State of Himachal Pradesh

Vs

Raja Mahendra Pal

Civil Appeal No. 9495 of 1995

(V.N. Khare, R.P. Sethi JJ)

31.03.1999

JUDGMENT

R.P. Sethi, J.

1. Despite independence of the country about half a century back and the establishment of a democratic set up with the declaration in the Constitution to have a Secular, Socialist Republic in the country, there are people and organisations who have not mentally re-conciled with the realities of life and the writings in the chapters of history for various reasons including their vested interests. Ignoring the establishment of the rule of law and the development of the constitutional set up, they have made and are making fanatic efforts to sabotage the path of the goal intended to achieve the welfare of the society. Ignoring the verdicts of this Court in *Keshvananda Bharati v. State of Kerala, 1973 Suppl. SCR 1, R.C. Cooper v. Union of India, 1970(3) SCR 530* and *Madhav Rao v. Union, 1971(3) SCR 9* and various other pronouncements, efforts have been made to reverse back the wheel of history merely for personal gains to quench the lust for money and power. The case of respondent No. 1 in this litigation is one of such persons who has done everything possible to utilise the forum of the Courts for the attainment of his personal benefits by attempting to utilise the alleged constitutional guarantees in his favour. A ruler of the yester years, the respondent No. 1, approached the High Court for issuance of the command to the State Forest Corporation by treating him equivalent to the Government of Himachal Pradesh with conferment of monetary gains which were permissible to the State Government on the basis of the decision of the Pricing Committee. The High Court granted prayer sought for by the judgment impugned in this appeal. The Maharaja was held, to have been equated with the Government and entitled to the relief claimed by him as according to the High Court he was found to have been deprived of the right to life as envisaged by Article 21 of the Constitution of India. The High Court observed "We have held that the petitioner is entitled to enforce his claim particularly the right to his livelihood through this writ petition." It was further held, "he was, for all purposes, possessed power of the government. The Court further observed, "infact the Pricing Committee on behalf of the Government, in its wisdom, appear to have equated the petitioner with the government and directed that the decision regarding the aforesaid payments taken in respect of the government product shall also apply to Kutlehar Forest as well." By way of issuance of the writ of mandamus, the respondent No. 1 was held entitled to the interest on the delayed payment of royalty, damages with respect to illicit felling plus 100 per cent penalty for the illegally felled trees. He was further conferred with the grant of interest on interest and share in the levy of extension fee chargeable by the State from the respondent-corporation under the terms of the agreement or the provisions of law applicable in the case.

2. The judgment impugned in this appeal has been assailed on various grounds including the ground of non-maintainability of the writ petition, error on the part of the High Court to equate the State

Government with a private person, disentitlement of the respondent to claim a share in the penal interest and levies which the State was entitled to impose and recover as a consequence of its sovereign functions.

3. The relevant facts for deciding the present appeal are, that the dispute relates to Kutlehar Forest located in the district of Kangra, now a part of Himachal Pradesh State which was earlier a Princely State. The aforesaid Princely State was founded by one Shri Narendra Pal about 300-400 years back whose descendant is respondent No. 1, the said State was conferred 16 `Tappas' (chunks of land), four were Jagir `Tappas' and twelve Khalsa `Tappas'. In Four Jagir `Tapas', the land revenue to the extent of Rs. 10,000/- was assigned to the forefathers of respondent No. 1 by way of `Jagir. In addition to four `Tappas', about twenty thousand acres of land belonging to the `Baratandars' (right holders) which was not used for agricultural purposes, was also assigned. The forefathers of respondent No. 1 are stated to have grown larger number of trees over the said land from the period before 1868 A.D. Respondent No. 1 claimed that this ancestors protected and maintained those trees while `Baratandars' were granted various rights including the right to get timber on concessional rate for their domestic requirements and the right to graze their cattle. During the settlement operation of civil district of Kangra in 1869, Mr. James Lyall, Settlement Officer, had made a proposal vide the letter 12.2.1868 that the management of forests in four `Tappas' be granted to the Raja of Kutlehar. The aforesaid proposal is claimed to have been accepted by the Government of Punjab not only with respect to four `Jagir Tappas' but also for all 16 `Tappas' including 12 Khalsa `Tappas'. The predecessor-in-interest of respondent No. 1 are stated to have started managing the Kutlehar Forest subject to the conditions contained in the approval dated 11.1.1869. The then Government is stated to have started laying claims to the threes grown on the aforesaid land in the year 1915 which was resisted and resulted in the commencement of the fresh correspondence between the parties. The controversies are said to have been set at rest by the Lt. Governor of Punjab in the year 1916 vide letter dated 25.5.1916 by which it was made clear that "All trees growing in the protected forests, subject to the right of `Bartandars' and to the other conditions and exceptions hereinafter specified, belong to Government, but have been assigned by Government to the Raja so long as he abaides by the conditions of management hereunto appended".

