the real Parliamentary intent behind its enactment would be achieved, otherwise not.

72. Whilst affording such an interpretation to **Sec. 41(3)** this Court has been guided by the Constitution Bench judgment of the Supreme Court in the ***State of M.P. v. Bhopal Sugar Industries Ltd. 1964 SCC OnLine SC 121 : (1964) 52 ITR 443 : (1964) 6 SCR 846 : AIR 1964 SC 1179 : (1964) 1 SCJ 555***, wherein the various provisions of Bhopal State Agricultural Income Tax Act, 1953 were challenged on the ground of having been introduced to achieve a temporary object, which could not have been allowed to assume permanency. ***Vide* Para 6**, the Constitutional Bench in the aforesaid ***Bhopal Sugar Industries Ltd. matter (Supra)*** held as follows:

> *"6. The reorganized State of Madhya Pradesh was formed by combining territories of four different regions. Shortly after reorganisation, the Governor of the State issued the Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) Order, 1956, so as to make certain laws applicable uniformly to the entire State and later the legislature by the Madhya Pradesh Extension of Laws Act, 1958, made other alterations in the laws applicable to the State. But Bhopal remained unamended and unaltered : nor was its operation extended to other areas or regions in the State. Continuance of the laws of the old region after the reorganisation by Section 119 of the*

States Reorganisation Act was by itself not discriminatory even though it resulted in differential treatment of persons, objects and transactions in the new State, because it was intended to serve a dual purpose — facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was expedient after full enquiry to do so. The laws of the regions merged in the new units had therefore to be continued on grounds of necessity and expediency. Section 119 of the States Reorganisation Act was intended to serve this temporary purpose viz. to enable the new units to consider the special circumstances of the diverse units, before launching upon a process of adaptation of laws so as to make them reasonably uniform, keeping in view the special needs of the component regions and administrative efficiency. Differential treatment arising out of the application of the laws so continued in different regions of the same reorganised State, did not, therefore immediately attract the clause of the Constitution prohibiting discrimination. But by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid. A purely temporary provision which because of compelling forces justified differential treatment when the Reorganisation Act was enacted cannot obviously be permitted to assume permanency, so as to perpetuate that treatment without a rational basis to support it after the initial expediency and necessity have disappeared."

(emphasis supplied)

73. A similar view of transient character and temporal nature of certain statutory provisions has been followed in multiple other judgments by the Hon'ble Supreme Court. A similar view has been followed in the context of legislations, which may be valid when they were enacted, but later on become unreasonable and discriminatory when the rationale of classification provided therein becomes non-existent. Refer to ***Satyawati Sharma v. Union of India & Anr., (2008) 5 SCC 287 (Para 32), Malpe Vishwanath Acharya & Ors. v. State of Maharashtra & Anr., (1998) 2 SCC 1***, **etc**.

74. Manifest arbitrariness also encompasses the aspect of transient character or temporary nature of any subordinate legislation when the exempting provision enacted under **Sec. 41(3)** ceases to serve the purpose for which such an exemption was granted. In such circumstances it becomes obligatory for the Courts to wipe out the said parcels of subordinate legislation. The *test of temporal unreasonableness* (in the case of forest produce) in provisions granting exemptions granted under **Sec. 41(3)** therefore must require scrutiny and be examined in two different timeframes - *first,* when the provision was originally notified and *secondly* when such provision comes to be challenged on the ground of having outlived its utility or disappearance of any of the two preconditions (the necessity test & the causal relationship with the necessity). If the said subordinate legislation outlives its utility, it gets vitiated by 'temporal unreasonableness' and resultantly rendered manifestly arbitrary.

M. OTHER ACTS & RULES RELATING TO FOREST PROTECTION & CONSERVATION APPLICABLE IN MADHYA PRADESH

75. Apart from the Forest Act, 1927 and FCA, 1980 there are hosts of other legislations, designed at conservation of forests and tree wealth effective in the State of MP. The description of some of them is provided below.

i.) Madhya Pradesh Vriksho Ka Parikshan (Nagriye Kshetra) Adhiniyam, 2001

76. This is an enactment providing for protection and conservation of trees against deforestation, applicable and implemented in urban and municipal areas of the State. Through its various provisions it places restrictions & regulates illegal refelling of trees and ensuring their replantation. The provisions under this enactment obligate any person who intends cutting down trees either on his private land or on the government land to duly compensate for the same by planting a higher number in lieu thereof at the designated place. *Vide* **Secs. 17 to 20**, illegal felling of trees or their transportation has been made an offence punishable with imprisonment up to two years as also imposition of fine.

ii.) M.P. Lok Vaniki Adhiniyam, 2001

77. M.P Lok Vaniki Adhiniyam 2001 is an act to regulate and facilitate management of tree-clad private and revenue areas in the State of Madhya Pradesh, whereunder, if there is a tree clad area; tree growth in abundance, a management plan has to be prepared under **Sec. 3** and it is then taken under the control of the State Government, through the said management plan. The management and monitoring of preservation of the said forest is done through the said management plan, which is a scientific management of the tree-clad area. In exercise of rule-making powers, the State Government has also framed M.P. Lok Vaniki Rules, 2002.

iii.) M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969

78. M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 is an enactment framed by the State for regulating the trade of certain 'forest-produce' by

creation of State monopoly in such trade. Under this enactment, the trade and business of 'forest-produce' of certain species gets restricted by the State taking over the control of said species and their 'forest-produce' by notification in the Official Gazette. The Act is however not very much relevant for the controversy at hand.

N. ORDERS OF THE SUPREME COURT IN THE PROCEEDINGS OF *T.N. GODAVARMAN V. UNION OF INDIA & ORS.*

79. During the course of arguments, extensive reliance has been placed upon various orders of the Apex Court in the proceedings of the case of *T.N. Godavarman Thirumulpad v. Union of India, WP (C) No. 202/1999*. Reference has been made on behalf of the farmers and industrial houses and companies to the two orders dated 12.12.1996 reported as ***T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 SCC 267*** and another order reported as ***T.N. Godavarman Thirumulpad v. Union of India, (1997) 3 SCC 312***. The initial order dated 12.12.1996 reads as follows:

> *"1. In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all on-going activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is, therefore, clear that the running of saw mills of any kind including veneer or ply-wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government. Accordingly, any such activity is prima facie violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith.*

***

4. There shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or water-ways. The Indian Railways and the State Governments are directed to take all measures necessary to ensure strict compliance of this direction. This ban will not apply to the movement of certified timber required for defence or other Government purpose. This ban will also not affect felling in any private plantation comprising of trees planted in any are which is not a forest.

***

5. Each State Government should constitute within one month an Expert Committee to:

(i) Identify areas which are "forests", irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

(ii) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons."

80. The subsequent order in the same proceedings as reported in (1997) 3 SCC 312 reads thus:

> "*2.....*
>
> *The inventory should, wherever possible, indicate the origin and source of the timber. The Committee may for this purpose select suitable persons who would be made available by the State Government concerned at its request.*

As far as possible, such inventory should be prepared within eight weeks from today.

(iii) The Committee may, if it considers appropriate, permit the use or sale of any part of the timber or timber products. Any sale shall be effected through the Forest Corporation of the State under overall supervision of the Committee.

(iv) The net sale proceeds after deduction of the transaction related costs and payment of wages to the labour and staff shall be deposited by or through the Forest Corporation/Forest Department in a designated account.

The modalities will be worked out by the Committee.

(v) The Committee may, through the amicus curiae, apply for such directions from time to time as it considers appropriate.

(vi) The MOEF will make available as far as possible within a week suitable office space and provide secretarial and all other related facilities in Delhi (including local transport telecommunication) befitting the stature of the Committee.

The MOEF will make arrangements for and meet expenses of travel of the Committee. All arrangements for stay etc. of the Committee (outside Delhi) as may be necessary, would be the responsibility of the State Government concerned. The Assam Government will make similar office and other facilities available in Gauhati…

> ***4.*** *It is clarified that the directions contained in the order dated 12-12-1996 and this order would not apply to minor forest produce, including bamboos, etc."*

(emphasis supplied)

81. The coalesce of both the above orders is that the Supreme Court, alarmed by the extent of deforestation in the country was left with no choice, but to impose a blanket ban on the felling of trees in the forest area with certain exceptions carved out therein. We have closely perused both the orders of the Supreme Court extensively relied upon by parties defending the impugned notification. ***Nowhere in the impugned orders is there any intent or opinion expressed by the Supreme Court, with due respect about liberating the 'forest-produce' completely from the regulatory control of the State or giving blanket powers to the State in exempting species from the regulatory regime of the State under Sec. 41(3) of the Forest Act***. There is no indication, much less expression of any opinion, even of relaxing the rigours of deterrent provisions being framed by the State enacted to check and control the illegal transit, storage or trading of 'forest-produce' as defined under **Sec. 2(4)** of the Forest Act. The counsels for the parties defending the notification, played around certain sentences, but however it is the bounden duty of the Court to read the Apex Court order in its entirety and comprehend the actual import and the opinion of the Supreme Court holistically without being guided or driven by segregated reference to sentences here and there randomly. What the orders imply in the humble opinion of this Court is referable to felling of the trees in private lands and their transit shall not be subjected a ban, but it does not imply that regulatory provisions framed under **Sec. 41(2)** shall cease to apply to certain species exempted from the rigors of the Transit Rules.

