

(1983) 11 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 8889 and 8897 of 1983

Daya Shanker Singh

APPELLANT

Vs

The Conservator of Forest (Southern Zone) and Another

RESPONDENT

Date of Decision : 28-11-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Forest Act, 1927 — Section 32

Citation : AIR 1984 All 188

Hon'ble Judges : K.N. Singh, J;Gopi Nath, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.N. Singh, J.—By means of these two petitions under Article 226 of the Constitution the petitioners have claimed relief for the issue of a writ of certiorari quashing the order of the Conservator of Forest, Southern Zone, U. P. Allahabad, dated 19-7-1983, refusing to extend the period of licence to enable the petitioners to cut and remove trees from the forest lots purchased by them. A further relief has been sought for the issue of a writ of mandamus directing the Conservator of Forest to permit the petitioners to cut and remove the trees from the lots purchased by them.

2. The petitioners are forest contractors in the district of Mirzapur. For the year 1980-81 they purchased a number of forest lots in Dudhi forest division in the district of Mirzapur for cutting and removal of trees. The forest authorities entered into agreement with the petitioners which stipulated that the petitioners will complete the cutting of trees by 31st March, 1981. The petitioners made necessary deposits but they could not cut or remove the trees within the stipulated time. They applied for extension of period to enable them to cut and remove the trees. Their application was recommended by the Range Officer and forwarded by the Divisional Forest Officer to the Conservator of Forest, Southern Range, who is empowered to grant extension. The Conservator of Forest instead

of passing orders, forwarded the petitioners' application to the Chief Conservator of Forest who referred the matter to the State Government. Meanwhile the Government had taken a policy decision and in pursuance of that policy decision the Chief Secretary on September 1, 1981, had sent a note to the Secretary, Forest Department informing him that the Chief Minister had directed that till the issue of formal orders proceedings for grant of new Thekas to private contractors to cut trees be kept stayed. In pursuance of that note formal orders were issued by the State Government on October 21, 1981, imposing ban on the cutting and felling of trees in the forest in the year 1982-83. It further directed that henceforth the forest produce should be allotted to the U. P. Forest Corporation only and it should not be given to any private party. The State Government by its order dated March 16, 1982, rejected the petitioner's prayer for extension of period of contract. Aggrieved, the petitioners challenged the validity of the order of the State Government by means of a writ petition in this Court (Writ Petition No. 1054 of 1982). The State Government as well as the Conservator of Forest both contested the petition. The Division Bench held that neither under the note dated Sept. 1, 1981, nor by the Government Order dated October 21, 1981, did the State Government direct that request for extension relating to felling of trees pertaining to licence for the term 1980-81 be not entertained by the Conservator of Forest. The Bench further held that the Conservator was empowered under the Standing Orders dated May 19, 1977, to extend the period of licence. On these findings the Bench allowed the writ petition by its order dated May 19, 1983, quashed the order of the State Government and directed the Conservator of Forest to decide the petitioners' application for extension in accordance with law uninfluenced by the Government order dated October 21, 1981, and the note dated September 1, 1981. The Conservator of Forest thereupon considered the petitioner's application and by his order dated July 19, 1983, he refused to extend time for cutting, felling and removal of trees. Aggrieved the petitioners have again approached this Court by means of these two petitions.

3. Learned counsel for the petitioners urged that the petitioners have deposited the entire contract money of more than Rs. 42 lacs and they have paid all the dues to the Government and yet they are not being allowed to cut or remove the trees which have been sold to them by the Forest Department. According to them, the work of cutting and felling is done by manual labour and as there was acute paucity of labour in the Dudhi area, the petitioners could not cut or remove the trees within the stipulated period of time. They applied for extension of period and they had always been willing to pay the additional charges for the extension of period but the Conservator has refused to extend the period of licence arbitrarily. He had further asserted that the Conservator has been granting extension to several other similarly situated contractors but he has practised discrimination against the petitioners in refusing to grant the extension. Lastly, it was urged that the Conservator has failed to consider the relevant facts and he has refused to grant extension on extraneous considerations.

