

(2014) 12 AHC CK 0008

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 72465 of 2011, 75365, 70386, 72724 of 2010, 67911, 73956, 74002, 74138, 74151, 75691, 75397 of 2011, 160, 163, 167 of 2012, 76045, 76060, 76062, 76064, 76245, 76303, 76365 of 2011, 338, 1040, 1056 of 2012, 67843, 75844, 7658

Singh Timber Trader and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Constitution of India, 1950 — Article 110(2), 14, 266
Evidence Act, 1872 — Section 106
Forest (Conservation) Act, 1980 — Section 2, 2(i)
Forest Act, 1927 — Section 2(4), 2(6), 2(7)
General Clauses Act, 1897 — Section 21

Citation : (2015) 1 ADJ 174 : (2015) 3 ALJ 289

Hon'ble Judges : Tarun Agarwala, J;Rajan Roy, J

Bench : Division Bench

Advocate : Bharatji Agarwal, Rahul Agarwal, Ravi Kiran Jain, Vinod Kumar Agarwal, Ansul Kumar Singhal, Udit Chandra and K.K. Mani, Advocates for the Appellant; Ram Krishna and Ravi Shanker Prasad, Advocates for the Respondent

Judgement

Tarun Agarwala, J.—In this group of petitions, the petitioners are engaged in the manufacture of plywood and veneer and have prayed for the quashing of the notification dated 20th October, 2010 by which Rule 11 of The U.P. Establishment and Regulation of Saw Mills Rules, 1978" (hereinafter referred to as the Rules of 1978) have been substituted by "The U.P. Establishment and Regulation of Saw Mills (Fourth Amendment) Rules, 2010" (hereinafter referred to as the Fourth Amendment), The petitioners have further prayed for a writ of mandamus commanding the respondents to renew their licence at the rates applicable prior to 20th October, 2010. By the said amendment, the licence fee has been enhanced 15 times from Rs. 5,000/- per year to Rs. 75,000/- per year per 25 HP. For facility, Writ Petition No. 72465 of 2011, M/s. Singh Timber Traders and others v. State of U.P. Through its Secretary, Forest, Lucknow and others have

been made the leading case and, for facility, the facts in this petition is being taken into consideration. The petitioners are manufactures of plywood and veneer for which the basic raw material is wood. The petitioners contend that they are mostly using poplar trees for the manufacture of their product. The petitioners contend that they are not purchasing this wood either from the State Government from the U.P. Forest Corporation but are purchasing the wood from the farmers, who grow poplar trees on the margin of their fields. The petitioners contend that poplar trees grow very fast and have a maximum life of 10 years and that cutting the poplar tree does not harm the environment. The petitioners further contend that for the manufacture of veneer or plywood, the basic machine required is, a saw mill for cutting the wood into various shapes and sizes.

2. Before proceeding further, it would be essential to give a brief background, which has led to the filing of the writ petitions.

3. The Indian Forest Act, 1927 (hereinafter referred to as the Act of 1927) was enacted in order to consolidate the law relating to trees, forest produce and duty leviable on timber and other forest produce. By the 41st Amendment 1976, Entry No. 17(A) was inserted in the concurrent list of the VIIth Schedule of the Constitution by which the subject matter of "forest" was inserted and the entry "forest" in Entry No. 19 of List II of the VIIth Schedule was omitted. Chapter VIII-A of the Act of 1927 deals with the regulation, manufacture and preparation of articles based on forest produce. Under Section 51A, the government is empowered to make Rules relating to the establishment of licence, permit or otherwise of saw mills and units including factories engaged in the manufacture or preparation of various articles as defined therein. For facility, Section 51A of the Act of 1927 is extracted hereunder:

"51A. Power to regulate manufacture and preparation of articles based on forest product.--(1) The Government may make rules--

(a) to provide for the establishment and regulation by licence, permit or otherwise (and the payment of fees therefor), of saw mills and units including factories engaged in the manufacture or preparation of the following articles--

(i) Katha (Catechin) Or Cutch out of Khair wood;

(ii) Plywood, veneer and wood-panel products;

(iii) preparation of match-boxes and match splints;

(iv) boxes including packing cases made out of wood;

(v) such other articles based on forest-produce as the State Government may, by notification in the Official Gazette, from time to time, specify;

(b) to provide for the regulation by licence, permit or otherwise of procurement of raw materials for the preparation of the articles mentioned in clause (a), the payment and deposit of fees therefore and for due compliance of the conditions

thereof, the forfeiture of the fees so deposited or any part thereof for contravention of any such conditions, and the adjudication of such forfeiture by such authority as the State Government may, by notification in the Official Gazette, specify.

(2) The State Government may prescribe, as penalties for the contravention of any rules made under this Section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both."

4. "Timber" has been defined under Section 2(6), which includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not.

5. "Tree" has been defined under Section 2(7), which includes palms, bamboos, skumps, brush-wood and canes.

Forest produce has been defined under Section 2(4), which includes:

(a) the following whether found in, or brought from, a forest or not, that is to say - timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds and myrabolams, and

(b) the following when found in, or brought from a forest, that is to say -

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface soil, rock and minerals (including lime stone, laterite, mineral oils, and all products of mines or quarries);

6. In exercise of the powers conferred under Section 51A of the Act of 1927, the State Government promulgated the Rules known as The U.P. Establishment and Regulation of Saw Mills, 1978 w.e.f. 1st August, 1978 (hereinafter referred to as the Rules of 1978). Rule 2 defines saw mills as under:-

"2. Definitions.--In these Rules, unless the context otherwise requires.--

(a) "Saw-mills" means and includes any mechanical devices whether operating with electric power, fuel-power or man-power for the purpose of cutting sawing or converting timber and wood into pieces or the like acts, but shall not Include such mechanical devices whose engine power is up to 3 H.P.);

(b) "One unit of saw-mill" shall be taken as equivalent to 25 H.P. engine or any part thereof. (Thus a saw-mill using 65 H.P. engines will be deemed as equivalent to 3 units.)"

7. Rule 3 provides that no person shall establish, erect or operate any saw mill or machinery for converting and cutting a timber wood without obtaining a licence from the Divisional Forest Officer.

8. Rule 3A places a restriction on the establishment of saw mills within a radius of 80 kms. from a protected forest.

9. Rule 4 provides that any person desiring to establish, erect or operate any existing saw mill shall make an application in that behalf to the Divisional Forest Officer concerned for obtaining a licence.

10. Rule 5 provides that on receipt of the application the Divisional Forest Officer shall make such inquiries as he may deem fit and, after satisfying himself with regard to the following factors, grant a licence. The facts which he is required to satisfy is, with regard to the quantity of timber, which would be available at the proposed site where the saw mill is to be established without causing damage to the tree growth to the forest under the control of the government and adjacent rural areas. The Divisional Forest Officer is also required to be satisfied with regard to the land on which the proposed saw mill is to be established and with regard to the availability of the machinery and power and that a no objection certificate is also required to be obtained from the District Magistrate. Rule 5A provides that the Principal Chief Conservator of Forest on an application and after such inquiry as he deems fit may order relocation of an existing saw mill from one place to another within the State.

11. Rule 6 provides the period for validity of the licence and Rule 7 provides for Renewal of the licence.

12. Rule 11 provides for payment of fees for grant and/or for renewal of the licence. This rule has been amended from time to time. Initially, in 1978, the fee was Rs. 250/- per unit. On 20th June, 1990, this Rule was amended and the fee was enhanced to Rs. 1000/- per unit. On 14th June, 2004 pursuant to the 3rd amendment, the fees was enhanced from Rs. 1000/- to Rs. 5000/- and now, by the 4th amendment, the fee for grant and/or renewal of the licence has been enhanced. For facility, Rule 11 as amended by the 4th Amendment Rules, 2010 is extracted hereunder:-

"Uttar Pradesh Shasan

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The Governor is pleased to order the publication of the following English translation of notification No. 3401/XIV-2-2010-343(L)/2001 dated October 20, 2010 for general information.

Notification

No. 3401/XIV-2-2010-343(L)/2001 Lucknow, Dated October 20, 2010

In exercise of the powers under clause (a) of Section 51-A of the Indian Forest

Act, 1927 (Act No. 16 of 1927), read with Section 21 of the General Clauses Act, 1897 (Act No. X of 1897), the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Establishment and Regulation of Saw Mills Rules, 1978.

By order, Sd/- Principal Secretary

13. Under the Fourth Amendment, the annual fee for a saw mill is Rs. 25,000/- per unit of 25 HP capacity. For veneer, the annual fee is Rs. 25,000/- per unit of 25HP and for plywood, the annual fee is Rs. 50,000/- per unit of 25 HP capacity. For veneer and plywood unit, the annual fee is Rs. 75,000/- per unit of 25 HP capacity.

14. The petitioners have both veneer as well as plywood manufacturing capacities in their factories. The forest officials are categorizing their factories as units manufacturing veneer and plywood and demanding that they pay the licence fee at the highest slab of Rs. 75,000/- per unit of 25 HP capacity.