82. Ergo, reading the orders in the proceedings of ***T.N. Godavarman*** **(Supra)** passed by the Supreme Court, it is clear as noon day that nowhere is there any expression of opinion regarding vesting of blanket, unbridled powers with the State of exempting any species of 'forest-produce' or timber completely from regulatory control of the State. Such an interpretation of the orders passed by the Supreme Court would not only be doing violence with the intent of the highest Court of the country in passing its orders, but also militating against the Parliamentary object behind enactment of the Forest Act. We have consciously opined so after a lot of deliberations amongst the members of the Bench.

O. POLICIES OF THE MOEF & MOA, UOI & THEIR CONTEXTUAL INTERPRETATION

83. Various counsels for the parties defending the impugned notification and the learned AAG have placed heavy reliance upon following three documents to justify the validity and legality of the impugned notification:

a. Report of the committee headed by Shri A.K. Bansal, ADG (FC) on the 'Regulatory Regime regarding Felling and Transit Regulation for Tree Species Grown on Non Forests/ Private Lands', as released by the MoEF, GOI;

b. National Agroforestry Policy of 2014 as issued by the Ministry of Agriculture and Cooperation, GOI;

c. Guidelines for 'Liberalizing Felling and Transit Regime for Tree Species grown on Non-Forest/ Private Land' as released by the MoEF, GOI in November, 2014.

84. **In Re: A.K. Bansal Report:** The committee headed by A.K. Bansal, ADG (FC) was a broad based committee, which was constituted by the MoEF to

study the regulatory regime regarding the felling and transit regulations for tree species grown on non forest/ private lands. This committee comprised 8 members and undertook study of the current regulatory regimes of different states, evaluated their experience in agro and farm forestry and thereafter proceeded to make recommendations in its report. The sum and substance of the report comprises regulatory regime applicable in various states to transportation, movement and transit of various forest produce and exemptions granted by them individually. If this report is seen holistically, it implies that forest produce grown on non-forest land/ private lands in non-notified areas must be completely free from the regulatory regime and be liberalized. Apart from this whilst naming various species, as exempted in various States of the country, the thrust is upon exemption of all those species, which are generally not available ***locally*** or in the nearby forests. **Clause 6.7.5** of this report, titled as **"Preferred Agroforestry Species"** must be adverted to understand the context in which the recommendations have been made (Internal Pg. 26 of 42) which reads thus:

> ***"6.7.5 Preferred Agro-forestry Species:***
>
> *(i) Plantations of preferred species like Eucalyptus, Poplar etc. are one of the main contributors of timber from non-forestry areas. There is a case for full exemption from regulatory regime of felling permits and timber transit in all States of such exotic species not found in natural forests or species with very sporadic distribution in forests but grown by farmers on large scale. Examples of important other species under this category are:*
>
> *(a) Subabul (Leucaena sp.), Casuarinas, Ailanthus sp; Gmelina sp; Silver oak (Grevillea robusta) Mulberry (Morus alba), Kadam (Anthocephalus cadamba) Melia sp; Acacia arabica, Acacia*

auriculiformis, Acacia mangium; Acacia lenticularis, Albizzia sp; Azadirachta india, Borassus flabelliformis, Hovea brasiliensis, Prosopis sp; Butea monosperma, Cedrela toona, Tamarindus india, Grewia oppositifolia, etc. melia dusra.

(b) Horticultural trees species like Mango, Guava, Coconut, Cashew nut, Citrus, Areca nut, Artocarpus sp., Zyiphus sp; Ashok , Gulmohar (Delonix regia), Cassia fistula.

(ii) In addition, there should be no restrictions in respect of felling permits and transit of valuable timber species that farmers can grow in the States that do not have such species in their natural forests or those districts of any State where such tree species are not natural to the local forests. e.g. Teak should be freed of all restrictive regime regulations in all states having no teak forests, and selected districts not having teak forests in states with natural teak forests in other districts. Thus restrictions should apply only in those districts that have natural teak forests. Species that could be exempted from regulatory regime under this category as above are as follows:

Teak (Tectona grandis), Terminalia sp; Syzigium cumini, Acacia catechu, Pines, Bombax ceiba, Schima wallichii, Dalbergia latifolia, Sandal (Santalum album), Dalbergia sissoo, Padauk (Pterocarpus dalbergioides) etc."

(emphasis supplied)

The above **Clause 6.7.5** makes it clear that exemption from the regulatory regime has been contemplated only *qua* those exotic species, which are generally not found in natural forests or are having a very rare presence in the local / regional forests, but grown by farmers on a large scale outside the

forest areas. By necessary implication, it implies therefore that transit regime and regulatory control *qua* those species that are either present in abundance or having sufficient visibility in the forest of the State must not be encouraged for agroforestry on private lands. This inference of ours is bolstered further by **Clause 7** of the Report, titled as **"Recommendations regarding Transit Regime"**, which reads thus:

> ***"7. RECOMMENDATIONS REGARDING TRANSIT REGIME:***
>
> *Main recommendations of the Committee are as given below:*
>
> ***7.1.*** *Preferred Tree and bamboo species under agro forestry by farmers and not naturally available in neighbouring forests may be exempted from the transit permit and felling regulations. As the regulatory mechanism is not uniform across various States/UTs, there is a need for simple uniform mechanism/ procedure to regulate the transit rules of forest produce within the State, and also in various States forming a region. States in a region should work out common strategy in this regard.*
>
> ***7.2.*** *Preferred Tree and bamboo species in areas where they are found in the natural forests/forests may be kept under the limited provisions for felling and transit. The local Gram Sabha may be authorized to regulate felling and transit of trees/ timber grown under agro-farm forestry or private lands in the village in respect of such species. A Special Committee or Standing Committee of Gram Sabha or the Joint Forest Management Committee (as the case may be) to be constituted for the purpose. The forest department may initially guide the committee in technical matters."*
>
> (emphasis supplied)

Thus liberalization of the transit regime is contemplated and conceived in respect of species which are ***not naturally available in neighbouring forests*****,** including trees and bamboo species.

85. **In Re: MoEF Guidelines of 2014 :**The aforesaid A.K. Bansal Report was forwarded to the MoEF, which called for suggestions and objections from all the stakeholders and issued the final guidelines on 18th, November, 2014. These were titled as **'Guidelines for Liberalizing Felling and Transit Regime for Tree Species grown on Non-Forest/ Private Land**'. Even **Clause 3** of these guidelines reiterated *verbatim* the contents of the A.K. Bansal Report, of granting exemptions from the transit regime of those species only that are naturally not found in forests present in the State. The recommendations of the A.K. Bansal Report are found to have been incorporated in totality *vide* **Clause 3**, titled as Guidelines with slight variations of vesting of powers to regulate felling and transit of trees/ timber so grown on private lands with the jurisdictional Gram Sabha. However the essential recommendation has been continued of exemption from the transit regime of only those species not present in the nearby forests. **Clause 8** of these guidelines comprises 2 lists, *viz* List 'A' (Tree species when exclusively grown on agriculture/ farm land and not naturally available in neighbouring forests) and List 'B' (Tree species grown on non forest land, where they are found in the neighbouring forests). These two lists leave no room of doubt about what tree species ought to be exempted and which ought not to be.

86. **In Re: Agroforestry Policy 2014:** The Ministry of Agriculture and Cooperation framed the Agroforestry Policy in view of an absence of a dedicated, focussed national policy with a suitable institutional mechanism. The Agroforestry Policy aims at establishment of institutional setup at national level to promote agroforestry and recommends a simple regulatory

mechanism for transit of agroforestry produced within the State as well as in various States forming an ecological region. It recommended exemption of all tree species planted under agroforestry and farmland from State regulations for harvesting and transit. However, having carefully studied and examined the policy, ***it is no more than a bunch of recommendations to the Central Government*** for introducing a nationwide uniformity in transit regulations framed by all the States. One of the recommendations being to identify about 20 commonly grown tree species, which can be grown on farmlands for the economic and ecological benefits of the farming community and then such commonly grown tree species may notify for exemption from any State regulatory regime, being so grown on private lands/ non-notified revenue lands.