4. Learned Chief Standing Counsel on the other hand urged that the petitioners

have no legal right to get the period of licence extended. Since they failed to cut and remove the trees within time stipulated they are not entitled to any relief. The power to extend the period of licence for cutting and removing the trees is discretionary and the Conservator of Forest has refused to extend the period of licence for good reasons. This Court should not interfere with the discretionary power of the Conservator.

5. The forest lots purchased by the petitioners are situate in vested forest. Sec. 32 of the Forest Act, 1927, confers power on the State Government to frame statutory rules regulating cutting, felling and removal of the trees in the vested forest. No statutory rules have, however, been framed by the State Government, instead administrative directions have been issued from time to time regulating cutting and removal of the trees. These rules generally are contained in the sales Rules. The administrative directions issued in this connection are compiled on the Forest Manual. Article 152(14)(d)(ii) provides for extension of period of contract by the previous sanction of the Conservator. The Conservator of Forest has formulated Standing Orders dated May 19, 1977, regulating extension of period of licence on certain conditions (Annexure I to the petition). Clauses 3 and 4 of the Standing Orders provide for extension of time. Clause 3 says that no extension shall be granted where a contractor is in arrears of the installments. Clause 4 lays down that extension shall be granted only in those cases in which the contractor is not able to complete the work of cutting on account of extraordinary circumstances which may have been beyond his control. The extension shall be granted subject to payment of additional price at the rate of 3% of the contract money. These Standing Orders hold the field in the absence of statutory rules and the Conservator is required to exercise his powers in accordance with these Standing Orders as was held by the Division Bench in Writ Petition No. 1054 of 1982.

6. The Standing Orders confer power on the Conservator to grant extension in suitable cases on the conditions specified therein. In exercising that power he has to act in a reasonable manner. He cannot act arbitrarily in refusing to extend the period of licence for cutting and removing the trees. He cannot act in a discriminatory manner in granting extension to one and refusing extension to the other, as such action would be discriminatory and would result into denial of equality. Forest produce is the property of the Government and the Conservator of Forest while exercising his discretionary power under the Standing Orders is required to act in accordance with law and reason. Equality before law is the principle underlying Article 14 of the Constitution. It is no more in dispute that Article 14 strikes at the arbitrariness. Where an act is arbitrary it is implicit that it is unequal and violative of Article 14. Even an executive action is liable to be struck down if it violates the concept of equality. A legislative and executive action both alike cannot be sustained unless they satisfy the test of reasonableness to ensure equality. These principles are well settled by a catena of decisions of the Supreme Court. Reference may be made to the cases of *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, , Ajay Hasia and Others*

Vs. Khalid Mujib Sehravardi and Others, and D.S. Nakara and Others Vs. Union of India (UOI), .

7. Even in cases where the properly belongs to the Government and a discretionary power is vested in an authority it has to exercise that power in a reasonable manner. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, Bhagwati, J. speaking for the Court observed (at pages 1635-38):

"It must therefore be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual deal with any person it pleases but its action must be in conformity with the standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including awarding of jobs, contracts, quotas, licences etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm, and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down unless it can be shown by the Government that the departure was not arbitrary but was based on some valid principle which in itself was not irrational or discriminatory."

In matters relating to the grant of licences or privileges formerly there was some doubt relating to the existence of legal rights, but in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, the doubt was removed and the Supreme Court held that some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government was not unlimited in that the Government cannot give largess in its arbitrary discretion or at its sweet will or on such terms as it chooses in its absolute discretion unlike the private individual as it pleases in the matter of giving largess. The Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. The Court observed (at page 1999):

"Whatever be its activity, the Government is still the Government and is subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government as a public element in it and it must, therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated."

8. The legal position is thus now clear that the Conservator of Forest who is a public authority acting on behalf of the Government is required to act in a reasonable manner. While exercising his powers under the Standing Orders in matters relating to grant of extension of period of licence he cannot act arbitrarily at his own sweet will like a private individual, instead he must act in conformity with the Constitution and the principles laid down in the Standing Orders in a manner which may withstand the test of reasonableness. Any departure from the principle of reason or equality would vitiate the order.

