The State Of Meghalaya vs All Dimasa Students Union Hasao ... on 3 July, 2019

Equivalent citations: AIRONLINE 2019 SC 399, 2019 (8) SCC 177, (2019) 8 MAD LJ 37, (2019) 8 SCALE 350

Author: Ashok Bhushan

Bench: K.M. Joseph, Ashok Bhushan

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10720 OF 2018

STATE OF MEGHALAYA ...APPELLANT(S)

VERSUS

ALL DIMASA STUDENTS UNION,
DIMA-HASAO DISTRICT COMMITTEE & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 10611 OF 2018

THE STATE COORDINATION COMMITTEE
OF COAL OWNERS, MINERS AND DEALERS
FORUM ...APPELLANT(S)

VERSUS

ALL DIMASA STUDENTS UNION
DIMA HASAO DISTRICT COMMITTEE & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.10907 OF 2018

GARO HILLS AUTONOMOUS DISTRICT
COUNCIL ...APPELLANT(S)

VERSUS

ALL DIMASA STUDENTS UNION
DIMA HASAO DISTRICT COMMITTEE & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 5272 OF 2016

KA HIMA NONGSTOIN LAND OWNERS,
COAL TRADERS AND
PRODUCERS ASSOCIATION
Signature Not Verified
...APPELLANT(S)
Digitally signed by
ARJUN BISHT

VERSUS
Date: 2019.07.03
11:48:29 IST
Reason:

ALL DIMASA STUDENTS UNION
DIMA HASAO DISTRICT COMMITTEE & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL No. OF 2019
(@C.A. DIARY NO. 3067 OF 2018)

LBER LALOO ...APPELLANT(S)

VERSUS

ALL DIMASA STUDENTS UNION,
HASAO DISTRICT COMMITTEE & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2968 OF 2019

STATE OF MEGHALAYA ...APPELLANT(S)

VERSUS

ALL DIMASA STUDENTS UNION
DIMA HASAO DISTRICT COMMITTEE & ORS. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Natural resources of the country are not meant to be consumed only by the present generation of men or women of the region where natural resources are deposited. These treasures of nature are for all generations to come and for intelligent use of the entire country. The present generation owes

a duty to preserve and conserve the natural resources of the nation so that it may be used in the best interest of coming generations as well and for the country as a whole.

2. These appeals have been filed challenging various orders passed by National Green Tribunal wherein several directions were issued, measures to be taken to check and combat the unregulated coal mining in Tribal areas of State of Meghalaya which coal mining resulted not only loss of lives but damaged the environment of the area.

Details of appeals

3. Civil Appeal Nos. 10720 of 2018, 10611 of 2018 and 10907 of 2018 have been filed against order dated 31.08.2018 passed by the National Green Tribunal, Principal Bench, New Delhi. Civil Appeal No.5272 of 2016 has been filed by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association against the order dated 10.05.2016 of the National Green Tribunal, Principal Bench, New Delhi. Civil Appeal (Diary No.3067) of 2018 has been filed by Lber Laloo against order dated 25.03.2015 of National Green Tribunal, Principal Bench, New Delhi and Civil Appeal No.2968 of 2019 has been filed against order dated 04.01.2019 of National Green Tribunal, Principal Bench, New Delhi by which State of Meghalaya has been directed to deposit Rs.100 crores with the Central Pollution Control Board.

4. All the appeals having been filed against the orders of National Green Tribunal (NGT), it is necessary to notice the details of various proceedings before the NGT to appreciate the grievances raised in the appeals. The Gauhati High Court on the basis of a News item to the effect that on 06.07.2012, 30 coal labourers were trapped inside a coal mine at Nongalbibra in the District of South Garo Hill and 15 of them died inside the coal mine, registered PIL suo moto No.(SH) 3 of 2012. Vide order dated 10.12.2012 of the Gauhati High Court the matter was directed to be transferred to NGT in which notice was issued by the Tribunal on 30.01.2013. Transferred matter was registered as Original Application NO.11(THC)/2012. All Dimasa Students Union Dima Hasao District Committee filed an Original Application No.73 of 2014 before National Green Tribunal, Principal Bench making serious complaints with regard to rat-hole mining operation, which has been going on in Jaintia Hills in the State of Meghalaya for last many years without being regulated by any law. It was alleged that in the course of rat-hole coal mining by flooding water several employees and workers have died. The applicant had also brought before the Tribunal a detailed report of one Dr. O.P. Singh, Professor, Department of Environmental Studies, North-Eastern Hills University, Shillong, Meghalaya where entire aspects of the coal mining in the State of Meghalaya were discussed. The NGT admitted the application and took the view that illegal and unscientific mining neither can be held to be in the interest of people of the area, the people working in the mines nor in the interest of environment. After hearing applicant, the Tribunal on 17.04.2014 passed an order directing the Chief Secretary of Meghalaya, Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by the Tribunal. After the passing of the order dated 17.04.2014 various applications were filed before the Tribunal by different Associations and persons claiming interest in the subject matter of the application. Application No. 317/2019 was filed by Western Coal Miners and Exporters Association

for being impleaded in O.A. No.73 of 2014, which was allowed. Another application M.A.No.306 of 2014 was filed by Khasi Hills District Autonomous District Council, Shillong, East Khasi Hills District, Meghalaya (one of the appellants before us) for impleadment claiming to be a constitutional body and entitled in the sharing primarily of the royalty on the coal produced/mined, which application was allowed.

5. The Tribunal clubbed O.A.No.13 of 2014, O.A.No.73 of 2014 and O.A.No.11(THC)/2012. Miscellaneous applications were filed before the Tribunal praying for vacating the order dated 17.04.2014. Against order dated 17.04.2014, C.A.No.5756 of 2014 was filed by a coal mine owner. The miscellaneous application was also filed by the State Coordination Committee of the Jaintia Hills District, Meghalaya (one of the appellants before us) for their impleadment, which was allowed. This Court dismissed the Civil Appeal filed against the order dated 17.04.2014 passed by the Tribunal, however, granted liberty to the appellant to approach the Tribunal for modification of the order. The Tribunal also noticed in its order dated 09.06.2014 that there has been serious air, water and environmental pollution being caused by the illegal, unregulated and indiscriminate rat-hole mining being carried on in various parts of the State of Meghalaya. Serious pollution to the upstream was also noticed. The Tribunal, however, noticed that there are documents on record to show that right from the year 2003, there has been serious air and water pollution in the mining areas of Meghalaya which is injurious and has not only resulted in degradation of environment, particularly the streams and underground water, but has also seriously jeopardised the human health. It was further noticed that Transportation of coal in an illegal, unregulated, indiscriminate and unscientific manner has resulted in serious diseases to the people. The report of the Committee dated 09.06.2014 was noticed by the Tribunal. By order dated 09.06.2014 while permitting the transportation of the already extracted coal lying in open near the mining sites, constituted a committee for supervising such transportation. Various other directions were issued to the committee as well as to the State and its authorities.

6. By a subsequent order dated 01.08.2014 the Tribunal noticed that the committee earlier constituted by order dated 09.06.2014 failed to perform the functions assigned to it, hence, a new committee was constituted. The Tribunal from time to time issued various directions. We need to notice four orders passed by the Tribunal in detail which are subject matter of challenge in these appeals. The orders which are subject matter in these appeals are orders dated 25.03.2015, 10.05.2016, 31.08.2018 and 04.01.2019. Order dated 25.03.2015

7. In order dated 25.03.2015 NGT noticed that the rampant, illegal, unscientific and life-threatening mining activity, particularly rat hole mining is going on in the State of Meghalaya for years. The NGT noticed the report of Commissioner appointed by it and opined that in spite of order dated 17.04.2014 fresh mining was going on. The Tribunal also noticed that State of Meghalaya has promulgated a Mining Policy of 2012 which does not deal with rat hole mining. The State Government was also directed to formulate and declare Mining Policy and Guidelines for the State of Meghalaya to deal with all aspects of mining, which Policy was yet to see the light of the day. The Tribunal also noticed that the order of the Tribunal has been violated by illegal mining despite complete prohibitory orders. It was noticed that the State Government has found as many as 73 cases of illegal transportation of coal in one District. Further, 15 more cases of specific violation of

the NGT orders had already been registered by the State Government. In all 11 Districts of State of Meghalaya, 308 cases of violation have been registered and a total number of 605 trucks and 2675.63 tonnes of coal has been seized. The stand of the State for a non-compliance and its inability to comply with the direction was also noticed to the following effect:

> "(a) Lack of forces of carry out counter insurgency operations and implementation of NGT orders.
>
> (b) The State Government proposes to approach the Central Government for claiming an exemption, in terms of para 12A(b) of the VIth Schedule of the Constitution of India and from the condition of previous approval of the Central Government under the Mine and Mineral Rule Regulation Act, 1957 in respect of reconnaissance, prospecting and mining of coal and from the operations of Coal Mines Nationalisation Act."

8. The Tribunal issued directions that the Additional Secretary, North East in the Ministry of Home, Central Government shall, within a period of two weeks, hold a meeting with the Chief Secretary of the State of Meghalaya and other concerned Authorities and consider the proposal of the State of Meghalaya. The Tribunal also expressed its disapproval for the conduct of the State in not formulating appropriate Policy and Guidelines. The Tribunal further observed that the mining in the State cannot be permitted, unless appropriate policy is prepared by the State Government.

9. The Tribunal also noticed that there is huge environmental degradation and pollution of the water in the State of Meghalaya and observed that serious steps are required to be taken for cleaning polluted waterbodies, with the above objective the Tribunal authorised the State Government to collect 10% on the market value of the coal in addition to the royally payable to it. In this regard following directions were issued:

> "It is also undisputable that there has been huge environmental degradation and pollution of the waterbody in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of `Polluter Pay Principle'. We direct that the State Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned Counsel appearing for the parties and keeping in view the notifications of the Central Government dated 10.05.2012 and that of the State Government dated 22.06.2012, we may notice that in the report of Comptroller and Auditor General of India for the period ending 31st March, 2013 under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken Rs. 4850/- per metric tonne.

> Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as 'Meghalaya Environment Protection and Restoration Fund' to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.
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> This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto."

10. Certain other directions were issued by the Tribunal vide order dated 25.03.2015. Order dated 10.05.2016

11. Order dated 10.05.2016 has been challenged by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association. The NGT vide its order dated 23.12.2015 had permitted transportation of coal for the period till 15.05.2016. By order dated 31.03.2016, NGT refused to further extend the time for transportation and directed that after 15.05.2016 all extracted coal shall vest in the State. Aggrieved against order dated 31.03.2016 KA Hima Nongstoin Land Owners, Coal Traders and Producers Association filed C.A.No.4793 of 2016 before this Court, which was disposed of by granting liberty to the appellant to file application before the NGT. Pursuant to the liberty granted by this Court M.A.No.427 of 2016 was filed before the NGT. By order dated 10.05.2016 applications, M.A. Nos.400 and 427 of 2016 were dismissed. By the same order the State of Meghalaya was directed to place on record the exact current quantity of coal and value thereof including the status of the coal lying and mined anywhere in the State of Meghalaya as on 01.04.2015 and the exact quantity of coal lying as on 16.05.2016. The state was also directed to submit its proposal as to how the State shall deal with the coal that is vested in the State primarily for the reasons that entire coal is illegally extracted coal.

Order dated 31.08.2018

12. On 31.08.2018, the Tribunal noticing the earlier proceedings also noted that few issues are pending before this Court arising out of orders passed by the Tribunal. In paragraph 10 of the order following has been noticed:

> "10. At this stage, we may note that following issues are pending before the Hon'ble Supreme Court arising out of orders passed by this Tribunal:
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> i) Civil Appeal No(s). 5272/2016 titled as Ka Hima Nongstoin Land Owners, Coal Traders and Producers Association Vs. All Dimasa Students Union, Dima Hasao District Committee and Ors., wherein following order was passed on 21.09.2016:
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> "Having heard counsel for the parties, it is directed that the petitioners, as well as the respondents, who have mined the coal, are permitted to transport the coal on payment of royalty and other fees as fixed by the National Green Tribunal (for short,

'the Tribunal') and other relevant status. The extracted coal can be transported from 1st October, 2016 till 31st May, 2017. It is further directed that no other extraction shall take place in the meantime.

The finding of the Tribunal that the coal is vested in the State on the ground that it is illegally extracted coal, shall be adverted to at the time of final hearing. The miners shall keep the accounts and if, ultimately, it is held that the coal belongs to the State, they will refund the amount with interest. The quantum of interest shall be determined at the time of final hearing. Needless to say, these observations have been made without prejudice to the contentions to be raised by the learned counsel for the parties. The tribunal can proceed with regard to the other aspects which are pending before it." The above order shows that question whether coal is vested in the State is to be gone into before the Hon'ble Supreme Court.

Thereafter, on 28.03.2018, by the said order, time for transporting already extracted coal was extended up to 31.05.2018 but it was clear that no further extraction shall be allowed.

ii) Civil Appeal Diary No. 3067/2018 titled as Lber Laloo Vs. All Dimasa Students Union, Dima Hasao District Committee and Ors., raising the question whether ban on mining can be continued. We are informed that in the said matter, the issue of mining plan has also been raised."

13. The Tribunal further directed that ban on rat hole mining shall continue subject to further orders of this Court. Ban on transportation of extracted coal will also continue subject to further orders. Following directions were issued in paragraph 13:

"13. Accordingly, we direct that orders of ban of rat-hole mining will continue, subject to further orders of the Hon'ble Supreme Court. Ban of transportation of the already mined material will also continue subject to further orders of the Hon'ble Supreme Court.

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The   State   of  Meghalaya    will  be   the
receiver/custodian     of    the    available
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extracted coal as on date, subject to further orders of the Hon'ble Supreme Court. If any further coal not so far recorded in the inventory is available, a separate inventory may be made and if it is found that the extraction was illegal, royalty in terms of orders already passed may also be collected. This may be determined by the Secretary of Mining of the State of Meghalaya. While one view is that there is extracted coal and not accounted for, the other view put forward that it is result of illegal mining. This aspect may be gone into by the Secretary of Mining, State of Meghalaya in the first instance. The same be cross-checked by a joint team of representatives of Central Pollution Control Board and Indian School of Mines, Dhanbad."

14. The Tribunal also deliberated on restoration of the environment and rehabilitation of the victims for which funds were available. The Tribunal constituted a committee headed by Justice B.P. Katakey, Former Judge of the Gauhati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad. Paragraphs 14 to 28 of the order are relevant in this context which are as follows:

> "14. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katakey, Former Judge of the Guwahati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad.

15. The Committee will take the following steps:

> • Take stock of all actions taken so far in this regard.
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> • Prepare time bound action plan to deal with the issue and ensure its implementation.

16. The Committee may requisition services of such technical experts as may be necessary and may also carry out visits to sites whenever necessary. They will be entitled to all logistic support for performing these functions which shall be provided under the directions of the Chief Secretary, Meghalaya.

17. The Committee may also set up website for receiving and giving information on subject.

18. The Committee may also involve educational institutions for awareness and feedback about results.

19. All authorities concerned in the State of Meghalaya shall cooperate and coordinate with the Committee. The Committee can seek such technical assistance as may be required from any relevant authority.

20. The Chief Secretary, Meghalaya to provide all facilities to said Committee to perform its functions. The Committee may send its periodical reports to the Tribunal by e-mail at filing.ngt@gmail.com.

21. The Committee may assume its charge within two weeks from today. The Committee may prepare Action Plan which shall have targets of ensuring compliance. It may meet at such intervals as considered appropriate but twice in every month and fix targets for compliance.

22. The Committee will be free to take up all incidental issues. The committee will be free to seek any further directions from this Tribunal by e-mail.

23. The Chief Secretary of State of Meghalaya may determine remuneration of the Chairman in consultation with him and the Chief Secretary of the State of Meghalaya will also provide all logistic support including security if needed for their proper functioning.

25. The Committee will be entitled to take the help of the technical experts in execution of this order. The Committee may frame its action plan for implementation within one month from today and implementation may be completed within six months as far as possible. The timelines may be laid down. A copy of the action plan may be sent to this Tribunal by e-mail at filing.ngt@gmail.com. Thereafter, reports may be sent at least once in two months. The Committee may also assess the damage to the environment as well as to the individuals as already suggested in the Report.

27. The State of Meghalaya will make available all the relevant records to the Committee for the purpose. The State will also determine the remuneration to be paid to the Chairman of the Committee in consultation with him within one month from today.

28. The Committee will be at liberty to take technical assistance from any quarter which may be facilitated by the State of Meghalaya. The Committee may also supervise any issue arising out of receivership/custodianship of the already extracted coal, including any environmental issues which any arise out of storage of the extracted material and the steps required to be taken for the purpose. The Report of the Committee may be furnished to this Tribunal by e-mail at filing.ngt@gmail.com.

A copy of this order may be sent to all the concerned authorities by e-mail for compliance.

All pending matters will stand disposed of in above terms.

List for consideration of the Report on 06th March, 2019." Order dated 04.01.2019

15. Justice Katakey submitted its report before the Tribunal on 02.01.2019. Committee's various proceedings which were part of the report were noticed in detail by the NGT. In paragraph 21 of the order following was noticed:

> "21. Under issue number D, it was noted that the Meghalaya State Pollution Control Board in its report in September, 1997 had noted that unplanned and unscientific coal mining activities were taking place. This had achieved dangerous dimensions in the last two decades creating ecological disturbance and adverse environmental impacts. This showed that though cognizance of the problem was taken in the year 1997, the problem continues even 20 years thereafter. The State Pollution Control Board had, in the year 1997, recommended steps to check illegal mining including generation of awareness, legislative measures, use of technology, carrying out of study but none of the recommendations were implemented even after 21 years."

16. The Tribunal after considering the report of the committee and other materials on record came to the conclusion that the State of Meghalaya had failed to perform its duties to act on the recommendation of the report of the Meghalaya State Pollution Control Board submitted in the year

1997. The Tribunal opined that interim amount be deposited towards restoration of the environment. Paragraphs 31 to 33 are as follows:

> "31. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology, the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors. The Committee may go into these aspects to determine the final figure.
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> 32. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs. 100 Crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs. 100 crores within two months with the CPCB in this regard.
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> 33. We have already noted the extent of damage found and the value of the illegally mined material, apart from clandestine mining for which sufficient material is not available. The State had collected, as noted in the earlier order, royalty of Rs. 400 crores which by now must be higher figure."

17. The State of Meghalaya has filed two appeals being C.A.No.10720 of 2018 and C.A.No.2968 of 2019. C.A.No.10720 of 2018 has been filed questioning the order dated 31.08.2018 passed by the Tribunal by which the Tribunal directed that order of the ban of rat- hole mining will continue and further constituted Justice B.P. Katakey committee to take steps for restoration of the environment and rehabilitation of the victims. The other Civil Appeal No.2968 of 2019 has been filed by the State of Madhya Pradesh questioning the order dated 04.01.2019 by which State of Meghalaya was directed to deposit interim amount of Rs.100 crores towards restoration of the environment.

18. Against the same order dated 31.08.2018 two other appeals have been filed being C.A.No.10611 of 2018 by the State Coordination Committee of Coal Owners, Miners and Dealers Forum and C.A.No.10907 of 2018 by Garo Hills Autonomous District Council aggrieved by the perpetual ban of coal mining by order dated 31.08.2018 without considering illegality of the ban in the first place. The appellants are also aggrieved by appointment of State Government receiver/custodian of the extracted coal when there is no dispute of the ownership of the coal and further the question of vesting of the coal in the State is pending consideration in this Court in C.A.No.5272 of 2016.

19. C.A.No.10907 of 2018 is filed by Garo Hills Autonomous District Council which is aggrieved by the order of the Tribunal dated 31.08.2018 by which it has confirmed the ban on coal mining which was in force for over four years and further direction by the Tribunal to constitute a committee for the disposal of funds in excess of Rs.400 crores. The appellants are aggrieved by the above and alleged that the Tribunal failed to consider that constituting the committee without considering the roles and responsibilities of the District Council has the effect of virtually excluding the Council from issues concerning administration of forests and lands which are within the exclusive jurisdiction of the Council. The ban on coal mining has effectively closed the doors on a major source of revenue for the functioning of the District Council, which is empowered in terms of Sixth Schedule of the

Constitution to collect taxes.