87. Therefore the policies relied upon by the learned AAG may in fact run counter to their arguments as these policies themselves explicate that only those forest species must be exempted, which are not found abundantly in the local or regional forests. Be it A.K. Bansal Report or the MoEF guidelines of 2014, both have consciously placed this rider over exemption of any forest species. ***Therefore it would be safe to hold that exemption would be available, if any, to those species, which were exotic and not found or existent naturally in the local or regional forests.*** The term *'local or regional forests'* is referable not only to the same district, but also to the same region, wherein 'State' as a unit may also constitute a region. For example, the forests, flora and fauna of Bandhavgarh stretching up to Kanha Kisli and Pench forest reserves create a contiguous triangular corridor, wherein there is huge commonality of species of trees, plants, flora and fauna existing in them. Therefore the reference to the region would imply even the ‘State’ as a unit in appropriate situations, in case of such species which may be existing

widely, spread over the whole State in the interconnected, intertwined forest corridors of our State possessing the highest forest cover in the country.

88. ***For yet another reason***, we are constrained to hold that all the aforementioned reports/ recommendations of policy documents are essentially recommendatory in nature, expressing the desirability of *'what should be'*, instead of *'what it is'*. Even though at first blush they appear to be laudable towards promoting a liberalized regime for trading and business of forest produce grown on private and non-forest lands, however on a closer scrutiny, such a distinction is not borne out by the express wordings of **Sec. 2(4)** of the Forest Act as explicated above. Whilst defining 'forest produce', the Parliament took extreme caution in attributing what should be treated as forest produce, regardless of its source or genesis. We had in the earlier part of the judgment made reference to ***Kasi Prasad Sahu v. State of Orissa & Anr.*** **(supra)** to hold that a forest produce like mahua or timber does not cease to be forest produce within the rigours of **Chapter IX** of the Forest Act simply because its grown or cultivated on private land outside the forest area. Likewise in case of forest produce falling within the definition provided under **Sec. 2(4)(b)**, it would be presumed as a forest produce, till and until it is shown or demonstrated that the class of material or product claimed to be falling under **Sec. 2(4)(b)** has not originated from within the forest area. Meaning thereby that burden of proof to show that material or product is not a forest produce qua the ingredients mentioned under **Sec. 2(4)(b)** is on the person/ transporter carrying it and not on the State or the forest department. If blanket exemption is granted to a large number of species then it leads to defeating the very objective of enactment of penal provisions under **Chapter VII** of the Forest Act and special provisions like **Sec. 69**.

89. Further in view of express provisions of **Sec. 69**, a presumption is attached to everything falling within the four corners of the definition clause of 'forest produce' under **Sec. 2(4)(b)** that it has originated from within the forest area and belongs to the State. However the said presumption is a rebuttable one, to be rebutted by showing necessary documents or papers in the said regard. **Sec. 69** is wide enough to presume any forest produce as a property of the government, until the contrary is proved. The word 'any' occurring under **Sec. 69** in the context of Forest Act would mean and stand interpreted as 'every' forest produce. Surprisingly neither the A.K. Bansal report, nor the policy documents of the MoEF have made any reference to the Parliamentary definition of 'forest produce' under the Forest Act, 1927. We express our dismay the way policymakers frame their policy overlooking the specific statutory provisions of Forest Act, which would override and supersede such policies contradicting or running repugnant to it till the enactment itself is suitably amended. Therefore to the extent recommendations made in the policies of the MoEF or the A.K. Bansal Report, running contrary to the express provisions of the Forest Act as referred to *supra*, the Court shall be reluctant to recognize any legal sanctity attached to them. We accordingly hold so categorically.

P. SCHEME OF TRANSIT PASS RULES, 2000 & THE NOTIFICATIONS ISSUED THEREUNDER

90. In the backdrop of the above discussion, the time is now ripe now for adverting to the Transit Rules of 2000 framed in exercise of rule making powers under **Secs. 41 and 42** of the Forest Act, 1927. **Rule 3** titled as **"Regulation of transit of forest produce by means of passes"** puts a statutory embargo over movement, transit or transportation of any 'forest produce' into or outside the State of M.P., without a transit pass issued in the

prescribed format. **Rule 4** titled as **"Officers and person to issue passes"** details the competent authorities authorized to issue the aforementioned passes. **Rule 4A** stands on a different footing than **Rule 4B**. The distinction between both the Rules is that whereas **Rule 4A** deals with 'forest produce' belonging to the Government, that is claimed by the Government or being transported by the Government, whereas Rule 4B deals with forest produce grown & owned privately. **Rules 4(B)(1) and (2)** exempts the requirement of transit pass of transportation of timber and fuel of certain species, which were 6 in number at the time of enactment of the Rules in the year 2000. Likewise **Rule 4(B)(2)** relates to transportation of timber and fuel of trees found over private lands and the officer competent to issue transit passes in respect thereof.

91. **Rule 3** which lies at the heart of present proceedings reads thus:

> ***"3. Regulation of transit of forest produce by means of passes:-*** *No forest produce shall be moved into or outside the State or within the State of Madhya Pradesh except in the manner as hereinafter provided without a transit pass in Form A, B or C annexed to these rules. The Transit Pass will be issued by a Forest Officer or Gram Panchayat or a person duly authorised under these rules to issue such pass :*
>
> *Provided that no transit pass shall be required for the removal :-*
>
> > *(a) Of any forest produce which is being removed for bonafide domestic consumption by any person or in exercise of privilege granted in this behalf by the State Government or of a right recognised under the Act within the limits of a village in which it is produced.*

> *(b) Of such forest produce as may be exempted by the State Government from the operation of these rules by notification in the Official Gazette.*
>
> *(c) Of forest produce covered by Money receipts/Rated passes/ Forest produce passes/carting challan issued by competent authority in accordance with the rules made in this behalf for the time being in force.*
>
> *(d) Of minor forest produce from forests to the local market or to the collection Centre or for bonafide domestic consumption.*
>
> *(e) Of mineral from forest for which transit pass is not compulsory under these rules."*
>
> (emphasis supplied)

No transit pass shall be required in view of **Clause (b)** of **Proviso** to **Rule 3**. Therefore the State Government possesses the powers to exempt any 'forest-produce' from the operation of the Transit Rules. Clearly such a power has to be confined and read subject to the provisions of parent enactment of **Sec. 41(3)**, and therefore would be interpreted restrictively by us as discussed in the preceding paragraphs. We have held that **Sec. 41(3)** is an exception to the general rule and therefore for invocation of such an exception, compelling circumstances must be shown to exist that warrant provision of exemption for being applied to any specific class of timber or other forest produce under **Sec. 41(3)**. The said principle of interpretation shall apply squarely to **Clause (b)** to **Rule 3** as well.

92. Since **Rule 4** providing exemptions has been amended way back in 2007, therefore we are not making reference to it. The challenge in the present petition is confined to the impugned notification of Sept. 2015. **Rule 5** provides for rates of fees for issue of transit pass; **Rule 6** the contents of transit pass, which when read conjointly with **Rule 3** makes the intent of regulation clear as noon day. **Rule 6** reads thus:

> ***"6. Contents of Transit Pass.-*** *(1) Every transit pass issued under Rule 3 shall specify :-*
>
> *(a) The name of the person to whom such pass is granted.*
>
> *(b) The quantity and description of forest produce covered by it; in case of logs, a list along with measurement shall be enclosed with the transit pass.*
>
> *(c) The places from and to which such forest produce is to be conveyed.*
>
> *(d) The route by which such forest produce is to be conveyed.*
>
> *(e) The period of time for which the pass is to be in force.*
>
> *(f) The impression of the valid hammer mark.*
>
> *(2) The transit pass shall be issued in Form A, B or C as annexed to these rules, as indicated below :-*
>
> ***Form A*** *- To be issued by Forest Officer or the person authorised in this regard.*
>
> ***Form B*** *- To be issued by Gram Panchayat.*
>
> ***Form C*** *- To be issued in lieu of the foreign pass by the officer authorised by the Divisional Officer, not below the rank of a Forester.*

....

(4) Transit pass shall be in duplicate and bound in books, which shall be obtainable from the Divisional Forest Officer. Each book shall bear in identifying number and the passes in each book should be numbered serially. First page will be the counterfoil and 2nd page shall be given to the person in charge of the produce."