4. In exercise of his powers vested under Section 28, 29(a) and 31 of the Indian Forests Act, 1878, the Lt. Governor of Punjab issued Notification dated 31.8.1915 by which various lands within the limits of various Jagirs including the Jagir of Kutlehar in the district of Kangra, the management of the forests was assigned to the Rajas' including the predecessor-in-interest of the respondent No. 1, subject to the terms and conditions specified in the aforesaid orders. The Rajas' were directed to maintain proper account of the trees standing on the land which could be sold to traders only after the trees were marked by the Forest Department. The trees could be sold only at the rates approved by the Forest Department. The Raja was held entitled to continue to realize grazing fees from the `Gaddies' at the rates fixed by government or by mutual agreement the Raja and the `Gaddi' subject to the approval by the Deputy Commissioner. However, vide Notification No. 4531-FT. 9CH-58/523 dated 1.10.1958 issued under Section 2(2) of the Forest Act, the respondent was appointed as a Forest Superintendent and the employees working under him in the aforesaid forest declared as Forest Officers with respect to Kutlehar Forest. As per terms of his appointment, the respondent was held entitled to retain 3/4 of the income derivable from the forest whereas 1/4 of the gross income was payable to the government. The conditions explicitly provided :-

> "The Raja shall keep a register showing all the receipts from the sale of timber, bamboos and other forest produce whether to zimdars or to traders. Of this income the Raja shall in case of Kutlehar, receive 3/4 and Government 1/4."

The various forest produces such as resin, timber, bamboo and bhabar grass etc. were required to be auctioned by the respondent like the manner such auctions were held by the Forest Department in respect of government forests in accordance with the working plan and the highest bidder was to be granted the lease. This practice was discontinued after the forests were nationalised by the Appellate-State in the year 1974, when Himachal Pradesh Forest Corporation was incorporated under the provisions of the Companies Act, 1956. Produce of the government forests, thereafter, could be sold only to the Forest Corporation. Ever since its incorporation the respondent-corporation continued purchasing timber and other forest produces from respondent No. 1 in accordance with the working plan. The said respondent alleged that in addition to his entitlement of the sale price of the various forest produces sold by him out of the Kutlehar forest to the respondent-corporation, he was also entitled to share the interest on delayed payment, interest on interest and compensation for damages caused to the trees in the course of extraction of timber etc. The basis for his claim as pleaded in writ petition and noticed by the High Court was :-

> Firstly, the Government of Himachal Pradesh constituted a Committee of officers for determination of the price and terms and conditions of the supply of forest produce sold in favour of the second respondent (HP Forest Corporation) vide notification dated 18.5.1974 (Annexure-C) whereby the fourth respondent (Pricing Committee) on behalf of the Government in its wisdom had equated the petitioner with the Government and directed that the decision regarding the aforesaid payments taken in respect of the Government produce should apply to Kutlehar Forest as well; Secondly, that according to the practice prevailing and trade custom, the petitioner is entitled to his share in the above said additional income; and Thirdly, that the Government and the petitioner were similarly circumstanced in so far as the sale of the forest produce is concerned and, therefore, any discrimination of the share of additional amount by way of income is offensive to Article 14 of the Constitution."