20. C.A.No.5272 of 2016 by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association has been filed against order dated 10.05.2016 by which Miscellaneous Applications No.400 and 420 of 2016 were dismissed. The appellants had prayed for modification and clarification and/or recall of the final order dated 31.03.2016 by which Tribunal directed for vesting of the duly assessed already extracted coal with the State of Meghalaya and refusing to extend the time for transportation of the already extracted coal. The appellants claim for propriety rights of its members over such coal, which were mined as per prevailing custom prior to 17.04.2014.

21. Now, remains appeal being Civil Appeal of 2019(@ Diary No.3067 of 2018) filed on behalf of the Lber Laloo. The appellant has filed this appeal against the order dated 25.03.2015. Aggrieved by the blanket ban on mining activities imposed in the State of Meghalaya by the NGT which, according to the appellant, is adversely affecting the lives and livelihood of the miners in the State of Meghalaya. As a result of ban on coal mining large number of the families are affected in the State of Meghalaya, who are dependent for their livelihood on coal mining.

Submissions

22. We have heard Shri Shekhar Naphade, learned senior counsel, Shri Amrendra Sharan, learned senior counsel, Shri Amit Kumar, Advocate General, for the State of Meghalaya. We also heard Shri Ranjan Mukherjee appearing for the State of Meghalaya. Shri Ranjit Kumar, learned senior counsel, appearing for the appellant in C.A. Diary No.3067 of 2018 and Shri Raju Ramachandran, learned senior counsel, appearing for the appellant in C.A.No.10907/2018. Shri Colin Gonsalves, learned senior counsel has been heard as amicus curiae. We have also heard learned counsel for respondent No.1 in C.A. No.5272 of 2016 (who was the applicant before the NGT). Shri Nidhesh Gupta, learned senior counsel has been heard for the private respondents in C.A.No.5272 of 2016. Shri A.N.S. Nadkarni, learned Additional Solicitor General has been heard for the Union of India. We have also heard other learned counsel who were permitted to intervene in the matter and raise various arguments in respect of their different IAs.

23. Shri Shekhar Naphade, learned senior counsel led the arguments on behalf of the State of Meghalaya. Shri Naphade submits that jurisdiction of NGT constituted under National Green Tribunal Act, 2010 is confined to Sections 14,15 and 16. Section 16 is not attracted in the present case. Section 14 deals with original jurisdiction of NGT and it takes within its compass or all of civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I. The jurisdiction depends upon two conditions which are required to be satisfied cumulatively and they are: (1) substantial question which relates to environment and (2) implementation of the enactments specified in Schedule I. It is submitted that Mines and Minerals (Development and Regulation) Act, 1957(hereinafter referred to as “MMDR Act, 1957”) not being specified in Schedule I, the National Green Tribunal could not have exercised jurisdiction to examine violation of MMDR Act, 1957. It is submitted that the NGT committed error in holding that the coal mining in State of Meghalaya is unregulated. The NGT proceeded on

erroneous premise that the Tribals of Meghalaya cannot do coal mining without obtaining lease from the State Government. It is submitted that Tribals who are owners of the land are also owners of the sub-soil and the minerals in the land. The land in the State of Meghalaya was property of men and villages. The Khasi Hills, Jaintia Hills and Garo Hills have different land tenure system of their own, which does not provide for vesting of land or minerals in the State right from pre-Independence period.

24. Shri Naphade submits that the ownership of minerals vests with the owner of the land unless the owner of the land is deprived of the same by some valid process of law, for example, the provision contained in Land Revenue Codes of different States, which categorically state that the ownership of minerals exclusively vests in the State Government. However, in the State of Meghalaya, there exists no such law that deprives the owner of the land from owning the minerals beneath it.

25. Shri Naphade submits that under MMDR Act, 1957, State has no legislative or executive power with regard to coal, which is a major mineral. It can neither exercise any jurisdiction of granting any mining lease to the Tribals nor it has any jurisdiction to frame any mining policy. It is submitted that the provisions of the MMDR Act deal with lease and prospecting licence. The Tribals of Meghalaya are owners of the minerals located in their land. Since they are the owners, there is no question of they being required to obtain either a prospecting licence or a mining lease. The concepts of lease and licence necessarily involve minimum two parties to the transaction- in case of a license, there has to be a licensor and licensee. The owner of minerals cannot give licence or lease to himself or grant a prospecting licence. The State is not the owner of the minerals and, therefore, it cannot on its own grant prospecting licence or lease as it has no proprietary right in respect of such minerals. State can neither be a licensor nor a lessor in such situation.

26. Shri Naphade reiterates that the whole premise of NGT that the coal mining in the State of Meghalaya is unregulated is fully erroneous. Referring to north- eastern area under which the State of Meghalaya was established as full-fledged State, it is submitted that administration of Tribal areas is to be governed as per Sixth Schedule of the Constitution of India and various orders passed by the NGT directly interfered in the administration of Tribal area which is vested in the Autonomous District Councils. It is submitted that NGT failed to consider the relevant statutory matrix including the provisions of Sixth Schedule and legislation framed by the Autonomous District Councils. It is submitted that NGT has no jurisdiction to constitute any committee for the purpose of enforcing its orders. The constitution of committees including constitution of Justice B.P. Katakey, former Judge of the Gauhati High Court by the impugned order dated 31.08.2018 is beyond the jurisdiction of NGT. The constitution of the committee is interference with the jurisdiction of Autonomous District Council. It is further submitted that NGT has also no jurisdiction to create any fund. The Tribunal by constituting the committee and by constituting a fund has created a parallel Government. The Tribunal not being a constitutional court it cannot issue a continuous mandamus. It is submitted that Tribunal although issued several directions to the State of Meghalaya to frame mining policy whereas the State has no jurisdiction regarding framing of mining policy under MMDR Act, 1957, the State is denuded with any legislative powers with regard to regulation and development of minerals, which have been declared by the Union to have taken under its control. Referring to EIA notification dated 14.09.2006 issued under Environment Protection Act, 1986, he

submitted that environment clearance for mining was required only when area of mining was more than five hectares. In Tribal areas of State of Meghalaya, mining area consists of small area which being not more than five hectares, there was no requirement of obtaining an environment clearance. He does not dispute that after 15.01.2016 by the EIA notification now the requirement of area of being not more than five hectares having been deleted environment clearance is required as on date with regard to carrying mining operations. The Tribals are dependent for their livelihood on coal mining and, therefore, by complete ban on coal mining with effect from 17.04.2014, large number of Tribals are deprived from their livelihood and it is obligatory for the State to espouse the cause of the Tribals, who individually were not before the NGT. There being no jurisdiction in the State of Meghalaya to grant mining lease as per special nature of land tenure in the Tribal areas of State of Meghalaya and further minerals are not vested in the State of Meghalaya, the NGT erred in holding that State has failed to carry on its obligation and failed to check coal mining in the State of Meghalaya, it is Central Government which have all jurisdiction and authorities under Act, 1957 to make necessary Rules and issue necessary directions and State alone cannot be blamed. Referring to Minerals Concession Rules, 1960 framed under Section 13 of MMDR Act, 1957, it is submitted that even though Rule 13(f) refers to mining application with regard to land of which minerals vest in persons other than the Government, he submits that this provision shall not apply for owner when he himself carries on the mining, the question of taking lease may arise when owner of the land give land to some other person to mine the minerals.

27. Shri Naphade, however, submits that the provisions of the Mines Act, 1952 are applicable and have to be complied with. He referred to the Mineral Conservation and Development Rules, 1988, where cess can be charged by the State.

28. Shri Amrendra Sharan, learned senior counsel appearing for the State of Meghalaya in C.A. No.2968 of 2019 submits that NGT vide impugned order dated 04.01.2019 has directed the State of Meghalaya to deposit Rs. 100 crores as an interim measure which is wholly unsustainable. The NGT has passed the order dated 04.01.2019 relying on first interim report of the Committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court. The constitution of committee was itself beyond the jurisdiction of the NGT. Shri Sharan adopts the submissions made by Shri Naphade and in addition to those submissions, submits that order dated 04.01.2019 has been passed in violation of principles of natural justice since no opportunity was given to the State of Meghalaya to respond to the report of the committee used against it for imposing a penalty of Rs.100 crores. The order impugned has been made by the NGT contrary to the findings recorded in the report of the committee of Justice B.P. Katakey. The impugned order dated 04.01.2019 has been passed by the NGT without any assessment of damage of environment whatsoever. The Tribunal also did not notice its earlier order dated 25.03.2015 wherein penalty has already been imposed on actual polluters, i.e., coal miners and transporters based on Polluters Pay Principle for which Fund, namely, Meghalaya Environment Protection and Restoration Fund (hereinafter referred to as “MEPRF”) has already been created. The NGT passed order dated 04.01.2019 without considering the concerned statutory provisions to determine as to who is responsible for implementation of the mining statutes and the environmental legislation in the State of Meghalaya. The state of Meghalaya has limited source of revenue and putting extra burden of Rs.100 Crores shall shatter the economy of the state.

29. Shri Raju Ramachandran, learned senior counsel, in support of appellant, Garo Hills Autonomous District Council in Civil Appeal No. 10907 of 2018 submits that the NGT while passing order dated 31.08.2018 has ignored the Sixth Schedule of the Constitution. By order dated 31.08.2018, the NGT could not have constituted the committee. Referring to Sixth Schedule of the Constitution, Shri Raju Ramachandran submits that under para 2, District Councils, Regional Councils have been constituted and also Hills District Council is a Council created under the Sixth Schedule of the constitution framed under Article 244(2) and Article 275(1) of the Constitution of India. The constitution of committee by the NGT has virtually affected District Autonomous Council from issues concerning administration of forests and lands within the exclusive jurisdiction of the council. The ban of coal mining has deprived the appellant from major source of Revenue. Under para 8 of Sixth Schedule, Autonomous District Council is entitled to share the Revenue from minerals royalty collected by the State Government. The impugned order has been passed without hearing and taking note of existence of shareholders or stake of shareholders. Shri Raju Ramachandran further submits that NGT has disposed of OA Nos.73/2014, 13/2014 and 186/2014 by order dated 31.08.2018 after this, it could not have passed any order.

30. Learned counsel for the appellant in support of C.A. No. 5272 of 2016 submits that the appeal filed by the appellant is only for seeking protection of the proprietary rights of its members over the coal which was mined as per prevailing custom prior to 17.04.2014. It is submitted that by order dated 31.03.2016, NGT had taken the view that all coal after 2016 shall vest in the State. The appellant had previously approached this Court by filing C.A.No.4793 of 2016 against the order dated 31.03.2016 wherein this Court granted the liberty to the appellant to approach the NGT for filing application for clarification of the order. The application of the appellant for clarification was rejected by the NGT without giving any reason. The NGT had overreached the scope of its jurisdiction and authority in directing for vesting of the coal extracted by the members from their land in the State. It is further submitted that MMDR Act, 1957 was enacted by the Parliament to regulate the mining activities in the country which does not in any manner purport to declare the proprietary rights to the State in the minerals.

31. Mr. Ranjit Kumar, learned senior counsel in support of C.A.(D) No.3067 of 2018 submits that the Tribunal committed error in stopping the entire coal mining in the State of Meghalaya. Referring to Section 15 of NGT Act, 2010, Shri Ranjit Kumar submits that relief, compensation and restitution can be granted as provided in Section 15. It is submitted that by stopping entire coal mining from 17.04.2014 the livelihood of appellant and several similarly situated persons had been adversely affected. It is submitted that the Tribunal ought to have lifted the ban. Order impugned infringes right under Article 21 of the Constitution of India. The Tribunal has acted beyond its power under Section 15 of NGT Act, 2010. The finding of the Tribunal on mining that in the State of Meghalaya mining is unregulated is not correct, whereas, a miner is required to get registered and it has to pay royalty fixed by the State of Meghalaya.

32. Shri Ranjan Mukherjee, learned counsel appearing for respondent No.2, State of Meghalaya in C.A.No.3067(D) of 2019 submits that even if rat-hole mining has been banned, all mining cannot be banned. He submits that the Meghalaya Mines and Minerals Policy, 2012 has been formulated with an aim to facilitate systematic, scientific and planned utilisation of mineral resources and to

streamline mineral based development of the State. The State of Meghalaya has been created to follow the customary rights and practices of coal mining in the Tribal areas of Meghalaya. In this regard letter of Central Government dated 02.07.1987 has also been relied. The draft guidelines for coal mining activities in the State has also been framed in the year 2015. Although, NGT has directed Ministry of Environment and Forests to look into the matter but no objection has been communicated to the State except certain miner discrepancies.

33. Shri A.S. Nadkarni, learned Additional Solicitor General appearing for the Union of India submits that provisions of MMDR Act, 1957 are also applicable in the Tribal areas of State of Meghalaya. The request submitted by the Government of Meghalaya for issuance of Presidential Notification under Paragraph 12A(b) of the Sixth Schedule of the Constitution of India for exempting the State of Meghalaya from certain provisions of the MMDR Act, 1957 has not been acceded to. The Office Memorandum dated 12.03.2019 issued by the Government of India, Ministry of Coal has been referred to and relied by the learned Additional Solicitor General in this regard. It is submitted that no prior approval for mining rights in respect of area containing coal has been given under MMDR Act, 1957 by Ministry of Coal, Government of India for the State of Meghalaya.

34. It is submitted that it is entirely impermissible for the appellant or any other private person to claim any rights for illegal or unlawful mining of coal in derogation of the law in force in the State of Meghalaya. It is further submitted that generation of revenue would not be a ground for claiming permission to carry out mining in contravention/derogation of the law in force. A draft guideline submitted by the State Government of Meghalaya by letter dated 24.09.2015 was examined by the Ministry of Coal, Government of India on which decision was taken that the guidelines submitted by the Government of Meghalaya were not in conformity with the existing statutory provisions of MMDR Act, 1957. Hence, the State of Meghalaya may reframe the guidelines in conformity with MMDR Act, 1957 and submit. In the revised proposal dated 25.07.2016 the State of Meghalaya had proposed certain amendments in MMDR Act, 1957 and exemption from the application of the MMDR Act, 1957 through a Presidential notification under Para 12A(b) of the Sixth Schedule. It had already been communicated by Central Government that exemption from applicability of MMDR Act, 1957 cannot be acceded to.

35. Shri Colin Gonsalves, learned senior counsel, appearing as amicus curiae, has raised various submissions. Learned amicus curiae has submitted a Report in two volumes titled “CURSE OF UNREGULATED COAL MINING IN MEGHALAYA”, a citizen’s Report from Meghalaya 01/12/2018. In Volume I under the head ‘INTRODUCTION’ the Report states:

> “INTRODUCTON Meghalaya has a resource curse. Although, we have been endowed with abundant forests and minerals, these resources have not contributed to the good of our society, because they have been extracted without any regulation or concern for the larger common good. This unregulated, narrow, self- interest based use of natural resources has exacerbated socio-economic inequality, destroyed the environment, heightened criminality, and torn as under our egalitarian tribal social fabric.

> It also violates Section 39(b) of the Constitution which provides that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good and, therefore, the State cannot distribute the material resource of the community in any way it likes. The process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.
>
> The National Green Tribunal's landmark order regarding Unregulated and illegal coal mining in our state therefore came as a wakeup call for Meghalaya society at large. This order has been criticised and appealed against by a small section of locals most of who are coal mine owners, transporters, politicians and administrators who have 'illegally' benefitted out of this unregulated mining and who want things to get back to business as usual. Coal Miners and politicians who are miners, truck owners, weigh bridge operators etc. have been filed appeals with the Honourable Supreme Court, asking the Hon'ble Court to rescind NGT orders so that mining can once again begin."

36. Learned amicus curiae submits that State of Meghalaya still continues with the illegal mining. Shri Gonsalves submits that Section 4 of MMDR Act, 1957 by use of words "no person" clearly prohibits mining operation without obtaining mining lease in accordance with the Act. Referring to Section 5, he submits that for Schedule A minerals permission of Central Government is required which has not been obtained. Shri Gonsalves submits that for mining, the leases are required and permission be sought. He submits that there are 53 mines per kilometre in Tribal areas of Meghalaya. He submits that all extracted coal which is claimed to be lying assessed or unassessed in the State of Meghalaya is result of illegal mining and Coal India Ltd. be directed to take over the entire coal.

37. Shri Gonsalves has also referred to various reports of Comptroller and Auditor General of India which has been brought on record in Volume II – A Citizen's Report from Meghalaya 06/01/2019.

38. Shri Nidhesh Gupta, learned senior counsel, appearing on behalf of private respondent in Civil Appeal No.5272 of 2016 has refuted the submissions raised by the learned counsel for the appellants. Shri Nidhesh Gupta submits that as per Entry 54 of List I regulation of mines and minerals development has been declared by the Parliament under MMDR Act, 1957. Section 2, by declaration as contained in MMDR Act, 1957, the State Government is denuded of all legislative and executive powers under Entry 23 of List II read with Article 162 of the Constitution of India. Section 4 sub-section (1) makes it clear that no person can undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence. As per Section 5 sub-section (1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person is an Indian National and satisfies such conditions as may be prescribed. The proviso to Section 5(1) provides that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government. The contention on behalf of the State

of Meghalaya that the MMDR Act, 1957 does not apply to State of Meghalaya is based on an erroneous reading of the statutory provisions.

39. Section 13 empowers the Central Government to make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of land in which minerals vest in the Government and also in respect of any land in which the minerals vest in a person other than the Government. In exercise of powers under Section 13 of the Act, the Mineral Concession Rules, 1960 have been framed.

40. Chapter V deals with the procedure for obtaining a prospecting licence or a mining lease in respect of a land in which the minerals vest in a person other than the Government. The said Chapter contains provisions from Rule 41 to Rule 52. Rule 41 stipulates that the provisions of the said Chapter apply only to the grant of prospecting licences and mining leases in respect of land in which minerals vest exclusively in a person other than the Government. Therefore, mining leases in respect of land where minerals vest in a person other than the Government are covered by the said Chapter and matters concerning grant of prospecting licences and mining leases are detailed therein.

41. As per Section 23C, the State Government is empowered to make Rules for preventing illegal mining, transportation and storage of minerals. No Rules have been framed by the State of Meghalaya under Section 23C. The contention on behalf of State of Meghalaya that MMDR Act applies only in the cases where minerals vest in Government, therefore, MMDR Act does not apply in the State of Meghalaya, is completely misconceived.

42. Learned counsel also relies on the stand taken by the Union of India in the Status Report dated 24.07.2018. Shri Gupta submits that approximate price of coal is Rs.10,000/- per metric ton. Referring to notice inviting tenders by the State of Meghalaya, it is submitted that amount of Rs.1,000/- per metric ton was contemplated. It is submitted that selling the coal on much low price is causing loss to Revenue as well as loss to other stakeholders. The allegations have been by Shri Gupta that sale of coal at such low price raises suspicion of under hand dealing. It is submitted that legal position be laid down by this Court and the orders of the NGT be upheld.

43. In addition to above, we have also heard several learned counsels who have filed IA for impleadment and IAs for direction including direction to transport coal belonging to them. We have heard Shri Siddharth Luthra, Shri R. Basant, Smt. Meenakshi Arora, Senior Advocates and other learned counsel.

44. On 10.05.2019, we had passed an order permitting transportation of coal to the extent of 75,050 metric ton which was balance quantity from 1,76,655 metric ton of coal, for transportation of which this Court had passed order on 04.12.2018. The order dated 10.05.2019 permitted transportation of the coal, for which Transport challans had already been issued after 04.12.2018 under the terms and conditions as indicated in the order dated 10.05.2019. In the order dated 10.05.2019, we had also held that applicants need not be impleaded, however, they were permitted to intervene in the matter.

45. The counsel appearing for different applicants claim transportation of different quantity of coal which according to them has now been assessed. Still some of the applicants claims transportation of the coal which is yet to be assessed. In different applications, different quantities are claimed to be transported which according to the applicant is lying in different districts of the State of Meghalaya. I.A.No.22981 of 2019 and I.A. No. 22991 of 2019 are applications by an applicant claiming to be auction purchaser. Learned counsel submitted that he was declared highest bidder, he pleaded for extension of time to deposit the amount but after the order dated 15.01.2019, he was not permitted to transport the coal nor he could deposit the balance auction money.