9. By the impugned order the Conservator of Forest refused to grant the extension to the petitioners on four grounds: (1) The petitioners should have purchased only that much of forest lots which they could have worked within the stipulated time, there was no special circumstance in the year 1980-81 beyond the control of the purchasers as a result of which they could not do the work in the lots; (2) the petitioners failed to comply with the sale Rule 22 (2) as they did not obtain permission from the Divisional Forest Officer for commencing the work with delay; (3) the petitioners did not pay late fee in accordance with sale Rule 21 and (4) the petitioners were in arrears in respect of a portion of the sales tax. For these reasons the Conservator of Forest refused to extend the period of licence.

10. We would now examine the reasons given by the Conservator of Forest in refusing to extend the period of licence. There is no dispute that in the district of Mirzapur a number of big projects and industries have recently come up which has resulted into migration of labour to those projects from the neighbouring areas. These projects include Annapara Project under the control of National Thermal Power Corporation, Shaktinagar Project, Singrauli Coal Mines, Bina Coal Mines, Cement Factories, etc. which have of late come up in the southern, part of the district of Mirzapur. The petitioners have asserted that a large number of labourers who were generally utilised by the contractors for cutting the trees in the forest lots had gone to work in the aforesaid projects and there was acute paucity of labour as a result of which in most of the lots taken by the petitioners no cutting at all commenced even though the petitioners had deposited the entire sale money which was to the extent of about Rs. 45 lacs. On 25-6-1981 and 30-6-1983 (30-6-1981 ?) and on several other dates the petitioners made representations to the Conservator seeking ex-tension of time for cutting and removing the trees. These applications are annexed as Annexures 2, 3, 4 and 5 to the petition. The Range Officer who is the immediate officer on the spot recommended the petitioners' request with a note that the reason stated by the petitioners was correct. As noted earlier, the Divisional Forest Officer had also forwarded the petitioners' application to the Conservator who had on an earlier occasion referred the matter to the Chief Conservator and the Government with the recommendation that the period may be extended in favour of the petitioners. No extension was, however, granted in pursuance of the Government policy. On a challenge being made, this Court in the earlier writ petition No. 1054 of 1982, held that the Government policy of not allowing any private party to cut

or remove the forest produce was not applicable to the petitioners' case. The Conservator was directed by this Court to consider the petitioners' application on merits.

11. The Conservator has rejected the petitioner's application but he has nowhere considered the petitioner's case that there was acute paucity of labour as a result of which they could not cut or remove the trees, instead a vague observation has been made by the Conservator that there was no special circumstance in the year 1980-81 beyond the control of the purchaser. The Conservator has further observed that the petitioners should have purchased only that much of forest which they could have worked within the stipulated period. There is no restriction on the purchase of more than one forest lot either under the sale rules or under the administrative instructions issued by the forest department and each year the Forest Contractors are allowed to purchase more than one lot. Merely because the petitioners had purchased more than one lot that could not be a relevant ground to reject their application. The petitioners' case throughout has been that on account of acute paucity of labour they could not employ labour to cut or remove trees within time and for that reason they had sought extension of time permitting them to cut and remove the trees even after the expiry of the period of contract. The Conservator of Forest was, therefore, required to consider the question as to whether there was acute paucity of labour in the area in question in the season 1980-81 and for that purpose he had to apply his mind to the situation prevailing in the area. The conservator skillfully evaded to express any opinion on this main question. He did not record any finding that there was no shortage of labour, instead he made an evasive and general observation that there was no special circumstance in the year 1980-81 beyond the control of the purchasers as a result of which they could not work their lots. The sole ground on which the extension of period was sought by the petitioners was not at all considered or disposed of by the Conservator.

12. The petitioners' allegation in the Writ petition that there was acute shortage of labour in the area as a result of which they could not cut or remove the trees which they had purchased by investing considerable amount of money has not been effectively denied in the counter-affidavit filed on behalf of the respondents. The Conservator who in respondent No. 1 and who rejected the petitioners' application has not filed his own affidavit, instead a counter-affidavit has been filed by one Atma Prasad Pandey, Assistant Conservator of Forest. In para 11 of his affidavit. Atma Prasad Pandey has asserted that it was wrong to say that there was acute shortage of labour, but immediately after making that statement he proceeds on to state that the petitioners fully knew that the Government and semi-Government projects were functioning in the locality and the labourers were attracted to those projects and it was for the petitioners to have considered their capacity for making arrangements to complete the work for which they were bidding. Again in para 33 of his counter-affidavit. Atma Prasad Pandey has asserted that the petitioners fully knew the fact of paucity of labour in the area.