The respondent asserted that the additional amounts claimed by him were payable even by the private lessees to whom he and the government had sold various forest produces before coming into the existence of the respondent-corporation. The appellant-State was claimed to have constituted a Pricing Committee which decided to apply the decisions taken by it in regard to the sales made by Forest Department to the sales made by the respondent out of the Kutlehar forest as well. To strengthen his claim, the respondent relied upon Article 51 of the Article of Association of the respondent-corporation which provided that the Government could issue directions from time to time which the directors of the company were bound to comply with. The respondent claimed that the corporation had an inescapable obligation to pay to him all the amounts claimed which it had failed to pay despite repeated written requests. The decision qua interest on interest is stated to have been taken by the Pricing Committee with the object to curb the pendency of belated payments attributed to the respondent-corporation. The decision regarding penalty of the illicit/outshaped blazes was stated to have been taken on 17.8.1982. Levy of extension fee was imposed vide decision of the Pricing Committee dated 4.12.1986. The aforesaid decisions are stated to have been made applicable in the case of the respondent vide Item No. VIII recorded in the minutes of the proceedings of the meeting held on 16.5.1988.

5. The Pricing Committee in its meeting held on 6.10.1990 was stated to have reviewed the guidelines issued earlier in respect of the dealings of the Himachal Pradesh State Forest Corporation with the Government and the royalty to be charged from, and levies and penalties to be imposed upon the corporation in respect of the working of the forest by the corporation. The Kutlehar Forest is stated to have been resumed by the State of Himachal Pradesh vide Notification dated 19.1.1990

issued under Section 3 of the Punjab Resumption of Jagir Act, 1957. The Principal Chief Conservator of Forests was directed to take over management and possession of Kutlehar forest from respondent No. 1 with the assistance of the Collector. Respondent No. 1 filed a writ petition (WP No. 42/90) with respect to his pre-existing rights as also his entitlement to retain the forest by challenging the validity of the notification. Thereafter, he also challenged the Himachal Pradesh (Acquisition of Management) Act, 1992 by filing a writ petition (W.P. No. 707/92). During the pendency of the aforesaid writ petition No. 42/90, respondent No. 1 filed CWP No. 528/91 in the High Court of Himachal Pradesh claiming the relief on the basis of the decisions of the Pricing Committee being applicable to him. The claim of the respondent No. 1 was resisted on various grounds including :-

> "(1) that the petitioner is not the owner of the forest;
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> (ii) that it is a case of enforcing contractual rights which can be done by way of a Civil Suit and not through this writ petition. Therefore, the writ petition is not maintainable;
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> (iii) that the decision of the fourth respondent (Pricing Committee) regarding the payment of additional amounts in question, such as, interest on belated payments, interest on interest, penalty on illicit out shaped blazes, levy of extension fees etc. to the petitioner is not binding on the first or the second respondent (HP Forest Corporation);
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> (iv) that the threes are not revenue but capital and that since the property in the trees is that of the first respondent, the first respondent is not liable to pay the share out of the damage caused to the trees etc. etc.
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> Rejecting the pleas of the appellant, the High Court allowed the writ petition vide the judgment impugned in this appeal.

6. The learned counsel appearing for the appellant has vehemently argued that the writ petition filed was not maintainable as the High Court was not justified in entertaining the same and consequently granting the relief to the respondent No. 1. The rights of respondent No. 1, if any, are stated to be based upon a contract for which he was obliged to avail of the alternative efficacious remedy of filing a suit either for the recovery of the money or for rendition of accounts. It is contended that the discretionary powers vested in the High Court under Article 226 of the Constitution could not have been exercised in the facts and circumstances of the case. Though, we find substance in the submission of the learned counsel for the appellant, yet we are not inclined to allow the appeal and dismiss the writ petition of respondent No. 1 only on this ground. It is true that the powers conferred upon the High Court under Article 226 of the Constitution are discretionary in nature which can be invoked for the enforcement of any fundamental right or legal right but not for mere contractual rights arising out of an agreement particularly in view of the existence of efficacious alternative remedy. The Constitution Court should insist upon the party to avail of the same instead of invoking the extraordinary writ jurisdiction of the Court. This does not however debar the Court from granting the appropriate relief to a citizen under peculiar and special facts notwithstanding the existence of alternative efficacious remedy. The existence of the special circumstances are required to be noticed before issuance of the direction by the High Court while invoking the jurisdiction under the said Article. In the instant case, the High Court did not notice any special circumstance which could be held to have persuaded it to deviate from the settled proposition of law regarding the