46. Shri Ranjan Mukherjee, learned counsel appearing for State of Meghalaya has filed an additional affidavit of Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department dated 06.04.2019. In the affidavit, it is stated that in pursuance of the order of NGT dated 31.08.2018, the State Government vide notification dated 14.09.2018 has constituted a team to assist the Commissioner and Secretary to deal with the directives given in para 13 of the order of the NGT. It is submitted that in pursuance of the order of the State Government dated 14.09.2018, the members of the committee have carried out assessment of unassessed extracted coal appearing in the datasheet of inventory in different hills district. The report dated 04.10.2018 of Deputy Commissioner, west Khasi hills, is filed as Annexure A-3, containing the statement of unassessed extracted coal has been brought on record. Another report dated 22.10.2018 and 16.11.2018 of west Khasi hills district containing the statement of assessment of unassessed extracted coal has been brought on record. By report dated 12.11.2018 of Deputy Commissioner, South west Khasi hills, datasheet of coal inventory has been brought on the record. Report dated 30.10.2018, Deputy Commissioner, South Garo hills, has also been brought on record. There were reports referring to different assessment carried out by the committee according to the affidavit which has been filed on behalf of the Commissioner and Secretary to the Government of Meghalaya, the total quantity of coal stock which has now been assessed in different reports stands at 32,56,715 metric ton.

47. It is further submitted by learned counsel for the State of Meghalaya that above assessment of coal has been also verified by technical committees appointed by the State of Meghalaya. Certain reports of technical committees have also been brought on the record along with the affidavit.

48. Shri Colin Gonsalves, learned Amicus Curiae has challenged the assessment made by the committees appointed by the State Government as well as verification by technical committee report. It is submitted by Shri Gonsalves that report of technical committee wants to undo what has been done in the proceedings before the tribunal and this Court. Learned Amicus Curiae submits that for transportation, five extensions were granted by NGT and four extensions were granted by this Court. Shri Gonsalves referred to Katakey committee report in support of his submissions.

49. Shri Nidhesh Gupta, learned senior counsel, has also refuted the claim of the different applicants as well as the steps taken by the State of Meghalaya in assessing the coal and verifying the same by technical committee. Shri Gupta submits that the coal which is now claimed to be assessed is nothing but illegally extracted coal. It is submitted that in pursuance of several orders passed by NGT and this Court substantial transportation of coal has been permitted, still the enormous quantity of coal is claimed which is nothing but an excuse to obtain an order of transportation of

such illegally mined coal. It is submitted that State of Meghalaya is hand in glove with illegal miners. Shri Gupta submits that the cost of winning coal by rat hole mining is negligible and after payment of royalty of Rs.675/- and Rs.485/- towards Meghalaya Environment Protection and Restoration Fund i.e. total payment of Rs.1160/-, the coal is transported. The market price of the coal is approximately Rs.10,000/- per metric ton. The claim of different applicants with regard to unassessed coal is false. It is submitted that all illegally mined coal should be vested in the State and no permission of transport as prayed by the different applicants be granted by this Court. Learned senior advocate submits that all applications praying for different directions deserve to be rejected.

50. Learned counsel for the parties in support of their respective submissions have placed reliance on various judgments of this Court which shall be referred to while considering the submissions of the parties.

51. From the submissions of the parties as noted above and the materials on record in these appeals following points arise for consideration.

52. POINTS FOR CONSIDERATION

1. Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?

2. Whether provisions of Mines and Minerals Development Regulation Act, 1957 are applicable in Tribal areas within the State of Meghalaya, included in Sixth Schedule of the Constitution?

3. Whether for mining the minerals from privately owned/community owned land in hills districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960?

4. Whether under the MMDR Act, 1957 and Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations?

5. Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in hills districts of State of Meghalaya?

6. Whether the power to allot land for mining purposes is vested in Autonomous District Councils?

7. Whether the order of National Green Tribunal dated 17.04.2014 directing for complete ban on mining is unsustainable?

8. Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of State and Tribals?

9. Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation; of minerals and to prepare action plan for restoration of environment?

10. Whether the NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund?

11. Whether NGT by constituting Committees has delegated essential judicial powers to the Committees and has further encroached the constitutional scheme of administration of Tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?

12. Whether direction to deposit Rs.100/- crores by the State of Meghalaya by order dated 04.01.2019 of NGT impugned in C.A.No.2968 of 2019 is sustainable?

13. Whether NGT's order dated 31.03.2016 that after 15.05.2016 all remaining coal shall vest in the State of Meghalaya is sustainable?

14. Whether assessed and unassessed coal which has already been extracted and lying in different Districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal?

53. Now we proceed to consider the above points in seriatim.

Point No.1

54. The State of Meghalaya submits that NGT while imposing ban on mining and by forming committee and creating a "Meghalaya Environment Protection and Restoration Fund" has gone beyond its jurisdiction as conferred on it by NGT Act, 2010. The Tribunal has no inherent jurisdiction, its jurisdiction flow from Sections 14, 15 and 16 of the Act.

55. It is relevant to notice few provisions of NGT Act, 2010 to comprehend the jurisdiction vested with the Tribunal. The National Green Tribunal Act, 2010 was enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Section 2 is definitions. Section 2(c)defines environment in the following manner:

> "2(c) "environment" includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;

56. Section 2(m) defines substantial question relating environment which is to the following effect:

> "2(m) "substantial question relating to environment" shall include an instance where,— (i) there is a direct violation of a specific statutory environmental obligation by a person by which,— (A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or (B) the gravity of damage to the environment or property is substantial; or (C) the damage to public health is broadly measurable; (ii) the environmental consequences relate to a specific activity or a point source of pollution;"

57. Chapter III of the Act deals with jurisdiction, powers and proceedings of the Tribunal. Sections 14 and 15 which are relevant in the present case are as follows:

> "14. Tribunal to settle disputes.—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> 1. Ins. by Act 7 of 2017, s. 182 (w.e.f. 26-

5-2017).

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
>
> 15. Relief, compensation and restitution.— (1) The Tribunal may, by an order, provide,—
>
> (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public

Liability Insurance Act, 1991 (6 of 1991). (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

> Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.
>
> (4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.
>
> (5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority."

58. The submission which has been pressed by the State is that neither MMDR Act, 1957 nor Mines Act, 1952 is prescribed in Schedule I of the Act, hence, coal mining is not within the purview of Schedule I and not within the jurisdiction of the Tribunal. The submission further is that for applicability of Section 14 both the component of sub-section (1) of Section 14 that

(i) a substantial question relating to environment and

(ii) such question arises out of the implementation of the enactments specified in Schedule I has to be satisfied.

59. It is relevant to notice that before the NGT no such plea was taken by the State of Meghalaya or any of the parties questioning the jurisdiction of the NGT. However, the issue being a jurisdictional issue, we have permitted the learned counsel for the appellant to raise the issue. The NGT took cognizance when application, O.A.No.73 of 2014 on 17.04.2014 was admitted and order was issued. The jurisdiction of the Tribunal to entertain O.A.No.73 of 2014 has to be found out from the case set up and pleadings in O.A.No.73 of 2014 for which we need to scrutinise the application. O.A.No.73 of 2014 has been brought on record as Annexure - A3 in C.A.No.5272 of 2016. The application was filed by one All Dimasa Students Union Dima Hasao District Committee. In the application following were the respondents:

> 1. The State of Meghalaya through the Principal Secretary, Forest and Environment Department, Government of Meghalaya, Shillong. 2. The Chairperson, State Pollution Control Board, Meghalaya, Shillong. 3. The State of Assam through the Principal Secretary, Forest and Environment Department Government of Assam, Dispur. 4.The Chairperson, State Pollution Control Board, Assam, Dispur. 5. The Central Pollution Control Board, Parvesh Bhawan, East Arjun Nagar, Delhi – 110032

through its Chairperson. 6. North Easter Electric Power Corporation Ltd. through its Chairman and Managing Director Brooklyn Compound, Lower New Colony, Shillong – 793003. Meghalaya.

60. Paragraph 3 of the application states the case of the applicant and facts in brief. Paragraph 3 and (I) to (VI) are as follows:

> "3.The Applicant above named beg to present the present Application to bring to the notice of this Hon'ble Tribunal about the adverse impact of unscientific opencast mining operations being still undertaken in the Jaintia Hills in Meghalaya on the ecology and socio-economy of the concerned area including Dima Hasao District of Assam. It is stated that the Acid Mine Drainage (for short (AMD') generated from the aforesaid mining operations has resulted in making the water of the river Kopili (an inter-state river flowing through the State of Meghalaya and Assam) and its tributaries highly acidic which in turn has not only caused serious far reaching damage to the environment, water bodies, soil, agriculture, economy, and industry of the concerned area but also resulted in causing erosion/corrosion of the critical underwater Hydro Power Equipments of the Kopili Hydro-Electric Project (for short `KHEP') of the North-Eastern Electric Power Corporation Ltd (for short `NEEPCo') situated in Umrongso, Dima Hasao, District of Assam in as much as the said acidic water is ultimately led to the reservoirs of the said project.
>
> FACTS IN BRIEF I. That the Applicant is the Secretary of the Dima Hasao Students Association and filing the present Petition in a representative capacity to espouse the cause of the people of Dima Hasao, Assam who are constantly and continuously facing the adverse affect of the afore said illeg al activitie s i n t h e S t a t e o f Meghalaya.
>
> II. That the Kopili River is an inter- state river in North-East India that flows through the States of Meghalaya and Assam and is the largest south bank tributary of the river Brahmaputra in Assam, The Kopili river originates from the black mountains of Lum Bah-bo Bah- Kong in Meghalaya and flows north-west into the Brahmaputra Valley in Assam. The said river demarcates the Jaintia Hills in Meghalaya and Dirria Hasao in Assam. The river flows for a total length of 290 kms and has a catchment area of 16, 420 Kms.
>
> III. That the Kopili Hydro-Electric Project (KHEP) of NEEPCO (a Government of India undertaking)is one of the pioneering Hydro-Electric Project in the North Eastern Region of India. The Kopili Hydro-Electric Plant is a 275 MW storage type hydro electric plant consisting of two dams which have created two reservoirs namely Kopili reservoir is used in the Khandong powerhouse through a 2759 metre tunnel to generate power. The tail water from this powerhouse is led to the Umrong reservoir is used in Kopili powerhouse through a 5473 metre tunnel to generate power. Although, the dam, powerhouse and residential colony of. kopili Hydro Electric Planer (KHEP)

are located in the Dima Hasao District (formerly known as North Cachar Hills District) of Assam, the catchment and reservoirs are spread in two states namely Meghalaya and Assam. It is further stated that the Kopili River and its tributaries feed water to the reservoirs of the project. The Kharkor is a major tributary of river Kopili and drains a vast area of Jaintia Hills Districts of Meghalaya. The Jaintia Hills being well known for coal mining areas is contributing acidic water in the form of Acid Mine Drainage (AMD) to the river Kharkor through its different tributaries such as Urn Pai, Myntriang, Urn Ropang, Sarbang, Mostem etc. as these streams drain through the active and inactive coal mining areas of Jaintia Hills. The acidic water finally reaches to Khandong and Umrong reservoirs of KHEP. As a result, the water of the reservoirs has become highly acidic. The water pollution in streams of catchment area varies from brownish to reddish orange. The same polluted water through various tributaries of rivers Kharkor and Kopili is perpetually reaching to the reservoirs of the KHEP. As a result, the water of reservoirs has become highly acidic. In recent years, it has been found that acidity of reservoir water is a major threat to equipments and machinery due to corrosion/metal decay and erosion. Components such as cooling water header pipe, Bends, throttling valves, pressure equalizer pipe of turbine etc. made up of different metals and alloys are getting severely affected and incurring high maintenance cost.

IV. That the said adverse impact of the aforesaid mining operation which has not only affected the ecology and socio-economy of the area but also severely affected the generation of hydro-electricity at the Kopili Hydro-Electric Plant has been subject matter of various studies. In fact, a detailed project report of pilot project for remediation of Acid Mine Drainage (AMD) in the catchment of Kopili River at the upstream of Kopili Hydro Electric Plant (KHEP), Umrongso, Dima Hasao, Assam was d o n e by Dr. O.P.Singh, Professor, D e p a r t m e n t o f Environmental Studies, North-Eastern Hills University, Shillong, Meghalaya. Similarly, a detailed article based on detailed investigation by Shri Pankaj Sharma and others was published under the heading "Acid mine discharge — Challenges met in a hydro power project" in the International Journal of Environmental Sciences, Volume I, No.6, 2011. Both the aforesaid publications gives an in depth analysis of the aforesaid problem as well as suggests remedial measures to improve the situation. However, it is stated that no proper and effective remedial measures have been taken by the concerned authorities / State Respondents to abort the aforesaid menace and the ill-effect of the same are still continuing and the same are being constantly faced by the innocent citizens / water bodies etc of the area including the people of Dima Hasao district of Assam. Copies of the detailed project report of pilot project for remediation of Acid Mine Drainage (AMD) in the catchment of Kopili River at the upstream of Kopili Hydro Electric Plant (KHEP), Umrongso, Dima Hasao, Assam and the article published under the heading "Acid mine discharge — Challenges met in a hydro power project" in the International Journal of Environmental Sciences, Volume I, No.6, 2011 are annexed herewith and marked as ANNEXURE-P/1 & P-2 respectively. The ill-effect of the aforesaid operations has also been the subject matter of news items in various

> newspapers including one published by the Assam Tribune on June, 20, 2012 under the heading "Concern over contamination of Kopili Water" and another one published in the Telegraph on 20.06.2013 under the heading "Two Kopili power units shut down — Mining in Jaintia Hills affects machines".

Copies of the news items published in the Assam Tribune dated 20.06.2012 and the Telegraph dated 20.06.2013 are annexed herewith and marked as ANNEXURE- P/3 & P-4 respectively."

61. In paragraph 3(V) the appellant has extracted a report of one Dr. O.P. Singh, Professor, North-Eastern Hills University, Shillong, Meghalaya. Certain paragraphs of report stated that Acid Mine Drainage(AMD) is the greatest environmental problem of coal industry and main source of water pollution in and around mining areas. The report mentioned that AMD degrades the water quality of the area in terms of lowering the pH of the surrounding water resources and increasing the level of total suspended solids, total dissolved solids and some heavy metals. Following is the part of the paragraph 4.1.4 of the report which is extracted in paragraph 3(V):

> "4.1.4 Impact of AMD on Environment, Socio- economy and Industry Impact on Environment and Water Resources:
>
> Acid mine drainage is the greatest environmental problem of coal mining industry and main source of water
>
> pollution in and around mining areas. The influx of untreated AMD into streams severely degrades both water quality and aquatic habitat turning water unfit for desired uses and often producing an environment devoid of most aquatic life. AMD degrades the water quality of the area in terms of lowering the pH of the surrounding water resources and increasing the level of total suspended solids, total dissolved solids and some heavy metals. Acidity and high concentration of SO42; iron and other metals prove to be toxic and corrosive to most aquatic animals and plants. Precipitate of iron hydroxide increases the load of suspended solids which impair light penetration and visibility resulting into low productivity and disruption of normal functioning of the contaminated aquatic ecosystem. AMD can also be toxic to vegetation when discharged to the shallow soil water zones and wetlands (Van Green et al., 1999; Singh and Agrawal, 2004; Gosh, 1991).
>
> Aquatic communities of rivers and streams comprise of phytoplanktoris,
>
> periphyton, macrophytes, zooplanktons, invertebrates and vertebrate species. They play important role in normal functioning of the aquatic ecosystem and are indicative of good health of water bodies.

Generally, a variety of species with representatives of almost all insect orders, including a high diversity of insects belonging to the taxonomic orders of Ephemeroptera (mayflies), Plecoptera

(stoneflies), and Trichoptera (caddisflies) commonly referred to as EPT taxa. Any physical, chemical or biological change in water bodies affects one or all species and disturbs the normal functioning of the aquatic ecosystem.

Like many other pollutants, AMID contamination causes a reduction in the diversity and total numbers, or abundance, of these aquatic communities including benthic macroinvertebrates, fishes, etc. As a result, the community structure is altered and water bodies affected by AMD possess a lower percentage of EPT taxa (C a m p b e l l e t al., 20 00). Moderate AMD contam inati on eliminates the more sensitive species whereas severely contaminated conditions are characterized by dominance of cert a in taxonomic representatives of pollution t o l e r a n t organisms.

As a consequence of depletion of aquatic invertebrates, the fishes do not get adequate supply of food and suffer indirectly from AMD contamination AMD also has direct effect on fishby causing various physiological disturbances. However, the primary cause of fish death in acid waters is loss of sodium ions from the blbod. Less availability of oxygen to the cells and tissues leads to anoxia and death as acid water increases the permeability of fish gills to water, adversely affecting the gill function. Severe anoxia occurs below pH 4.2. Low H that is not directly lethal may adversely affect fish growth rates and reproduction."

62. Further, paragraph 4.2.3 of the report dealt with coal mining in Jaintia Hills and paragraph 4.2.4 dealt with impact of coal mining in Jaintia Hills and paragraph 4.2.5 dealt with degradation of water quality due to coal mining. Paragraphs 4.2.3, 4.2.4, 4.2.5 and 4.2.6 which were extracted in O.A.No.73 of 2014 are produced as below:

> "4.2.3 Coal Mining in Jaintia Hills Extraction of coal has been taking place in all three regions, however, 'major production occurs in Jaintia Hills. The mining activity in Jaintia Hills is a small scale venture controlled by individuals who own the land. Primitive mining method commonly known as 'rat-hole' mining is in practice in Meghalaya. In this method the land is first cleared by cutting and removing the ground vegetation and then digging pits ranging from 5 to 100 m2 into the ground to reach the coal seam. Thereafter, tunnels are made into the seam sideways to extract the coal which is brought into the pit by using a conical basket or a wheel barrow manually. Coal seams are reached by excavating the side edge of the hill slopes and then coal is extracted through a horizontal tunnel. The coal from the tunnel or pit is taken out and dumped on nearby un- mined area, from where it is carried to the larger dumping places near highways for its trade and transportation. Finally, the coal is carried by trucks to the larger dumping places near highways for its trade and transportation. Entire road sides in and around mining areas are used for piling of coal which is a major source of air, water and soil pollution. Off road movement of trucks and other vehicles in the area causes further damage to the ecology of the area.
>
> Every year new areas are brought under mining and area under coal mining in Jaintia Hills is increasing day-by-day as shown in Figure 4,5."

"4.2.4 I mp ac t o f Co a l M in in g in J ai nt ia H i ll s an d Beyond Mining operation, undoubtedly has brought wealth and employment opportunity in the area, but simultaneously has led to extensive environmental degradation and erosion of traditional values in the society. Environmental problems associated with mining have been felt severely because of the region's fragile ecosystems and richness of biological and cultural diversity. The indiscriminate and unscientific mining and absence of post- mining treatment and management of mined areas are making the fragile ecosystems more vulnerable to environmental degradation and leading to large scale land cover/land use changes. The current modus operandi of surface mining in the area generates huge quantity of mine spoil or overburden (consolidated and unconsolidated materials overlying the coal seam) in the form of gravels, rocks, sand, soil etc. which are dumped over a large area adjacent to the mine pits. The dumping of overburden and coal destroys the surrounding vegetation and leads to severe soil and water pollution. Large scale denudation of forest cover, scarcity of water, pollution of air, water and soil, and degradation of agricultural lands are some of the conspicuous environmental implications of coal mining in Jaintia Hills. Further, entire coal mining area of the Jaintia Hills has become full of mine pits and caves. These open, unfilled pits are the places where surface water percolates and disappears. As a result, smaller streams and rivers of the area, which served as life lines for the people, are either completely disappearing from t he f a c e o f t h e e a r t h o r b e co m i n g s e a s o na l instead. Consequently, the area is facing acute shortage of clean drinking and irrigation water. Besides, a vast area has become physically disfigured due to haphazard dumping of overburden and mined coal, and caving in of the ground and subsidence of land.