These averments do indicate that there was paucity of labour in the area in the year 1980-81. What has been suggested in the counter-affidavit is that in spite of having knowledge of paucity of labour, the petitioners purchased several lots and if they failed to complete the cutting within the stipulated time they themselves were to be blamed. In paragraph 33 of the counter-affidavit filed in writ petition No. 1054 of 1982, a copy of which has been filed as Annexure 12 to the petition, Atma Prasad Pandey had himself stated that the shortage of labour was not a new problem for 1980-81 season, that problem has been there since the last 3-4 years when the projects started coming up in the area. Averments contained in the counter-affidavit filed in this petition and the earlier writ petition and the recommendations made by the Range Officers as contained in Annexures 2, 3, 4 and 5 to the petition fully establish that there was acute shortage of labour in the area in the year 1980-81.

13. The counter-affidavit filed by Atma Prasad Pandey is not in accordance with rules. The averments contained in the affidavit have not been sworn in accordance with the procedure prescribed under Order XIX of the Civil P. C. The averments contained therein have not been sworn on the basis of personal knowledge or on information received, instead most of the paragraphs of the counter-affidavit have been sworn on legal advice. The counter-affidavit consists of 78 paragraphs, out of which only paras 73 to 77 have been sworn on perusal of record and the rest of paras 3 to 72 have been sworn on legal advice. The petitioners' averment that there was acute shortage of labour in the area in the year 1980-81 is essentially a question of fact but this assertion has been denied on basis of legal advice. Such a denial is of no consequence. "I his defect in the counter-affidavit was brought to the notice of the Chief Standing Counsel during the course of hearing. He promised to take action to file another affidavit, but in spite of our objection no steps were taken to file any other affidavit or to remove the defect, although he had sufficient time at his disposal to remove the defect. In the circumstances, it is legitimate to hold that the petitioners' assertion that there was acute shortage of labour in the area in 1980-81 as a result of which he could not cut and remove the trees remained uncontroverted and further on the material on record we hold that there was (sic) shortage of labour in the area in the year 1980-81. The Conservator of Forest evaded to meet this question as it was a hard reality. The Conservator of Forest took pains to reject the petitioners' application for extension of time for other reasons which we shall discuss presently.

14. The petitioners' plea of discrimination is founded on the assertion that the Conservator of Forest has himself granted extension to several contractors for cutting and removal of trees even on the expiry of the stipulated time on the precise ground of shortage of labour in the area. The details of the representations made by the Contractors and the extension granted by the Conservator have been given in paragraph 47 of the writ petition and paras 2 and 3 of the supplementary affidavit filed by the petitioners and in Annexure 14-A. The material disclosed by the petitioners shows that in the previous years

right up to March, 1981, the Conservator has been granting extension on account of shortage of labour for cutting and removing trees in the area in question. Girja Shanker Singh had taken forest lots in the year 1979-80. He could not cut and remove the trees on account of shortage of labour, he applied for extension on the ground of shortage of labour and he was granted extension for a period of five months to cut and remove the trees, the extended period expired on 31st March, 1981. Lalmani Singh, another contractor, who had taken forest lot in the year 1978-79 was also granted five months extension on the ground of shortage of labour. Sheo Mandir Singh and Moti Lal had taken forest contract in the year 1979-80, they could not work the forest within time. On their request they were granted five months' extension in the year 1980-81. Moti Lal was granted extension even though he was in arrears of about Rs. 5880/- towards payment of installments, which was contrary to the Standing Orders.

The petitioners have asserted that no extension was ever refused from 1977 by the Conservator and more than 300 extensions have been granted to enable the contractors to cut and remove away the trees.