(emphasis supplied)

A conjoint reading of both the **Rules 3 & 6** would show that a transit pass so issued under the Rules shows the ownership of the person to whom it is issued; quantity and description of forest produce covered by it; place to which it is delivered and the route which it shall follow along with the impression of *valid hammer mark.*

93. Proceeding ahead, **Rule 16** restricts transportation of forest produce after sunset and before sunrise i.e., it has to be transported during day hours only. *Vide* **Rule 20**, titled as **"Forest produce in transit to be stopped and examined"**, forest officers at the checking barriers have been authorised to stop, examine, survey and check at any place any forest produce being transported from one place to another. The person in charge of such forest produce is obligated under the Rules to furnish the necessary information as also the production of transit pass, if so required by the checking / examining inspector / officer at the checking barrier / forest barrier / checking naka. **Rule 22** lays down a penalty for breach of the Rules.

94. The holistic reading of the Transit Rules, 2000 would show that it is a complete Code in itself for regulating the transit, movement and transportation of forest produce originating from the forest or private lands within the State of M.P. to outside the State or within the State. Clearly the

Rules aim for regulation, streamlining and transparency in the transit of forest produce. The officers of the forest department as well as the Gram Panchayat at the village level have been authorised to ensure effective, efficacious implementation of the Rules, in respect of which vast powers have also been conferred for stopping any carriage of forest produce, undertake checking and surveillance whenever so felt necessary or in case of suspicion about the legality of the forest produce being so transported. If **Rule 3** is being seen, it therefore exempts not only the transportation of forest produce from the mandatory requirement of Transit Pass for the exempted species of the forest produce therein, but also impliedly liberates them completely from the regulatory regime of the entire set of Transit Rules.

95. In other words, the exempting provisions of **Proviso (b) to Rule 3** give a ***'blanket pass'*** to the transportation of timber, fuel and forest produce of the exempted category from the gateway, bounds and confines of the Transit Rules. The result of operation of the exempting Rule (or the impugned notification in the present case) is that the only power the forest guard or any competent authority standing at the check barrier/ forest naka possesses is just to see whether the forest produce or the timber belongs to the exempted species or not. If he finds that the forest produce belongs to the exempted species, then he is required to hold his hands back entirely, regardless such a forest produce belongs to the Government or to any private person.

96. A specific question in the course of hearing was put to the learned arguing counsel for the parties about the extent of applicability of the Transit Rules to the exempted species, to which a curt answer came that forest produce of the exempted category can be taken from any place to anywhere into or outside the State of M.P., without any barrier regulation/ checking by the authorized

officers of the Forest Department or of the Gram Panchayat under the regime of Transit Rules.

97. That after enactment of the above Rules in 2000, they underwent amendment on 16th May 2005, whereunder **Sub-Rules 1 and 2 of Part B** were omitted. Thereafter through another notification issued on the same day, in exercise of power conferred by **Proviso (b) to Rule 3** of the Transit Rules 2000, the State Government exempted 10 species of the forest produce from the operation of the Transit Rules. Through a subsequently issued notification on 11th April 2007, the State Government again exempted two more species from the rigour of the Transit Rules. Through another amending notification issued on 23.05.2012, one more species was added to the list, taking the tally total to 12 exempted species.

98. It is then that the impugned notification came into scene on 24.09.2015 issued by the Government, through which initially straight away 53 (Fifty Three) species of trees, plants were exempted, whererafter again through a subsequently issued notification on 11.04.2017, 9 more species of various trees were brought under the exemption knit. Thus as on date with minor variations, we have been informed that there are around 61 to 62 species of trees and plants, whose forest produce stands exempted completely. We shall now proceed to examine the validity of the impugned exemption notification of September 2015 as well as the subsequently issued amendments adding 9 more species to the same.

Q. VALIDITY OF IMPUGNED NOTIFICATION DATED 24.09.2015 & ITS SUBSEQUENT AMENDMENTS-

99. On a lighter note, whilst authoring this judgment we were reminded of the recent movie *'Pushpa'*, which highlighted the syndicate of traders and

smugglers engaged in illegal transportation, trading and selling of red sandal-wood in the deep green forests of Seshachalam, Andhra Pradesh.

100. The syndicate of smugglers and traders starts yielding so much influence and clout that no segment of governance is left untouched, from the police to the forest department to the policy makers and eventually the legislators. It depicts how the monster and mafia of illegal business and transportation of forest produce can penetrate into the deep forests and in collusion with the State machinery rob the forest of its natural wealth, with the executive bending to the clout and influence of such syndicate of 'forest produce' peddlers. Our assumptions are supported by various documents that constituted part of voluminous pleadings running into more than 1500 pages of the present batch of matters.

101. At this juncture, we may briefly make reference to some of the documents filed along with the **Intervention Application in W.P. (C) No. 26802/ 2018** as **I.A. No. 5384/ 2022** by one Rajveer Singh Hura, S/o Shri Prem Singh Hura as an environmentalist and Office Bearer of NGO Paryavaran Prahari. These documents that raised our eyebrows include correspondences exchanged internally between the officers of the Forest Division of Indore or within the Forest Department. **They are as follows:**

a. Letter of April, 2017 addressed by **Conservator Forests**, Forest Division, Indore to **DFO**, Forest Division Indore mentioning about large scale illegal cutting and felling of lush green & fruit laden old trees and their large scale trading for timber in huge quantities in timber market of Indore. This letter states that around 100-150 vehicles everyday have suddenly started carrying thousand 1000-1500 tonnes of timber and forest produce illegally in all the important markets of Indore, the source

of which is depressingly unknown. It has also been directed in the said letter by the CF to the DFO to take necessary legal action in the matter;

b. Letter dated 16.04.2019 written by Chief Conservator, Forests, Indore Circle to the Conservator Forests, Indore Division dated 16.04.2019, wherein it was again mentioned that taking undue advantage of exemption notification to 53 species of trees, large scale deforestation, illegal felling and transportation of timber is taking place in the whole Indore Division & various forest areas of the State. It is suspected that old lush green trees are being illegally chopped off in thousands for being traded in the timber market by the timber mafia;

c. An Inquiry Report dated 18.07.2019 forwarded by the Chief Conservative Forest, Indore Circle to Principal Conservative Forest, State of M.P., Bhopal highlighting how blanket exemption to 53 species is playing havoc to lives of large number of lush green trees both in the forest as well as non-forest areas of Indore Division. It was pointed out that the exemption notification has become a license to legitimize transportation of illegally procured timber, wood and forest produce and trade it without any checks or control by the forest department, which is severely affecting the forest cover of the State. In its concluding part, this Inquiry Report prepared by the CF, Mr. M. Kallidurai, it was recommended that the exemption notification be accordingly either recalled or modified to revive regulatory control and regime of transit passes over all those species, who are present in abundance in the forests of M.P. This letter is a clinching piece of evidence that the exemption notification has legitimised indirectly open loot of forest resources in the State of M.P. in the garb of trading of privately grown trees and plants.

d. Though this Court generally doesn't lend any credence to newspaper reports or articles, however the thread of continuity emerging from more than 25-30 newspaper reports articles filed along with the intervention application of one of the intervenors. Referring to 4 to 5 different leading newspapers in various districts of Malwa region, especially Indore and Ujjain, it is reported that in the night hours after sunset and before sunrise (contrary to the mandate of **Rule 16**), forest produce and timber in humongous quantities in large convoys of trucks and carriageways is being transported from the districts having dense forest to city trading centres & markets. There are no identification signs/ marks or impressions on these timbers and forest produce, primarily because they are exempted from the rigours of the Transit Pass Rules and it is therefore difficult to identify their source or genesis of origin, whether they are originating from the private land or from the forest areas. The newspapers can be looked into at least for information that officials of the forest department are encouraging such transportation and it has legitimised corruption and sprouted windfall benefits for the timber mafia. Newspaper reports appeared to be of some of the leading and widely circulated newspapers as well like Dainik Bhaskar, Patrika, Times of India, free press etc. However we have not believed the particulars of any information provided in them, except a general inference about the disappointing state of affairs prevailing in some parts of the State.

102. The learned AAG representing the State, when confronted with these documents about the endemic problem arising out of the impugned notification was not able to satisfactorily offer any explanation. It was simply stated that there are sufficient checks and balances available on the field for

distinguishing between produce of privately grown trees from that of what is generated in the forest areas. However in the absence of any contest to the inter departmental correspondences, inquiry reports of its own officers of the forest department, we are constrained to believe that exemption notification has made the trees, plantation and biodiversity of the State present in the forest areas extremely vulnerable to the timber mafia. But for the eye opening documents brought on record by the PIL petitioners and environmentalists, this Court otherwise would have completely been aloof of the ground reality, and would have held the impugned exemption notification as completely constitutional, having been issued within the confines of powers delegated under **Sec. 41(3)** of the Forest Act.