Continuous discharge of Acid Mine Drainage (AMD) and toxic chemicals from coal mines, storage sites and exposed overburden have polluted the river system of the area. Acidic water on reaching to land and agricultural fields has affected the traditional agriculture and agricultural productivity of the area (Das Gupta et al, 2002; Swer and Singh, 2004) "4.2.5 Degradation of Water Quality due to Coal Mining The water bodies of the area are the greatest victims of the coal mining. The water bodies are badly affected by contamination of Acid Mines Drainage (AMD) originating from mines and spoils, leaching of heavy metals, • organic enrichment and silting by coal and sand particles. Pollution of the safer is evidenced by the colour of the water which in most of the rivers and streams in the mining area varies from brownish to reddish orange. Low pH (between 2-3), high conductivity, high concentration of sulphate, iron and toxic heavy metals, low dissolved oxygen (DO) and high BOD are some of the physic-chemical and biological parameters which' characterize the degradation of water quality.

Analysis of physic-chemical and biological p a r am et er s of w at er i n the m i ni ng ar ea s h ow s s ev er e degradation of water quality.

The colour of the water in mining area generally varies from brownish to reddish orange. Siltation of coal particles,' sand, soil etc. and contamination of AMD and formation of iron hydroxide are some of the major causes of change in water colour. Formation of iron hydroxides [Fe (CH) 31 is mainly responsible for orange or red colour of water in the mining areas. Iron hydroxide is a yellowish insoluble material commonly formed in water bodies of the coalfields. It is this material that stains streams and responsible for red to orange color of water. When elevated levels of iron are introduced into natural waters, the iron is oxidized and hydrolyzed, thereby forming precipitate of iron hydroxides.

The water in coal mining areas has been found highly acidic. The pH of streams and rivers varies between 2.31 to 4.01. Solids such as fine particles of coal, sand, mud and other mineral particles were found deposited at the bottom of the water bodies. Besides, water wa s also found turbid and coloured due to suspended precipitates of iron hydroxides. D i s s o l v e d oxygen was found to be low in water bodies of coat mining areas, the lowest being 4.24 mg/L in river Rawaka and stream Metyngka of Rymbai.

The waters of the mining areas have been found containing sulphate concentration between 78 to 168 mg/L. Electrical conductivity is a rapid measure of the total dissolved solids present in ionic form. Water in coal mining areas was found having high conductivity. Deposition of silt at the bottom of the rivers and streams is another important problem in coal mining areas. Water bodies of the mining area appear to contain various types of organic matter which is evident by low Di ss ol v ed Ox yg en (Do o a nd h i gh Bi oc he m ic al O xy ge n Demand(BOD).

As a result , the r i v e r s , s tr e am s and springs which had supported extremely rich biodiversity and traditional agriculture, and were source of potable and irrigation water in the area have become unfit for human consumption.

Further, there is an overall decline in agricultural productivity due to contamination of soil with coal particles, seepage of Acid mines drainage and scarcity of water. The water of many rivers and streams have almost become devoid of aquatic life".

4.2.6 Causes of Deterioration of Water Quality Major causes of deterioration of water quality, as evidenced by above observations are AMD discharge, siltation and organic enrichment. As in any other coal mining area, Acid Mine Drainage (AMD) is the main source of water pollution in the coal mining areas of Jaintia Hills. As discussed in previous chapter, Amp is formed by a series of complex geochemical and microbial reactions that occur when water comes in contact with pyrite (Iron sulfide) found in coal and exposed rocks of overburden. Iron sulfide in presence of oxygen, water and bacteria forms sulphuric acid, is referred to as AMD. In the process, iron hydroxide, a yellowish orange precipitate is also formed. The prercipitate of iron hydroxide together with other contaminants auses turbidity and changes in colour of the water which reduces the penetration of light and affects the aquatic life. Extremely low pH conditions in the water accelerate weathering and dissolution of silicate and other rock minerals, thereby causing the release of other elements such as aluminium, manganese, copper, cadmium etc. into the water. Hence, water contaminated with AMD is often coloured and turbid with suspended solids, highly acidic (low pH), and contains

high concentration of dissolved metals and other elements. Most of the streams and rivers of Jaintia Hills in coal mining areas are severely contaminated with AMD and thus becomes water has become highly acidic. The pH and other parameters of some AMD affected water bodies are summarized in Table 4.1. Table 4.1: Summary of water quality parameters in some Coal mining rivers/reservoir.

SI. No.	Rivers/ Streams & Location	Colour of Water	pH	Sulphate contents (mg/L)	E Conductivity (pS/Cm)
1.	Myntriang	Light yellow	2.8	36	56
2.	Urn Pai	Brownish	3.2	186	160
3.	Rawaka, Rymbai	Reddish	2.31	166.5	135
4.	Kenai-um, Rymbai	brown Reddish	2.66	144.0	74
5.	Metyngka, Rymbai	brown Reddish	2.42	168.0	27
6.	Urn-Mynkseh, Ladrymbai	Brownish orange	3.52	118.7	67
7.	Thwai-Kungor, Bapun	Brownish	4.01	82.87	18
8.	Umkyrpon, Khliehriat	Light Orange	3.67	161.3	37
9.	Waikhyrwi, Sutnga	Brownish	3.96	78.69	-
10.	Um Roong		2.8	896	128
11.	Mostem	Brownish	2.9	616	119
12.	Sarbang	Turbid	3.35	150	32
13.	Um Lurem	Yellowish	5.0	19	3
14.	Khongdong Reservoir	Clear	4.6	43	34

Source: Present study; GSI, 2006-7;

Biahwar, 2010 The results show that most of the rivers in the coal mining areas of Jaintia Hills are severely affected AMD as evident from the lower pH values, higher sulphate content and EC in water samples".

63. Thus, there were clear allegations in the application that in spite of various remedial measures set out in the report no proper and effective remedial measures have been taken by the concerned authorities of the State of Meghalaya. Paragraph 3(VI) is as follows:

> "3(VI). That the various remedial measures are set out in detail in paragraphs 4.4, 4.5, 5, 5.1 and 5.2 and other relevant paragraphs of the said report. However, to the best of knowledge of the Applicant, no proper and effective remedial measures have been undertaken by the concerned authorities till date and the innocent citizens/ water bodies etc. of the concerned areas including that of Dima Hasao District in Assam continue to be subjected to the ill-effect of the aforesaid illegal mining operation in the State of Meghalaya. That apart, continuous and irreparable damage on the environment, water, soil, agriculture etc. in the concerned areas including Dima Hasao district of Assam are also continuing as a result of the said illegal mining operations in Jaintia Hills in the State of Meghalaya."

64. Ground A of the application is also relevant to be reproduced which is to the following effect:

> "GROUNDS A. that the aforementioned illegal mining operations in the Jaintia Hills in the State of Meghalaya have not only caused serious and irreparable damage to the ecology, water bodies and the socio- economy of the concerned areas including of Dima Hasao district of Assam but has also resulted in serious erosion/corrosion of the underwater plants and machineries and equipments of the Kopili Hydro Power Project of the North Eastern Electric Power Corporation of India (a Government of India undertaking), The ill-effect of the said mining operation has been highlighted in detail in the aforementioned detailed project report by Dr. O.P.Singh, Professor, North-Eastern Hills University as well as the said article published in the International Journal of Environmental Sciences. Though remedial measures were suggested in both the aforesaid studies, to the best of the knowledge of the Applicant, no proper and effective remedial measures have been undertaken by the Respondents herein and the ill -effect of the said activities are still continuing to the detriment of the ecology, water bodied and socio-economy of the concerned areas including Dima Hasao district of Assam. It is most respectfully submitted that the total inaction on the part of the Respondents herein in spite of detailed study on the subject with remedial suggestions are totally inexcusable and show the total callous attitude of the State Respondents The menace of illegal opencast mining operations in the Jaintia Hills in Meghalaya is still continuing to the detriment of the ecology and socio - economic of the concerned areas including Dime Hasao district of Assam and as such, warrants, in the most respectful submissions of the Applicant, immediate intervention by this Hon'ble Tribunal. The aforesaid inaction has resulted in violation of the various enactments mentioned in Schedule I of the National Green Tribunal Act 2010 including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act 1986 apart from infringing the fundamental rights of the Applicant under Article 14 and 21 of the Constitution of India."

65. The pleadings in O.A.No.73 of 2014 as extracted above clearly and categorically alleged environmental degradation consequent to illegal coal mining. It was further stated that inaction of respondent authorities has resulted in violation of various enactments mentioned in Schedule I of the NGT Act, 2010 including the Water (Prevention and Control Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The application O.A.No.73 of 2014 thus has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14. Both the component as appearing in sub- section 1 of Section 14 that is (i) substantial question relating to environment and (ii) such question arises out of the implementation of the enactments specified in Schedule I, were involved.

66. The NGT after adverting to the application O.A.No.73 of 2014 on 17.04,2014 has undertaken different proceedings and asked for various reports from different committees including State Pollution Control Board. By order dated 31.08.2018, the NGT had appointed a committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court which consisted of Prof. Ashok K. Singh, Rajiv Gandhi Chair Professor, Department of Environmental Science & Engineering representative from Indian School of Mines, Dhanbad IIT(ISM), Dhanbad (826004), Dr. Shantanu Kumar Dutta, Scientist 'D' representative of Central Pollution Control Board. The said committee submitted interim report on 31.12.2018 and on the subject "Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?" has been dealt with in Issue No.(D) in the following manner:

> "Issue No.(D) Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?
>
> (i) The Meghalaya State Pollution Control Board in the month of September, 1997 published a report entitled "ENVIRONMENTAL IMPACT OF COAL MINING IN JAINTIA HILLS DISTRICT". The then Chairman of the said Board, in his foreword, has admitted unplanned and unscientific coal mining activities in the State for more than hundred years, which achieved dangerous dimensions since last two decades and are creating ecological disturbances and negative environmental impacts, to the extent that the very existence of biological life is threatened in the coal mining areas of the State. It has also been admitted that no systematic efforts to study such impacts have so far been made by any institution. The then Member Secretary of the Board, in the preface, has projected the adverse impacts on the environment because of the coal mining activities. The pH level of in water almost all the rivers and streams was found to be below the required level. In some rivers and streams, the pH level was found to be as low as 2.4. The Meghalaya State Pollution Control Board, in the said report, has observed that the random discharge of AMD and acidic run offs from -40- the coal storage areas have also made the rivers, streams and even ground waters highly acidic. The ambient air quality of the coal mining and coal storage areas was also found to be degraded to certain extent.

The Board, therefore, observed that – "The uncontrolled and unscientific coal mining operations in Jaintia Hills District have already created massive ecological disturbances and environmental

degradation because presently neither any pollution control measures are adopted by the miners nor any sincere efforts are made for reclamation of the mine land". In the said report, the following recommendations were made to minimize the overall adverse environmental impacts of the mining activities:-

> (a) To generate social awareness among the public in general and the miners in particular about the adverse environmental impacts and the health hazards associated with such unscientific and unplanned coal mining activities.
>
> (b) Preparation of the inventory of the mine owners, areas under mining and rate of land use change to get the first hand knowledge about the quantum of the efforts required for better management of these activities.
>
> (c) To enforce suitable legislations on the lines of the National Mineral Policy immediately for exploitation of coal in most sustainable manner.
>
> (d) To engage expert institution for finding out the most suited technologies for the coal exploitation with appropriate pollution control measures in order to ensure that the environment as a whole is not subjected to further degradation.
>
> (e) To engage the expert institution for finding out the suitable ways for rehabilitation of the mined land in phase manner so that the scarce land resources can be brought back to productive uses.
>
> (f) To look for the alternative transport facilities to control vehicular pollution.
>
> (g) To identify the suitable location for the storage of coal for sale with adequate facilities to treat dump run offs.
>
> (h) To study the aspect of the presence of trace elements in the surface and ground water because the low pH values increase the dissolution power of water.

Large numbers of trace elements are always associated with the coal which gets dissolved in low pH waters. These trace elements are serious health hazards even in very low concentrations.

(i) To introduce lucrative schemes for the aforestation in the most affected areas.

(j) To develop the State Mineral Policy with the interaction of Government Agencies, Social Institutions, Local Elders and the Miners, keeping in view the specific land ownership system of the State. Nothing of the above recommendations have been implemented so far.

(ii) It is, therefore, evident that apart from the water, air pollution, there is degradation of surface land because of the coal mining activities in the State of Meghalaya. Despite publication of the said report by the Meghalaya State Pollution Control Board as back as in the year 1997, no steps

appeared to have been taken by any authority to check the adverse environmental affect and also to remedy the same."

67. The present is not a case of mere allegation of applicant of environmental degradation by illegal and unregulated coal mining rather there were materials on the record including the report of the experts, the Meghalaya State Pollution Control Board published in the month of September, 1992, the report of Katakey committee appointed by the Tribunal where environmental degradation of water, air and surface of the land was proved.

68. Hence, there was sufficient allegation regarding substantial questions relating to environment and violation of enactments in Schedule I. We fail to see any substance in the submission of the learned counsel for the appellant that NGT has no jurisdiction to entertain the case and pass orders. During submission, learned counsel for the appellant has not even referred to application which was filed by the applicant in O.A.No.73/2014. There were reports of the Meghalaya State Pollution Control Board before the State Government pointing out environmental degradation and the Tribunal having taken up the issue, the submission on behalf of the State that the Tribunal has no jurisdiction is not expected from the State Government who is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter the State has to act as facilitator and not as obstructionist. Article 48A of the Constitution provides:

> "48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

69. Learned counsel for the appellant has placed reliance on the judgment of this Court in Techi Tagi Tara versus Rajendra Singh Bhandari and others, 2018(11) SCC 734. This Court had occasion to consider Section 14,15 and 2(m) of the National Green Tribunal Act, 2010, which involves the question of jurisdiction of NGT. The nature of order passed by NGT which was challenged before this court has been noticed in para 1 of the judgment, which is to the following effect:-

> "1. This batch of appeals is directed against the judgment and order dated 24-8-2016 passed by the National Green Tribunal, Principal Bench, New Delhi (for short "the NGT") in Rajendra Singh Bhandari v. State of Uttarakhand1. On a reading of the judgment and order passed by the NGT, it is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State Pollution Control Boards (for short "SPCBs") did not have, according to the NGT, the necessary expertise or qualifications to be members or Chairpersons of such high-powered and specialised statutory bodies and therefore did not deserve their appointment or nomination. While we fully commiserate with the NGT and share the pain and anguish, we are of the view that the Tribunal has, at law, exceeded its jurisdiction in directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs, however well- meaning they might be. Therefore, we set aside the decision of the NGT, but note that a large number of disconcerting facts have been brought out in the judgment which need serious

consideration by those in authority, particularly the State Governments that make appointments or nominations to the SPCBs. Such appointments should not be made casually or without due application of mind considering the duties, functions and responsibilities of the SPCBs."

70. In the above background, this Court held that the failure of the State Government to appoint professionals and experience persons to the key positions in the State Pollution Control Board cannot be classified as a primary dispute over which the NGT could have jurisdiction. Following was laid down in paragraph 21: -

"21. As far as we are concerned, in the context of the Act, a dispute would be the assertion of a right or an interest or a claim met by contrary claims on the other side. In other words, the dispute must be one of substance and not of form and it appears to us that the appointments that we are concerned with are not "disputes" as such or even disputes for the purposes of the Act — they could be disputes for a constitutional court to resolve through a writ of quo warranto, but certainly not for the NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which the NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like the NGT. While we appreciate the anxiety of the NGT to preserve and protect the environment as a part of its statutory functions, we cannot extend these concepts to the extent of enabling the NGT to consider who should be appointed as a Chairperson or a member of any SPCB or who should not be so appointed."

71. The issue involved in the above case was entirely different which did not directly pertain to environmental degradation. Whether NGT has jurisdiction to entertain a particular cause is a question which depends on the facts of each case. To find out as to whether NGT has jurisdiction to entertain a case, the case set up before the Tribunal has to be looked into to answer the question. The judgment of Techi Tagi Tara (supra) was on its own facts and does not help the appellant in the present case.

72. In view of the foregoing discussion, we reject the submission of the learned counsel for the State that the Tribunal exceeded its jurisdiction under Sections 14 and 15 in entertaining the application O.A.No.73 of 2014. We also record our dis-approval to the stand taken by the State in this regard.

Point No.2

73. Before we proceed to consider the above points, first of all, we need to notice the nature of land tenure in the Hills Districts of State of Meghalaya. Learned counsel for the parties are not at

variance on the question of nature of land tenure in the Hills Districts of State of Meghalaya. By the North-Eastern Area Reorganisation Act, 1971 the State of Meghalaya was formed as independent full-fledged State. After the enforcement of the Constitution the area, now comprised in the State of Meghalaya, was included in the State of Assam, the Administration and control of which area was as per Article 244 of the Constitution of India read with Sixth Schedule of the Constitution. In so far as the land tenure in the Hills Districts of Meghalaya, there is no substantial change after the advent of the Constitution. There was no payment system of land revenue before the advent of the Constitution in the Hills Districts of Meghalaya. Learned counsel for the parties have referred to various materials pertaining to the land tenure system prevalent in the Hills Districts of State of Meghalaya. The lands in the Khasi Hills District of Meghalaya come under two divisions Ri Raid and Ri Kynti. Ri raid lands are community lands which are set apart for the benefit and use of entire community. Ri kynti lands are privately owned lands which were also owned by community as well as by individuals. The owner of the re kynti land is an absolute proprietor. The tenure system in Jaintia Hills classified into two types of lands, namely, Hali /irrigated land and High land. Hali lands are further categorised in Raj land, service land, village puja land and private land. Proprietary right does not vest in the State in respect to majority of lands which are either privately owned or owned by the Tribal community. No system of payment of land revenue is prevalent in the Hills District of Meghalaya except lands which belong to State. For the purposes of present case where the submission of the appellant is that land in which mining operations of coal is being done are lands belonging to Tribals who are owners of the land as well as of the sub-soil, we proceed with the assumption that Tribal is the owner of the land. It is further the case of the appellant that in Hills Districts of State of Meghalaya in land which is privately owned by the Tribal or community owned, the Tribals or the community or the clan are owners of both surface right and sub-soil. It is the case of the appellant that the State does not have any right in sub-soil or minerals. The judgment of this in Thressiamma Jacob and others vs. Geologist, Department of Mining and Geology and others, 2013(9) SCC 725, is relied on. This Court in the above case had occasion to consider the question of ownership of sub- soil/mineral rights in reference to genmom lands in Malabar area of the State of Madras. Holder of the genmom rights also claimed not only as proprietor of the soil but the owner of the minerals in the soil. This Court laid down following in paragraph 58:

> "58. For the abovementioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth/subsoil rights vest in the State, on the other hand, the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench."

74. A Constitution Bench of this Court in Raja Anand Brahma Shah vs. The State of Uttar Pradesh and others, AIR 1967 SC 1081, had laid down that prima facie owner of a surface of the land is entitled to everything beneath the land unless there is an express or implied reservation in the grant. In paragraph 13 following has been laid down:

> "13. In our opinion, a reading of the two sanads supports the case of the appellant that there is no reservation of mineral rights in favour of the Government. The expression used in the sanad of 1803 A.D. is "You ought to consider him the Raja of immovable jagir and of mahal and everything appertaining thereto belongs to him." In effect, the grant to the Raja in the two sanads is a grant of the lands comprised in the mahal of Agori and everything appertaining thereto and as a matter of construction the grant must be taken to be not only of the land but also of everything beneath or within the land. Prima facie the owner of a surface of the land is entitled ex jure to everything beneath the land and in the absence of any reservation in the grant minerals necessarily pass with the rights to the surface (Halsbury's Laws of England, 3rd Edn., Vol. 26, p. 325). In other words, a transfer of the right to the surface conveys right to the minerals underneath unless there is an express or implied reservation in the grant. A contract therefore to sell or grant a lease of land will generally include mines, quarries and minerals beneath or within it (Mitchell v. Mosley). It is manifest that when the sanad was executed in favour of the Raja the Government made over the land with all its capabilities to the Raja and merely imposed on him a fixed sum of revenue in lieu of all the rights the Government had as a proprietor of the soil. When neither of the parties knew undiscovered minerals underneath the land and the idea of reservation never entered their minds it cannot be held that there was any implied reservation in the grant. Nor can afterwards a distinction be drawn between the various rights that may exist on the land for the purpose of qualifying the original grant and importing into it what neither party could have imagined. It was argued on behalf of the respondents that the assessment was made on the agricultural income, but this circumstance cannot derogate from the rights conveyed to the Raja in the two sanads because no restriction was placed on the use of the land and the use by the Raja was not limited to agriculture."

