

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 335/2019

WITH

Original Application No. 313/2019

(I.A. No. 172/2019 & I.A. No. 616/2019, I.A. No. 676/2019,
I.A. No. 680/2019, I.A. No. 695/2019, I.A. No. 732/2019,
I.A. No. 755/2019, I.A. No. 756/2019, I.A. No. 748/2019
& I.A. No. 757/2019)

WITH

Original Application No. 396/2019

Samvit Foundation

Applicant(s)

Versus

State of U. P. & Ors.

Respondent(s)

WITH

Uday Education & Welfare Trust

Applicant(s)

Versus

State of U. P. & Ors.

Respondent(s)

WITH

U. P. Timber Association

Applicant(s)

Versus

State of U. P. & Ors.

Respondent(s)

Date of hearing: 13.02.2020

Date of uploading on the website: 18.02.2020

CORAM:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. This order is in continuation of order dated 18.12.2019. The issue for consideration is validity of proposal to establish more wood based industries/saw mills in the State of Uttar Pradesh without correctly determining availability of timber to sustain the same as

required in terms of judgments of Hon'ble Supreme Court inter-alia in *State of H.P. v. Ganesh Wood Products*, (1995) 6 SCC 363, *T.N. Godavarman v. U.O.I.*, (1997) 2 SCC 267, (2006) 1 SCC 1, (2009) 16 SCC 398 and (2012) 12 SCC 297.

2. Grievance of the applicant is that vide notice dated 01.03.2019, the State proposes to give license for 1350 new units which is not viable in view of limited wood available in the State. It is also submitted that the State has ignored the order of this Tribunal dated 11.09.2018 in *O.A. No. 805/2017, Kshitij Agnihotri v. Ministry of Environment, Forest and Climate Change & Ors.* quashing exemption to certain categories of forest species from the restrictions on cutting of the forest. In connected matter being *O.A. No. 313/2019*, grant of provisional licenses for establishment of about 1350 units by wrongly assuming availability of the wood as per FSI report dated 08.01.2018 has also been specifically challenged. Both the matters have been heard together and are being disposed of simultaneously.
3. Vide order dated 28.03.2019 in *O.A. No. 313/2019*, a report was sought from a joint Committee comprising of Principal Secretary (Forest), U.P. and Principal Chief Conservator of Forest, U.P. The matter was considered further on 06.08.2019 in the light of the report dated 03.08.2019 which was to the effect that the wood was available. The Tribunal directed that the notice dated 01.03.2019 be reviewed. Again, on 01.10.2019, the Tribunal directed that status quo be maintained with regard to establishment of wood based industries.

4. Wood availability was claimed in the report of the State of UP in view of exemption notification dated 31.12.2000. It was submitted that the exempted species principally are Poplar, Eucalyptus etc. and it was based on this assumption that the new wood based industries are proposed to be allowed. This Tribunal observed that notice dated 01.03.2019 for establishing new wood based industries, without ensuring legitimate sources of availability of wood, may result in clandestine supply of wood by illegal cutting of trees, in violation of judgments of the Hon'ble Supreme Court and order of this Tribunal dated 11.09.2018, *supra*.

5. The matter was then considered on 18.12.2019 in the light of application filed by the State of UP for modification of order dated 06.08.2019. It was observed:

"5. Though no further report has been filed, the State of U.P. has filed I.A. No. 732/2019 for modification of order dated 06.08.2019 by submitting that the exemption notification dated 31.12.2000 is not in conflict with the restrictions in the judgment of the Hon'ble Supreme Court in T.N. Godavarman v. U.O.I., supra and the said notification is qualitatively different from the notification dated 31.10.2017 which was quashed by this Tribunal. It is submitted that sufficient wood is available to make new wood industries viable based on the data available with the State. New wood industries will utilize Poplar and Eucalyptus trees excluding possibility of illegal cutting of trees.