15. The background leading to the payment of licence fee is on account of various directions issued by the Supreme Court since 1995. Initially, the definition of the saw mills as provided under Rule 2(a) of the Rules of 1978 was restricted to those units, who only functioned as saw mill and not to such units manufacturing plywood or veneer. Consequently, the petitioners, who are manufacturing plywood and veneer were not required to obtain a licence for manufacture of veneer and plywood. The Supreme Court in T.N. Godavarman Thirumulpad v. Union of India and others in Writ Petition (Civil) No. 202 of 1995 passed various orders from time to time for regulating various units utilizing timber and other forest produce across India. By an order dated 4th March, 1997, the Supreme Court directed all unlicensed saw mills, veneer and plywood industries in the State of Uttar Pradesh to close forthwith and directed the State Government not to relax or remove any condition for grant of permission/licence for the opening of such units. The relevant extract of the order of the Supreme Court dated 4th March, 1997 is extracted hereunder:

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

16. By an order dated 9th May, 2002 the Supreme Court constituted a Central Empowered Committee (CEC) for the purpose of manufacturing the implementation of Court orders and other related issues. By another order dated 29/30th October, 2002 the Supreme Court prohibited the States or Union Territories from permitting any unlicensed saw mills, veneer and plywood industries to operate without permission of the Central Empowered Committee.

The relevant extract of the order of the Supreme Court dated 29/30th October, 2002 is extracted hereunder:

"No State or Union Territory shall permit any unlicensed saw-mills, veneer, plywood industry to operate and they are directed to close all such unlicensed unit forthwith. No State Government or Union Territory will permit the opening of any saw-mills, veneer or plywood industry without prior permission of the Central Empowered Committee. The Chief Secretary of each State will ensure strict compliance of this direction. There shall be no relaxation of rules with regard to the grant of license without previous concurrence of the Central Empowered Committee.

It shall be open to apply to this Court for relaxation and or appropriate modification or orders qua plantations or grant of licences."

17. The Central Empowered Committee submitted a report dated 19th April, 2007 to the Supreme Court recommending that licences may be issued to plywood and veneer units under the Rules of 1978 subject to the availability of timber. In paragraph 19 of the report, the Central-Empowered Committee stated that the plywood and veneer units in the State of Uttar Pradesh would be required to obtain licences under the Rules of 1978, which had been established without any licence. In paragraph 20 and 21 of the report, the Committee recommended that plywood and veneer units should be given licences under the Rules of 1978. For facility, paragraph 19, 20 and 21 of the report of the Committee dated 19th April, 2007 is extracted hereunder:-

"Recommendation regarding plywood/veneer units

19. In the State of Uttar Pradesh, almost all the plywood and veneer units have been established without a valid saw mill licence issued under the Uttar Pradesh Saw Mills (Establishment and Regulation), Rules, 1978 though such units required a license under these Rules. The State Government Forest Department had from time to time issued circulars but these were often not in conformity with the Saw Mill Rules. The U.P. Forest Department had put no restriction on the establishment of the plywood/veneer Units upto 26.7.1989. Thereafter, a complete ban was imposed by the U.P. Forest Department on the establishment of the plywood/veneer units upto 15.2.1995. However, a large number of units were allowed to be established between 27.7.1989 to 15.2.1995 by the Industries Department and were registered as small scale units. With effect from 16.2.1995, the plywood/veneer units were permitted to be established in 38 districts after obtaining the NOC from the U.P. Forest Department in the remaining districts the ban continued. During this period some of the units were established with the NOC issued by the Forest Department while the others were established without the NOC but registered by the Industries Department. No guidelines were issued or followed for issuing of the NOC by the Forest Department. No authentic record of the NOC issued by the Forest Department has been maintained pursuant to this Hon''ble Court's order dated 4.3.1997 the

establishment of new plywood/veneer units was prohibited.

20. In the above background, the CEC is of the view that subject to the availability of timber, the plywood/veneer units in U.P. may be considered eligible for the grant of license under the U.P. Saw Mill Rules on the basis of their seniority i.e. the date of establishment. As regards the units established between 1995 to 1997 no distinction on the basis of the NOC issued by the Forest Department may be made as no reliable record about the validity and the authenticity of such NOCs exists. In any case, the NOC cannot be a substitute for a license required under the Saw Mill Rules.

21. The following recommendations were made for the plywood/veneer units in the State of U.P.

(i) a seniority list of the plywood/veneer units established upto 4.3.1997 may be prepared by the SLC. As stated in the CEC's earlier report dated 19.1.1997, the District Level Committees comprising of District Magistrates, Superintendents of Police and the Divisional Forest Officers have, after verifying the original records and taking into account the details provided by the plywood/veneer units, compile their category wise details. These details are verified by the SLC after which the provisional list is drawn up and details are displayed on the website of the Forest Department as well as in the office of the PCCF, Lucknow. Objections are invited after giving wide publicity through newspapers and the final seniority list is prepared after considering the objections received by the State Level Committee. The above process has been completed for the units provisionally falling in Category I and II and for other it is in progress. Subject to the availability of timber they may be granted license under the Saw Mill Rules in the order of their seniority. While granting the licence, the details of the machinery such as press, vertical band saw and the peelers installed by such units should be mentioned on the license itself. Units with saw mill license should have the option to continue either as a saw mill or as a plywood/veneer unit. No expansion of the existing machineries should be permissible.

(ii) the permission may be granted to the plywood/veneer units established prior to 26.7.1989 without any penalty as there was no restriction on the establishment of the plywood/veneer units prior to this date. There are 29 plywood/veneer units falling in this category.

(iii) the units established between 27.7.1989 to 4.3.1997 may be granted licences on the payment of one time amount for operating in violation of the U.P. Saw Mill Rules. The CEC may be permitted to decide this additional amount in consultation with the SLC. This amount should be payable in addition to the normal licence or other fee otherwise payable by such units;

(iv) the plywood/veneer units established after 4.3.1997 irrespective of the timber availability should be directed to be closed permanently as such units have been established in flagrant violation of this Hon"ble Court's order dated 4.3.1997. There was absolutely no ambiguity about the applicability of the order

of the Hon''ble Court by which it was directed that no plywood/veneer units shall be established in the State of Uttar Pradesh after 4.3.1997. These units have been established and have continued to operate for the last 10 years inspite of the clear directions issued by the Hon''ble Court and inspite of the fact that the issue of the wood based industries illegally functioning in Uttar Pradesh was time and again being raised before this Hon''ble Court.

(v) to ensure that the plywood/veneer units are not causing any environmental pollution, the grant of licence should be effected by the Forest Department only after they obtain the NOC from the State Pollution Control Board. The units which fail to obtain the NOC within the period stipulated by the SLC should be liable to be closed permanently;"

18. The aforesaid report of the Central Empowered Committee was accepted .by the Supreme Court by its-order dated 18th May, 2007. The order of the Supreme Court Mated 18th May, 2007 is extracted hereunder:

"The matters relate to Saw Mills and Plywood and Veneer.

The CEC has considered the availability of wood for the industries, which has assessed as 43.70 lakh cu. mt. from trees outside forests and 02.00 lakh cu. mt. from Government Forests.

It has also assessed the units into four categories.

We accept the CEC''s recommendations.

The Saw Mills may be permitted on the basis of the recommendations made by the CEC. Licenses may be given by the State Level Committees.

If there are any objections regarding grant of licenses, the parties would be at liberty to submit their applications before the CEC for consideration."

19. By another order dated 27th May, 2007, the Supreme Court permitted saw mills, which were included in category-IV to apply for fresh grant of licences. The said order dated 27th May, 2007 is extracted hereunder:

"These applications relate to the various Saw Mills in the State of Uttar Pradesh. This Court by order dated 18th May, 2007 permitted the Saw Mills to function, subject to the availability of wood and fulfillment of other conditions. These applications are disposed in terms of the order passed by this Court on 18th May, 2007. The appropriate authorities may permit the saw mills to run, subject to the order passed by this Court at 18th May, 2007.

Learned counsel appearing in some of the Saw Mills which were allegedly functioning from 1983-85 and thereafter, submit that they have been functioning as saw mills but they were not having proper licence because and or applications, in some cases, are pending since long with the authorities. In some cases, we are told that they have filed applications and those saw mills have been included in category IV of the CEC report and they were now denied their

right to operate their saw mills. Counsel appearing for those applicants submitted that those saw mills may be permitted to file fresh applications for running their units, subject to availability of wood and that they will also follow the norms prescribed in the order passed by this Court on 18th May, 2007, if they are granted licenses for which they shall make necessary applications.

Under the above circumstances, those saw mills which have been functioning right from 1983 and some of them who claim to functioning from 1985 to 1997 and which are included in category IV of authorities for running their saw mills and the appropriate authorities shall consider the availability of wood and if sufficient wood is available they may be granted fresh licenses, subject to such terms and conditions as are and/or may be prescribed.

We are told that some other saw mills have made grievance that there was wrong categorization. These applications may approach the CEC and the CEC may hear them and appropriate directions be issued by the CEC, subject to the order passed by this Court on 18th May, 2007.

All these applications are disposed of accordingly."