75. Thus, looking to the nature of the land tenure as applicable in the Hills Districts of State of Meghalaya, the most of the lands are either privately or community owned in which State does not claim any right. Thus, private owners of the land as well as community owners have both the surface right as well as sub-soil right. We are, thus, of the opinion that Tribals owned the land and also owned the minerals, which is an inescapable conclusion. We, thus, proceed to examine the issues on the premise that in privately owned land or community land minerals also vest in the owner. We first need to consider as to whether the provisions of MMRD Act, 1957 are applicable in the Tribal area of Hills District of State of Meghalaya.

76. Part X of the Constitution separately deals with Scheduled and Tribal areas. Hills Districts of State of Meghalaya were treated to be Tribal area and were to be governed by Article 244 sub-clause (2) read with Schedule VI. Provisions of Article 244 after formation of State of Meghalaya is as follows:

> "Article 244. Administration of Scheduled Areas and Tribal Areas.-(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya,

Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram."

77. Sixth Schedule of the Constitution contains 'Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram'. Paragraph 20 of Sixth Schedule refers to Tribal areas and Part II of which consists of Khasi Hills District, Jaintia Hills District and Garo Hills District which have been referred as Autonomous Districts. Sixth Schedule Para 1(1) is as follows:

"1. Autonomous districts and autonomous regions.-(1)Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and IIA and in Part III of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

78. Para 2 of Sixth Schedule provides for Constitution of District Councils and Regional Councils. Para 3 provides for powers of the District Councils and Regional Councils to make laws which is to the following effect:

"3. Powers of the District Councils and Regional Councils to make laws.—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes 1 [by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of jhum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

(i) marriage and divorce;

(j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question. (3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

79. Para 9 of the Sixth Schedule which is relevant for the present case is as follows:

"9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.— (1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State] in respect of any area within an autonomous district as may be agreed upon between the Government of the State] and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-

paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final."

80. Para 12A which is relevant for Meghalaya is as follows:

"12A. Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.— Notwithstanding anything in this Constitution, —

(a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in subparagraph (1) of paragraph 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under paragraph 8 or paragraph 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law

made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

(b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.

81. Now, we revert back to Mines and Minerals (Development and Regulation) Act, 1957. Act, 1957 has been enacted to provide for development and regulation of mines and minerals under the control of the Union. Section 1 of the Act is as follows:

"Section 1. Short title, extent and commencement. □(1) This Act may be called the Mines and Minerals (Development and Regulation) Act, 1957.

(2) It extends to the whole of India.

(3) It shall come into force on such date3 as the Central Government may, by notification in the Official Gazette, appoint."

82. The Act came into effect w.e.f. 01.06.1958. Whether there are any indications in the Sixth Schedule or any other provision of the law by which it can be contended that Act, 1957 is not applicable in Hills District of Tribal areas of State of Meghalaya? We may first refer to Sixth Schedule of the Constitution which is a provision for Administration of Tribal areas in the State of Meghalaya. Para 12A sub-clause (b) empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Para 12A(b) of the VIth Schedule of the Constitution, although, the said Para 12A(b) is in the Constitution with effect from 21.1.1972. Thus, there is nothing in Sixth Schedule of the Constitution which may indicate about the inapplicability of Act, 1957 with regard to the Hills Districts of State of Meghalaya. At this juncture, we may also notice the report of the Comptroller and Auditor General of India for the year ended 31st March, 2013. In para 7.5.1 the report mentions:

"7.5.1. Introduction Meghalaya is endowed with sizeable deposits of valuable minerals like coal, limestone, uranium, granite and clay. Minerals being valuable resource, the extraction needs to be maximised through scientific methods of mining with aim to ensure extraction and utilisation of minerals. Besides, most of the mineral reserves are in areas which are under forest cover and hence, mining in the State has environmental implications. In Meghalaya, individual and local communities have ownership over the land and the minerals and barring a few reserve forest areas, the State Government has no ownership over the minerals. The

activities of the Mining & Geology (M&G) Department, Government of Meghalaya (GOM) are limited to collection of royalty on the minerals exported outside the State besides geological investigation/exploration of minerals. The Mines and Minerals (Development and Regulation) Act, 1957 lays down the legal framework for regulation of mines and development of minerals. The Mineral Concession Rules, 1960 and the Mineral Conservation and Development Rules, 1988 were accordingly framed under the MMDR Act framed for conservation and systematic development of minerals and for regulating grant of permits, licences and leases. The GOM has introduced the Meghalaya Mineral Cess Act, 1988 to mobilise additional revenue. Further with a view to facilitating systematic, scientific and planned utilisation of mineral resources and to streamline mineral based development of the State, the Meghalaya Mines and Mineral Policy, 2012 has also been notified with effect from 5 November 2012."

83. The Comptroller and Auditor General has clearly stated that Act, 1957 is fully applicable for regulation of mines and regulation of minerals in the State of Meghalaya.

84. Learned counsel for the State of Meghalaya has also filed before us along with an affidavit of Joint Secretary of Government of Meghalaya, Mining and Geology Department dated 13.04.1018 by which Meghalaya Mines and Minerals Policy, 2012 issued by the Government of Meghalaya as well as draft guidelines of coal mining activities in the State prepared in the year 2015 has been brought on the record.

85. Clause 10 of the Policy provides for "Regulatory Framework for Mine Development and Mining". Sub-clause

b) of Clause 10 required application for mineral concession either fresh or renewal is to be submitted to the State Government through the Deputy Commissioner of the District wherein the area applied for is situated and with NOC from District Council concerned and land owner. Clause 10 also refers to clearance of the Pollution Control Board of Meghalaya and other requirement. Sub-clause (l) further contemplated that order for grant of mineral concessions will be issued by the State Government, with the approval of the Central Government wherever necessary. Thus, the Policy of 2012 contemplated regulatory regime for mining lease by the State. The Mining and Geology Department of the Government had framed a draft guidelines for coal mining activity in the State which has also been brought on record along with the above affidavit dated 13.04.2018.

86. The above guidelines were prepared after in consultation with the Central Government.

87. The above draft guidelines prepared by the State clearly mentions about the unregulated and unscientific mining being carried out in the State of Meghalaya. The

Policy Guidelines of Coal Mining which is part of the guidelines also contains following statement:

"The Mines Act, 1952 and the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR), together with the rules and regulations framed under them constitute the basic laws governing the mining sector in India. While the Mines Act, 1952 governs the health and safety of the workers, the MMDR Act, 1957 (including all amendments) lays down the legal frame work for the regulation of mines and development of all minerals other than petroleum and natural gas. The relevant rules in force under the MMDR Act, 1957 are the Mineral Concession Rules (MCR), 1960 outlines the procedures and conditions for obtaining a Prospecting Licence or Mining Lease. The MCDR, 1988 lays down guidelines for ensuring mining on a scientific basis, while conserving the environment, at the same time.

Apart from the mining statutes, which also govern environment in mines, India has elaborate environment statutes for protection of environment in mining."

88. One submission of Shri Naphade with respect to direction of NGT to frame mining policy by the State also needs consideration. Shri Naphade submits that the State of Meghalaya having no legislative competence with regard to major minerals, National Green Tribunal could not have directed the State of Meghalaya to frame Mining Policy.

89. There can be no dispute to the preposition that in view of MMDR Act, 1957, the legislative competence of State of Meghalaya under Entry 23 List II stands denuded. However, under the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, several statutory obligations/jurisdictions have been conferred on the State of Meghalaya, which shall be referred to later in this judgment.

90. When under a Parliamentary enactment, State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement the jurisdictions conferred on the State by Parliamentary enactments.

It is true that Mining Policy to be framed by the State has to confine to the jurisdiction conferred on it as per the MMDR Act, 1957 and the Rules framed thereunder. There are other related issues concerning Mining like protection of environment and forests for which the State has to declare its policy for implementation of its objective. Several other aspects relating to mining like, rehabilitation, reclamation and restoration have to be effectively implemented by the State for which also, it may be required to frame a policy. We may further notice that Meghalaya Mines and Minerals Policy, 2012 was already framed by the State of Meghalaya, even before directions were issued by the NGT. In pursuance of NGT directions, it was draft guidelines of 2015, which were prepared by State of Meghalaya. We, thus, are of the view that direction of NGT to declare Mining Policy by the State of Meghalaya cannot be said to be without jurisdiction. However, the State in its Mining Policy can only include those areas where it has jurisdiction under the MMDR Act, 1957 and

the Rules framed thereunder.

91. A perusal of the entire Policy documents indicate that Policy has been framed by the State as per the Act, 1957 and Minerals (Concession) Rules, 1960.

92. The Government of Meghalaya has also made a request to the Government of India in the year 2015 for issuance of Presidential notification under Para 12A(b) of Sixth Schedule for exempting State of Meghalaya from certain provisions of the MMDR Act, 1957. After several deliberations, the Union of India has communicated through its O.M. dated 12.03.2019 that it is not possible to accede to the request of the Government of Meghalaya for issuance of Presidential notification under Para 12A(b) of Sixth Schedule. Thus, the request made by the State of Meghalaya to issue exemption has not also been acceded to. The request of the State of Meghalaya that exemption be granted by Presidential notification under Para 12A(b) itself expresses recognition of the State of Meghalaya that provisions of Act, 1957 are applicable. We, thus, conclude that there is nothing in Sixth Schedule of the Constitution which in any manner exclude the applicability of Act, 1957 in the Tribal areas of Hills District of State of Meghalaya. Point No.3

93. We need to scan through the statutory scheme of Act, 1957 to find out as to whether Parliamentary legislation requires obtaining lease for winning the minerals in so far as mining of coal from privately owned land/community owned land are concerned?

94. Section 2 of the Act, 1957 contains declaration to the following effect:

> "2. Declaration as to expediency of Union Control.—It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

95. The Act, 1957 has been enacted in reference to Entry 54 List I of Seventh Schedule to the following effect:

> "Entry 54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

96. At this juncture, we may notice Entry 23 of List II which is to the following effect:

> "Entry 23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

97. The Legislative power under Entry 23 is subject to the provision of List I with respect to regulation and development under the control of the Union. When the Union has declared to have taken under its control the regulation of mines and development of minerals to the extent provided in the Act. Legislative power of the State to the above extent is denuded. Learned counsel for the

appellant have also very fairly not disputed the position in law.

98. Section 3 of the Act contains definition clause. Section 3(c) defines mining lease and Section 3(d) defines a mining operation which are to the following effect:

> "Section 3(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
>
> Section 3(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;"

99. Section 4 of the Act contains general restriction on undertaking prospecting and mining operation. Section 4 is couched in terms of an injunction. No person shall undertake any mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and rules made thereunder. Sub-section (1) of Section 4 is relevant in the present case which is as follows:

> 4. Prospecting or mining operations to be under licence or lease.—(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:
>
> Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:
>
> Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited., a Government company within the meaning of clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government]:
>
> Provided also that nothing in this sub- section shall apply to any mining lease (whether called mining lease mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu."

100. The use of word no person in Section 4(1) is without an exception. There is nothing in Section 4(1) to indicate that restriction contained in Section 4(1) does not apply with regard to a person who is owner of the mine. Further, word 'any area' under Section 4(1) also has significance which does not have any exception. Further phrase 'except under and in accordance with terms and condition with a mining lease granted under the Act' are also significant which make the intent and purpose of prohibition clear and loud. Section 5 contains restriction on the grant of prospecting licences and mining lease in the following words:

> 5. Restrictions on the grant of prospecting licences or mining leases.□(1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person□
>
> (a) is an Indian national, or company as defined in 1clause (20) of section 2 of the Companies Act, 2013 (18 of 2013)]; and
>
> (b) satisfies such conditions as may be prescribed:
>
> Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.
>
> Explanation. □For the purposes of this sub- section, a person shall be deemed to be an Indian national,□
>
> (a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and
>
> (b) in the case of an individual, only if he is a citizen of India.
>
> (2) No mining lease shall be granted by the State Government unless it is satisfied that□
>
> (a) there is evidence to show the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;
>
> (b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned:
>
> Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.

101. The proviso to Section 5(1) is relevant since it contains a further restriction that no mining lease shall be granted with regard to any minerals specified in Para A of First Schedule except with the previous approval of the Central Government. We in the present case are concerned with coal which is in Para A of First Schedule.

102. The next provision which is relevant is Section 13 which provides for Rule making power of Central Government in respect of minerals. Section 13 sub- section (1) and Section 13 sub-section (2) in so far as relevant in the present case are as follows:

> "13. Power of Central Government to make rules in respect of minerals.—(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith.
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
>
> (a) the person by whom, and the manner in which, applications for reconnaissance permits, prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;
>
> .....
>
> (f) the procedure for obtaining 5 [a reconnaissance permit, a prospecting licence or a mining lease] in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such 6 [a permit, licence or lease may be granted or renewed;
>
> ....."

103. When we read clause (a) and clause (f), it makes clear that the Rules can be made for grant of mining lease in respect of land in which minerals vest in the Government as well as in respect of any land in which minerals vest in person other than Government. The statutory scheme, thus, is clear that lease can be granted with regard to both the categories of land, land in which Government is owner of minerals and land in which minerals vest in person other than Government. The Tribals, owners of the minerals shall expressly fall in Rule making power of the Government under Section 13(f).

104. The Central Government in exercise of power under Section 13 has framed Rules, namely, Minerals (Concession) Rules, 1960. Chapter IV of the Rules contains a heading "Grant of Mining Lease in respect of land the Minerals vest in the Government". Rules 22 to 40 contain various provisions under Chapter IV. Chapter V has a separate heading which is "Procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government". Thus, Chapter V contains provisions for grant of lease in respect of minerals

which vest in the person other than the Government. Rules 41 and 42 which are relevant are quoted below:

> "41. Applicability of this chapter: - The provisions of this chapter shall apply only to the grant of prospecting licences and mining leases in respect of land in which the minerals vest exclusively in a person other than the Government.
>
> 42. Restrictions on the grant of prospecting licence and mining lease:- (1) No prospecting licence or mining lease shall be granted to any person unless he has filed an affidavit stating that he has–
>
> (i) filed up-to-date income tax returns;

(ii) paid the income tax assessed on him, and

(iii) paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961). (2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act."

105. The statutory scheme delineated by Section 13(2)(f) and the Minerals (Concession) Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land, that is, land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government. In statutory provisions there is no kind of exception as contended by the learned counsel of the appellant that when owner himself wants to win the minerals he does not require any mining lease. The submission is contrary to the express statutory scheme, in the event submission of appellant is accepted that with regard to minerals which vest in a private person no mining lease is required, the whole object of the Union by which it declared to have taken under its control regulation of mines and development of minerals shall be frustrated.

106. Another limb of submission of the appellant needs to be noticed here. Shri Naphade submits that there is no concept of owner of a land granting lease to himself. He submits that concept of lease is well known and well recognised concept as contained in Section 105 of Transfer of Property Act. Section 105 of the Transfer of Property Act is as follows:

> "Section 105. Lease defined. A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
>
> Lessor, lessee, premium and rent defined: The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

107. Halsbury's Laws of England, Fourth Edition Para 321 defines nature of mining lease in the following manner:

> "321. Nature of mining lease. A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, properly considered, is really a sale of a portion of the land at a price payable by instalments, that is, by way of rent or royalty, spread over a number of years."

> 108. This Court had occasion to consider the concept of mining lease under Act, 1957 in SRI TARKESHWAR SIO THAKUR JIU vs. DAR DASS DEY & CO. AND OTHERS, 1979(3) SCC 106, this Court held that term lease occurring in Section 3(C) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act but it has all the characteristics of a lease as defined in the Transfer of Property Act. In paragraph 31 following was laid down:

> "31. It is important to bear in mind that the term "lease" occurring in the definition of "mining lease" given in Section 3(c) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act. But, as rightly pointed out by a Bench of the Calcutta High Court in Fala Krishna Pal v. Jagannath Marwari. a settlement of the character of a mining lease is everywhere in India regarded as "lease".

> A mining lease, therefore, may be meticulously and strictly satisfy in all cases, all the characteristics of a "lease" as defined in the Transfer of Property Act.

Nevertheless, in the legal accepted sense, it has always been regarded as a lease in this country."

109. This Court proceeded further to consider Section 105 of the Transfer of Property Act and opined following in paragraphs 37:

> "37. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a "right to enjoy immovable property" within the meaning of Section 105; more so, when — as in the instant case — it is coupled with a right to be in its exclusive khas possession for a specified period. The "right to enjoy immovable property" spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject-matter of the lease is mineral land or a sand-mine, as in the case before us, it can only be enjoyed and occupied by the lessee by working it, as indicated in Section 108, Transfer of Property Act, which regulates the rights and liabilities of lessors and

lessees of immovable property."

110. This Court further following the Nageshwar Bux Roy vs. Bengal Coal Co., LR (1930) 58 IA 29, in State of Karanataka and others vs. Subhash Rukmayya Guttedar and others, 1993 Supp.(3) 290 laid down following in paragraph 6:

> "6.....The question, therefore, is whether the grant of the right to extract the minor mineral from Government quarry is a lease or a licence and whether the contractor is liable to pay the royalty in respect of minor mineral extracted from the Government quarry. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The normal connotation of the term lease is the preservation of the demised estate to be in occupation and enjoyment thereof for a specified period or in perpetuities for consideration; the corpus by user thereof does not disappear and at the expiry of the term or on termination the same is handed over to the lessor subject to the terms of the contract, express or implied. A right to carry on mining operations in the land on surface or sub-soil is to extract the specified quantity of the minerals found therein, to remove and appropriate that mineral. Section 9 of the Mines and Minerals (Regulation & Development) Act, 1957 affords the guidance in this behalf. It says that the holder of a mining lease or agent, etc. is entitled to remove or consume the mineral. It would mean destruction of the estate leased out and appropriation thereof on payment of consideration i.e. royalty. Therefore, it is a right to enjoy immovable property within the meaning of Section 105 more so when, as in the instant case, it is coupled with a right to be in occupation or enter into possession for a specified period. Section 3(d) of the Act defines 'mining operations' to mean any operation undertaken for the purpose of winning any minerals. It is true that no right, title or interest has been created in the contractor over the mining area. But he has been permitted to remove and use the minor minerals in the execution of the works as its (sic his) right to enjoy immovable property spoken of in Section 105 which means the right to enjoy the property in the manner in which that property can be enjoyed. In Nageshwar Bux Roy v. Bengal Coal Co.1 Lord Macmillan speaking for the Board held that:
>
> "In considering the character and effect of acts of possession in the case of a mineral field, it is necessary to bear in mind the nature of the subject and the possession of which it is susceptible. Owing to the inaccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field: it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarily be partial."

111. The word mining lease has been given specific meaning under Act, 1957. It is well settled principle of interpretation that the provisions of an Act including definition of a term is to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted for the purpose of undertaking mining operation and mining operation means any operation undertaken for the purpose of winning the mineral. Applying aforesaid definition in the Minerals (Concession) Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person.

112. The examination of a statutory scheme applicable in Tribal areas of State of Meghalaya shall not be complete unless we notice two more aspects, they are (i) the Mines Act, 1952 and the Regulations framed thereunder; (2) Environmental Protection Act, 1986 and the notification issued thereunder with regard to mining project.

113. The Mines Act, 1952 is an Act to amend and consolidate the law relating to the regulation of labour and safety of mines. The act contains various provisions regarding inspection of mining operation and management of mines. Section 16 provides a notice to be given to mining operations by the owner agent or manager of a mine. Section 16 is as follows:

> "Section 16. Notice to be given of mining operations.-(1) The owner, agent or manager of a mine shall, before the commencement of any mining operation, give to the Chief Inspector, the Controller, Indian Bureau of Mines and the district magistrate of the district in which the mine is situate, notice in writing in such form and containing such particulars relating to the mine as may be prescribed.
>
> (2) Any notice given under sub-section (1) shall be so given as to reach the persons concerned at least one month before the commencement of any mining operation."

114. Section 18 contains duties and responsibilities of owners, agents and managers. There are various other provisions in the Mines Act, 1952 which are mandatory to be followed before working any mine. Learned counsel for the appellant has not disputed that the provisions of the Mines Act, 1952 are applicable with regard to the coal mining in the State of Meghalaya. He, however, submits that there are no powers with the District Magistrate or State Officials under the Mines Act, 1952. Chapter II of the Mines Act, 1952 deals with Inspectors and Certifying Surgeons. Section 5(3) provided that the District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government. Section 5(3) is as follows:-

> "5(3) The district magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government."