103. Also the State, despite being asked repeatedly about this in the course of hearing, was not able to provide any sufficient explanation about the probable adverse effects of exempting such large number of species from the regulatory regime of the State. The binding dictum of ***M.K. Ranjitsinh & Ors. v. Union of India & Ors. (supra)*** therefore enjoins this Court to hold that till the State justifies validity of providing exemption on such a wholesale scale by demonstrating that it will not have any adverse effect on the environment, it is not permitted to implement the impugned exemption notification.

104. The effect and impact of the impugned notifications exempting around 62 - 63 species of trees and plants and their forest produce is therefore palpably writ large. The senior officials of the forest department have been echoing the concern of illegal deforestation being amplified for generation, transportation and trading of trees and plants falling under the exempted category. The Court cannot lose sight of the fact that even though any species may not be exempted, but if in its appearances and resemblances it is strikingly similar to

any of the exempted species, that may also become vulnerable to deforestation and being placed under the axe/ hammer. One also cannot lose sight of the fact that the forest officials at the checking point / barrier naaka, possibly in the garb of permitting transportation of the exempted species may also permit those timber trees, timber and forest produce, which may have such similar resemblances. The possibility of abuse and misuse of the exempting provisions not only can be ruled out completely, but can be readily believed to be existing in many parts of the State. The intervenors as well as the petitioners have highlighted in their applications supported by annexures how the various trees and plants growing naturally inside the dense and deciduous forest of the State have become vulnerable to being uprooted or chopped off with the active involvement of the timber mafia with the forest officials or local representatives of the Gram Panchayat. We don't wish to elaborate any further except to reiterate that the misuse and abuse of provisions of exempting notification is not only imminently visible, but also tangible.

105. On the vehement contention of the learned AAG about exemption being available only to trees, plants species grown over the private land, a specific question was put about the mechanism devised by the State Government for identifying the source of such forest produce. However no satisfactory answer available was offered on behalf of the State. On another question as to whether before exempting 62 - 63 species of trees and plants, was there any study, data collection exercise through any survey being carried out by the State in terms of the MoEF guidelines of 2014 of finding out how many of the exempted species mentioned in the impugned notification were growing naturally in the dense deciduous forest of the State of M.P., no satisfactory answer was offered to this even. We were at pains in asking the State

Government to produce any credible report or any data collected that would demonstrate that the exemption notification mentioned only those species, which were not present in the local or regional forest of the State. To the contrary, we found that more than ten species of trees and plants are those, which are growing abundantly and constitute the dense, wild & deciduous forest cover of the State. Some of them by way of illustration, were Gulmohar, Ashok, Amrud, Jamun, Jungle Jalebi, some of the species of bamboo, which can be seen constituting the forest cover of the State. Jungles of Balaghat and Betul are famous for their indigenous species of trees like Mango, Jamun, whilst those of Mandla and Dindori comprise diverse richness of Bamboos as part of their forest cover. Therefore the minimum the State was obligated to have produced a credible document pointing out the description of natural distribution of diversity of species of trees in the localised forests of the State (both notified and non-notified); and to have informed the Court dispassionately without driven by any vested interests as to which all species amongst the exempted lot of 62-63 species were present in the local forests of the State. However such an exercise appears to have never been undertaken as except relying blindly upon the National Agro Forestry and the MoEF recommendations of 2014, there is no other credible material placed independently of its own by the State. The submissions of the State were therefore completely piggyback on the recommendations of the MoEF, which have been made generically for all the States in the country.

106. In the above factual scenario, clearly therefore the power of exemption available under **Sec. 41(3)** seems to have been unmindfully exercised, without undertaking any study or research survey of the species so exempted *vide* the impugned notifications. In a way therefore the State has acted contrary to the very recommendations of the MoEF on which it seeks to place reliance upon

and not in consonance thereto. This amounts to gross abdication of its constitutional duty as a trustee of natural resources, as envisaged under **Article 48A** of the Constitution of India read with **Sec. 41(1)** of the Forest Act, 1927. As an eternal trustee and custodian of the natural resources and forests of the State, the State Government was duty bound to have diligently examined before exempting 62-63 odd species as to whether such exempted species are also the ingredients of our forests or not. The diligence stemmed also from the Precautionary principle we had discussed at length in the preceding paragraphs, resting on the broad shoulders of the State.

107. The arbitrary manner in which notifications came to be issued in quick succession from the year 2005 onwards points out clinchingly of the immense pressure of the timber mafia on the State authorities, with the environment and forest as its mute victims. The issuance of impugned notification mechanically, without studying and examining the fundamental aspect of impact of such exemptions on the existing forest cover of the State provokes the conscience of this Court, which has been compounded by dissatisfactory answers given by the State in the present proceedings. It has been almost 10 years from the date impugned exemption notifications were issued and an additional obligation with State is enjoined upon was to have examined the impact and correlation of the impugned notification with the fast depleting forest cover of the State. The State ought to have analysed and assessed whether there exists any ***causal connection*** between the fast depleting forest cover and the impugned exemption notification, in as much as perceivably the exemption notification has triggered, encouraged and enhanced the deforestation activities in the State. The State has even failed to carry out such post audit analysis and assessment after issuing the impugned exemption

in the last one decade. What is more appalling is frequent additions and improvements of the said exemption list now and then.

108. As stated supra, the impugned notification of 2015 also grants blanket exemption from the very applicability of Transit Rules, 2000 to all the 62-63 species.

109. The circumstances warranting applicability of ***'exception/ exemption clauses'*** also can never be presumed to be existing till eternity. They are by their very nature temporal in nature having a fixed life. The power to exempt available to the State is not only circumscribed by the existence of compelling circumstances, but also the life of the existence of such compelling circumstances. Meaning thereby that such compelling circumstances cannot be presumed to be existing forever or till infinity, but for a limited duration, say two or three years. It cannot be argued that an exception once created shall exist forever, lest the very purpose of creating an exception stands defeated. Likewise an exemption once provided, by necessary corollary will also not be held to be existing forever but a duty is cast upon the State and the exemption authorities to review the life of such exemption at regular intervals, say every two years or three years. If the exempting provision is presumed to be carrying an endless life, then it becomes repugnant to the principal charging provision putting in place the regulatory regime. ***Therefore the power available to the State Government under Sec. 41(3) is a transitory, temporal power, having a fixed life/ duration, which is determined by the existence of compelling circumstances***, exigencies that necessitates the exercise of powers of exemption by the State Government under **Sec. 41(3) r/w Proviso (b) to Rule 3** of the Transit Rules, 2000. Therefore not only the State is obligated to review at regular intervals the exemptions issued under **Sec. 41(3)** for various species, but also to examine

and demonstrate that the necessity for renewal/ continuation/ extension of such exemption exists to the same degree and to the same extent as it was existing before. Illustratively a species of tree may be available in the forest areas, as also being grown on private lands (for example, Subabul, Gulmohar and Eucalyptus trees). It might happen that owing to exemption being provided to these species of trees or timber, their exploitation in the forest areas may also start, leading to their aggravated depletion or degradation in the forest areas.

110. If the State finds after two or three years of granting exemption that such an exemption is annihilative of the existence of such species in the forest areas, leading to their depletion or decrease in their presence with the misuse of the exempting provisions by the public at large, then the exemption may be revoked. This is called ***periodic audit and scrutiny of the necessity of the exemption notification***. When a question was put to the State counsel about the life of exemption provided to the 62-63 species *vide* the impugned notification, the answer was very amusing, *viz.* till the State Government feels it appropriate. Accordingly we hold and direct that State as an eternal trustee of the natural resources on behalf of the public at large is duty bound to examine, review and assess the necessity of continuing/ extending/ renewing the operation of exemption notification *qua* any species at least every three years before continuing the said species in the exempted category under **Sec. 41 (3)**. Apart from the absence of any study or survey behind issuance of the impugned notification, there is no document brought on record that shows even on date all the 62-63 species deserve exercise of exceptional powers of exemption under **Sec. 41(3)** of the Forest Act after 10 years of their exemption by the State. That this is yet another reason for our holding that the

impugned notification granting exemption can't be allowed to continue or hold the field in the State.

111. For all the above mentioned reasons we hold that the impugned notification dated 24.09.2015 and the amendments affected *vide* the subsequently issued notification of April, 2017 are *ultra vires* the provisions of **Secs. 41(1), (2) & (3)**, being *manifestly arbitrary* having been issued without any compelling reasons or circumstances for exempting such large number of species of trees and plants. Both the notifications are therefore held to be invalid and liable to be struck down by this Court.