exercise of the writ jurisdiction under Article 226 of the Constitution. For exercise of the writ jurisdiction, the High Court pressed into service the alleged fundamental right to livelihood of the respondent which was found to have been violated by not making him the payment of the amounts claimed in the writ petition. It is true that Article 21 of the Constitution is of utmost importance, violation of which, as and when found, directly or indirectly, or even remotely, has to be looked with disfavour. The violation of the right to livelihood is required to be remedied. But the right to livelihood as contemplated under Article 21 of the Constitution cannot be so widely construed which may result in defeating the purpose sought to be achieved by the aforesaid Article. It is also true that the right to livelihood would include all attributes of life but the same cannot be extended to the extent that it may embrace or take within its ambit all sorts of claim relating to the legal or contractual rights of the parties completely ignoring the person approaching the court and the alleged violation of the said right. The High Court appears to have adopted a very generous, general and casual approach in applying the right to livelihood to the facts and circumstances of the case apparently for the purpose of clothing itself with the power and jurisdiction under Article 226 of the Constitution. We are sure that if the High Court had considered the argument in the right perspective and in the light of various pronouncements of this Court, it would not have ventured to assume jurisdiction for the purposes of conferring the State largess of public money, upon an unscrupulous litigant who preferred his claim on his proclaimed assumption of being as important as the Government of the State and equal thereto. Despite holding that the High Court had wrongly assumed the jurisdiction in the facts of the case, as earlier noticed, we are not inclined to dismiss the writ petition of the respondent No. 1 on this ground at this stage because that is likely to result in miscarriage of justice on account of the lapse of time which may now result in the foreclosure of all other remedies which could be availed of by the respondent in the ordinary course. The alternative remedies available to the respondent admittedly not being efficacious at this stage has persuaded us to decide the claim of the respondent on merits.

7. To justify the claim of the respondent based upon the decision of the Pricing Committee, the learned senior counsel, Dr. L.M. Singhvi, has submitted that as the Pricing Committee was the *quasi judicial* tribunal constituted by the State Government in exercise of its statutory as well as plenary power, the respondents in the writ petition were bound to abide by its decision and in case of their failure to perform the obligations, the writ petitioner was justified in approaching the Court by way of writ petition to seek the enforcement of rights arising on account of the decision of the alleged statutory Pricing Committee. It is not disputed that the Pricing Committee was constituted by a Notification No. 10-26/72-SF dated 18.5.1974 which was initially presided over by the Chief Secretary and later on by the Minister of Forests. It is also not disputed that the said Committee was established to determine the terms and conditions for the supply of resin, resin blazes, standing trees and other forest produce to be handed over by the Himachal Pradesh Forest Department to the Himachal Pradesh State Forest Corporation Ltd. from time to time. However, there is nothing on the record to suggest that the said committee was constituted in exercise of any statutory power. Despite mentioning the provisions of State Forest Corporation Act of 1974, the learned counsel for the respondent No. 1 could not refer to any statutory obligation under the said Act requiring the appointment of the Pricing Committee. The argument appears to be afterthought and contradictory to the pleadings. In his writ petition, the respondent No. 1 referred to Clause 51 of the Memorandum of Association of Articles of Association and submitted :-

> "That in exercise of the powers conferred by clause 51 of the Memorandum, the Government of Himachal Pradesh vide Notification No. 10-26/72-SF, Shimla dated 18.5.1974 constituted a committee of officers to determine the price and terms and conditions for the supply of resin, resin blazes, standing trees and other forest

> produce to be sold to the Himachal Pradesh Forest Corporation Ltd. from time to time. A copy of the said notification is annexed to this petition as Annexure C. That this notification was subsequently amended in the year 1986 vide notification Fts (B)(A) 4-14/84-II dated 28.11.1983. By this notification the earlier notification on 1974 was partially modified so as to include the State Minister for Forests, Himachal Pradesh as the Chairman of the said Committee. That the aforesaid Committee has been holding meetings from time to time and taking decisions regarding the prices at which the Corporation would purchase the forest produce from the Forest Department."