115. The above provision clearly empowers the District Magistrate to exercise the powers and perform the duties of an Inspector but subject to general and special orders of Central Government, which means that there may be some restriction on the power of the District Magistrate as directed

by Central Government. In this context, Shri Naphade has referred to a notification dated 18.09.1953 issued under sub-section 3 of Section 5 of the Mines Act, 1952, which is to the following effect:-

> "New Delhi, the 18th September, 1953 S.R.O. 1789 – In pursuance of sub-section 3 of section 5 of the Mines Act, 1952 (XXXV of 1952), the Central Government hereby directs that in exercising the powers and performing the duties of an Inspector, the District Magistrate shall not, without prior reference to the Chief Inspector, take direct action or issue any order in respect of any matter solely connected with the technical direction, management or supervision of any mine, even though such direction, management or supervision may appear to him to be dangerous or defective.
>
> [No.M-41(370 52.] P.N. SHARMA, Under Secy."

116. The restriction as is apparent from the above notification is with regard to matters solely connected with the technical direction, management or supervision of any mine. The above notification does not take away all the functions of the District Magistrate but restriction is with regard to area mentioned therein. As noted above, Section 16 obliged the owner, agent or manager of a mine to give notice before the commencement of any mining operation to the district magistrate of the district in which the mine is situate. Section 75 of the Mines Act, 1952 also empowers the District Magistrate to institute prosecution against any owner, agent or manager for any offence under the Mines Act, 1952. Section 75 is as follows:-

> "75. Prosecution of owner, agent or manager.--No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the district magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector;
>
> Provided that the Chief Inspector or the district magistrate or the Inspector as so authorised shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.
>
> Provided further that in respect of an offence committed in the course of the technical direction and management of a mine, the district magistrate shall not institute any prosecution against an owner, agent or manager without the previous approval of the Chief Inspector."

117. We, thus, do not accept the submission of Shri Naphade that District Magistrate has no jurisdiction under the Mines Act, 1952 to take any action.

118. In exercise of the power under Section 57 of Mines Act, 1952 a new set of regulations has been framed, namely, Coal Mines Regulations, 2017. Regulation 2(r) defines "District Magistrate". The

Regulations contain various regulatory provisions with regard to mines. Chapter II deals with returns, notices and records. Chapter IV deals with Inspectors and Mine Officials. The Regulations contain several regulatory provisions which need to be followed while working a mine by the owner or his agent. The enforcement of Mines Act, 1952 and the Regulations, 2017 have to be ensured in the public interest by the state of Meghalaya.

119. Now we come to the Environment (Protection) Act, 1986. A notification dated 14.09.2006 was issued by the Ministry of Environment and Forests in exercise of power under Section 3(3) of the Environment Protection Act, 1986. Section 3 of the Act, 1986 which provided for requirements of prior environmental clearance with regard to projects enumerates therein. Schedule to the notification listed the projects or activities requiring prior environmental clearance. “Mining of minerals” included at Item No.1(a) but even for mining project requirement of minimum 5 hectares area was required for applicability of the project. Substituting Item No.1(a) of Notification dated 14.09.2006 a new notification dated 15.01.2016 has been issued. In place of Item No.1(a) new entry has been substituted in respect of coal mine lease which is to the following effect:

(1)	(2)	(3)	(4)	(5)
“1(a)	(i) Mining of minerals	>50 ha of mining lease areas in respect of non-coal mine lease >150 ha of mining lease area in respect of coal mine lease Asbestos mining irrespective of mining area	<50 ha of mining lease area in respect of non-coal mine lease <150 ha of mining lease area in respect of coal lease	General Conditions shall apply except: (i) for project or activity of mining of minor minerals of Category ‘B2’(up to 25 ha of mining lease area); (ii) River

bed mining projects on account of inter-state boundary.

120. If the project was under Category 'A',

environmental clearance is required from Ministry of Environment and Forests whereas as per new notification dated 15.01.2016 for project 'B' environmental clearance is required from State Environmental Assessment Authority with respect of coal mining lease area of less than or equal to 150 hectares. Now as per statutory regime brought in force by notification dated 15.01.2016 environmental clearance is required for a project of coal for mining of any extent of area. We have dealt with the notification dated 15.01.2016, since it was placed before us and submissions were made by learned counsel for the parties. The notification dated 15.01.2016 being a statutory provision shall operate on its own force and no order of any Court is required for enforcement of notification dated 15.01.2016. We have dealt the matter only in view to clarify the statutory regime pertaining to mining of coal.

121. While implementing statutory regime for carrying mining operations in the Hills District of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but Mines Act, 1952 as well as Environment (Protection)Act, 1986. Point No.4

122. We having held that for carrying out mining operations in privately owned and community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a mandatory requirement for carrying out the mining, we have to examine the procedure for grant of such mining lease and the authority/person, who is competent to grant such lease.

123. Chapter IV of the Mineral Concession Rules, 1960 deals with grant of mining leases in respect of land in which the minerals vest in the Government and Chapter V deals with procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government. Chapter IV contains Rules 22 to 40 and Chapter V contains Rules 41 to 52 and the procedure and manner of applying for mining lease and grant of lease as contained in Chapter IV is not made applicable to the procedure as given in Chapter V except that by virtue of Rule 45(i) certain conditions of mining lease as contained in Rule 27 under Chapter IV are made applicable for mining lease under Chapter V.

124. Rule 22(1) provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf. In Chapter V,

there is no such rule, which requires making an application for lease to the State Government. There is a marked difference between the rules contained in Chapter IV and rules contained in Chapter V, few of which are relevant to notice for the purposes of this case. Rule 27(2) provides that a mining lease may contain such other conditions as the State Government may deem necessary in regard to the matters enumerated therein. Whereas Rule 45(iii) provides that every mining lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be agreed upon between the parties. The above provision gives an indication that in the lease executed by Chapter V, the omission of word “State Government” in Rule 45(iii) is indicative of the fact that conditions, which are to be added has to be agreed upon between the parties. Most important rule to be noticed is Rule 45 in this context, which is to the following effect:-

> “45. Conditions of mining lease : - Every mining lease shall be subject to the following conditions :-
>
> (i) the provisions of clauses (b) to (l) and
>
> (p) to (u) of sub-rule (1) of rule 27 shall apply to such leases with the modification that in clauses (c) and (d) for the words "State Government" the word "lessor" shall be substituted ;
>
> (ia) mining operations shall be undertaken in accordance with the duly approved mining plan ;
>
> (ii) Omitted.;
>
> (iii) the lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be agreed upon between the parties;
>
> (iv) if the lessee makes any default in payment of royalty as required by section 9 or commits a breach of any of the conditions of the lease, the lessor shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the lessor without prejudice to any proceeding that may be taken against the lessee determine the lease;
>
> (v) the lessee may determine the lease at any time by giving not less than one year’s notice in writing to lessor.”

125. It is provided in Rule 45(i) that in clauses

(c) and (d) of Rule 27 for the words “State Government” the word “lessor” shall be substituted, which gives a clear indication that State Government is not a lessor in a lease granted under Chapter V. Rule 27(5) and Rule 45(iv) is also relevant to notice. Rule 27(5) provides as follows:-

> ”27(5) If the lessee makes any default in the payment of royalty as required under section 9 or payment of dead rent as required under section 9A or commits a breach of any of the conditions specified in sub-rules (1), (2) and (3), except the condition referred to in clause (f) of sub-rule (1), the State Government shall give notice to the lessee requiring him to pay the royalty or dead rent or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty or dead rent is not paid or the breach is not remedied within the said period, the State Government may, without prejudice to any other proceedings that may be taken against him, determine the lease and forfeit the whole or part of the security deposit.”

126. Under Rule 27(5), if the lessee makes any default in the payment of the royalty or the payment of dead rent or commits breach of any of the conditions, the State Government shall give notice to the lessee and determine the lease and forfeit the whole or part of the security deposit. Whereas under rule 45(iv), the said power has been vested in the lessor, which also indicates that it is lessor, who will determine the lease and not the State Government. Other provisions of Chapter V also support the above conclusion. Rule 47 provides for submission of copy of licence or lease to the State Government within three months of the grant of such licence or lease. Requirement of submitting the licence or lease copy to the State Government indicate that the State Government is not the authority, who is granting the lease, otherwise there was no requirement of submitting a copy to the State Government, if it was contemplated that State Government shall grant the lease. Rule 63 in Chapter V provides that previous approval of the Central Government to be obtained through State Government, which is to the following effect:-

> “63. Previous approval of the Central Government to be obtained through State Government:- Where in any case previous approval of the Central Government is required under the Act or these rules, the application for such approval shall be made to the Central Government through the State Government .”

127. Our above conclusion is reinforced when we look into the statutory regime regarding grant of mining lease as per the Mineral Concession Rules, which were in force prior to enforcement of Mineral Concession Rules, 1960. Prior to MMDR Act, 1957, earlier Central Legislation which was governing the field was Mines and Minerals (Regulation and Development) Act, 1948, under which rules have been framed by Central Government namely, Mineral Concession Rules, 1949. Rule 14 of Chapter III contemplated application for prospecting license. Chapter IV of the Rules, 1949 contained the heading “grant of Mining Lease in respect of land in which the minerals belong to Government”. The provisions of Rule 27 of Chapter IV provide for application for mining lease and there were several other rules under Chapter IV, which in substance have been retained in Chapter IV of Rules, 1960. Chapter V of Rules, 1949 contained the heading “grant of mineral concessions by private persons.” As noted above, the heading of Chapter V under Rules, 1960 is “procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government.” Rule 47 of Chapter V of Rules, 1949 provide for “conditions in a mining lease”, which are in substance similar as Rule 45 of Rules, 1960. Rule 47(iv) of the Rules, 1949 was akin to present Rule 45(i) of the Rules, 1960. Rule 47(iv) of the Rules, 1949 is as follows:-

"47. Conditions of mining lease : - A mining lease granted by a private person shall be subject to the following condition:-

XXXXXXX

(iv) the provisions of clauses (i), (ii),

(iii), (iv), (v), (vii), (viii), (ix), (x), (xi0 and (xv) of sub-rule (1) of rule 41 shall apply to such lease with the modification that in clauses (ii), (iii), (iv) and (xv) for the words "State Government" the word "lessor" shall be substituted;

XXXXXXXXX"

128. Thus, the Chapter V of Rules, 1949 dealt with the mining lease granted by private persons, i.e., the category where the minerals were not owned by the Government but was owned by private persons. Chapter V of the Rules, 1960 contains substantially similar provisions. Thus, Chapter V of Rules, 1960 has to be treated to be dealing with minerals owned by private owners. The earlier statutory regime, which was enforced as per Rules, 1949 made it amply clear that mineral concessions are to be granted by private persons also, which is in substances retained in Chapter V of Rules, 1960. Thus, mining lease to be granted as per Chapter V of Rules, 1960 is mining lease by the owner of mineral and similar concept has to be borrowed and read in Chapter V as noted above. Absence of any procedure to make an application for mining lease to the State Government in Chapter V of the Rules, 1960 and lessor being the private persons and not the State Government, clearly indicates that State Government is not to grant the lease in respect of land of privately owned/community owned owners.

129. Another reason for not providing any application to State Government for grant of mining lease in respect of minerals, which vests in the private owners and community owners is that; without consent or willingness of private owners/community owners of minerals, no authority is empowered to grant any mining lease with regard to minerals, of which he is the owner, it is the owner of the minerals may be private persons or community owners, who is entitled to grant lease of minerals as per the provisions of Chapter V of Rules, 1960.

130. We, thus, conclude that as per the statutory provisions contained in Rules, 1960 especially Chapter V, a mining lease for minerals, which belongs to a private owner or a community owner, it is not the State Government, which is entitled to receive any application or grant any mining lease, but it is the private owner or community owner, who is entitled to grant a lease for mining minerals owned by them. Issue No.4 is answered accordingly.

Point No.5

131. Shri Shekhar Naphade, learned senior counsel appearing for the State of Meghalaya has submitted that State of Meghalaya has no control over the mining of the coal by owners of the minerals since it is the owners, who have right to carry on mining, which has been traditionally

going on in the State of Meghalaya for last several decades. To find out as to whether State of Meghalaya has any statutory control over the mining operations in State of Meghalaya, which is going on for last several decades, we have to examine the statutory provisions governing the field.

132. We have already held that provisions of MMRD Act, 1957 and Mineral Concession Rules, 1960 are applicable in the Hills Districts of the State of Meghalaya. We, in the present case, are concerned with the mining of coal, which is a major mineral as per the Act, 1957 and Mineral Concession Rules, 1960. Rule 42 of Chapter V of the Rules, 1960 provides for restrictions on the grant of prospecting licence and mining lease, which is to the following effect:-

> "42. Restrictions on the grant of prospecting licence and mining lease:- (1) No prospecting licence or mining lease shall be granted to any person unless he has filed an affidavit stating that he has–
>
> (i) filed up-to-date income tax returns;
>
> (ii) paid the income tax assessed on him, and
>
> (iii) paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961).
>
> (2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act."

133. As per Rule 42(2), except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act. Thus, previous approval of Central Government is mandatory before grant of mining lease of coal. Rule 63 provides that the approval of the Central Government has to be obtained through the State Government. Thus, the State Government has to be aware that any previous approval of the Central Government for mining coal has been obtained or not. Thus, restriction being statutory and without any exception State Government cannot say that it has no role to play with regard to mining of coal. All applications for previous approval of Central Government has to be routed through State Government. There are other rules in Chapter V itself, which provides for control of the State government in the mining of coal. Rule 50 empowers the provision for prohibition of working of mines by the State Government, which is to the following effect:-

> "50. Prohibition of working of mines:- If the State Government has reason to believe that the grant or transfer of a prospecting licence or a mining lease or of any right, title or interest in such licence or lease is in contravention of any of the provisions of this chapter, the State Government may, after giving the parties an opportunity to represent their views and with the approval of the Central Government, direct the parties concerned not to undertake any prospecting or mining operations in the area

to which the licence or lease relates."

134. The above rule empowers the State Government with the approval of the Central Government to direct the parties concerned not to undertake any mining operations, if it has reasons to believe that the grant or transfer of mining lease is in contravention of any of the provisions of Chapter V. Thus, when mining operations of coal are being conducted without prior approval of Central Government, State is not powerless to direct the parties not to undertake any prospective mining operations in the area. The power given under Rule 50 is not only enabling power, but is a statutory obligation on the State to exercise the power in the public interest. Rule 51 requires a mining lease to furnish to the State Government such returns and statements as may be prescribed. Rule 52 provides for penalty, which is to the following effect:-

"52. Penalty:- (1) If the holder of a prospecting licence or a mining lease or his transferee or assignee fails, without sufficient cause, to furnish the documents or information, or returns referred to in rule 46, rule 47, rule 48, or rule 51, or acts in any manner in contravention of rule 49 or rule 50, he shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to five thousand rupees or with both.

(2) If any person grants or transfers or obtains a prospecting licence or mining lease or any right, title or interest therein, in contravention of any of the provisions of this chapter, he shall be punishable with imprisonment which may extend to one year or fine which may extend to five thousand rupees or both."

135. Rule 52 gives the State Government ample power to prosecute and punish mining leases or his transferees or assignees on violation of the rules or contravention of any of the provisions of Chapter V, which is ample power to the State to ensure that the Act is faithfully followed.

136. The State was advised by the Comptroller and Auditor General of India in its report ended 31st March, 2013 in para 4.5.1 that to regulate mining by following Mines and Minerals (Development and Regulation) Act, 1957. Para 7.5.8 of the same report has made the following as recommendation No.1:

"Recommendation No.1: The M&G Department should take necessary measures to regulate mining in the State in accordance with the provisions of the MMDR Act and Rules thereunder."

137. The State is thus well aware of its statutory obligation which is reflected in Mining Policy of 2012 and Draft Guidelines, 2015 but still before this Court their contention that no mining lease is to be obtained for privately owned/community owned land in Hills District of State of Meghalaya is unacceptable and not in a good spirit. Our country being governed by the Constitution of India all the States are to implement Parliamentary Acts in true spirit and in the present case the State having been advised time and again by Comptroller and Auditor General and being well aware of its

statutory obligation as noticed above it comes ill from the State to contend before this Court that there is no requirement of mining lease for winning the minerals. The above stand of the State taken before this Court gives the impression that instead of implementing the Parliamentary enactment and regulatory regime for mineral regulation some vested interests wants to continue the illegal regime of illegal mining to the benefit of the few persons which is unacceptable and condemnable. We, thus, conclude that the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease granted under Mineral Concession Rules, 1960, Chapter V, as discussed above. Point No.6

138. One more point which needs to be considered is as to whether power to allot land for mining purpose is vested in Autonomous District Council? The submission on behalf of one of the Autonomous District Council which is the appellant before us as well as on behalf of State of Meghalaya is that Autonomous District Council being constitutional authority constituted under Schedule VI of the Constitution has legislative and administrative power. Reference to various legislation framed by Autonomous District Council which received the assent of the Governor has also been relied on. Para 3 of Schedule VI enumerates the power of District Council and regional council to make laws which we have extracted above.

139. Certain legislation framed by District Council has also been referred namely the Khasi Hills District (Trading by Non Tribals) Regulation, 1954, the United Khasi Jaintia Hills Autonomous District (Management and Control of Forest) Rules, 1960. The Khasi Hills Autonomous District (Trading by Non Tribals) Rules, 1959, all framed in exercise of power under para 3 of Sixth Schedule. The power to make law entrusted to Autonomous District Council under para 3 of Schedule VI is power to make law referable to List 2 and List 3 of the Seventh Schedule. We have already noticed above that with regard to regulation and development of mineral, the Union has made declaration by Section 2 of 1957 Act and the power of the State Legislature is denuded in that respect. The logical corollary of the above principle is that power of Autonomous District Council shall also be denuded in so far as regulation and development of minerals to the extent which is covered by 1957 Act. We may refer to one Rule 4 of United Khasi Jaintia Hills District (Trading by non Tribals) Rules,1959, which contemplates form of licence and one of the licence referred to is under Rule 4 is licence in Form E. Rule 4 is as follows:

> "4. Form of License.-
>
> ....
>
> (5) License in form 'E' shall be issued for the mining of minerals and the sale or purchase of minerals accruing from the autonomous district and for the import of minerals into the autonomous district for sale therein as specified in Part 'E' of the First Schedule on payment of prescribed license fee subject to the conditions specified in the license..

. . . . "

140. It is relevant to notice that the United Khasi Jaintia Hills District (Trading by Non-Tribal) Rules, 1959 has been repealed insofar as Jaintia Hills Districts are concerned by the Jaintia Hills Autonomous District (Trading by Non-Tribal) Regulation Act, 2011, Section 18. Rules, 1959 is still in force in Khasi Hills Autonomous Districts, since, no other regulations have been placed before us repealing the Rules, 1959. In Regulations, 2011, one aspect needs to be noted in Section 2, which is definition clause. By clause

(viii), “trade” has been defined, which is to the following effect:-

> “(viii) "Trade" means any trade involving buying and selling or business for profit and includes exchange of goods or commodities or business or import, export and transport of goods/commodities or entry of goods into market for sale or trade and business such as construction works or other work rendered by the contractor or his agent and it also includes person and persons engaged by such contractor or agent or any other profession or vocation such as barber, cobbler, tailoring, cattle rearing (which include piggery, goatary, poultry) milk and dairy products, automobiles making or repairing, electrician, furniture makers, pharmacist, physician, transport and any other similar vocation or profession and the term "trade" and "trading" shall be construed accordingly.”

141. The grant of licenses contemplated by Regulations are only with respect to the “trade” as defined in 2(viii). The entire Regulations do not refer to any kind of trade in mining of coal or mining operations. Thus, the Regulations, 2011 have nothing to do with the mining of coal.

142. Constitutional provisions of Schedule VI are also relevant to be noticed. Paragraph 9 of the Schedule VI refers to Licences or leases for the purpose of prospecting for, or extraction of, minerals. Para 9 is as follows: -

> “9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.
>
> -
>
> (1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by [the Government of the State] in respect of any area within an autonomous district as may be agreed upon between [the Government of the State] and the District Court of such district shall be made over to that District Council.
>
> (2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-

paragraph(1) of this paragraph to the District Council and the decision of the Governor shall be final."