R. IMPUGNED NOTIFICATION OF EXEMPTION BEING 'MANIFESTLY ARBITRARY'

112. The Supreme Court in the matter of ***Cellular Operators Association of India & Ors. v. Telecom Regulatory Authority of India & Ors.,*** **(2016) 7 SCC 703** held that in order to pass the scrutiny of **Article 14**, the provision under challenge must be shown to have been drafted as a result of intelligent care, deliberations and due application of mind as statutorily expected by the authority. In the absence of such intelligent care, deliberation or diligence of consideration of relevant factors and material by the decision-making authority, it is always susceptible to challenge on the ground of being *manifestly arbitrary* and *ultra vires* the provisions of the parent enactment, conferring such power to take such administrative decision or pass subordinate legislation. In the landmark judgment of ***Shayara Bano v. Union of India & Ors., (2017) 9 SCC 1,*** the test for manifest arbitrariness was systematically reiterated. A legislation or any subordinate legislation would become manifestly arbitrary under **Article 14** when the enacting authority acts capriciously, irrationally, with oblique or without adequate determining principle. When something is done in an excessive and disproportionate

manner, contrary to the provisions, purpose and objective for which such a power is conferred by the parent enactment, such a piece of executive action or subordinate legislation becomes *manifestly arbitrary*. Such a test of manifest arbitrariness can be resorted to for invalidating legislation or a Parliamentary/ State enactment as well under **Article 14**.

S. REVIVAL OF EARLIER NOTIFICATIONS OF 2005 & 2007 ON ANNULMENT OF IMPUGNED NOTIFICATION

113. There was a lot of argumentation over the effect of annulment of the impugned notification of September, 2015. It was argued that even if the impugned notification is annulled, the impact would be automatic revival of the previously issued notifications of 2005 and 2007 under the provisions of Transit Rules, 2000. While on the proposition of law that annulment of the impugned notification shall automatically revive the validity of the previously issued notifications of 2005 and 2007, there is no quarrel, for other reasons we shall decline this relief even to the landowners and the industrial corporates.

114. in view of what we have held above about the nature of 'exempting provision' of **Sec. 41(3)** and character of the notifications issued thereunder being temporal and transitory, even though the annulment of the impugned notification ideally should lead to automatic revival of the previously issued notifications of 2005 and 2007, however this Court is appropriate cases has the powers to mould the relief sought for by the petitioners and issue appropriate directions to avoid perpetration of injustice or loss to environment attributable to final reliefs claimed by the claimants. The power of the Writ Court to mould the relief suitably under **Art. 226** of the Constitution needs no elaboration and is settled by a host of precedents of this Court as well as the

Supreme Court wherever it is so necessary to prevent injustice being perpetuated owing to reliefs being granted by the Court eventually.

115. Therefore, even though the validity of the previously issued notifications of 2005 and 2007 would revive (since they were substituted by the impugned exemption notification), ***we deem it fit to restrain the State Government from enforcing them by staying their operation and effect*** by keeping them in abeyance for a period of 6 months from the date of this judgment. During this period of 6 months, if the State intends to come out with any fresh exemption notification of any number of species, then it shall undertake a State wide study and survey by a High Powered Committee (*for short*, **'HPC'**) constituted by it for finding out which all species proposed to be exempted are present substantially/ significantly in the local and regional forests of the State. By forest we mean not only notified forest, but the forests as defined and interpreted by the Hon'ble Supreme Court in the matter of ***T.N. Godavarman Thirumulpad v. Union of India,*** **(supra).** Therefore, if any species proposed to be exempted (or exempted under 2005 & 2007 notifications) by the State is found present substantially/ visibly in the local or regional forests of the State by necessary implication, it cannot remain exempted from the regulatory regime of the Transit Pass Rules, even though it may lead to incidental hardships to all those who intend to trade or transport the forest produce of such species.

116. The mandate of the HPC as proposed above shall be primarily to ascertain whether any of the exempted species is present substantially/ significantly in the forests, national parks, sanctuaries of Madhya Pradesh and if it is so found to be present in noticeable dimensions, the State must show dissidence in exempting such a species. This is then clearly to avoid misuse or abuse of such exempting provisions or to avoid the possibility of the forests being

subjected to deforestation of such species of trees and plants. However to the contrary, if any of the 12-13 exempted species are alien to the forests of Madhya Pradesh, or having very little / insignificant presence, in a way that its exemption shall not disturb its presence in the ecological balance in the forests of the State, then the State would be justified in granting exemption under **Sec. 41(3) r/w proviso (b) to Rule 3** of the Transit Pass Rules. However even for granting exemptions to such species, are alien to forests of M.P., the HPC as proposed by this Court must record detailed findings and elaborate conclusions on the basis of concrete empirical study, survey and research undertaken by it on the field and not within the four walls of their offices on the basis of hearsay or speculative informations.

117. The **HPC as aforementioned, which this Court directs the State Government must at least be of 7 members**, comprising necessarily of the following:

a. 2 Senior Officers not below the rank of Principal Chief Conservator of Forests (PCCF) or Additional Principal Chief Conservator of Forests (ACCF);

b. Chief Wildlife Warden (CWW) or any officer equivalent to the said rank, handling the department/ directorate of wildlife in the State of Madhya Pradesh;

c. 2 eminently qualified & nationally renowned environmentalists having distinctive name and reputation in the field of botany or horticulture, who have study, knowledge and understanding about the forest cover and resources of the State of Madhya Pradesh, OR/ AND who had been in the past been part of the committees constituted by the MoEF, GOI for study about the status of forest cover of other States;

d. A nominee of the GOI, any senior government official not below the rank of Joint Secretary, Union of India as nominated by the MoEF in the said regard;

e. Any other member / members or publicly elected representative in the State of M.P., which the State Government may feel appropriate to nominate in the committee of members having knowledge, understanding and exposure to the field of environment and forests.

118. That the HPC so constituted hereinabove by the State Government shall undertake a detailed reason-wise/ district-wise study about the status of current forest cover and diversity and variety of species present therein, especially those which are proposed to be exempted or already exempted in the 2005 and 2007 notifications from the provisions of Transit Rules. The said exercise may be carried out within a period of 6 months from the date of this order. If for any reason it is found that the aforesaid exercise of research and study by the HPC is likely to take more time, the State Government can always move this Court seeking appropriate extension of time necessary for completing the said exercise effectively and sincerely.

119. It is after the preparation of the aforesaid research and survey report by the HPC that the State Government may either come out with a new exemption notification under **Sec. 41(3) r/w Proviso (b) to Rule 3** of the Transit Pass Rules or may consider continuing the implementation of the previously issued notifications of 2005 and 2007 with modifications as it deems fit in light of the research, empirical study and survey report prepared by it.

120. In view of what we have observed above in the present judgment, therefore it would be obligatory for the State to periodically review and assess the necessity of continuing the exemption and relaxation of any species of trees and plants **after at least every three years**, on the basis of the satisfaction

arrived by it about the existence of compelling circumstances, exigencies & desirability for continuing the exemption/ relaxation in favour of the species notified by it.

T. CONCLUSIONS

121. **In view of the discussion undertaken by us, our conclusions to various submissions & issues arising in the present reference are as follows:**

a. Right to life is deeply entrenched in the protection and conservation of environment, forests, and all the natural resources of the State, as a facet of **Article 21 r/w 48-A** of the Constitution of India. Judicial review of any legislative action or subordinate legislation must be guided by the well settled concepts of Precautionary Principle, public trust doctrine, when questions about utilization or exploitation of natural resources or forest wealth are concerned;

b. The Precautionary Principle, as one of the basic features of environmental jurisprudence, mandates that Courts must lean towards that interpretation of any statutory position, which furthers and advances the precautionary approach towards the environment, forests, and natural resources. Whilst doing so, the Court must be mindful that the State cannot treat the environment, natural resources and forests, as part of its sovereign wealth under its commercial use, rather all these resources are held as a trustee on behalf of the general public;

c. Whilst interpreting any decision, policy, or legislative action or statutory provisions relating to the environment and forests, the Court must always advance that interpretation which aligns with the famous Latin maxim *'Res Commune'* - *'Res Extra Commercium',* meaning 'things owned by no one and subject to use by all as a community resource' -