The petitioner further submitted that the State and all its functionaries were duty bound to act fairly and reasonably in the discharge of their official functions. The conduct of the respondent-corporation in allegedly denying to the writ petitioner the benefit of the Pricing Committee which was stated to be otherwise binding on the corporation in accordance with the Clause 51 of the Memorandum of Association, was alleged to be amounting to actionable wrong which entitled the petitioner to seek appropriate directions from the Court to direct the respondent-corporation to give effect to the said decision and the appellant to issue direction to the Corporation to carry out all the directives of the Pricing Committee in relation to the forest produce sold in favour of the corporation by the writ petition out of Kutlehar forest. A Committee constituted for the purposes of settling the matters between the Government and the Forest Corporation in pursuance of Clause 51 of the Memorandum of Association could not be termed to be a *quasi judicial* tribunal, the decision of which could be binding upon the State for the purposes of the writ petitioner as well. Clause 51 authorises the State Government to issue appropriate directions, from time to time, as might be considered necessary in regard to the exercise and performance of the function of the Corporation in the matters involving substantial public interest and in like manner might vary and annul any earlier direction. Directions thus issued are required to be duly complied with and given immediate effect to. Memorandum and Articles of Association regulated the conduct of the appellant and respondent Nos. 2 herein, which was not in any way, intended to be made applicable to other persons such as the respondent No. 1 herein.

8. The submission that the Princing Committee was a *quasi judicial* tribunal constituted by the State Government in exercise of its statutory as well as plenary executive powers can also not be accepted in the light of the functions assigned to the Committee. *Quasi judicial* acts are such acts which mandate an mandate an officer the duty of looking into certain facts not in a way which it specially directs but after a discretion, in its nature judicial. The exercise of power by such tribunal or authority contemplates the adjudication of rival claims of the persons by an act of the mind or judgment upon the proposed course of official action as to an object of the corporate power, for the consequences of which the official will not be liable, although his act was not well-judged. A *quasi judicial* function has been termed to be one which stands midway a judicial and an administrative function. The primary test is as to whether the authority alleged to be a *quasi judicial,* has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in affirmative, the authority would be deemed to be *quasi judicial,* and if the reply is in the negative, it would not be. The dictionary meaning of the word `quasi' is "not exactly".

9. It follows, therefore, that an authority is described as *quasi judicial* when it has some of the attributes or trappings of juridical functions, but not all. This Court in *Province of Bombay v. Khusaldas S. Advani, 1950 SCR 621* dealt with the action of the statutory body and laid down tests for ascertaining whether the action taken by such body was a *quasi judicial* act or an administrative act. The Court approved the celebrated definition of the *quasi judicial* body given by Atkin L.J., as

he then was in *Rex v. Electricity Commissioners, 1924(1) KB 171* in which it was held :

> "Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

The aforesaid definition was accepted as correct in *Rex v. London County Council, 1931(2) KB 215* and many subsequent cases both in England and in India. Again this Court in *Radshyam v. State of M.P., AIR 1959 SC 107* relying upon its earlier decision held :-

> "It will be noticed that this definition insists on three requisites each of which must be fulfilled in order that the act of the body may be *quasi judicial* act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the errors of a court or a *quasi judicial* body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is a *quasi judicial* act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin L.J.....
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> Relying on paragraphs 114 and 115 of Halsbury's Laws of England 3rd Edition Volume 11 at pages 55-58 and citing the case of R. v. Manchester Legal Aid Committee 1952-2 QB 413 learned counsel for the appellants contends that where a statute requires decision to be arrived at purely from the point of view of policy or expediency the authority is under no duty to act judicially. He urges that where, on the other hand, the order has to be passed on evidence either under an express provision of the statute or by implication and determination of particular facts on which its jurisdiction to exercise its power depends or if there is a proposal and an opposition the authority is under a duty to act judicially. As stated in paragraph 115 of Halsbury's Laws of England Volume 11 pages 57, the duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question Applying the tests noticed hereinabove, it cannot be said by any stretch of imagination that the said committee was or intended to be a *quasi judicial* tribunal as argued on behalf of the respondent No. 1. This committee can also not be stated to have been constituted in exercise of the plenary administrative power of the appellant-State. It has been conceded before us that the said Committee was not constituted in terms of Section 6 of the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982. No other statutory provision has been relied either. The Committee appears to have been constituted for settlement of the claims and disputes between the appellant-State and the respondent-corporation. The decisions of the Committee were applicable to the parties to the said Committee and not to any third person. The said Committee had no source of its constitution in any statutes nor was it intended to determine or adjudicate the claims of parties with respect to the matters referred to it for opinion and suggestion or even for settlement between the parties concerned. The decision of the Committee, not being statutory, thus could not be given effect to by the High Court.