15. In the counter affidavit an attempt has been made to explain that the extensions were granted not on account of shortage of labour only but also on account of shortage of diesel oil. The explanation does not inspire any confidence. Diesel oil is not at all required for cutting trees in the forest as it is admitted between the parties that the entire work of cutting the trees is done by manual labour and no machine is employed for cutting the trees in the forest which has been purchased by the petitioners. Diesel oil is required for transporting the trees after cutting. There is ample evidence on record to hold that the Conservator has been extending period of licence of the contractors on the ground of shortage of labour. In view of the prevailing practice the petitioners bona fide believed that the Conservator will grant extension to them also, but their hopes have been belied and the Conservator has refused to grant extension. The petitioners and other contractors who were granted extension were placed in similar situation and yet the Conservator has refused to grant extension to the petitioners in an unreasonable manner. The order of the Conservator refusing to grant extension to the petitioners has practised discrimination and it has denied equality to the petitioners. For this reason also the order of the Conservator is rendered illegal.

16. The remaining three grounds on which the Conservator refused to grant extension related to the petitioners' failure to obtain permission to commence work with delay and late payment of installments and arrears of sales tax. None of these grounds are relevant for refusing to extend time as the Standing Orders dated 19th May, 1977, do not provide for refusal of extension on any of these grounds. The Division Bench while allowing Writ Petition No. 1054 of 1982 passed the following order:

"The order of the State Government contained in the impugned letter dated March 16, 1982, addressed to the Chief Conservator of Forest is set aside. The

conservator of Forest shall decide the application of the petitioners for extension expeditiously in accordance with law uninfluenced by the Government order dated Oct. 21, 1981, and the note dated September 1, 1981."

Prior to the issue of the aforesaid direction the Court had observed that it would be up to the Conservator to consider whether the circumstances beyond the petitioners' control had arisen. The Conservator was therefore, required to exercise power in accordance with the Standing Orders dated May 19, 1977, which regulated the extension of period on the expiry of the stipulated period. A perusal of the Standing Orders, Annexure I to the petition, shows that none of these three grounds as enumerated above are a valid ground within the Standing Orders for refusing extension. The Conservator of Forest, in our opinion, acted beyond the scope of the Standing Orders in refusing to grant extension. The second, third and fourth reasons contained in the impugned order are wholly irrelevant for the purpose of granting extension. In fact during the arguments the learned Chief Standing Counsel conceded this position. Since the petitioners have urged that these grounds are non-existent we would examine these grounds on merits.

17. The Conservator has observed that the petitioners failed to comply with Sale Rule 22 (2) as they did not obtain permission from the Divisional Forest Officer for commencing the work with delay. Rule 22(2) of the Sale Rules lays down that the purchaser will have to commence the work on the date fixed by the Divisional Forest Officer. If for any reason the purchaser fails to commence the work on the said date then he will have to seek permission of the Divisional Forest Officer by means of a written application, failing which the contract shall stand cancelled and the lots would be re-auctioned. The petitioners have asserted that they had deposited the installments but they could not commence the work on account of non-availability of labour. This fact had been brought to the notice of the Divisional Forest Officer and he was fully satisfied with the explanation given by the petitioners and for that reason he had not taken any steps to terminate the contract or to re-auction the forest lots. These averments are contained in paras 53, 54 and 55 of the petition. The Divisional Forest Officer fully knew that the petitioners had not commenced the work at all as he had himself forwarded the petitioners' application to the Conservator for extension. The petitioners' allegation is denied in paragraph 47 of the counter-affidavit which has been sworn on legal advice. The fact, however, remains that the Divisional Forest Officer appeared satisfied with the difficulties faced by the petitioners and as such he did not cancel the petitioners' contract nor he issued any orders for reduction of the forest lots. Had there been any deliberate default on the part of the petitioners in not commencing the work the Divisional Forest Officer would have certainly taken action in accordance with Rule 22 (2) of the Sale Rules, 1981. It is thus apparent that the Divisional Forest Officer was satisfied that the petitioners could not commence the work on account of reasonable grounds. Moreover necessity to apply for extension arose because the petitioners could not commence work on account of shortage of labour.

18. The third ground on which the Conservator has refused to grant extension relates to the petitioners failure to pay late fee in accordance with Sale Rule 21. There is no dispute that if a contractor fails to deposit installments within time he is required to pay late fee. It appears that since the petitioners had not commenced work they could not pay the installments in time, consequently the security amount deposited by them was adjusted towards last installment in accordance with Rule 19 of the Sale Rules, 1981. After adjustment the entire contract money stood paid but only late fee was required to be paid. The Divisional Forest Officer who adjusted the petitioners' security money towards installment has not issued any notice to the petitioners for payment of late fee and no demand has been made on the petitioners. In the absence of demand notice the petitioners cannot be held guilty of their failure to pay the late fees.