20. Pursuant to the said directions of the Supreme Court, the petitioners made the necessary one time payment as directed by the Central Empowered Committee to resume operations after obtaining licence under the Rules of 1978. Accordingly, the petitioners started their factory by paying a sum of Rs. 5,000/- per calendar year per unit i.e. per 25 HP from 2007 onwards. Till 2010, the petitioners were paying a sum of Rs. 5,000/- per unit per calendar year, which has been enhanced by 15 times by the 4th Amendment in 2010. Some of the petitioners are category-IV units, which were issued licences after the Central Empowered Committee approved it for grant of fresh licence in the year 2010. The State Level Committee, which is the apex body for granting permission to saw mills, plywood and veneer units directed the Divisional Forest Officer to issue licence to these petitioners, who were granted necessary permission for the first time in the year 2011-12 and 2012-13. However, while granting licence condition No. 8 indicated that these petitioners were to pay the licence fee with retrospective effect from 2007 onwards irrespective of the fact that the licence was issued for the first time to these petitioners in the year 2011, 2012 and 2013. Condition No. 8 of the permission granted by the State Level Committee reads as under:-

"In ikaiyon se varsh 2007 se navinikaran sulk vasul kiya jana hai. Varsh 2010 evam 2011 se navinikaran sulk ki vasuli sanshodhit dar se ki jayegi."

21. This condition No. 8 has also been challenged and a prayer has been made for the quashing of this condition and for refund of the excess amount deposited. Some of these writ petitions are:-Writ Petition No. 44573 of 2012 (Gauri Shankar Plywood and others v. State of U.P. and others); Writ Petition No. 66867 of 2012 (M/s. Issa Plywood Material Seller v. State of U.P. and others); Writ Petition No. 18597 of 2012 (V.K. & Sons (Saw Mills) v. State of U.P. and others); Writ Petition

No. 32280 of 2012 (M/s. S.W. Plywood & Veneer Industries v. State of U.P. and others); Writ Petition No. 54283 of 2012 (M/s. National Veneer v. State of U.P. and others); Writ Petition No. 108 of 2013 (M/s. A.R. Polymers v. State of U.P. and others); Writ Petition No. 21534 of 2012 (M/s. Allied Enterprises and others v. State of U.P. and others); Writ Petition No. 53979 of 2012 (M/s. Shiva Audyogic Sansthan v. State of U.P. and others).

22. In this backdrop, we have heard Sri Bharat Ji Agrawal as well as Sri Ravi Kiran Jain, the learned Senior Counsels assisted by Sri Rahul Agrawal, Sri Vinod Kumar Agarwal, Sri Ansul Kumar Singhal, Sri Udit Chandra and Sri K.K. Mani, the learned counsel for the petitioners and Sri Ram Krishna, the Chief Standing Counsel-III and Sri Ravi Shankar Prasad, the Additional Chief Standing Counsel for the State.

23. Sri Bharat Ji Agrawal, the learned Senior Counsel submitted that admittedly the fee prescribed under Rule 11 of the Rules of 1978 is a regulatory fee and regulates the functioning of saw mills in the State of Uttar Pradesh. The levy of such fees is required to be justified with reference to the cost of such regulation. It was submitted that the principle of quid pro quo is not applicable but the fee, which is charged should have a broad co-relationship with the cost of administering the regulation. The learned Senior Counsel submitted that in the instant case, by the impugned amendment, the increase in licence fee has gone up by 15 times, which has no-relation with the cost incurred by the State of U.P. in administering the regulation. The learned Senior Counsel contended that the impugned amendment enhancing the regulatory fee was wholly arbitrarily and was liable to be quashed.

24. It was further contended that from a perusal of the counter affidavit the increase in the levy of fee is on account of the increase in the price of the raw material. The contention is, that since the price of the end product has been increased, the State Government was justified in enhancing the levy fee by 15 times. The learned Senior Counsel contended that the increase in the price of the finished product has no co-relation with the cost incurred in administering the regulation. The learned Senior Counsel further contended that the counter affidavit reveals that the over all expenditure of the forest department has increased by approximately 3 times, whereas the increase as per the impugned notification is by 15 times, which is wholly excessive and disproportionate. The learned Senior Counsel contended that the impugned levy was only to raise the revenue for the State of U.P. and, consequently, a tax is being imposed in the guise of a fee. The learned Senior Counsel contended that the calculation of cost shown in the counter affidavit suffers from inherent contradictions and impossibilities. The figures are not only imaginary and are not based on any evidence. Further, no proof of any inspection being carried out at the premises of the petitioner was indicated nor any proof has been shown to indicate that the cost has been incurred for that purposes.

25. Sri Ravi Kiran Jain, the learned Senior Counsel submitted that initially the

Rules of 1978 only provided a licence fee for a saw mill but, by the impugned notification, a further classification has been made for veneer, plywood and a combination of both. The learned Senior Counsel contended that initially a fee for a saw mill was based on horse power, which it was consuming and by the impugned notification, the fee has been increased fifteen times without any justification. The learned counsel submitted that earlier a plywood unit or for a veneer and plywood unit consuming 100 HP came to four units as per Rule 2(b). The fee prescribed was Rs. 5,000/- per unit, which came to Rs. 20,000/- but by the impugned notification, the petitioners" have to pay Rs. 75,000 X 4 units, which comes to Rs. 3 lacs per annum. Whereas the petitioner was earlier paying only Rs. 20,000/- the petitioner is now required to pay Rs. 3 lacs, which is wholly arbitrary. The learned Senior Counsel contended that this increase by 15 times is wholly arbitrary. The learned Senior Counsel contended that the Rules of 1978 is with regard to establishment and regulation of saw mills, which cannot be applied in the case of veneer and plywood units nor such classification can be made as per the impugned notification demanding more fee for plywood and for veneer units. The learned Senior Counsel contended that the licence fee under the Rules of 1978 is only regulatory and the same could not be used for the purpose of earning revenues for the State Government nor can the licence fee be made a measure to meet the total expenditure of the forest department. The learned Senior Counsel further contended that the cost of the end product could not form any basis for fixing a licence fee as the same would amount to imposition of tax.

26. Sri Udit Chandra, the learned counsel contended that any regulatory fee charged has to be based on the "principle of equivalence" and that the fee charged has to be proportionate to the service provided by the State and, therefore, the burden is upon the State to justify the arbitrary increase in the fee by the impugned notification. The learned counsel contended that the licence fee so imposed is not in the nature of regulatory fee but is in the nature of a compensatory tax, which is wholly illegal. The learned counsel contended that the impugned notification charging fee with retrospective effect is patently illegal. It was submitted that the fee cannot be charged retrospectively unless the same was specifically mentioned in the enabling statute, which in the present case is silent with regard to retrospective fee.

27. Some of the petitioners have also challenged the fee for reallocating the units contending that there is no rational connection in charging different fee for rural area, District headquarter, Commissionary or in a Mahanagar area. Other counsels have adopted the submissions of the learned Senior Counsels. In support of their submissions, the learned counsels for the petitioners have placed certain case laws, which will be addressed at the appropriate place.

28. The stand taken by the State Government including the forest department has varied from petition to petition. In Writ Petition No. 72465 of 2011, M/s. Singh Timber Trader and others v. State of U.P. and others, the State

Government has taken a stand that the increase in licence fee was due to the increase in the cost incurred by the State of Uttar Pradesh in administering the Rules of 1978 and, therefore, such increase was justified. Similar, stand was taken in Writ Petition No. 70386 of 2010, Zaheer Khan and others v. State of U.P. and others and Writ Petition No. 67911 of 2011, M/s. Azmi Plywood Industries and others v. State of U.P. and others. The State Government contended that the enhancement of licence fee was based upon the increase and price of timber or the final product, namely, plywood and veneer. In these counter affidavits, the State Government is absolutely silent on the cost incurred by the State in administering the regulation and its co-relation with the increase in the licence fee. For facility, the relevant stand of the State in Writ Petition No. 70386 of 2010 is-extracted hereunder:-

"Para 5: That it is relevant to mention-here that the aforesaid notification has been issued according to Section 5-A(b) of Indian Forest Act, 1927 and that license fee for renewal of Saw Mill license is being enhanced time to time from Rs. 250-1000 and that in the year 2004, it was enhanced to Rs. 5,000/- and that the State Government has framed the U.P. Establishment & Regulation of Saw Mills Rules, 1978 for the purpose of checking illegal transportation and conservation of timber and that the enhancement of license fee depends upon the increase the price of timber and that the petitioner has got no right to challenge the same as the same is a policy decision and domain of State Government, therefore, there is no merit in the aforesaid case and writ petition is devoid of merit and is liable to be dismissed with costs."

29. Similarly, the stand of the State Government in Writ Petition No. 67911 of 2011 is extracted hereunder:

"Para 9: That contents of paragraphs No. 13 and 14 as stated are incorrect and as such, are denied. In reply thereto, it is submitted that the justification is collaborated with Central Empowered Committee's (constituted by Hon"ble Supreme Court of India) decision dated 8.6.2007 in which it was decided that different one time amount is to be deposited by Veneer and Plywood units for consideration for grant of license. (Only Veneer Units-per peeler/slicer in the unit: Rs. 1,50,000 and Plywood Units as press in the unit: Rs. 4,50,000/-). The eligible units have deposited this amount without ever objecting to it at any stage. On the similar license fee for plywood and veneer & plywood units has been decided at a rate which is two and three times respectively that of saw-mill or veneer unit. It is also worth mentioning that these units primarily use poplar and eucalyptus as their raw material as mentioned in writ and their rates have increased manifold till date from the year 2004-05 which is shown in table given, be low and this also supports the enhancement of license fees.