10. Assuming that the Committee was of a *quasi judicial* character, it has to be seen as to whether its decisions/recommendations were applicable to the respondent No. 1 in so far as Kutlehar Forest was concerned. It is admitted that the Committee dealt with various items of disputes between the State of Himachal Pradesh and the Forest Corporation such as handing over of charging of extension fee, fixation of rates for resin blazes for the year 1988-89, 1989-90, adjustment of rebate, royalty rates for timber lots (deodar, kail, fir and chill, sal lots, Eucalyptus Lots, shisham, sain and tuni, khair lots, interest on belated payments, damages in geltu lots, interest on interest, royalty for private trees and levy of extension fee. It is not disputed before us that on the basis of the arrangement prevalent before the constitution of the corporation, respondent No. 1 was entitled to a share of 75 per cent of the sale profits of the forests. In other words, it is conceded that respondent No. 1 was entitled to 75 per cent of the royalty received from the Kutlehar Forest. It is also not disputed that respondent No. 1 has already been paid his due share of royalty on the basis of the price fixed by the Pricing Committee from time to time. The dispute is with respect to item Nos. XI, pertaining to interest on belated payments, item No. XII damage in geltu lots, item No. XIII interest on interest and item No. XVII levy of extension fee, mentioned in the Processing of the Pricing Committee dated 6.10.1990 (Annexure C). To claim the share in the aforesaid items, the respondent No. 1 relied upon the decision of the Pricing Committee meeting held on 16.5.1988 which *inter alia* provided :

> "It was decided and clarified that the royalty will be charged for Kutlehar Forests on the same lines as fixed for Govt. lots linked with the nature of trees and intensity of making. No differential rates or system can be fixed for Kutlehar Forests."

It is contended that the words "no differential rates or system" mentioned in the aforesaid item of the decision of the Pricing Committee entitled the respondent No. 1 to a share in all types of charges received/recovered by the Government from the State Forest Corporation. The submission is superficial having no foundation to stand inasmuch as it ignores the heading of the item No. VIII dealing with "charging of royalty for Kutlehar Forest". The reference to the words, "no differential rates or system" is relatable only to the royalty and not to the other recoveries which the appellant-State was entitled to recover as a sovereign being admittedly the owner of the forest and its produce. The High Court appears to have committed a mistake in reading something between the lines which in fact did not exist. Finding difficult with the conclusions arrived at by the High Court, the learned senior counsel appearing for respondent No. 1 vehemently urged that the items regarding which the respondent No. 1 had preferred his claim, in fact, were the attributes of the royalty, the payment of which the appellant-State could not have denied to his client. In support of his submission he has referred to various judgments.

11. Whatever be the meaning of the word "royalty",l its connotation and use in the context of the case has to be understood in the light of the peculiar facts and attending circumstances. The practice prevalent for exploitation of the forest produce, cannot be ignored, which generally authorised the owner of the forest to recover the royalty for the felling of trees and extraction and utilisation of the other forest produce. The extension fee, interest, interest on interest, payment for out shaped illicit blazes, and damages cannot be held to be covered by the term "royalty" as used in item No. VIII of the proceedings of the Pricing Committee. The respondent NO. 1 as already noticed could not be equated with the State Government of Himachal Pradesh, and had no basis to claim the ownership in the trees grown in the Kutlehar forest after he accepted his appointment as a Forest Superintendent in the year 1958 under Section 2(2) of the Forest Act. The acceptance of his position as a Forest Superintendent in law, `a forest officer' appointed under Section 2(2) of the Forest Act clearly established that the respondent No. 1 had accepted the State Government to be dominant

owner of the property and that he was merely an officer appointed by the Government in exercise of its sovereign power. But for his position as a Forest Officer, he had no jurisdiction to deal with the forest or even enter into it. The arrangements made earlier in the form of conferment of rights upon his forefather stood extinguished and merged with his position as a Forest Officer of the State Government. He was entitled only to such benefits to which the forest officer is entitled. His entitlement in the present case was restricted only to the extent of sharing of the royalty and not for anything more. Even in the settlement report of 1916 which was amended on 30.7.1945 regarding Kutlehar Forest it was provided that all trees growing in the protected forest subject to the rights of Burtandars and to the other conditions and exceptions specified therein belonged to the Government which were assigned to the Raja so long as he abides the conditions of management or such other conditions as were specified at the time or which might be substituted by other terms at any time.