19. The petitioners have asserted that they are ready to pay late fee as determined by the Divisional Forest Officer. This ground could not reasonably be a valid ground in refusing the extension. As noted earlier, the Conservator himself has granted extension to Moti Lal even though he was in arrears of his installment dues. Shea Mandir Singh and another contractor were granted five months' extension by the Conservator by his order dated November 16, 1980, even though Sheo Mandir was in arrears of late fee, the is evident from Annexure 16 to the writ petition which shows that the Divisional Forest Officer had directed the Range Officer to realise Rs. 30/- late fee (vilambh shulk) and only thereafter the contractor be permitted to commence the work. Averments with regard to these facts are contained in paragraphs 61 and 62 of the petition. These facts are not denied in the counter-affidavit filed by Atma Prasad Pandey. It is thus apparent that the Conservator of Forest had been granting extension to contractors even in those cases where the contractor had failed to pay the late fees. After the grant of extension late fee was realised and only thereafter the contractor was permitted to commence the work. The Conservator had no valid reason to adopt a different course in the petitioners' case. The petitioners were entitled to be treated in the same manner as other contractors had been treated by the Conservator in the matter relating to grant of extension. It is quite apparent to us that the Conservator took pains to find out same reason, whether plausible or not, to reject the petitioners' request. The third ground is not justified at all.

20. The last ground on which the extension was refused is that the petitioners were in arrears of a portion of sale tax. Under the U. P. Sales Tax Act and the rules framed thereunder the petitioners are liable to pay 13% sales tax on timber and 3% sales tax on firewood. At the time of auction the Divisional Forest Officer could not quantify the exact quantity of the timber and firewood contained in the various forest lots sold to the petitioners. According to the prevailing practice, 8% sales tax on the bid money was paid by the contractors in advance and the balance if any was to be determined on the completion of the work. The petitioners have asserted that neither the Conservator of Forest nor the Divisional Forest Officer ever determined the exact quantity of timber and

firewood which existed in the lots purchased by them nor any demand for additional sum payable towards sales tax was made. The petitioners, according to the prevailing practice, deposited 8 per cent of the bid money as sales tax. Since the various lots were not worked and the trees were not cut or removed the exact amount of timber and firewood could not be ascertained and as such final determination of the sales tax could not be made. There is no denial of this assertion of the petitioners in the counter-affidavit, instead it is submitted in para 68 of the counter-affidavit that it was the duty of the petitioners to have found out the balance amount of the sales tax and to pay the same. The petitioners have throughout asserted that they have paid 8 per cent tax in advance and they are ready to pay any amount which is determined later on. Till today the exact amount of sales tax has not been determined and as such the petitioners could not be blamed for their failure to deposit a portion of the sales tax. The Conservator of Forest was wholly unjustified in putting the blame on the petitioners and in refusing to grant extension on that ground. The payment of sales tax is not within the scope of the Standing Orders dated May 19, 1977.

21. In view of the above discussion we hold that the Conservator of Forest failed to apply his mind to the relevant question relating to the acute shortage of labour, instead he refused to extend the period on unjustified and non-existent reasons. The Conservator further acted in a discriminatory manner in refusing to grant extension to the petitioners although on similar set of facts he had granted extension to other contractors. The petitioners had deposited the entire bid money of about Rs. 45 lacs, but they could not cut away the trees on account of acute shortage of labour which was beyond their control. In the circumstances, the Conservator should have granted extension. It appears that in refusing to extend the period the Conservator was influenced by the policy of the State Government that forest produce should not be allotted to private individuals, instead the same should be allotted to the U. P. Forest Corporation. Though this reason has not been stated in the impugned order, but the manner in which the petitioners' request for extension was rejected leads us to that conclusion. Moreover, in para 77 of the counter-affidavit it is asserted that since the U. P. Forest Corporation had actually started functioning in the locality it would not have been desirable to permit the private contractors simultaneously with the Forest Corporation. This averment clearly shows the attitude of the Department and it is quite apparent that the Conservator was influenced by the policy of the Government that where the Forest Corporation is functioning, no private contractor should be permitted to function. This was done in total disregard of the direction issued by this Court in the earlier Writ Petition No. 1054 of 1982. As already noted, the Bench had directed the Conservator of Forest to decide the application for extension uninfluenced by the Government Order dated Oct. 21, 1981, and the Chief Secretary's note dated Sept. 1, 1981, which related to the Government policy of not permitting the private contractors to function along with the Forest Corporation. The impugned order is therefore illegal and liable to be quashed.