'things outside of commercial intercourse'. The interest of the community in the protection and preservation of the environment, natural resources, and forests, therefore always triumphs over that of the private commercial interest of any individual or section of individuals, since all the natural resources are held in public trust by the community at large;

d. The Courts are duty-bound to acknowledge the necessity and enforce the regulatory measures envisaged under the enactment. In view thereof **Sec. 41(2)** is a norm and being a repository of regulatory powers of the State as a public trustee of all the natural resources (including forests) under **Sec. 41(1)**;

e. Under **Sec. 41(2)**, regulatory measures will include even the *'power to prohibit'* whenever deemed necessary by the State as a trustee, restraining the public at large or any member from the general public from undertaking any activity that may adversely affect the existence and presence of all these natural resources. **Sec. 41(3)** is, therefore, ***an exception to the norm*** of the State's power to enforce its regulatory regime;

f. The power to exempt available to the State under **Sec. 41(3)** is circumscribed by **two inherent limitations**; *firstly,* the 'necessity test' and *secondly* the 'causal connection test,' which must be met by any exemption granted to any species of trees, plants, or forest produce or any area of the State, before liberating it from the regulatory regime envisaged under **Sec. 41(2)** of the Forest Act;

g. The exemption granted under **Sec. 41(3)** cannot be a blanket one or so broad-based in nature as to defeat the very objective and Parliamentary

intent behind **Secs. 41(1) & (2)**. In other words, the exception cannot substitute the norm — an inalienable duty of the State to enforce the regulatory regime or regulating the generation, transit, transportation, and possession of forest produce;

h. The powers of exemption under **Sec. 41(3)** are always subject to judicial review, to be justified by demonstrating ample material, compelling circumstances backed by data, research, surveys, and empirical studies to show why exceptional powers under **Sec. 41(3)** are being invoked for granting exemptions; qua any timber or forest produce, or any species of trees, plants, or for any area in the State. The ***bigger the ambit of exemption, the larger and heavier the duty to justify it***, supported by equally persuasive, convincing material at the disposal of the State. If the State fails to meet any of the criteria as aforestated in justifying the exemption issued by it under **Sec. 41(3)**, the exemption would not only become violative of **Sec. 41(3),** but also would fall from the generic principles and Parliamentary intent as exhibited under **Secs. 41(1) and (2)** of the Forest Act;

i. The powers of exemption under **Sec. 41(3)** are inherently ***transient in character and temporary in nature***. No exemption allowed under **Sec. 41(3)** be allowed to exist in perpetuity, as **Sec. 41(3)**, being an exception to **Secs. 41(1) & (2)**, cannot possess the trait of permanency. By necessary implication, therefore any exemption is bound to be short-lived for a period not more than 2-3 years;

j. It is obligatory for the State to undertake periodic review of all the exemptions granted by it on a periodical basis, atleast once in three years on the same principles and same considerations, that necessitated the issuance of the original notification of exemptions;

k. The broader the scope of exemption, the scope and width of the exemption is inversely proportional to its transient character, meaning thereby that if the exempting notification covers a large number of species and is applicable for the whole State, then it is necessary for the State to review it all the more in shorter intervals, instead of keeping the exemption operative for years together as a license to plunder the forest wealth of the State;

l. **Rules 3 and 4** of the 'Transit Rules', insofar as they make a distinction between *'forest produce'* generated from the Government on one hand and generating from private land, have to be read in consonance with the definition of *'forest produce*' under **Sec. 2(4)** of the Forest Act. All those categories of '*forest produce'*, mentioned under **Sec. 2(4)(a)** have to be treated as originating from the 'forest area', irrespective of they having been grown on the private lands and be subjected to stricter regulatory control and cannot be subjected to exemption at all. Meaning thereby that the distinction made in the Rules between the forest produce growing on government land and that growing on private land is clearly artificial, not backed by the definition of 'forest produce' under **Sec. 2(4)(a);**

m. Any species, which is found in the forest areas of the State of Madhya Pradesh substantially / significantly (if not abundantly) cannot be subjected to a blanket exemption from the regulatory regime or the Transit Pass Rules enacted under **Sec. 41(2)**;

n. It is only those species, which are not significantly/ substantially present or available in the forest areas of the State of M.P., (but are ordinarily alien and exotic to the forest areas) can only be exempted), but that too after undertaking thorough research and surveys, empirical studies by the

HPC, as we have suggested above. Without such data, research, or survey studies, the powers of exemption under **Sec. 41(3)** clearly cannot be resorted to, for exempting those species which are found ordinarily and significantly in the forest areas of the State;

o. The impugned exemption notification dated 24th September 2015 and subsequently issued amendments thereto, amending the same to exclude 62-63 species of plants and forest produce, are therefore held to have been issued without any independent background research, and surveys, empirical studies undertaken by the State on its own to demonstrate the compelling circumstances in which such large number of species came to be exempted, that too indefinitely;

p. The impugned notification has been issued without deliberations and intelligent care and is therefore '*manifestly arbitrary*', being violative of not only **Sec. 41(3)** but also **Secs. 41(1) and (2), r/w Articles 14**, **21 and 48-A** of the Constitution of India. It shows the lackadaisical approach of the State;

q. The annulment of the impugned notification of September 2015 might automatically lead to revival of the previously issued notifications of 2005 and 2007, exempting around 13-14 species for the whole State of M.P. However, for the reasons stated *supra*, the aforestated notifications also deserve a re-scrutiny, relook, and reconsideration by the State authorities before being implemented, made operational, or given effect to in the State of M.P. Therefore, the operation and effect of all the statutory provisions, notifications issued under the provisions of Transit Rules, 2000 granting blanket exemption to the 13-14 species for the whole State of M.P., from the year 2000 onwards ***are also kept in abeyance and suspension for the next six months***, whilst requiring the

State to undertake the exercise of data collection & empirical study of all the exempted species as has been directed hereinabove qua the impugned notification of September 2015;

r. The aforesaid direction for keeping earlier notifications of the years 2000, 2005, and 2007 is being issued by this Court by moulding the relief so that whilst finding the cure to one malady, we do not open the floodgates for another malady. In other words, the solution / cure to the problem cannot be worse than the problem itself. The State shall in terms of whatever has been observed in the present judgment is duty-bound to adopt diligence, intelligent care, and deliberations before issuing any exemption for any species or forest produce for the whole of State.

U. THE WAY FORWARD & OPERATIVE DIRECTIONS

122. **DIRECTIONS ISSUED IN FURTHERENCE OF THE CONCLUSIONS**

In view of the conclusions recorded above, our task would be left half complete, if this Bench does not issue necessary directions to preserve the 'forest produce' relating to exempted species lying spare in various parts of the States and may be attempted to be disposed of/ transported out of the straight to avoid the clutches of stringent provisions of Transit Rules, 2000. The issuance of directions is necessary to ensure that the spirit of our judgment is kept intact, till the full fledged implementation of Transit Rules, 2000 is restored and revised by the State machinery.

However before issuing any direction, we must underscore that ordinarily the task of the larger/ full Bench is concluded with the recording of conclusion and remitting the matter back to the designated Bench for further adjudication. **Rules 8 & 9 occurring under Chapter IV of the M.P. High Court Rules, 2008** also envisages answering of the reference by the Larger

Bench constituted for the said purpose **Rules 8 & 9 of the High Court Rules** Read thus:

> *"8. (1) A single bench or a division bench may refer any proceeding, pending before it, to the Chief Justice with a recommendation that it be placed before a larger bench where it involves a substantial question of law of general importance.*
>
> *(2) In such proceeding, the referring Judge(s) may formulate question(s) and may either refer such question(s) for opinion or may request that entire proceeding be heard and decided by the larger bench.*
>
> *(3) Where a Judge sitting alone while hearing a case is of the opinion that for the decision of that case, an earlier decision of coordinate or larger bench of this Court needs reconsideration, he may formulate question (s) and refer the same to the Chief Justice with a recommendation that it be placed before a larger bench.*
>
> *9. After the reference is answered by the division bench or the larger bench, the case shall be placed before the Chief Justice for listing before the appropriate bench for hearing and decision in accordance with the opinion of the division bench or larger bench, as the case may be."*

Though the Rule obligates the Larger Bench to refer the matter back to the regular Bench hearing the similar category of assigned matters, but however it nowhere inhibits or curtails the inherent powers of the High Court under Article 226 available to the larger/ full Bench for acting '*ex debito justitiae*' (in the larger interests of justice), where it is felt compulsory.