The above increase in selling prices/royalty shows only for raw timber only. The increase in selling price of processed wood like veneer/plywood is 5 to 10 times in comparison raw timber. The fee revision is not frequent (Last two revisions were in 1990 and 2004) and remains same for many subsequent year hence to

offset expected increase in future years, the 5 to 15 times increase in renewal fees of license of saw mill, veneer and plywood this time is very reasonable and considerate."

30. In Writ Petition No. 72465 of 2011, the State Government has taken a different stand contending that the State is competent to make the Act and Rules under Entry 17A of the concurrent list of the VII Schedule. The State further contended that the Rules of 1978 are regulatory in nature and, therefore, the principle of equivalence and quid pro quo is not applicable. It was contended that the State has framed the rules for regulating the function of the establishment or unit by exercise of sovereign power including the policing power and that the State Government has a mandatory duty under the Indian Forest Act, 1927 and the Forest Conservation Act, 1980 as well as the Uttar Pradesh Protection of Trees Act, 1976 and the Rules framed therein to protect not only the trees but environment, ecology, health and other related environmental act. It was contended that for implementation of the above Acts and the Rules, the State Government has the statutory duty towards the public at large to provide general nature of service. The State Government, accordingly, has created a machinery to facilitate saw mills on the basis of which the saw mills and other establishments are getting the benefit of the fruits of the various trees scheme under which the State Government had made huge expenditure and is providing service to the saw mills by making inspection by the officials of the department and, therefore, the increase in fee is justified.

31. The State Government in the counter affidavit has tried to justify the enhancement in the fee in the following manner.

(a) Expenditure on enforcement/regulation in U.P. Forest Department has increased about three times i.e. from Rs. 11213.93 lakh in year 2004-05 to 32205.16 lakh in year 2010-11.

32. The license fee/renewal fee of saw mills and veneer/plywood are thus regulatory in nature and the same has been enhanced with a view to balance and meet the enhanced expenditure being incurred on enforcement/regulation of the Forest Department as below:

Note: Expenditure incurred or time spent for checking by Range Officer and higher officers are not included in above calculation. The amendment in licence fee is 25,000/- per saw mill unit which is on the lower side of the average expenditure on enforcement.

AVERAGE EXPENDITURE ON REGULATION OF PLYWOOD AND VENEER & PLYWOOD UNITS

According to the State the normative timber requirement (Recommendations proposed by Central Empowered Committee dt. 19.4.2007 which was accepted by Hon''ble Supreme Court order dt. 18.5.2007) of the saw mills are as follows:-

On the basis of the report of the Indian Plywood Industries Research 8b Training

Institute (IPRITI) Bangalore, an autonomous body under MOEF the normative timber requirement of the peeling length of 4 feet size in veneer units is about 1500 cu. mt. per year. The normative timber requirement of the plywood units is about 2000 cu. mt. per year. Hence the timber requirements of plywood units are about two times in comparison to saw mill. Hence the checking expenditure on the plywood units and the veneer & plywood units are two and three times to the above calculated expenditure for saw mills i.e. approximately Rs. 52800 and Rs. 79200 respectively as given below:-

(i) AVERAGE EXPENDITURE ON REGULATION OF PLYWOOD UNITS

Note: Expenditure incurred or time spent for checking by Range Officer and higher officers are not included in above calculation. The amendment in licence fee is 50,000/- per plywood unit which is on the lower side of the average expenditure on enforcement.

(ii) AVERAGE EXPENDITURE ON REGULATION OF VENEER & PLYWOOD UNITS

Note: Expenditure incurred or time spent for checking by Range Officer and higher officers are not included in above calculation. The amendment in licence fee is 25,000/- per veneer & plywood unit which is on the lower side of the average expenditure on enforcement. It was contended that the normative timber requirement of veneer and plywood units are based on scientific analysis of report of Central Government institute IPRITI, an autonomous body under MOEF.

(b) Central Empowered Committee's (constituted by Hon"ble Supreme Court of India) decision dated 8.6.2007 in which it was decided that different one time amount is to be deposited by Veneer and Plywood units for consideration for the grant of licence. (Only Veneer Units-per peeler/slicer in the unit: Rs. 1,50,000 and Plywood units per press in the unit: Rs. 4,50,000). The eligible units have deposited this amount without ever objecting to it at any stage. The similar licence fee for plywood and veneer and plywood units has been decided at a rate which is two and three times that of a saw mill licence. The prices of the raw material, namely, poplar and eucalyptus trees have increased manifold from the year 2004-05 and, therefore, the enhancement of licence fees is justified, as is clear from the table below:

33. The aforesaid increase in selling prices is only for raw timber only. The increase in selling price of processed wood like veneer/plywood is 5 to 10 times in comparison to raw timber. To offset expected increase in future years, 5 to 15 times increase in renewal fees of license of saw mill, veneer and plywood has been made which is very reasonable and considerate and is not compensatory in nature.

(c) The State Government has also justified the importance of regulatory mechanism through licence fee contending that a study on ECONOMIC VALUATION OF DUDHWA NATIONAL PARK (DNP), LAKHIMPUR-KHERI was carried

out to see the Economic Valuation of Forest Ecosystem in monetary terms per annum to the society. The Dudhwa National Park represents woodland, grassland and wetland ecosystem and provide variety of goods and services having use and non-use value such as timber, fodder, MFP, carbon sequestration, soil and water conservation, gene pool preservation and biodiversity conservation so that it has been identified for this study to derive its Total Economic Value (TEV). The monetary value for the goods and services provided by the forest ecosystem of Dudhwa National Park (DNP) are as follows on the basis of price/rates of year 2006.

A. The Annual Monetary Value of Fuel wood extracted from Dudhwa National Park 155989920 or say 155.98 million

B. The Annual Monetary Value of Fodder and Grazing from Dudhwa National Park 228199028 or say 228.16 million

C. Annual Monetary Value of Minor Forest Produce (MFP) extracted from Dudhwa National Park 52411633 or say 52.41 million

D. Annual Monetary Value of Carbon Sequestration from Dudhwa National Park

E. Annual Monetary Value of Biodiversity Conservation in Dudhwa National Park

F. Annual Monetary Value of Ecological Functions form Dudhwa National Park

G. Annual Monetary Value Of Biodiversity Conservation in Dudhwa National Park

34. The Government contended that it was not harvesting any timber from DNP since its inception in January, 1977. On the basis of the annual increment, the Government is sacrificing 5.95 cubic meters per hectare timber production in 60% woodland of 88873.90 hectare DNP area with the average royalty during last three years paid by U.P. Forest Corporation as Rs. 8,880/- . The Government is sacrificing the revenue Rs. 30,99,18,931/- or Rs. 309.91 million each year. The Central and State Government are also spending Rs. 3,00,00,000/- for the conservation of biodiversity for future generations. Thus, the bequest value of DNP is Rs. 33,99,18,931/- per year.

35. It was contended that total Economic Value (TEV) of DNP Has been estimated at Rs. 1244.93 million on price/rates of year 2006. The Total Economic Value (TEV) per hectare would be come to Rs. 14087.00. The contribution of DNP is around 39% for direct use value such as fuel, wood, fodder, MFP and recreation, 31% for indirect use value such as ecological function and carbon sequestration, and 30% for non-use value or bequest value of preservation of biodiversity. The DNP is getting Rs. 30 million as budgetary allocation per annum from all sources against the requirement of Rs. 100 million. If intangible benefits such as oxygen, soil protection, effect on climate etc. then economic value would be much more. This justifies that forest resources are though valuable, the people understand its importance of preservation, conservation only when its monetary value is estimated. Hence, the huge monetary value sensitizes us that the forest resource

should be used on the basis of sustainable yield which could keep the forest intact and the ecosystem to be a healthy entity.

36. It was urged that the example of Dudhwa National Park showed an ecological and economic importance of a small chunk of forest and this evaluation is made for the entire State or country, the wanton destruction of such valuable forest would lead to catastrophic effect negating the survival of mankind. Hence it was contended that the licence fee for saw mill, veneer and plywood has been scientifically prepared in order to keep a vigil on the illegal source of production of timber/forest produce.

37. The State Government further contended that the regulatory mechanism through license fee is based on the premise that forest wealth should be used on the concept of sustainable development. It was submitted that forest is a precious commodity which takes a long time to grow and mature. Hence only incremental yield should be removed from forest so that forest wealth should be available for posterity. It was contended that the regulatory mechanism checks unhindered flow of forest produce by unscrupulous elements. The saw mill, veneer and plywood are the centre of transformation of timber and other forest produce into consumptive material for mankind. The growing population always put huge gaps in demand and supply. This leads to tremendous pressure on extraction of forest produce far beyond the sustainable yield. Once the timber is converted at these three places, the detection of forest crime become difficult because the origin of timber extraction cannot be detected.

38. The State Government submitted that deforestation and forest degradation are responsible for around 17.4% of all man made greenhouse as emissions, forests are home to 80% of the world's terrestrial biodiversity. The loss of forests results in the loss of all the services that the forest provides such as conservation of soil, water, biological diversity alongwith critical habitat loss for species. Loss of forest also means that the vital role the forest plays in carbon storage and carbon sequestration was no longer possible. Removing trees from forests not only means the loss of this carbon carrying capacity but also frequently means that large amounts of greenhouse gases are suddenly released into the atmosphere, compounding climate change problems. The United Nations Environment Programme's Bridging the Emission Gap report shows that, even if all countries implement their emissions targets for 2020 to their maximum extent, total emissions in that year will still exceed the level required to hold global warming to the UN's 2 degree goal.