12. Reliance upon the judgment of this Court in *State of Orissa and others v. Titaghur Paper Mills Co. Ltd. and another, AIR 1985 SC 1293* is also of no help to respondent No. 1. In that case it was observed that "royalty" is not a term used in legal parlance for the price of goods sold." It was observed that the royalty was defined to mean, a payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee, which shall on payment of money, but may be a payment in kind being the part of the produce of the exercise of the right. The judicial Committee of the Privy Council in *Raja Bahadur Kamakshya Narain Singh v. Commissioner of Income Tax Bihar and Orissa, AIR 1943 PC 153* had held that royalty was an income flowing from the convenant in the lease. While dealing with the question of royalty. It was held :

> "These are periodical payments, to be made by the lessee under his convenants in consideration of the benefits which he is granted by the lessor. What these benefits may be is shown by the extract from the lease quoted above, which illustrates how inadequate and fallacious it is to envisage the royalties as merely the price of the actual tons of coal. The tonnage royalty is indeed only payable when the coal or coke is gotton and dispatched : but that is merely the last stage. As preliminary and ancillary to that culminating act, liberties are granted to enter on the land and search, to dig and sink pits, to erect engines and machinery, coke ovens furnaces and form railways and roads. All these and the like liberties show how fallacious it is to treat the lease as merely one for the acquisition of a certain number of tons of coal, or the agreed item of royalty as merely the price of each ton of coal."

Neither the Judicial Committee of the Privy council nor this Court had held or referred to that the item like extension fee, interest, interest on interest, and payment for damage caused could be included within the ambit of them `royalty'. The aforesaid payments were thus recoverable only on the basis of the contract or the statutory provisions.

> In *Inderjeet Singh Sial and another v. Karamchand Thapar and others, 1995(6) SCC 166* it was held :
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> "In its primary and natural sense `royalty', in the legal world, is known as the equivalent or translation of *jura regalia* or *jura regia.* Royal rights and prerogatives of a sovereign are covered thereunder. It its secondary sense the word `royalty' would signity, as in mining leases, that part of the reddendum, variable though, payable in cash or kind, for rights and privileges obtained. It is found in the clause of the deed by which the grantor reserves something to himself out of that which he grants. But

"What is in a name ? A rose by any other name would smell as sweet." So said Shakespeare."

13. The Court further held that the commodity goes by its value and not by the wrapper in which it is packed. If the thought is clear, its translation in words, spoken or written, may more often than not, tend to be faulty. The same substance under the facts of the particular case has to be understood before applying it in legal manner. This Court has very clearly held that royalty in general connotes the State's share in the goods upon which the rights of its exploitation are conferred upon any person or the group of persons. If the royalty cannot be claimed by any individual, much less the controvercial items being its attribute, even if assumed, can be claimed by a citizen.

14. The subjects covered by item Nos. XI, XII, XIII and XVII have thus to be understood in this context which leave no doubt in our mind that the said claims against the forest corporation covered by the aforesaid items owed their origin to the exercise of the sovereign rights vested in the appellant State. No private citizen, unless specifically authorised in that behalf under the provisions of law could prefer such claims. The High Court was, therefore, not justified in allowing the aforesaid claims in favour of the respondent No. 1. The observations in Para No. 21 of the impugned judgment are, therefore, benefit of any legal substance and thus cannot be upheld.

15. We, are, therefore, satisfied that the impugned judgment of the High Court cannot be sustained even on merits and is liable to be quashed inasmuch as no statutory right enforceable under law existed in favour of the respondent No. 1 regarding the enforcement of which a command could have been issued in the form of a writ of mandamus. The appeal of the State is accordingly allowed and the judgment of the High Court is set aside dismissing the writ petition filed by respondent No. 1. Interim order issued in the case shall stand vacated and the respondent No. 1 held liable to refund all the sums of money which he has received in pursuance of the judgment of the High Court and interim order of this Court dated 16.10.1995. The excess amount shall be refunded within a period of three months. In case, the excess amount is not refunded within the time specified, the respondent No. 1 shall be liable for its refund along with interest at the rate of 12 per cent per annum from the date of this order till the actual payment is made. Respondent No. 1 is also held to pay costs which we quantify at Rs. 5,000/-. The amount of costs be deposited in the Registry for the Funds of the Supreme Court Legal Services Committee.