The practice of issuing directions whilst answering reference in extraordinary cases for doing complete justice in extraordinary situations is not completely unknown. A *pari materia* provision of reference to larger Bench exists under the Supreme Court Rules, 2013 as well. *Vide* **Order VI Rule 2,** the power is conferred upon the Benches of the Supreme Court to refer it to a larger Bench. **Order VI Rule 2 of the Supreme Court Rules, 2013**, reads thus:

> *"2. Where in the course of the hearing of any cause, appeal or other proceeding, the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it."*

Whenever it has been felt necessary to issue directions by the larger Bench, as an inextricable and insegregable component of the conclusions written by it, there the larger Bench has issued directions collaterally with the conclusions recorded by it. The issuance of directions is intertwined with the delivery of the final judgment as a necessary ingredient of the justice dispensation process. We may readily refer to certain judgments of the larger Benches of the Supreme Court, constituted under Rule 2 Order VI, abovementioned, wherein apart from recording conclusions, directions were also simultaneously issued by the Supreme Court's larger Bench to give full effect to the purpose for which the reference was made to the by the larger Bench. The following judgments of the larger/ Constitution Benches of the Supreme Court may be referred to, wherein along with the eventual conclusion, a host of directions were issued :

a. In *Lalita Kumari v. Government of Uttar Pradesh & Ors.,* (2014) 2 SCC 1, wherein *vide* Para 120, whilst recording conclusions, the Constitution Bench had issued certain directions in relation to the

powers of the investigating officers of registration of FIR, whenever commission of offences is communicated to him/ her;

b. In *Re : Section 6A of the Citizenship Act, 1955,* 2024 SCC OnLine 2880, the Supreme Court examined the constitutionality of Section 6A of the Citizenship Act, 1955. The majority opinion whilst returning conclusions had also felt necessary to issue a slew of directions to ensure that illegal immigration post 1971 in the borders of India is being appropriately regulated. The directions pertain to implementation of immigration and citizenship legislations, which were held to be requiring constant monitoring of the Court and accordingly it was falsed down;

c. In *Association for Democratic Reforms & Anr. (Electoral Bond Scheme) v. Union of India & Ors.,* (2024) 5 SCC 1, wherein the validity of the electoral bond scheme floated by the Central Government was examined. *Vide* Para 222, the majority opinion whilst recording conclusions also issued certain directions for revocation of various categories of electoral bonds and placement of the said money were issued. Though the proceedings were arising out of Writ Petition filed under Article 32, however, the same were adjudicated finally by the 5 Judge Bench.

In view of the foregoing discussion, therefore whilst answering the reference, we have no hesitation in holding that certain directions necessarily consequential to answering the reference would be necessary to be made by the very same Bench. This is to ensure that at the later stage, owing to mutual difference between the members of the Bench, the directions are just and necessary for protecting the ‘forest produce’ generated out of the exempted

species, till the same is subjected to regulatory regime by the State and its instrumentalities.

123. In view of the discussion undertaken, since we shall be annulling the impugned notification, therefore a consequential direction flowing out of it is also necessary to avoid any multiplicity of litigation after the references are answered. **The following directions are therefore issued:**

a. In view of the detailed reasoning and analysis mentioned hereinabove, we hold & declare that the impugned notification dated 24.09.2015 and the amendments affected to it subsequently in April, 2017 are *ultra vires* the provisions of **Secs. 41(1), (2) & (3)** of the Forests Act, 1927 and violative of **Arts. 14, 21, 48-A** of the Constitution of India, being also *manifestly arbitrary. Therefore, the impugned notification dated 24.9.2015 and subsequent amending notification dated 11.04.2017 are hereby* ***quashed/set aside****.*

b. The annulment of the impugned notification shall revive the applicability of Transit Pass Rules, 2000 to all the previously exempted 62-63 species in their full effect, **which must be implemented with immediate effect by the State Government**;

c. We keep in abeyance for reasons stated *supra*, the previously issued exemption notifications of 2005 and 2007 for a period of 6 months for State to undertake the exercise of collection and collation of necessary data before implementing both the said exemptions notifications.

d. To avoid any immediate hardship, **a maximum time frame of 10 days** shall be given to all the persons/ entities in possession of or in the occupation of transit/ transportation of exempted categories of forest

produce and timber to take all necessary steps for compliance of provisions of the Transit Rules, 2000;

e. **Within a period of 10 days from the date of this judgment**, therefore, if any application is filed for issuance of a Transit Pass or for any other purpose under the Transit Rules, 2000 by any person/ entity, then the same shall be dealt with at the earliest dispatch and disposed of statutorily within a further period of 30 days from the date of filing of the application;

f. Therefore, **for a period of 10 days from the passing of this order**, though it is mandatory for every such person/ entity indulging in transit/ transportation of any forest produce and timber relating to exempted species to necessarily apply for issuance of transit pass, however, on the proof of the filing of said application (so made for issuance of transit pass) being produced, **for a period of 30 days after 10 initial days** mentioned above, ***no adverse action or coercive action be initiated against such person producing the proof of filing his application***. The "coercive action" is referable to the civil and criminal action envisaged under the provision of Transit Rules, 2000 only qua the exempted species, exempted from the year 2000 till date by the State Government;

g. However, it shall be open for the State or its instrumentalities to apply for suitable extension (only if necessary) if they hit upon any impediment or difficulty in disposing of the large number of applications received by them for issuance of Transit Passes. Appropriate orders may then be passed by the designated Division Bench extending the time frame for disposal of such applications filed for issuance of Transit Passes or for any other purpose as specified under the Transit Rules, 2000;

h. ***For a period of 10 days from the date of judgment of this Court***, therefore there shall be no transportation/ transit undertaken by any person of any forest produce or timber in the State of Madhya Pradesh, till (a.) he/ she files an application for issuance of a transit pass or any other statutory permission/ requirement under the Transit Rules; and (b.) produces the proof of filing of such transit pass with the notified competent authority under the Transit Rules on being detected or found transporting or moving any exempted category of forest produce or timber as stated *supra*;

i. If after passing of this judgment, if it is found that a person is indulging in movement or transportation of exempted species of forest produce without a validly issued transit pass issued by the competent authority of the State, or the application for the same as aforestated in the preceding paras, the authorities under the Forest Act as well as the Transit Rules shall be at liberty/ free to institute appropriate civil and criminal action including seizure & confiscatory proceedings under the provisions of the Forest Act;

j. The proof of application filed by the concerned person/ entity for issuance of necessary passes or any other permission / requirement under the Transit Rules for movement/ transport of exempted forest produce **shall be valid only for a period of 30 days from the date of its filing *qua* such a produce**, within which it shall be obligatory for the competent authority to issue the necessary permission, failing which (in the absence of any extension granted by this Court) such an officer or competent authority shall be individually responsible for committing contempt and disobedience of the directions of this Court to be

proceeded appropriately under the provisions of Contempt of Courts Act, 1971;

k. The State Government and its instrumentalities shall ensure **State wide dissemination** of directions of this Court so issued in the present judgment within a period of 3 days from the date of the judgment, through **both print and electronic media** so that the effective compliance of the directions of this Court takes place timely by every person/ entity in the State;

l. The State authorities shall ensure the circulation of operative directions of this Court to all officials of their respective departments and Gram Panchayats for ensuring proper implementation of Transit Rules, 2000 *qua* all the exempted species (without any exception) with immediate effect;

m. We expect that the operative part of this judgment, *viz.* the directions mentioned in the preceding paragraphs are published on the **homepage of the official websites** of all concerned departments of the State, who are responsible in any manner (even remotely) for implementation of the Transit Pass Rules at the grassroots level. The personal responsibility for this dissemination shall lie on the shoulders of **Principal Secretary** of the concerned departments as aforementioned;

n. We hope and expect that the State, as a public trustee under **Sec. 41(1)** of the natural resources of the State shall act with all promptitude to ensure that officers and responsible government functionaries at the grassroots level are made aware of the directions of this Court as well as every person who is likely to be affected directly - indirectly by them.

124. In case the State or any aggrieved party intends to seek clarification of the above directions or extension of time for compliance of any the directions issued above, there shall be liberty to move appropriate application if necessary. The designated Division Bench shall consider the application on its own merits, in view of the circumstances mentioned thereunder.

125. Since the present reference is being answered with certain consequential directions, whose compliance and monitoring would be necessary, therefore all the matters relating to the subject matter of the present petitions, *viz.* relating to issues arising out of the various exemption notifications shall be heard by a designated Division Bench at the Principal Seat, Jabalpur. If any writ petition on any proceeding relating to the exemption notifications or the directions issued hereinabove are instituted before the Indore or the Gwalior Bench, then the same shall stand transferred immediately to the Principal Seat, Jabalpur, in respect of which the Registrar (Judicial) shall issue necessary steps of intimating all the Bar Associations in both the Benches of this Court about the present matter. Since this Court has issued a series of directions in the matter, which shall require compliance and monitoring by the Court atleast for next 6 months, therefore the compliance proceedings or any connected proceedings shall also be heard by the designated Division Bench of this Court.

126. The reference is answered accordingly. The **designated Division Bench** shall be constituted for the above purposes as aforementioned on the directions of the **Hon'ble The Chief Justice at the Principal Seat, Jabalpur**. It shall deal with all other issues arising in relation thereto including the compliance proceedings as aforementioned.

127. List before the designated Division Bench on 10.03.2025 for necessary directions & orders, when the learned AAG file the status report of compliance of the directions issued above before this Court.

(SURESH KUMAR KAIT) (S.A.DHARMADHIKARI) (VIVEK JAIN)
CHIEF JUSTICE JUDGE JUDGE

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