143. Para 9(1) confines to the licences or leases of minerals granted by government of the State. Schedule VI which constitute the District Councils and Regional Councils enumerates their powers. Para 9 refers to licences or leases for extraction of minerals granted by the Government of the State. Para 9 only deals with share of the royalties to District Councils as agreed upon between the Government of the State and the District Councils. Further paragraph 12(A)(a) itself contemplates that any law made by District Council or Regional Council which is repugnant to any law of the State shall be void. Thus, the status of law made by District Council or Regional councils has to give way to the law made by the State. There can be no doubt that District Council and Regional Council cannot make any law which may be repugnant to the provisions of the Parliamentary Act.

144. We, thus, are of the view that District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with 1957 Act and Mineral Concession Rules, 1960.

145. This Court in State of Tamil Nadu versus M/s Hind Stone and others, 1981 (2) SCC 205, speaking through Chinnappa Reddy,J., has made following weighty observations: -

> "6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957....."

146. No one can dispute the underlying object in the above observations of this Court. The use of natural resources also plays major role in carrying out development. A fine balance has to be maintained in utilisation of natural resources and its conservation and preservation. One cannot be sacrificed for the interest of other. The concept of Sustainable Development has been evolved and is being pursued. In this context, reference be made to the three-Judge Bench judgment of this Court in Lafarge Umiam Mining (pvt.) Ltd. Versus Union of India & Others, 2011(7) SCC

338. In para 75, following legal position was noticed:

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> "75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is

always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of "sustainable development". It is equally well settled by the decision of this Court in Narmada Bachao Andolan Vs. Union of India that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

147. Now we come back to the order of NGT dated 17.04.2014 by which Tribunal prohibited the Rathole mining/illegal mining throughout the State of Meghalaya. We have noticed above that in OA No.73 of 2014 wherein the above order was passed, sufficient materials were brought on the record including experts report which proved that illegal coal mining in the State of Meghalaya is degrading the environment. The Court also noticed the report of Professor Dr.O.P.Singh which noticed that the Meghalaya Pollution Control Board in the year 1997 has submitted the report about the environmental pollution consequent to illegal mining.

148. Learned Amicus Curiae has invited our attention to report of Comptroller and Auditor General for the year ending 31st March, 2013, where the Comptroller and Auditor General has noticed that due to Acid Mine Drainage several locations of Lukha River were severally polluted. The report also referred to investigation by the Meghalaya State Pollution Control Board in November 2011 and noticed that no effective steps were taken to control AMD. Paragraph 7.5.23.1 of the report is as follows: -

"7.5.23.1 Pollution of rivers due to Acid Mine Drainage from coal mines Based on media reports relating to pollution of Lukha river in Jaintia Hills, the Meghalaya State Pollution Board (MSPCB) conducted (November 2011) an investigation to ascertain the water quality of the Lukha River and its feeding streams in Jaintia Hills District vis-a-vis a similar investigation carried out in February 2007. For this purpose, eight water and sediment samples were collected from the same sampling locations investigated during 2007. The findings are as follows: -

Table 1.6

Station	pH		Iron(mg/I)		Sulphate(mg/I)	
	BIS norms 6.5-8.5		BIS norms:0.3		BIS norms:200.0	
	2007	2011	2007	2011	2007	2011
St.1	3.0	2.7	3.6	6.2	254.0	566.5
St.2	7.5	5.0	0.13	5.4	13.4	305.0
St.3	6.8	7.3	0.17	0.4	62.0	8.69
St.4	4.5	4.3	0.46	4.8	211.8	265.0

St.5	6.3	5.0	0.32	1.2	188.8	200.0
St.6	4.3	6.2	0.372	0.26	192.1	118.2
St.7	7.9	8.2	1.35	0.18	99.0	29.04
St.8	7.8	8.1	0.3	0.28	101.5	45.6

The water quality characteristics in terms of pH, Sulphate and Iron concentrations with respect to Stations 1,2,4 and 5 indicated that there is significant deterioration of water quality in comparison to that of the year 2007 the major cause of which was the AMD from coal mining in these areas.

The investigation made by the MSPCB further revealed that the river water on the entire stretch of the sampling locations was not suitable for drinking purpose……"

149. Tribunal being satisfied from the materials on record has issued the order dated 17.04.2014 which cannot be faulted in the facts and materials which are on record in the present case. One more fact in the above context need to be noticed i.e. after the order dated 17.04.2014, several applicants including the appellants of Civil Appeal No.5272 of 2016 filed application for vacating the ban which was not acceded to by the Tribunal. Subsequently the NGT permitted transportation of coal till 15.05.2016 and directed that after 15.05.2016, all coal within the State of Meghalaya shall vest in the State.

150. The tribunal after considering all pleas and materials including reports submitted by the committees affirmed the order dated 17.04.2014 and refused to withdraw the ban. We do not find any error in the order of NGT reaffirming its ban order in the facts of the present case. But the question which has been raised by the appellant before this Court is that whether the complete ban as imposed by the NGT deserves to be vacated or modified in the interest of the State and tribals. The revenue earned by the State from coal mining plays substantial part in the economy of the State. It is also amply demonstrated from the record that tribals are the owners of the land who carry on mining of coal in their land by which they earn their substantial livelihood.

151. Though as discussed above the manner in which the mining is being carried out by the tribals cannot be approved which is clearly in violation of statutory regime under 1957 Act and 1960 Rules but in event the mining is carried out by tribals or their assignees as per the provisions of 1957 Act and 1960 Rules, there can be no objections in carrying such mining under the regulation and control of State of Meghalaya. We thus clarify that in event mining operations are undertaken by the tribals or other owners of hills districts of Meghalaya in accordance with mining lease obtained from the State of Meghalaya as per 1957 Act and Mineral Concessions Rule, 1960, the ban order dated 17.04.2014 of the tribunal shall not come in its way of

carrying mining operations. The ban order is for the illegal coal mining which was rampant in the State of Meghalaya and the ban order cannot be extended to valid and legal mining as per 1957 Act and 1960 Rules.

152. The appellants contend that the NGT has no jurisdiction to constitute any committee. The NGT vide its different orders has constituted different committees for submitting reports for different purposes. The Constitution of which committees are sought to be challenged on the ground that the NGT has no jurisdiction to constitute a committee. Similarly, order of the Tribunal directing for constituting a fund, namely, Meghalaya Environment Protection and Restoration Fund has been challenged on the ground that the Tribunal has no jurisdiction to constitute any fund.

153. What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? In so far as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15, and 16 of the Act. Section 19 of the Act deals with procedure and powers of the of the Tribunal. Section 19 which is relevant for the present case is as follows:

"19. Procedure and powers of Tribunal. – (1). The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2). Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3). The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4). The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decision;

(g) dismissing an application for default or deciding it ex parte;

(h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;

(j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;

(k) any other matter which may be prescribed.

5. All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."

154. Sub-section (1) of Section 19 provides that Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What sub-section (1) meant to convey is that Tribunal is not shackled with the procedure laid down by the CPC for conducting its proceedings. Sub-section (2) of Section 19 empowers the Tribunal, powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal in so far as its procedure is concerned. Section 19(4) vests some powers as are vested in civil court, while trying a suit, in respect of matters enumerated therein. The use of expression "shall not be bound by the procedure laid down by the CPC" is not akin to saying that procedure as laid down by the CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that Tribunal cannot follow any procedure given in the CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 01.02.1977 is Order XXVI, which is relevant for present inquiry. Order XXVI Rule 10A provides as follows:

"Order XXVI Rule 10A.Commission for scientific investigations"- (1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9."

155. Rule 10A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10A which are to be exercised by the Court can very well be used by the NGT to obtain reports by experts. The NGT as per the statutory scheme of the NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirement in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in the NGT to appoint a committee to submit a report. We may further say that while asking expert to give a report the NGT is not confined to the four corners of Rule 10A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10A s per Section 19(1) as noticed above.

156. There is one more provision which throws considerable light on the above. Under Section 35 of the NGT Act, 2010 Central Government is empowered to make rule for carrying out the provisions of the Act. Rules have been framed in exercise of powers under Section 35, namely, National Green Tribunal (Practice and Procedure) Rules, 2011. The said Rules have been framed in exercise of powers under Section 4(4) as well as Section 35. The Rules, 2011 are Rules also for practices and procedure of the Tribunal. Rule 24 which is relevant for the present case is as follows:

> "Section 24. Order and directions in certain cases.- The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."

157. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives vide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to Tribunal to pass orders and issue directions to secure ends of justice. Use of words 'may', 'such orders', 'gives such directions', 'as may be necessary or expedient', 'to give effect to its orders', 'order to prevent abuse of process', are words which enable the Tribunal to pass orders and the above words confer vide discretion.

158. Professor Justice G.P. Singh, in Principles of Statutory Interpretation, 14th Edition while dealing with enabling word says:

> "Ordinarily, the words 'May' and 'It shall be lawful' are not words of compulsion. They are enabling words and they only confer capacity, power or authority and imply discretion. "They are both used in a statute to indicate that something may be done which prior to it could not be done". The use of words 'Shall have power" also connotes the same idea."

159. The enabling powers give to the Tribunal under Rule 24 is for purpose and object to decide the subjects which are to be examined, decided and an appropriate relief is to be granted by the Tribunal. Further, subjects contain vide range of subjects which require technical and scientific inputs. The Tribunal can pass such orders as it may think fit necessary or expedient to secure ends of justice.

160. The object for which said power is given is not far to seek. To fulfil objective of the NGT Act, 2010. NGT has to exercise a wide range of jurisdiction and has to possess vide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to judgment of this Court in L. Hirday Narain vs. Income Tax Officer, Bareilly, 1970(2) SCC 355, where this Court was examining provision empowering authority to do something. This Court laid down in paragraph 14:

> "14. The High Court observed that under Section 35 of the Indian Income Tax. Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling the Courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right — public or private — of a citizen."

161. We, thus, are of the considered opinion that there is no lack of jurisdiction in the NGT to direct for appointment of committee or to obtain a report from a committee in given facts of the case.

162. Now coming to the challenge to the Fund which has been constituted by the Tribunal, namely, "Meghalaya Environment Protection and Restoration Fund", it is useful to notice the observation of the Tribunal in its order dated March 25, 2015 by which the said Fund was created. The reasons for constitution of Fund are self-explanatory which are to the following effect:

> "It is also undisputable that there has been huge environmental degradation and pollution of the waterbody in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some 16 extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of `Polluter Pay Principle'. We direct that the State Government shall in

addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned Counsel appearing for the parties and keeping in view the notifications of the Central Government dated 10.05.2012 and that of the State Government dated 22.06.2012, we may notice that in the report of Comptroller and Auditor General of India for the period ending 31st March, 2013 under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken Rs. 4850/- per metric tonne. Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as 'Meghalaya Environment Protection and Restoration Fund' to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.

This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto"

163. As noticed above the NGT could have passed any order or direction to secure ends of justice which power especially conferred by Rule 24 as noticed above, direction to constitute Fund is thus also saved under such power.

Point No.11

164. In respect of constitution of committee by the Tribunal there are two other limbs of submission; that, (1) NGT by constituting committees has delegated essential judicial power to the committee; (2) the Constitution of committees encroaches the constitutional scheme of administration of Tribal areas under Article 244(2) read with Sixth Schedule of the Constitution.

165. The Tribunal vide its various directions has asked for reports from State officials and the committees. The various instances where the NGT directed for report or investigation and submission of report by committees were with the object of ensuring the implementation of the orders passed by it and to decide the environmental issues raised before it. In no manner constitution of committee can be said to be delegation of essential judicial powers of the NGT to the committee.

166. Now, we come to the Katakey committee which was constituted by the Tribunal on 31.08.2018. In paragraphs 14 and 15, the Tribunal while directing for constitution of committee headed by Justice B.P. Katakey directed:

"14. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katoki, Former Judge of the Guwahati 8 Item Nos. 06 to 10 August 31, 2018 R High Court with representatives from Central

Pollution Control Board and Indian School of Mines, Dhanbad.

15. The Committee will take the following steps:

• Take stock of all actions taken so far in this regard.

• Prepare time bound action plan to deal with the issue and ensure its implementation."

167. The Constitution of the committee and its functions entrusted were with the object to implement the orders passed by the Tribunal. The Tribunal has already directed for preparing a scheme for the restoration of the environment and ecology. The environment and ecology restoration plan was submitted before the Tribunal along with the affidavit dated 03.10.2017 as has been noticed in the order dated 02.01.2018 of the NGT. In the constitution of Katakey committee, thus, it cannot be said that essential judicial functions were delegated to the committee by the Tribunal. For the restoration of environment NGT vide its order dated 31.08.2018 has directed the committee to submit its action plan and reports by e- mail. The Tribunal, thus, had kept complete control on all steps which were required to be taken by the committee and issued directions from time to time. We, thus, do not accept the submission of the appellant that the essential judicial powers of the NGT had been delegated to the committee. Looking to the enormous work of restoration of environment which has to be supervised on the spot the committee was constituted. We, however, observe that the State is always at liberty to obtain particular direction if aggrieved by any act of the committee. The matter being pending before the Tribunal of acts of the committee are under direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.

168. Now, we come to the second limb, that the constitution of the committee encroaches the constitutional scheme of the Tribal areas. We revert back to the Sixth Schedule of the Constitution. Para 3 of the Sixth Schedule enumerates the powers of the District Council and Regional Council to make laws. The powers of the District and Regional Councils are enumerated under paragraph 3. In the directions of the Tribunal to constitute committee for transportation of extracted minerals or for preparing time bound action to deal with the restoration of environment and to ensure its implementation, there is no interference in the powers of the District or Regional Councils. Action plan for restoration of environment is consequence of Tribunal finding out that an unregulated coal mining has damaged environment and has caused the pollution including water pollution. It is not case of the appellant that District and Regional Councils have framed any law for restoration of environment which is being breached by the committee or its acts. The District and Regional Councils are free to exercise all their powers and the committee constituted by the Tribunal is only concerned with the Environmental degradation and illegal coal mining. The committees' report or direction of the Tribunal in no manner encroaches upon the administration of Tribal areas by the District and Regional Councils.

Point No.12

169. The NGT vide its order dated 04.01.2019 directed the State of Meghalaya to deposit an amount of Rs.100 Crores with the Central Pollution Control Board, which was to be spent for restoration of environment. The State of Meghalaya aggrieved by above direction has filed Civil Appeal No.2968 of 2019. We have already noticed the submission of Shri Amrendra Sharan, Senior Advocate.

170. Shri Colin Gonsalves, learned Amicus Curiae has refuted the submissions made by the learned counsel for the appellant. It is submitted that despite the specific ban on coal mining by order dated 17.04.2014 in the entire State, illegal coal mining had been going on, which was proved from the reports and pictures referred to in the report. The State is responsible and constitutionally obligated to provide clean environment to every citizen. They having entirely failed to stop the illegal mining, which is cause of degradation of pollution including pollution of river streams, the Tribunal has rightly directed the State of Meghalaya to deposit Rs.100 Crores. Shri Gonsalves submits that in spite of State Pollution Control Board as well as Comptroller Auditor General having invited the attention of the State of Meghalaya towards serious pollution especially in the river water, no steps were taken by the State of Meghalaya. It is further submitted that restoration of environment requires carrying out various projects and unless the State provides for necessary fund and finances, the restoration of damaged environment cannot be undertaken. It is further submitted that State had collected huge fund Rs.4,33,07,26,731/-, which amount had not been spent by the State, although, it was required to take steps for restoration of environment.

171. The NGT vide its order dated 31.08.2018 constituted a committee headed by Justice B.P. Katakey, Former Judge of Gauhati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad. By subsequent order dated 19.09.2018 issued by the Tribunal, additional Chief Secretary to Government of Meghalaya was made the Member Secretary/Coordinator for proper functioning of the committee. The committee visited different sites, held various meetings, various presentations were also made before the committee by Meghalaya State Pollution Control Board and other bodies namely North Eastern Centre for Technology Application and Reach, North Eastern Space Application Centre. In Para 12(g), following has been stated by the committee:-

> "12(g) Presentation was also made by the Meghalaya State Pollution Control Board on the coal mine activities and its impact on the land used, water quality, air quality, ecology as well as socio-economic impact. The Committee, on the basis of the said presentation, found the following:-
>
> (i) Continuation of coal mine activities for a long time in an unplanned and unscientific manner as well as without any pollution control measures.
>
> (ii) Such mining activities are generating huge ecological disturbances and negative environmental impacts.
>
> (iii) Water in rivers and streams in the mining areas have become highly acidic in nature with pH value of 2.7 since 1991-92 due to presence of high percentage of sulphur in coal, which reacts after mixing with oxygen in air and water giving rise to

AMD problem.

No difference of pH level of water in rivers, streams and mine drains have been noticed during monsoon.

(iv) pH level of water in springs, taps water and hand pumps also found to be less than permissible limit of drinking water standards.

(v) Absence of biological life in the water bodies.

(vi) Ambient air quality of the coal mining areas and coal storage areas exceeds the National Ambient Air Quality Standards on few occasions.

(vii) Requirement of urgent steps to be taken to generate social awareness about the adverse environmental impacts and the health hazards associated with unplanned and unscientific coal mining activities.

172. Action plans for restoration of environment were also discussed and finalised.

173. On detailed discussion on Issue No.(A), committee with details including photographs and maps observed following:-

> "(vi) From the aforesaid materials available before the Committee, it is, therefore, evident that the coal mining activities, which includes the extraction of coal and transportation, is going on in the State of Meghalaya, at least in East Jaintia Hills District, where such mining activities are most, despite the ban imposed by the Hon'ble NGT vide its order dated 17.04.2014. Very sincere and honest efforts are required on the part of the State Government to stop the mining activities, which are going on. Such mining activities are going on without adopting any safety measures for the workers and without caring for adverse environmental affect. A sincere desire to stop such illegal mining activities is also necessary on the part of the State and Central Government agencies for implementation and monitoring of health, safety and environmental regulations.
>
> (vii) The result of ongoing un-abetted illegal mining, despite the ban imposed by the NGT, is the very tragic incident occurred very recently on 13.12.2018 in a coal mine in Ksan Village near Lytein River under Saipung Police Station in East Jaintia Hills District, where 15(fifteen) coal mine workers are reported trapped, while they were working in the mine. Unfortunately, none of them so far could be rescued. For the said incident, Saipung Police Station Case No.15(12)/2018 under Section 188/304A/34 IPC read with Section 3(2)(d) of PDPP Act and Section 21(1) of MM(R&D) Act against the coal mine owner has been registered. A Magisterial enquiry to find out the facts and circumstances leading to the said incident, has also been directed."

174. The fact that on 13.12.2018, 15 coal mine workers were trapped in an ongoing coal mining operation, who all have been reported to be dead itself proves beyond any shade of doubt that order dated 17.04.2014 banning mining in the entire State of Meghalaya was neither been enforced nor serious endeavours were taken by the State or its authorities to save the environmental pollution. With regard to restoration of the environment and restoration of the victims, action plans were formulated by the committee.

175. The first submission raised by Shri Amrendra Sharan challenging the order is violation of principles of natural justice. The report dated 31.12.2018 of the committee itself in issue No. f(iv) noticed: -

> "Website has been opened and all the proceedings of the Committee are uploaded in the said website."

176. The report being placed on website on 31.12.2018 itself, there is no question of serving copy of the report of the committee to the Stakeholders. It is further relevant to notice that Additional Chief Secretary of the Government of Meghalaya was himself the Member Secretary and Coordinator of the committee under the orders of the Tribunal dated 19.09.2018. All proceedings of the committee, its meetings and minutes, were with the knowledge and participation of the coordinator/ Additional Chief Secretary of the State of Meghalaya.

177. A perusal of the order dated 04.01.2019, which is impugned in the appeal indicates that although learned counsel for the State of Meghalaya was present and was heard but no kind of objection was raised regarding acceptability of the report. The report obtained by the NGT through the committee was to take effective steps towards protection of environmental pollution and for restoration of damaged environment. Pollution of the various rivers and streams and steps for treating the acidic water was urgently required. Several presentations before the committee were also made and different steps regarding restoration of environment were to be taken as noticed and indicated in the report of the committee. As noticed above, the NGT vide its order dated 25.03.2015 constituted a fund namely 'Meghalaya Environment Protection and Restoration Fund' to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya. It is reiterated in the report of the committee that an amount of Rs.433 Crores is already lying in the said fund, which has not been spent.