6. *On our query, learned ASG - Ms. Pinky Anand has stated that as at present 5000 saw mills are in existence in the State of U.P. and they have sufficient supply of wood from legitimate sources. Additional 1215 units can also be sustained. Break up is as follows:*

Sr. No.	Type of WBI	Number of Units
1.	Sawmill	615
2.	Veneer	89
3.	Plywood (Press)	344
4.	Veneer & Plywood	75
5.	Standalone Chipper	83
6.	MDF/HDF	0

7.	Particle Board	3
8.	MDF/HDP + Particle Board	6

7. To consider the above, we find it necessary to require following data:

(i) District wise data of the existing saw mills/Wood Based Industries with their number, capacity and availability of wood species wise for the said saw mills for the period of three years.

(ii) Justification for new saw mills/Wood Based Industries in terms of availability of demand and supply of timber - species wise. This data be supplied for the districts where such new saw mills/Wood Based Industries are proposed to be set up along with the note on carrying capacity of such areas to sustain new saw mills/Wood Based Industries.

(iii) Mechanism to ensure that no trees are cut from the government forests or private trees of categories which are not exempted.

8. We are further of the view that MoEF&CC may also examine the issue and give its opinion in the matter for consideration by this Tribunal. The applicant may furnish a set of papers to the MoEF &CC forthwith.”

6. Before considering the matter further, we may note that apart from the application filed by the State of UP, seeking modification of order dated 06.08.2019 requiring the State of UP to review the notice dated 01.03.2019 and order dated 01.10.2019 (directing maintenance of status quo on the issue) for establishing 1350 new wood based industries, applications for impleadment and to seek modification of orders dated 06.08.2019 and 01.10.2019 have been filed by many wood based industries to whom provisional licenses have been given. Without formally passing an order on the said applications, we permitted counsel for the said applicants to make their submissions. Their contentions stand covered by the stand of the State since the issue is in *rem* relating to general decision of the State which is applicable uniformly to all the proposed/provisional licensees. Thus, it is not necessary to refer to

the contents of individual applications. No separate arguments have been advanced by the counsel for the said applicants inspite of opportunity being given. All the said applications will accordingly stand disposed of in terms of this order. Any provisional licenses will stand governed by the present final order. Such licenses cannot continue once it is held that there is no availability of raw material timber to sustain such licenses, as held by the Hon'ble Supreme Court.

7. In pursuance of order dated 18.12.2019, an affidavit dated 22.01.2020 has been filed by the Divisional Director of Forest, Hathras, on behalf of the State of UP, giving data of the existing saw mills/wood based industries with their number, capacity and availability of wood species wise for the said saw mills for the period of three years as follows:

“Summary of number of existing saw mills / WBIs for 2017, 2018 & 2019

Year	Saw mill	Only veneer	Plywood (only Press)	Veneer and Press	Standal one Chipper	MDF/HDF	Particle Board	MDF/HDF + Particle Board	Total
2017	6161	209	59	178	0	0	0	0	6607
2018	6167	221	62	186	0	0	0	0	6636
2019	6208	228	63	187	0	0	0	0	6686

“Summary of capacity of existing saw mills / WBIs for 2017, 2018 & 2019 vis-à-vis availability of timber

Year	Saw mill	Only veneer	Plywood (only Press)	Veneer and Press	Standal one Chipper	MDF/HDF	Particle Board	MDF/HDF + Particle Board	Total	Timber availability (In lac cubic meters per year)
2017	33.03	3.13	0	4.66	0	0	0	0	40.82	80.30
2018	33.04	3.31	0	4.86	0	0	0	0	41.22	80.30
2019	33.15	3.42	0	4.98	0	0	0	0	41.56	80.30

8. The total availability of timber in the State, wood species wise and Agro Climatic Zone wise for Trees Outside Forest (TOF) as per assessment of FSI of 2018, for the said saw mills and other wood based industries, has been indicated in the following table:



Agro Climatic Zone Wise Annual Potential Production

S. No.	Species Name	Mid Western Plain	Central Plain	Eastern Plain	North Eastern Plain	Tarai
		(1.Agra 2. Aligrah 3. Etah 4. Firozabad 5. Hathras 6. Mainpuri 7. Mathura 8. Kasgarj (Kansiram Nagar)	(1.Auraiya 2. Allahabad (Prayagraj) 3. Farrukhabad 4. Etawah 5. Fatehpur 6. Hardoi 7. Kannauj 8. Kanpur 9. Kanpur Dehat 10. Kanpur Nagar 11. Kaushambi 12. Lucknow 13. Raibareli 14. Pratapgarh 15. Sitapur 16. Unnao)	(1.Amethi 2. Azamgarh 3. Ambedkar Nagar 4. Barabanki 5. Ballia 6. Chandauli 7. Faizabad 8. Ghazipur 9. Jaunpur 10. Mau 11. Sultanpur 12. Sant Ravidas Nagar 13. Varanasi)	(1.Balrampur 2. Basti 3. Deoria 4. Gonda 5. Gorakhpur 6. Kushi Nagar 7. Maharajganj 8. Siddharth Nagar 9. Sant Kabir Nagar)	(1.Baharaich 2. Bijnor 3. Kheri 4. Rampur 5. Pilibhit 6. Saharanpur 7. Shrawasti)
1	2	3	4	5	6	7
1.	<i>Acacia arabica</i>	29481	87911	49382	0	0
2.	<i>Azadirachta Indica</i>	49004	0	63162	9741	8243
3.	<i>Dalbergia sissoo</i>	23146	47650	30088	65877	36822
4.	<i>Eucalyptus species</i>	80323	1101150	327403	39083	599654
5.	<i>Ficus religiosa</i>	23996	28731	0	0	0
6.	<i>Holoptelea integrifolia</i>	10221	27307	36717	0	0
7.	<i>Mangifera Indica</i>	68330	307977	277090	99756	138497
8.	<i>Morus Species</i>	4109	0	0	0	4234
9.	<i>Porsopis juliflora</i>	14387	0	0	0	0
10.	<i>Syzygium cumini</i>	11513	38800	26149	5169	17589
11.	<i>Bombax ceiba</i>	0	168583	0	20248	102505
12.	<i>Madhuca latifolia</i>	0	29060	59742	18991	0
13.	<i>Polulus species</i>	0	129971	0	0	904158
14.	<i>Artocarpus heterophyllus</i>	0	0	13778	8494	0

1	2	3	4	5	6	7
15.	<i>Tectona grandis</i>	0	0	0	30291	6142
16.	<i>Terminalia arjuna</i>	0	0	0	7326	5246
17.	<i>Aegle marmelos</i>	0	0	0	0	0
18.	<i>Acacia lenticularis</i>	0	0	0	0	0
19.	<i>Zizyphus mauritiana</i>	0	0	0	0	0
20.	<i>Rest of Species</i>	52017	246257	164987	69453	73701
Total		372527	2213397	1048498	374429	1896791



Based on the above, contention of the State of UP is that there is surplus timber availability.

9. After conclusion of the hearing, the State of UP has filed on 18.02.2020 a written note referring to India State of Forest Report (ISFR) 2019 to the effect that there is increase of 'Forest and Tree Cover' as per table given below:

*“Table – 1
Increase in Forest and Tree Cover in Uttar Pradesh from 2013 to 2019 as per India State of Forest Report (ISFR), 2015, 2017 & 2019 by Forest Survey of India (FSI)*

Sr. No.	Detail for the Uttar Pradesh as per India State of Forest Report (ISFR) 2015, 2017 & 2019	Forest Cover (Sq. Km.)	Tree Cover (Sq. Km.)	Total Forest and Tree Cover (Sq. Km.) (Col. 5 = 4+3)
1	2	3	4	5
1	ISFR, 2013	14349	6995	21344
2	ISFR, 2015	14401	7044	21505
3	ISFR, 2017	14679	7442	22121
4	ISFR, 2019	14806	7342	22148
3	Increment from 2013 to 2019	+457	+347	+804
4	% Increment of the Forest and Tree Cover respectively from 2013 to 2019	+3.18%	+4.96%	+3.77%

It is further stated that provisional licenses have been given to 1215 WBIs in February 2019 before the order of status quo granted by this Tribunal. 632 WBIs have already established their units.