39. It was urged that the aforesaid expenses have been occurred while performing the statutory duty contemplated under the Act and the Rules. It was contended that a perusal of the aforesaid data would clearly establish that the quantum of fee was justifiable although it was not required under law to establish it in an arithmetical manner but to test the reasonableness of the determination of the regulatory fees, the State submitted that the data indicated in the counter affidavit clearly establishes that the levy was reasonable and not

excessive. The licence fees up to the year 2004 was Rs. 5000/- per unit and index price of the valuation of the money was much higher as compared to the fee levied by the 4th amendment. It was submitted that the cost of the management for regulation of the establishment had increased which is apparent from the fact that in the year 2004-05, the sale price of the eucalyptus per cubic meter was 1990/- while in the year 2010-11 it had been enhanced to Rs. 4302/- . The selling price of the poplar was Rs. 1055/- per cubic metre for the year 2004-05 which had been enhanced to Rs. 4303/- in the year 2010-11. Similarly, the royalty of the poplar per cubic metre decided by the Forest Department to be paid by the U.P. Forest Corporation was Rs. 720/- per cubic metre which was enhanced to Rs. 2951/- for the year 2009-10. It was contended that the data shows that the price has been enhanced by three or four times. The expenditure has also enhanced and, consequently, the enhancement of the regulatory fee is justified. The licence fee which has been enhanced by the 4th amendment is a regulatory fee and does not amount to compensatory tax. Regulatory fees has been charged to regulate or control the function of the units. There is no requirement of law that the collection raised by the levy under the regulatory fee should exactly tally or should be corresponding to the administrative expenditure of regulation. The test of co-relation of the collection with the service rendered is to be re-looked at the aggregate level and not at the individual level.

40. The Chief Standing Counsel in support of his submission placed reliance on the judgment of the Hon''ble Supreme Court in the case of Secretary to Government of Madras and another Vs. P.R. Sriramulu and another, . In State of U.P. and Others Vs. Vam Organic Chemicals Ltd. and Others, in which it was held that in a regulatory fee, the existence of the quid pro quo was not necessary. In Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another, the Supreme Court held that the licence fee can also be charged for regulating the activities.

41. In case of Corporation of Calcutta and Another Vs. Liberty Cinema, the Hon''ble Supreme Court has made a distinction between a fee and a tax. In the case of Sona Chandi Oal Committee and Others Vs. State of Maharashtra, the Supreme Court held that when the object of the Act is to control the business and, for this purpose, charge a fee, the same is a regulatory fee. The Supreme Court held that the duty of the staff and officer of the department is to visit the place of the money lending business, inspect the accounts and other matters relating to the business to find out illegal money lending, carrying out raids in suspicious cases and do regular inspection as provided in the Act. Taking a clue from this decision, it was urged that in the instant case the respondents are duty bound to visit the place of the establishment and check the functioning, inspect the records and forest produce and other matters relating to the business with the purpose to find out the illegal activities in functioning of the business and, for that purpose, the officers have been empowered under the Act and Rules to carry out raids in suspicious circumstances and make regular inspections. It was

urged that the Act serves a larger public interest and, consequently, the fee levied by the respondents in the present case is a regulatory fee and is not a compensatory tax.

42. The State Government has also placed reliance upon certain case laws, namely:-

Maharashtra Distilleries Vs. Municipal Corporation of Aurangabad and Another, ; T.N. Godavarman Thirumulkpad Vs. Union of India and others, ; B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc., ; Municipal Corporation of Delhi and Others Vs. Mohd. Yasin, ; Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd., and Express Hotels Private Ltd. Vs. State of Gujarat and Another, .

43. Having heard the learned counsel for the parties at some length and having given our thoughtful consideration in the matter, we find that the Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance and therefore, provisions have been made for the conservation of forests. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective" of the ownership or classification thereof.

44. In view of the meaning of the word "forest" as defined in the Act it is obvious that prior approval of the Central Government is required for any non forest activity within the area of any "forest". The Supreme Court, after considering all aspects of the matter, permitted running of saw mills of any kind including veneer or plywood mills pursuant to a licence being issued to them by the appropriate authority under the Rules of 1978.

45. The basic challenge in these petitions is, that the licence fee has been enhanced many folds, which is wholly arbitrary. The contention is, that the fee is required to be justified with reference to the cost of regulation and that the principle of quid pro quo is not applicable. The fee, which is charged, should have a broad co-relationship with the cost of administering the regulation. According to the petitioners, the enhanced fee does not have any co-relationship with the cost of administering the regulation. On the other hand, the State has justified the increase in the levy of fee, on the ground, that the expenses in enforcing the regulation has increased by three times.

46. Both parties agree that the licence fee, which is charged under Rule 11 of the

Rules of 1978 is a regulatory fee and regulates the functioning of the saw mills in the State of U.P. Both the parties have placed judgments on the question whether a licence fee, in a given circumstance, is a fee or a tax. Since parties agree that it is a regulatory fee, we need not dwell on this question whether it is a fee or a tax and whether the principle of quid pro quo is applicable or not. However, few judgments are being cited to encapsulate the settled principles on this subject.

47. In *Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another*, , the Supreme Court held.

"It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive."

48. In *B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc.*, , the Supreme Court held:

"Once we come to the conclusion that the fee in question is primarily a regulatory fee then the argument that the service rendered by the Board should be confined to the contributories alone, cannot be accepted. What the Court has to investigate while examining a challenge of this nature is to see what is the primary object of the Regulations for which the fee is being collected and find out whether the Regulations in question are in public interest or not. Once the levy is in public interest and connected with the larger trade in which the contributories are involved then confining the services only to the contributories does not arise, as has been held by this Court in *City Corporation of Calicut (supra)*. Applying the said principle, we are of the opinion that since the amount collected under the impugned levy is being spent by the Board on various activities of the stock and securities market with which the petitioners are directly connected, the fact that the entire benefit of the levy does not accrue to contributories i.e. the petitioners would not make the levy invalid."

49. In *Sona Chandi Oal Committee and Others Vs. State of Maharashtra*, , the Supreme Court held,

"A three Judge Bench of this Court in *B.S.E. Brokers" Forum v. Securities and Exchange Board of India* after considering a large number of authorities, has held that much ice has melted in Himalayas after the rendering of the earlier

judgments as there was a sea change in the judicial thinking as to the difference between a tax and a fee since then. Placing reliance on the following judgments of this Court in the last 20 years, namely, *Sreenivasa General Traders v. State of A.P.*; *City Corporation of Calicut v. Thachambalath Sadasivan*; *Sirsilk Ltd. v. Textiles Committee, Commr. & Secy. to Govt.*; *Commercial Taxes & Religious Endowments Deptt. v. Sree Murugan Financing Corpn.*; *Secy. to Govt. of Madras v. P.R. Sriramulu*; *Vam Organic Chemicals Ltd. v. State of U.P.*; *Research Foundation for Science, Technology & Ecology v. Ministry of Agriculture and Secunderabad Hyderabad Hotel Owners' Assn. v. Hyderabad Municipal Corpn.*, it was held that the traditional concept of quid pro quo in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. Quid pro quo in the strict sense was not always a sine qua non for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. It was observed that it was not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid. It was held that if one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied."

and further held--

"This apart the fee charged is regulatory in nature to control and supervise the functioning of the money lending business to protect the debtors the vast majority of which are poor peasants, tenants, agricultural labourers and salaried workers who are unable to repay their loans. The object of the Act is to control the money lending business and protect the debtors from the malpractices in the business by detecting illegal money lending. This exercise is a must to carry out the object of the Act for which lot of infrastructure is required. The duty of the staff and the officers of the Department is to visit the places of money lending business, inspect the accounts and other matters relating to the business, to find out illegal money lending, carry out raids in suspicious cases and do regular inspection as provided in the Act. The Act serves a larger public interest."

50. In *Municipal Corporation of Delhi and Others Vs. Mohd. Yasin*, , the Supreme Court held--

Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough."

51. In *Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd.*, , the Supreme Court after considering all the judgments held--

"Thus what emerges from the conspectus of the aforesaid decisions is as follows:

(1) Though levying of fee is only a particular form of the exercise of the taxing power of the State, our Constitution has placed fee under a separate category for purposes of legislation. At the end of each one of the three Legislative Lists, it has given power to the particular legislature to legislate on the imposition of fee in respect of every one of the items dealt with in the list itself, except fees taken in Court.

(2) The tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. There is no quid pro quo between the taxpayer and the public authority. It is a part of the common burden and the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

(3) Fee is a charge for a special service rendered to individuals or a class by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service though in some cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are various kinds of fees and it is not possible to formulate a definition that would be applicable to all cases.

(4) The element of compulsion or coerciveness is present in all kinds of impositions though in different degrees and it is not totally absent in fees. Hence it cannot be the sole or even a material criterion for distinguishing a tax from fee. Compulsion lies in the fact that payment is enforceable by law against an individual in spite of his unwillingness or want of consent and this element is present in taxes as well as in fees.