22. The question then arises as to what relief should be granted to the petitioners. Normally, after quashing the impugned order we would have directed the Conservator to consider the petitioners' application afresh in accordance with law. But in the special circumstances of the case, this course does not appear advisable. Earlier a Division Bench of this Court had while deciding the earlier Writ Petition No. 1054 of 1982, adopted this course and it had directed the Conservator to decide the question of extension in accordance with law and the directions contained in the judgment. The Conservator of Forest refused to grant extension on extraneous considerations disregarding the directions of this Court. The Conservator evaded to record a finding that there was no shortage of labour. Now sufficient delay has occurred. The Conservator was given opportunity to exercise his power according to law but he has failed to perform his function. In the circumstances it would not be useful to refer the matter to him again as there is ample material on record in the shape of affidavits, documents and admissions made by the respondents to show that there was acute shortage of labour during the season 1980-81 in the area concerned and the petitioners faced great difficulty in cutting and removing the trees. In the circumstances it would not serve the ends of justice to direct the petitioners to go to the Conservator of Forest again for extension of time.

23. In Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , the State Financial Corporation sanctioned loan to Lotus Hotels, a private limited company, for setting of Hotel on certain terms. Acting on the promise the Lotus Hotels created an equitable mortgage in favour of Gujarat State Financial Corporation for securing loan and also incurred other expenditure and suffered liabilities to implement and execute the project. Later on, the Corporation refused to disburse the loan to Lotus Hotels. Aggrieved, Lotus Hotels filed a writ petition under Article 226 of the Constitution which was allowed by the High Court and a writ of mandamus was issued directing the Gujarat State Financial Corporation to disburse the promised loan to Lotus Hotels. On appeal the Supreme Court affirmed the order of the High Court. The Supreme Court held that since the Corporation had entered into a solemn contract and the respondent acted upon it the Corporation cannot be allowed to act arbitrarily so as to cause harm and injury flowing from its unseasonable conduct to the respondent. In such a situation, the Court was not powerless from holding the appellant to its promise and it could be enforced by a writ of mandamus directing it to, perform its statutory duties. The principles laid down in Gujarat State Financial Corporation case are fully applicable to the facts of the instant case. The respondent entered into contract with the petitioners for sale of forest lots and accepted the entire sale money from them. The petitioners relying upon the Standing Orders dated May 19, 1977, which are statutory in nature, represented to the Conservator of Forest, to extend the period of contract to enable them to cut and remove the trees in the event of existence of extraordinary circumstances beyond the petitioners control. The petitioners have fully made cut the extraordinary circumstances of acute shortage of labour and now it is not open to the

Conservator to refuse to grant extension for extraneous reasons. The petitioners have deposited the entire sale money of Rupees 45 lacs. They have also deposited a portion of the sales tax. They have all along been ready to deposit 3. % of the sale money for the extension of the period of licence and they have not taken away the forest produce which was sold in their favour. The Conservator is trying to find some fault in refusing them permission to cut and remove the trees for some reason or the other. By no standard the conduct of the Conservator of Forest is a reasonable conduct. The Conservator in our opinion has acted in an arbitrary or unreasonable manner in dealing with forest produce of the State. We have already recorded a finding that there was acute shortage of labour even which the petitioners had no control and as such they are entitled to extension of the period of licence on payment of the necessary amount of money. In such a situation, we are of the opinion that a mandamus should be issued to the Conservator of Forest to grant extension to the petitioners on the terms and conditions as envisaged under the Standing Orders.

24. We accordingly allow the petitions and quash the order of the Conservator of Forest dated 19th July, 1983, and direct the Conservator to extend the period of the petitioners' licence forthwith on the usual conditions as contained in the Standing Orders. The petitioners are entitled to their cost.