178. Learned counsel for the appellant has laid much emphasis that there had been no calculation of the extent of damage nor Tribunal could have arrived at on the amount of damages to the extent of Rs.100 Crores, which was directed to be deposited by the State of Meghalaya with the Central Pollution Control Board.

179. We are of the view that the amount, which has been directed by NGT to be deposited by State of Meghalaya is neither a penalty nor a fine imposed on the State. The amount has been directed to be deposited for carrying out steps regarding restoration of environment. We further agree with the submission of the learned counsel for the appellant that the said amount cannot be said to be amount of damages to be paid by the State. We further find force in the submission of the learned

counsel for the appellant that State of Meghalaya has very limited source of revenue and putting an extra burden on the State of Meghalaya to make payment of Rs.100 Crores from its own financial resources and budgetary amount may cause great hardship to the State of Meghalaya. Ends of justice be served in modifying the direction of NGT dated 04.01.2019 to the extent that State is permitted to transfer an amount of Rs.100 Crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal (NGT) shall utilise the aforesaid amount of Rs.100 Crores only for restoration of the environment. The appeal is thus, partly allowed to the above extent.

Point No.13

180. Vide order dated 31.03.2016, the NGT had permitted transportation of coal till 15.5.2016 under terms and conditions as enumerated therein. The order dated 31.3.2016 further contemplated that no coal in any form whatsoever shall be permitted to be transported after 15.05.2016 on which date the entire remaining coal shall vest in the State Government and shall be disposed of in accordance with law.

181. The main grievance of the appellant is that NGT could not have directed for vesting of coal in the State. The submission is that members of the appellant- association have proprietary rights in the coal with which they could not be divested by the Tribunal. We have already held that private owners of the land are also owners of the minerals and the minerals belong to the owners/Tribals. We have also found that coal mining was illegally going on unregulated by any statutory law in the Hills District of State of Meghalaya without there being any mining lease. The entire mining was, thus, is clear in contravention of Section 4(1) of Act, 1957 which attracted penalties under Section 21. Section 21 of the Act is as follows:

> "21. Penalties.—(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.
>
> (2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.
>
> (3) Where any person trespasses into any land in contravention of the provisions of sub-

section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the

trespasser from the land. (4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf. (4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable."

182. The mining of coal in contravention of Section 4(1) invites penalties as enumerated in Section 21. The present is not a case where any kind of penalty has been imposed on the miners except that the amount of royalty as payable on mining of coal is being collected by the State as penalty. It is true that the State Government has power under Section 21(5) to recover from such person the minerals so raised, or, where such material has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, but it is for the State Government to exercise its power under Section 21(5) by way of penalty. The NGT has not given any reason as to how coal shall automatically vest in the State. The right of recovery of mineral as contemplated under Section 21(5) does not amount to say that proprietary right of owner of the minerals is lost rather State under Section 21(5) exercises its power to recover the mineral which has been raised without any lawful authority. We, thus, are of the view that coal extracted and lying in open after 15.05.2016 was not automatically vested in the State and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.

Point No.14

183. Several I.A.s have been filed by different applicants seeking direction to transport already extracted coal lying at different places in hills districts of State of Meghalaya. Different applicants may claim to different quantities of coal situate at different places. By our order dated 10.05.2019, we have already permitted transportation of balance coal to the extent of 75050 MTs for which challans were already issued after the order of this Court dated 04.12.2018. The above quantity of said 75050 MTs. was balance quantity out of 176655 Mts., for transportation of which order was passed by this Court on 04.12.2018. In addition to the aforesaid quantity, claim with regard to different quantities by different applicants has been laid. It is not necessary for the purpose of the present case to notice different quantities and claims of different persons for transportation. After the order of the NGT dated 31.08.2018, the State of Meghalaya has constituted committees to assist

the Commissioner and Secretary, Mining and Geology to prepare a separate inventory with regard to coal not so far recorded in the inventory available with the NGT. In pursuance of said direction, as contained in paragraph No.13 of the order, steps were taken and various committees had made certain assessments with regard to different quantities of coal lying in four Hills Districts of State of Meghalaya. Katakey committee Report dated 31.12.2018 has in chart noticed the different quantities as was informed by letter dated 13.11.2018 to Commissioner and Secretary to the Government of Meghalaya. While dealing with issue No.3, in paragraph Nos.(iii), (iv) and (v), following has been stated:-

> "(iii) The Commissioner & Secretary to the Government of Meghalaya, Mining & Geology Department, in the ATR submitted on 13.11.2018 has stated about the availability of 176655 MTs of already inventorised coal for transportation, which has also been reflected in the order dated 04.12.2018 passed by the Hon'ble Supreme Court. The Commissioner & Secretary, in the said ATR, has also stated that 23,25,663.54 MTs of coal, other than those inventorized coal, remained un-inventorized and available for transportation, district-wise break up of which is as follows:-
>
> "REPORT ON EXTRACTED COAL REFLECTED AS UN-ASSESSED OR NIL IN THE INVENTORY APPROVED BY NGT Sl. Name of Declared Assessed No. District Quantity in Quantity in MT MT
>
> 1. East Jaintia 15,46,687.00 13,22,379.00 Hills District
>
> 2. West Khasi 7,29,757.00 7,78,297.99 Hills District
>
> 3. South-West 1,25,600.63 2,14,145.55 Khasi Hills District
>
> 4. South Garo 12,834.00 10,841.00 Hills District Total 24,14,878.63 23,25,663.54"
>
> (iv) From the aforesaid District wise break up of extracted coal, which was un-

inventorised, it appears that the quantity of such coal was highest in East Jaintia Hills District, where the Deputy Commissioner, as noticed above, has admitted ongoing coal mining activities despite the ban imposed by the Hon'ble NGT vide order dated 17.04.2014. The stand of the Government that the quantity of coal, as reflected in the aforesaid chart were mined prior to the said ban, appears to be not acceptable, in view of the aforesaid admission of the Deputy Commissioner and also what the Committee has noticed during its field visit on 12.11.2018. It seems that there is an attempt to show the freshly mined coal, i.e. the coal mined after the ban imposed by the Hon'ble NGT, as the coal left out from the assessment and remained un-inventorised though mined prior to the said ban. The Committee also apprehends that such freshly mined coal may be transported taking advantage of the order dated 04.12.2018 passed by the Hon'ble Supreme Court.

(v) The Hon'ble NGT vide its order dated 31.08.2018 given the responsibility of going through the said issue to the Secretary of Mining, State of Meghalaya in the first instance and to be cross-checked by the Joint Team of representatives of the Central Pollution Control Board and India School of Mines, Dhanbad. As reported, no such cross- check has so far been made."

184. The State of Meghalaya has filed additional affidavit dated 06.04.2019 of Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department, where details of assessments made by committees appointed by the State of Meghalaya has been brought on the record. In the affidavit, it has also been stated that a technical committee was also constituted to perform the verification of the assessments made by the Deputy Commissioners of respective districts. As per the affidavit, assessment of extracted coal stocks in above four districts is 32,56,715 MTs whereas in the report submitted by Katakey committee, the said figure in the above four districts is 23,25,663.54 MTs. Technical committee submitted their report, which have been brought on the record alongwith the Additional Affidavit verifying the assessed quantities. In the affidavit of the Commissioner and Secretary, it has also been sated that the technical committees have submitted that it is difficult to define with certainty that which coal was mined prior to ban in 2014 and mined after 2014. From the above it is clear that the State Government itself has come with a case that huge quantity of coal in the four hills districts, which has been extracted is lying waiting for orders of transportation. Learned Amicus Curiae and Shri Nidhesh Gupta, learned senior counsel have refuted the claim made by the applicants as well as the State of Meghalaya. It is submitted by learned Amicus Curiae that in fact State is not making any effort to stop the illegal mining, in spite of the ban of 17.04.2014, illegal mining of coal has been permitted and now such illegal mined coal has also been assessed and State also supports the claim of transportation of the applicants on the guise that coal lying in open is an environmental hazard.

185. Shri Nidhesh Gupta, learned senior counsel appearing for private respondents in C.A. No.5272 of 2016 has submitted that the State auctioned coal on a meagre price, whereas market rate of the coal is approximately Rs.10,000/- per MT. In the present case, we have noticed that illegal coal mining is going on in spite of ban by NGT by its order dated 17.04.2014. The Katakey committee report has also opined that all the extracted coal lying in different districts is a coal, which has been illegally mined after the imposition of ban by the order dated 17.04.2014. All coals being illegally mined, the State is fully entitled to impose a penalty, i.e., to realise the royalty and the amount of MEPR Fund. The coal being major mineral and useful for different industries and projects, appropriate disposal of extracted coal is also of a paramount importance.

186. We accept the suggestion of learned Amicus Curiae that entire extracted coal lying at various places be directed to be taken over by Coal India Ltd, a Government of India unit, who may dispose of the same as per its normal method of disposal and proceeds be distributed as per directions issued by this Court hereinafter. The NGT has already directed that for all extracted coal lying at different places, it is the State, which is the receiver-cum-custodian of the coal. The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that the entire coal are handed over to the Coal India Ltd., as per the mode and manner to be formulated by Katakey Committee, in consultation with officers of the Coal India Ltd. and State of Meghalaya.

187. The Katakey committee and its various members and participants have done a commendable job in studying and examining various aspects of environment in the State of Meghalaya and several valuable suggestions have been given by the committee, which are also being implemented to mitigate the suffering of the citizens consequent to the illegal coal mined.

188. We direct that Commissioner and Secretary of the State in the Department of Mining and Geology alongwith the officers of Coal India Ltd. may deliberate with the Katakey committee to finalise a comprehensive plan for transportation and handing over of the coal to Coal India Ltd. for disposal/auction as per rules of Coal India Ltd. Disposal/auction by Coal India Ltd. shall be beneficial to both the owners of the mines as well as to the State of Meghalaya. Receiving fair value of the coal should be a concern of both the owners and State. It is for the Coal India Ltd. to decide as to venue, where they shall receive the coal, i.e., either at any of its depot or any other place in State of Meghalaya and it is for the Coal India Ltd. to finalise the process of disposal and auction of the coal. It goes without saying that it shall be the duty of the State of Meghalaya and its officers especially Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. Coal India Ltd. shall also take steps to ensure weighment of the coal when it is received by it and since all consequent steps regarding disposal, price grade of the coal shall be determined as per the weight of the coal received by the Coal India Ltd. from different places. The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MERP Fund as well as taxes out of the price of the coal. After deduction of cost of transportation, the payment of royalty and payment to MERP fund and taxes plus 10% of value of the coal to be given to Coal India Ltd. for the above exercise, balance amount shall be disbursed to the owner of the coal towards its price, which disbursement shall be the responsibility of the State. The Coal India Ltd. after taking its expenses for transportation with 10% of price of the coal shall remit the entire amount to the State and it is for the State after deducting the royalty and payment to the MERP Fund and taxes to pay back the balance of the amount to the owner.

189. Another aspect of the matter is also to be noticed. The coal, which has been seized by the State in illegal transportation or illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The said seized coal shall be dealt by the State in accordance with Section 21 of the Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority and the said cases has to be separately dealt with in accordance with law.

190. We, thus, are of the view that all I.A.s filed by different applicants seeking order of transportation of the different quantities stand disposed of in view of the directions as given above. Let the Katakey committee in consultation with State of Meghalaya and officers of Coal India Ltd. finalise appropriate mode and manner to affect the transport and disposal of the coal in the above manner.

Conclusions: -

191. From the foregoing discussions we arrived at following conclusions:-

1) The application O.A.No.73 of 2014 has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14 of the National Green Tribunal Act, 2010. Both the component as appearing in sub-section 1 of Section 14 that is (i) substantial question relating to environment and (ii) such question arises out of the implementation of the enactments specified in Schedule I, were present.

2) The allegations of the applicant of O.A.No.73 of 2014 of environmental degradation by illegal and unregulated coal mining were fully proved from materials on the record including the report of the experts, report of the Meghalaya State Pollution Control Board, the report of Katakey committee, which all proved environmental degradation of water, air and surface.

3) The stand taken on behalf of the State of Meghalaya before this Court that the Tribunal has no jurisdiction cannot be approved. The State Government is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter, the State has to act as facilitator and not as obstructionist.

4) According to the land tenure system as applicable in the Hills Districts of State of Meghalaya, the most of the lands are either privately or community owned in which State does not claim any right. The private owners of the land as well as community owners have both the surface right as well as sub-soil rights.

5) Para 12A sub-clause (b) of Sixth Schedule of the Constitution empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Section 12A(b). There is nothing in Sixth Schedule of the Constitution which may indicate about the inapplicability of Act, 1957 with regard to the Hills Districts of State of Meghalaya.

6) There is nothing in Section 4(1) of 1957 Act to indicate that restriction contained in Section 4(1) does not apply with regard to privately owned/community owned land in Hills Districts of Meghalaya. Further, word ‘any area’ under Section 4(1) also has significance which does not have any exception. Further phrase “except under and in accordance with terms and condition with a mining lease granted under the Act” are also significant which make the intent and purpose of prohibition clear and loud.

7) The statutory scheme delineated by Section 13(2)(f) and the Minerals (Concession) Rules, 1960 clearly contemplate grant of mining lease, with regard to both the

categories of land, i.e., land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government.

8) The Mines Act, 1952 contains various provisions regarding inspection of mining operation and management of mines. The provisions of The Mines Act, 1952 are mandatory to be followed before working a mine. The regulations namely Coal Mines Regulations, 2017 also contains several regulatory provisions which need to be followed while working a mine by a mining lease holder. The enforcement of Mines Act, 1952 and the Regulations, 2017 have to be ensured by the State in the public interest.

9) As per statutory regime brought in force by notification dated 15.01.2016 issued under Environment (Protection) Act, 1986, environmental clearance is required for a project of coal for mining of any extent of area. While implementing statutory regime for carrying mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but Mines Act, 1952 as well as Environment (Protection)Act, 1986.

10) In Hill District of State of Meghalaya for carrying coal mining operations in privately owned/community owned land it is not the State Government which shall grant the mining lease under Chapter V of Rules, 1960, but it is the private owner/community owner of the land, who is also the owner of the mineral, who shall grant lease for mining of coal as per provisions of Chapter V of Rules, 1960 after obtaining previous approval of the Central Government through the State Government.

11) The State of Meghalaya has ample power and jurisdiction under the Act, 1957 and Rules, 1960 to check, control and prohibit coal mining operations in Hill Districts of State of Meghalaya.

12) The Union having made declaration by Section 2 of 1957 Act taking under its control regulation and development of mineral, the power of Autonomous District Council to legislate on the subject shall also be denuded as that of the State Legislature.

13) In event the mining is carried out by a mining lease holder as per the provisions of Act, 1957 and Rules, 1960 with an approved mining plan there can be no objections in carrying of such mining operations under the regulation and control of the State of Meghalaya. We clarify that in event mining operations are undertaken in privately owned/community owned land in Hills Districts of Meghalaya in accordance with mining lease with approved mining plan as per Act, 1957 and Mineral Concessions Rule, 1960, the ban order dated 17.04.2014 of the tribunal of the NGT shall not come in way of carrying mining operations.

14) Under Order 26 Rule 10A of the Civil Procedure Code, a Court can appoint commission for scientific investigation. The power which can be exercised by a Court under Order 26 Rule 10A of CPC can very well be exercised by the NGT also. The NGT while asking expert to give a report is not confined to the four corners of Rule 10A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10A by virtue of 19(1) of the NGT Act.

15) Rule 24 of National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a Committee.

16) The direction to constitute a fund namely "Meghalaya Environment Protection and Restoration Fund", is also saved under the above power.

17) NGT by directing for constitution of committee has not delegated essential judicial functions.

The Tribunal had kept complete control on all steps which were required to be taken by the committees and has issued directions from time to time. The State is always at liberty to obtain appropriate directions if aggrieved by any act of the committee. The matter being pending before the Tribunal all acts of the committee are under direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.

18) NGT by issuing direction to constitute the committee for transportation of the extracting mineral, for preparing time bound action plan to deal with the restoration of environment and to ensure its implementation does not in any manner interfere with the powers of the District or Regional Councils. The District and Regional Councils are free to exercise all their powers and committee constituted by the Tribunal is only concerned with the Environmental degradation and illegal coal mining. The committees report or direction of the Tribunal in no manner encroaches upon the administration of Tribal areas by the District and Regional Councils.

19) The amount which has been directed by NGT to be deposited by State of Meghalaya is neither a penalty nor a fine imposed on the State of Meghalaya. We accept the submissions of the learned counsel for the appellant that State of Meghalaya has very limited source of finances and putting an extra burden on the State of Meghalaya to make payment of Rs. 100 Crores from its own financial resources may cause great hardship to the State of Meghalaya. Ends of justice be served in modifying the direction of NGT dated 04.01.2019 to the extent that State is permitted to transfer an amount of Rs. 100 Crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal shall utilize the aforesaid amount of Rs.100 Crores only for restoration of the environment in the State of Meghalaya.

20) The coal extracted and lying in open after 15.05.2016 does not automatically vest in the State of Meghalaya and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.

21) The suggestion of learned Amicus Curiae that entire extracted coal lying at various places in hills districts of Meghalaya be directed to be taken over by Coal India Ltd. is accepted. The Coal India Ltd. may dispose of the same as per its normal method of disposal and proceeds be dealt with as per directions issued.

22) The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that entire coal is handed over to the Coal India Ltd., as per the mode and manner to be formulated by Katakey Committee in consultation with officers of the Coal India Ltd. and the State of Meghalaya.

23) It is for Coal India Ltd. to decide as to venue, where they shall receive the coal, i.e., either at any of its depot or any other place in the State of Meghalaya and it is for the Coal India Ltd. to finalise the process of disposal and auction of the coal. It shall be the duty of the State of Meghalaya and its officers especially Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. All concerned shall take steps to ensure weighment of the coal when it is received by Coal India Ltd.

24) The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MERP Fund as well as taxes out of the price of the coal. After deducting its expenses for transportation with 10% of price of the coal, the Coal India Ltd. shall remit the balance amount to the State and it is for the State after deducting the royalty and payment to the MERP Fund and taxes to pay back balance the amount to the owner.

25) The coal which has been seized by the State in illegal transportation and illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The seized coal shall be dealt by the State in accordance with Section 21 of the Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority.

192. In view of the foregoing discussions and conclusions, all these appeals are decided in the following manner: -

> 1) Civil Appeal No. 10720 of 2018, Civil Appeal No. 10611 of 2018, Civil Appeal No. 10907 of 2018 and Civil Appeal No.....of 2019 (arising out of Civil Appeal Diary No. 3067 of 2018) are dismissed subject to declaration and clarification of law as made above.

2) Civil Appeal No. 5272 of 2016 is allowed setting aside the order of NGT dated 31.03.2016 to the extent it declared that all extracted coal after 15.05.2016 shall vest in the State of Meghalaya.

3) Civil Appeal No. 2968 of 2019 is partly allowed permitting the State of Meghalaya to transfer the amount of Rs.100 Crores to Central Pollution Control Board from the Meghalaya Environment Protection and Restoration Fund which amount shall be used by Central Pollution Control Board only for restoration of Environment.

4) All I.As. seeking direction for transportation of coal are disposed of directing: -

i) All extracted coal as assessed by State of Meghalaya lying in different districts of State of Meghalaya which as per order of NGT is in custody of State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.

ii) The Katakey Committee after discussion with Coal India Ltd. and State of Meghalaya shall formulate a mechanism for transport, weighment of all assessed coal.

iii) The Coal India Ltd. shall auction the coal so received by it as per its best judgment and remit the proceed to State to the extent as directed above.

iv) All coal seized by the State for which cases have already been registered shall be dealt by the State in accordance with Section 21 of 1957 Act.

193. Before we close, we record our appreciation for valuable assistance rendered by learned counsel for the parties which enable us to decide several important issues in these appeals. We also record our appreciation for assistance rendered by learned Amicus Curiae Shri Colin Gonsalves, Senior Advocate.

.....J. (ASHOK BHUSHAN) .....J. (K.M. JOSEPH) New Delhi, July 03,2019