(5) The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for a special benefit or privilege. Fees confer a special capacity although the special advantage is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which is conferred and accruing which is the reason for Imposition of the levy. In the case of a tax, the particular advantage if it exists at all, is an incidental result of State action. A fee is a sort of return or consideration for services rendered and hence it is primarily necessary that the levy of fee should on the face of the legislative provision be correlated to the expenses incurred by Government in rendering the services. As indicated in Article 110(2) of the Constitution ordinarily there are two classes of cases where Government imposes fees upon persons. The first is of grant of permission or privilege and the second for services rendered. In the first class of cases, the cost incurred by the Government for granting of permission or privilege may be very small and the

amount of imposition levied is based not necessarily upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, the tax element is predominant. If the money paid by privilege holders goes entirely for the expenses of matters of general public utility, the fee cannot but be regarded as a tax. In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered.

(6) There is really no generic difference between tax and fee and the taxing power of the State may manifest itself in three different forms, viz., special assessments, fees and taxes. Whether a cess is tax or fee, would depend upon the facts of each case. If in the guise of fee, the legislature imposes a tax it is for the Court on a scrutiny of the scheme of the levy, to determine its real character. In determining whether the levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specific area or classes. It is of no consequence that the State may ultimately and indirectly be benefited by it. The amount of the levy must depend upon the extent of the services sought to be rendered and if they are proportionate, it would be unreasonable to say that since the impost is high it must be a tax. Nor can the method prescribed by the legislature for recovering the levy by itself alter its character. The method is a matter of convenience and though relevant, has to be tested in the light of other relevant circumstances.

(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable correlation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general co-relationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

(8) Absence of uniformity is not a criterion on which alone it can be said that the levy is of the nature of a tax. The legislature has power to enact appropriate retrospective legislation declaring levies as fees by denuding them of the characteristics of tax.

(9) It is not necessary that the amount of fees collected by the Government should be kept separately. In view of the provisions of Article 266, all amounts received by the Governments have to be credited to the Consolidated Funds and to the public accounts of the respective Governments."

52. In *Ram Surat Tiwari v. State of U.P. and others*, 1991 All LJ 644, a Division Bench of this Court held:

"Although, it is open, as mentioned above, for the State to regulate any trade or business by means of licence and to charge licence fee in connection therewith; but in such cases principles of quid pro quo do not apply as by regulating the trade or business the State is not rendering any service to the licence holders but enforcing the regulation by placing restrictions on their rights to trade and business for the good of the society. By exercising the control on the activities of the licensees, State makes their activities subject to reasonable restrictions, which is not a service rendered to them. Object of law, which places restrictions on the fundamental right to trade and business, is not to confer any benefit on those, whose rights are being regulated but to regulate their activities in the interest of general public. As observed by the Supreme Court in *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, :

"The requirement to take a licence is prescribed to safeguard public interest and not as a source to gather revenue. What is made punishable is either a persons' failure to take the required licence or the breach of the conditions of the licence. Otherwise there would be no sanction behind the rule requiring to take a licence. Generally speaking by granting a licence the State does not confer any privilege or benefit on any one. All that it does is to regulate a trade, business or profession in public interest."

To the same effect are the observations made by the Supreme Court in the case of the *Corporation of Calcutta and Another Vs. Liberty Cinema*, (supra) wherein it has been mentioned that inspection of cinema houses by officials is not service to the licensees, as the object of the inspections is to control the licensee's activities and to make him observe the conditions of the licence.

When the State makes the law for regulation of any trade or business by means of licensing, it is open to it to charge licence fee to defray the cost of administering the regulation. In these cases although the principles of quid pro quo do not apply; but the fee so charged should have broad co-relationship with the cost of administering the regulation. What is essential is that fee should not be excessive or exorbitant"

53. Similarly in *M/s. Indian Glycols Limited v. State of U.P. and others*, 2000

UPTC 474, a Division Bench of this Court held:

"However, it is also equally well settled that the State Government can charge regulatory fees for the purpose of payment of salary for the staff to see that no non-potable alcohol is converted into potable alcohol. However, the said regulatory fee must not be excessive and must have a broad co-relation with the aforesaid expenses as held by a Division Bench of this Court in *Ram Surat Tiwari v. State of U.P. and others*, 1991 ALJ 644 and *Rajendra Prakash Sharma v. State of U.P. and others*, decided on 31st March, 1999. As such the regulatory fee must have broad co-relation with the cost of administering the regulation and must not be a garb for imposing excise duty for raising revenue by the State, as the State cannot impose duty on non-potable alcohol.

No doubt in *Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others*, it was held by the Supreme Court that for regulatory fee like the licence fees, existence of quid pro quo is not necessary (although the fee imposed must not be in the circumstances of the case excessive). In our opinion, this only means that the fee charged need not be exactly the same as expenses incurred for maintenance of the staff. For example, if the expenses on salaries of staff etc. for seeing to it that non-potable alcohol is not converted into potable alcohol is Rs. 10 lacs, a fee of Rs. 11 or 12 lacs will not be declared illegal, but if the fee charged is, say, rupees one crore it will be certainly illegal as there will be no broad co-relation between the fee charged and the administrative expenses. In fact the extra 90 lacs is really being imposed as a tax in the garb of administrative expenses. In our opinion, the burden of showing that there is a broad co-relation between the fee charged and administrative expenses for imposing regulatory fee is on the Government in view of Section 106 of the Evidence Act which says that the burden of proving any fact which is especially within the knowledge of any person is on him. Moreover, as held by this Court in *Ram Surag Tewari's* case (Supra). It is not the entire expenses on salaries of the staff of the excise department which is to be considered but only that portion of the expenses which can broadly be attributable to the expenses for checking that non-potable alcohol is not converted into potable alcohol. The excise department officials discharge several functions e.g. checking the quantity and quality of the goods produced, and hence the entire salary of the staff posted in the premise is not to be considered, but only such portion of it which can be roughly estimated to be for the work of ensuring that non-potable alcohol is not made potable."

54. In *State of U.P. and Others Vs. Vam Organic Chemicals Ltd. and Others*, , the Supreme Court held-

"Considering the various authorities cited, we are of the view that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is not surreptitiously converted into potable alcohol so that the State is deprived of revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor. But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in *Vam*

Organics-I to be outside the seisin of the State Legislature. Assuming that denatured spirit may be whatever process be renatured (a proposition which is seriously disputed by the respondents) and then converted into potable liquor, this would not give the State the power to regulate it. Even according to the demarcation of the fields of legislative competence as envisaged in Bihar Distillery industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to Bihar Distillery "denatured rectified spirit, of course, is wholly and exclusively industrial alcohol".

Besides, the fee is required to be justified with reference to the cost of such regulation. The industry is already paying a fee under Rule 2 for such regulation. Indeed, the justification for levying the fee under Rule 3(a) is the identical justification given by the State for levying the fee under Rule 2. Presumably, a full complement of excise officers and staff are appointed by the State in the Excise Department to carry out their duties under the Act to oversee, control and keep duty on the various kinds of intoxicants under the Act. Having regard to the decision in Vam Organics-I we must also assume that apart from the normal strength, additional officers and staff were appointed to regulate the denaturation of the industrial alcohol. There is nothing to show that there has been any deployment of any additional staff to oversee the possibility of renaturation of the denatured spirit."

55. In A.P. Paper Mills Ltd. Vs. Government of A.P. and Another, , the Supreme Court held--

"It is our considered view that the licence fee has co-relation with the purpose for which the statute and the rules have been-enacted."

The Supreme Court further held-

"The question that remains to be considered is whether the enhanced licence fee under challenge is grossly high and excessive, and therefore, arbitrary. On a first look it appeared to us that the enhancement from Rs. 10,000/- to Rs. 18,00,000/- (maximum), was too high. We also did not find any material on record to show that there was justification for the enhancement of the fee to the extent prescribed. There was also no material on record to show existence of co-relation between the expenditure incurred by the Government for enforcement of the Act and the Rules and the enhanced levy."

56. In the light of the aforesaid decisions, admittedly, the fee prescribed under Rule 11 of the Rules of 1978 is a regulatory fee. The levy regulates the functioning of saw mills including veneer and plywood mills. The regulatory fee is required to be justified with reference to the cost of such regulations. The principle of quid pro quo does not apply, but, the fee charged should have a broad co-relationship with the cost of administering the regulation. The licence fee should not be excessive or exorbitant and must have a reasonable co-relationship with the amount spent in regulating the activity.

57. In the light of the aforesaid decisions, we have to examine whether the increase in the licence fee from Rs. 5000/- per unit to Rs. 25,000/- per unit was justifiable and whether it has any co-relation with the cost incurred by the State Government in administering the regulation.

58. The State Government has taken a different stand in different writ petitions. The respondents have justified the increase in the fee, on the basis, that the price of the raw material has also increased. It was also contended that the selling price of eucalyptus and poplar trees per cubic metre have increased from 2.3 times to 4 times between the year 2004 to 2010. The respondents have further stated that the price of the processed goods, namely, the end product such as veneer and plywood has increased 5 to 10 times in comparison to the rise in the purchase of the raw material and therefore, justified the increase in the licence fee.

59. In our opinion, the increase in the cost of the raw material or increase in the sale price of the finished products has no co-relationship with the cost incurred in enforcing or administering the regulation. The increase in the price of the raw material or the increase in the price of the end product manufactured and sold by the petitioner has no relevance to the cost incurred by the State of U.P. in enforcing the regulation and such examples cannot be made the basis to justify the increase in the licence fee. Such stand taken by the State in the counter affidavit filed in Writ Petition No. 70386 of 2010 Zaheer Khan and others v. State of U.P. and others and Writ Petition No. 67911 of 2011, M/s. Azmi Plywood Industries and others v. State of U.P. and others cannot be justified in any manner whatsoever, in the light of the decisions of the Supreme Court as quoted aforesaid. These counter affidavits are silent with respect to the cost incurred by the State of U.P. in administering the regulation and its co-relation with the increase in the licence fee.

60. In the counter affidavit, in Writ Petition No. 72465 of 2011, M/s. Singh Timber Traders and others v. State of U.P. and others, the respondents have tried to justify the increase in the licence fee by taking an example of the annual monetary value of Dudhawa National Park. The study on economic valuation of Dudhawa National Park in monetary terms per annum and the conclusion drawn therein has again no co-relation with the cost incurred in administering the regulation nor does it portray any broad co-relationship with the cost incurred by the State in enforcing or administering the regulation. The Dudhawa National Park represents woodland, grassland and wetland eco system providing a variety of goods and services which has nothing to do in so far as the costing of the licence fee is concerned. The suggestion made by the respondents in comparing the study of the Dudhawa National Park in terms of the annual monetary value is not only misleading, but, is contrary to the stand taken by the State before the Supreme Court and before the Central Empowered Committee regarding availability of timber for saw mills, plywood and veneer mills. The Supreme Court as well as this Court have held that the enhancement of the licence fee has to

have a broad co-relationship with the cost incurred in administering the regulation and that the fee cannot be used as a guise to raise the general revenue for the State. The various values indicating in the study towards extraction of fuel wood, fodder, grazing and minor forest produce has nothing to with the determination of the licence fee payable by the petitioners pursuant to the impugned notification. Nothing has been indicated by the State in their counter affidavit as to how these values indicated in the study of Dudhwa National Park has any co-relation with the increase in the licence fee at hand.

61. Admittedly, the study of the Dudhawa National Park indicates the forest wealth that has to be used and conserved in relation to the sustainable development of the State. The study relates to the use of forest produce inside a forest. This determination of the use and conservation of the forest wealth would have some bearing if the petitioners were using the timber coming out from the forest or purchasing the raw material from the U.P. Forest Corporation. Admittedly, in the instant case, trees are not being removed from the forest. The raw material, which the petitioners are using are the eucalyptus and poplar trees grown by the farmers on the margin of their fields. The fact, that the State of U.P., in its constitutional obligation in preserving and protecting the environment, is losing large amount of revenue by not exploiting the forest resources of Dudhawa National Park could not justify the increase of licence fee. In our opinion, such plea raised by the State has no co-relationship with the cost of administering the regulation. Further, no details have been indicated in the counter affidavit indicating that such consideration were germane and were made the basis for increasing the levy of licence fee. Apparently, these considerations were not there before the authorities when the decision to increase the licence fee was taken. This study was not made the basis for calculating the increase in the licence fee. It is clearly an afterthought as deliberation and minutes of the Committee formed to recommend the increase in the licence fee has not been brought on record.

62. The State Government has justified the increase in the licence fee by contending that the total expenses incurred by the U.P. Forest Department has gone up by three times, i.e., from Rs. 11213.93 lacs in the year 2004-05 to Rs. 32205.16 lacs in the year 2010-11. We are of the opinion, that such justification made by the State Government is patently erroneous. The increase in the expenditure indicated is not confined to the regulation under the Rules of 1978, but, in relation to the expenditure incurred by the entire Forest Department. The figures shown in paragraph 4(a) of the counter affidavit reflect the establishment cost of the entire Forest Department and is not confined to the cost incurred by the Forest Department in enforcing the regulatory fee under the Rules of 1978. To buttress this fact, the petitioners have placed reliance upon a decision of a Division Bench of this Court in NTPC Limited and Another Vs. State of U.P. and others, which was in relation to transit fee Rules issued by the State of U.P. In paragraph 68 of the said judgment, a Division Bench of this Court has extracted the same figures as has been mentioned in paragraph 4(a) of the counter

affidavit and which has also been extracted in this judgment, in the earlier paragraphs. The Division Bench, in the said decision of N.T.P.C., has noted these figures to be the increase in the overall expense of the Forest Department.

63. Upon a query raised by us, the respondents conceded that the staff engaged in the enforcement of the transit fee Rules and the staff engaged in enforcing the Rules of 1978 are different and that the same cost could not be incurred by the State of U.P. towards regulating the activities under two totally different regulations. Assuming that the increase in the cost incurred by the Forest Department was three times from 2004 to 2010, the increase of licence fee by almost 15 times appears to be wholly irrational and unconnected with the overall increase in the cost incurred by the Forest Department. The increase of licence fee on this basis appears to unsustainable in the eyes of law.

64. In the counter affidavit in the leading writ petition, the State has tried to justify the fee of Rs. 25,000/- per unit by contending that the State incurred a cost of Rs. 26,400/- for regulating a saw mill, Rs. 52,800/- for regulating a plywood unit and Rs. 76,200/- for regulating a veneer and plywood unit. The respondents have placed a chart: justifying these expenses, which has already been extracted in the preceding paragraphs.

65. A perusal of the aforesaid chart/table indicates that the basic premise is inspection of the wood by the enforcement agencies in cubic metres. At the outset, only the U.P. Forest Corporation sells the logs of wood in cubic metres and, on that basis, the costing has been done. In our opinion, there is an inherent flaw in the calculation of the price on this basis.

66. In the instant case, the petitioners do not purchase wood in cubic metres. It is not in the form of logs of wood nor is the wood in a particular shape or size. It is neither measured in cubic metres nor is capable of measurement in cubic metres for the reason that the petitioner purchases the wood on quintal basis from the farmers. The wood which is purchased is wet and twisted broken branches, which are haphazardly cut by the farmers. The aforesaid facts have not been disputed by the respondents. The wood sold by the U.P. Forest Corporation is in a particular shape and size, which is measured in cubic metres. If wood was sold by the U.P. Forest Corporation to the petitioners, the State could have made out a case justifying their costing. But, the said costing cannot be made applicable in the case of the petitioners because the petitioners are purchasing wood in quintals and not in cubic metres. We find that the petitioners neither purchase wood in cubic metres nor maintain their stock in cubic metres and that the entire transaction of purchase of same of wood by the petitioners is in quintals.

67. In the light of the aforesaid, the contention of the respondents that one forester and forest guard or beat incharge requires half a day in checking 12 cubic metres of wood is based on surmises and conjectures. No details, proof of inspection has been filed by the respondents to indicate that inspections in the

like manner has been made by the respondents in a particular factory nor details of measurement in cubic metres have been brought on record. Apparently, the foundation of arriving at these figures indicating the expenditure of regulation the saw mill or a veneer or plywood units is not based on any scientific method and this estimation of cost has been done primarily on a post facto basis only to justify the increase in the licence fee before this Court.

68. There is another contradiction in the table given by the respondents. We find that the State has given details of the time spent by a staff of the Forest Department in checking 12 cubic metres of wood. For a saw mill/veneer unit, a forest staff takes half a day for measuring 12 cubic metres of wood. For plywood unit, it is one day for measuring 12 cubic metres of wood and for plywood and veneer unit it is 1.5 days. One finds it is strange that the same kind of wood is used in all the three units, namely, in the saw mill, veneer unit and plywood unit but the time taken to inspect 12 cubic metres of the wood would be different in all the units. Because of the nature of the industry the inspection of the wood in the three units could not be different unless the process of inspection is different. Nothing has been brought on record to show as to how the inspection of wood differs in the saw mill, plywood and veneer mill. This blatant and apparent inconsistency is only on account to justify the increase of the fee between a saw mill, a veneer unit, a plywood unit and a veneer and plywood unit. There is nothing to indicate that different kinds of woods are being used in a saw mill, in a veneer unit or in a plywood unit. Consequently, if the time taken for inspecting 12 cubic metres of wood is taken to be the same for all the three categories, the cost of regulation would come down to Rs. 26,400/- for all the three units, assuming that the cost of Rs. 26,400/- is correct.

69. The petitioners have categorically stated on oath that no inspection of any staff of the Forest Department has ever been carried out in their unit. The actual measurement of the wood, if any, is only carried out in the forest area or at the depots of the U.P. Forest Corporation. No proof of inspection carried out by the Forest Department at the petitioners premises has been placed before the Court to justify the expenses as indicated in the table. Consequently, the expenses indicated towards the expense incurred by the beat incharge, forest guard or forester is only based on surmises and conjectures for the purpose of justifying the cost of the increase in fee.

70. A specific assertion was made by the petitioner that the role of the Forest Department is at the beginning of the year when licences are issued or renewed and entries are required to be made in the licence book of the petitioners. Thereafter, the Forest Department does nothing to regulate the activities of the petitioners nor the Forest Department incur any expenditure in administering these regulations.

71. We find from a perusal of the counter affidavit that no evidence of any sort has been brought on record to prove and justify the expenditure indicated in the table. No evidence has been brought on record to indicate that any inspection

had been carried out by the Forest Department and entries to that effect were made in the licence book of the petitioners. We also find that the justification made by the respondents that a staff of four persons is required to check a unit appears to be based on the figment of imagination. As per the table, the frequency is thrice in every month while the time taken in each inspection is 1.5 days. Therefore, for each factory, the Forest Department would require $3 \times 1.5 \times 6 = 27$ days for the staff of four persons to carry out the checking. For facility, the aforesaid working is extracted hereunder:

In view of the above 27 days would be spent by four staff members for checking each factory.

72. As per the figures in the counter affidavit, each team of 4 officers takes 1/2 day in checking the saw mill, and does it 3 times a month for each saw mill. Therefore, for each saw mill, $3 \times 0.5 = 1.5$ days is spent by 4 officers every month in checking. Taking 30 days in a month, each team of 4 officers can therefore check only 20 saw mill units ($30/1.5 = 20$). Therefore, for checking 6947 saw mill units, the Forest Department requires $6947/20 = 347.35$ teams consisting of 4 officials each, or $347.35 \times 4 = 1389.40$ persons. These persons need to be devoted only for checking saw mills for the frequency indicated in the counter affidavit. For convenience the figures are tabulated as under:

73. From the aforesaid, a total 1558 persons would be required continuously only for inspection. The Forest Department does not have this kind of staff dedicated only for inspecting the saw mills nor are actually carrying out any inspection. We are, consequently, of the opinion, that the figures given in the table, in the counter affidavit, is only an afterthought to justify the increase in the levy of fee. The respondents have failed to justify the expense of Rs. 26,400/- per unit.

74. Till 2010, a uniform licence fee @ Rs. 5000/- per unit was payable irrespective of the fact as to whether a unit was manufacturing veneer or plywood or veneer and plywood or the unit was merely functioning as a saw mill. By the 4th Amendment, the structure of the licence fee was changed introducing a different licence fee for a saw mill, veneer or plywood mill. The counter affidavit reveals that a distinction has been made on account of the end product being produced by the said units.

75. Rule 2(a) of the Act defines a saw mill, which includes any mechanical devices for the purposes of cutting, sawing or converting timbers and wood into pieces. The Supreme Court, pursuant to the recommendation of the Central Empowered Committee allowed the State of U.P. to grant licence under the Rules of 1978. The Rules of 1978 does not make any distinction between a saw mill, a veneer mill and a plywood mill. A plywood and a veneer mill is also a saw mill for which a licence is required. The mere fact that a plywood and veneer unit have a vertical band saw or a Peeler will not entitle the respondents to charge a different rate of fee in the absence of amending the Rules justifying different rate of fee for a plywood and a veneer unit. So long as the definition of saw mill is not

amended, the different rates for saw mill, veneer and plywood unit could not be made. The charging of a different fee for veneer and plywood units based on the end product is discriminatory. So long as plywood and veneer mills are treated as saw mills for the purpose of issuance or of renewal of a licence fee, for all practical purposes, these mills would be treated as a saw mill until and unless the Rules are modified. Rule 11 of the Rules is the charging provision relating to imposition of a licence fee per unit of saw mill. Consequently, no distinction can be made between a saw mill, a veneer unit and a plywood unit. We are, consequently, of the opinion, that a uniform licence fee for a saw mill, plywood and veneer manufacturing unit has to be made irrespective of their end product produced in their factory.

76. In the instant case, we find, that as per impugned notification Rs. 25,000/- per unit is being charged as a licence fee for a saw mill and veneer factory, and Rs. 50,000/- per unit is being charged for plywood unit and Rs. 75,000/- per unit for a unit manufacturing veneer and plywood. This distinction in charging of licence fee is primarily discriminatory and violative of Article 14 of the Constitution of India. We are of the opinion, that such distinction has no nexus with the object sought to be achieved under the Rules of 1978.

77. The petitioners contended that the licence so issued to them contained a condition, namely, condition No. 8, in which the petitioners were directed to pay the licence fee from 2007 onwards. We are of the opinion, that charging fee with retrospective effect is illegal. The fee cannot be charged retrospectively unless it is specifically mentioned in the enabling statute. In the instant case, the statute is silent with regard to charging fee with retrospective effect. Further, nothing has been indicated by the State that they had incurred the expenditure in these previous years. In the absence of any justification indicating the expenditure it is not permissible to raise a demand that the petitioners would be liable to pay the licence fee from 2007 onwards. Condition No. 8 of the licence which creates a retrospective demand is patently illegal and invalid.

78. We also find from a perusal of the affidavits that other States are charging far less licence fee from similar units. We find that different fee is being charged by different States, namely,--

79. From the aforesaid table, it is apparently clear, that the fee charged by the State of U.P. is several times more than the fee charged by the other States for the same activity. Such increase in licence fee apparently appears to be arbitrary.

80. In 1978 the licence fee was Rs. 250/- per unit. In 1990, the fee was enhanced to Rs. 1000/- per unit, i.e., in 12 years the fee was enhanced by 4 times, which works out to an increase by Rs. 200/- to Rs. 250/- every three years. In 2004 the fee was increased from Rs. 1,000/- to Rs. 5,000/- that is to say, in 14 years the increase was 5 times, namely, an increase by Rs. 750/- after every 3 years. In 2010 the fee was increased to Rs. 25,000/- . In six years, it was increased 5 times. The increase in the licence fee from 1978 to 2004

indicates a pattern, namely, that the fee doubles every three years. Following the same ratio from 2004-2010 the increase would be twice that is to say from Rs. 5,000/- it would increase twice to Rs. 15,000/- . On this basis, the increase in licence fee at best would be Rs. 15,000/- per annum.

81. There is another aspect. Under the impugned notification, the respondents are charging a fee where a unit has to be reallocated. If a unit is reallocated in a rural area, a fee of Rs. 50,000/- is being charged; in a District headquarter, a fee of Rs. 1,00,000/- is being charged; in a Commissionerary headquarter, Rs. 2,00,000/- is being charged and Rs. 5,00,000/- is being charged if the unit is reallocated in a Mahanagar area. The counter affidavit is totally silent on this aspect. No justification has been given as to why different slabs of fee is being charged if a unit is reallocated in a rural area or in the District headquarter or in the Commissionerary or in Mahanagar area. We find that no rational classification has been made justifying the reallocation charges. There is nothing to show that the State would be expending more for re-allocating a unit in a different area. In the absence of any plausible explanation being given, coupled with the fact that prior to the impugned notification, only a sum of Rs. 10,000/- was being charged, we are of the opinion, that reallocation fee per unit is wholly arbitrary and excessive which cannot be sustained and is accordingly quashed.

82. In view of the aforesaid, we are of the opinion, that a fee is charged for a special service rendered to individuals or class by some governmental agency. The amount of fee levied is based on the expenses incurred by the government in rendering the service. In the instant case, we find, that the State Government has completely failed to justify their expenses leading to an arbitrary increase in the licence fee. We are of the opinion, that the licence fee so increased is wholly arbitrary and without any rational basis. Although the exact arithmetical equivalence is not required to be indicated or proved that the fee so charged commensurate with the cost of rendering the service, we find, that in the instant case, the State Government has completely failed to justify its cost in administering the regulation viz-a-viz the increase in the licence fee. We find that the table and charts shown in the counter affidavit has no nexus with the object sought to be achieved under the Rules of 1978. The figures given are wholly fictitious and appears to be an afterthought. The State has failed to produce any material to show that it has actually been incurring the cost in administering the regulation. In the absence of any proof, we are of the opinion, that the increase in the fee under Rule 11 of the Rules of 1978 is not a fee levied for the purpose of administering the regulation, but, is really a tax in the guise of a fee.

83. We accordingly, hold that the notification dated 20.10.2010 substituting Rule 11 of the U.P. Establishment and Regulation of Saw Mills (4th Amendment) Rules 2010 is arbitrary, illegal and violative of Article 14 of the Constitution of India and is quashed. Further, condition No. 8 of the licence demanding the licence fee with retrospective effect is wholly illegal and is also quashed. Further, no distinction can be made in charging a fee between a saw mill, veneer mill and a

plywood mill. Only a uniform rate could be charged till such time specific Rules for veneer and plywood mills are framed or the Rules of 1978 are amended.

84. It is made clear that this judgment will have only prospective operation and any amount collected by the respondents as licence fee under the impugned government order shall not be refunded to the petitioners except the fee realised, if any, under condition No. 8, which will be refunded alongwith interest @ 6% per annum within six weeks from today. We are of the view that since the petitioners must have absorbed the licence fee in the sale price of the end product, the refund of the excess amount towards licence fee would amount to unjust enrichment.

85. Considering the fact that enhancement of fee by Rs. 5000/- every three years appears to be justified as discussed earlier, we are of the opinion, that till such time a fresh notification is issued by the State Government, the respondents should be allowed to charge a licence fee for the year 2015 @ Rs. 15,000/- per annum, per 25 unit horse power. No distinction can be made between a saw mill, a veneer unit and a plywood unit and a uniform rate of Rs. 15,000/- per unit, per 25 horse power would be leviable till such time specific Rules are framed for veneer and plywood units or the Rules of 1978 are amended accordingly. The writ petitions are allowed.

In the circumstances of the case parties shall bear their own cost.