10. Justification for new saw mills/wood-based industries in terms of availability of demand and supply of timber species wise given by the State of UP is that such industries are required to cope up with the demand, without potential of cutting of trees from the Government Forests or private trees of categories which are not exempted. New wood based industries will lead to development of

market, generate employment, encourage planting of seedlings, reduce migration of people, reduce dependence on traditional /cash crops, boost new technology, boost export, reduce import and utilization of resources. Further justification for permitting new industries, according to the State of UP, is as follows:

“a. xx

xx

xx

- b. *Eucalyptus and Poplar are the main species used in WBIs, which is grown mainly by farmers on their land. Eucalyptus and Poplar are exempted species in all the districts of the State. It may be submitted, with emphasis, that Eucalyptus and Poplar constitute 43.02 lac cubic meter per year out of total timber requirement of 53.94 lac cubic meter per year for all categories of WBIs, which constitutes about 80% of the total timber requirement.*
- c. *It is also submitted that Timber of other species to be used by the WBIs also come mainly from private and farmer's land.*
- d. *It may be noted that the wood production in the State is much higher than the present capacity of existing WBIs in the State. The same is also reflected from the fact that Large quantity of wood (unsawn timber) which is part of the surplus timber i.e. 38.74 lac cubic meter per year is being exported daily from U.P. to WBIs of other States, mainly Haryana, M.P., Uttarakhand and even Punjab.*
- e. *The felling of trees from private and farmer's land is regulated by U.P. Protection of Trees Act, 1976 (as Amended). The scope of the Act is also important to be kept In hindsight and the same is provided in Section 2 of the Act. It has already been placed before this Hon'ble Tribunal in modification application filed by the State and therefore the same is not reproduced here for sake of brevity. The felling permits are being issued for non-exempted species as per provisions of the Act. It is necessary to bring to the knowledge of this Hon'ble Tribunal that the State government has issued a notification dated 07.01.2020 in exercise of the powers under Section 21 and 23 of the Uttar Pradesh Protection of Trees Act, 1976 read with Section 21 of the Uttar Pradesh General Clauses Act, 1904. The said notification is annexed herewith and marked as Annexure No. 10.*
- f. *That from the perusal of the said notification, it would be evident that felling of 29 species of trees has been prohibited and other species situated on individual cultivated and un-cultivated holding have been exempted. It*

is further provided in the notification that the tree owner shall plant and maintain 10 trees in place of each tree felled. Furthermore, security amount for planting 10 trees is deposited by the farmer with the Forest Department at the time of permission.

- g. That as per the Govt. of India Agro Forestry Policy, 2014, India imports about 7-8 billion dollar per year worth of WBIs produce. With the establishment of new WBIs, the imports will reduce thus saving precious foreign currency.
- h. That it may be noted that the farmers in U.P. are not getting remunerative price and are forced to sell their produce at very cheap rate mainly to middlemen. Moreover, the large-scale daily transportation of wood from U.P. to other States is causing lot of vehicular, noise and air pollution besides heavy expenditure on transportation.
- i. That it is relevant to point out that the trees in Govt. Forest are felled, as per the provisions of Working Plans duly approved by the Government of India and the directions of the Hon'ble Supreme Court in T.N. Godavarman (supra) case.
- j. That there would be expected investment of about Rs. 3,000 crore in the State with the establishment of new WBIs and employment generation of 80,000 people, mostly in the rural areas of the State. Apart from above, total expected annual turnover is Rs. 1200 Crore, which would be recurring in nature.
- k. That 632 out of 1,215 WBIs Provisional License holders have established their units and ready for operation. Such units have been established after huge investments and by taking loans from the banks etc. Apart from the above 632, many other Provisional License holders are also in advance stage of establishment.

Therefore, the status quo granted by Hon'ble Tribunal in order dated 01.10.2019 will cause irreparable hardships to these Provisional License holders.”

11. In opposition to the above, an affidavit has been filed on behalf of the applicant on 12.02.2020. Substance of the stand of the applicant is that the statistics furnished by the State are not reliable as the capacity given is based on erroneous assumption. Actual requirement has to be calculated with reference to the use of Horse Power (HP) by different saw mills which may vary. The capacity assumed is contrary to the capacity determined by CEC in

its report dated 18.04.2007 submitted to the Hon'ble Supreme Court. Timber availability for plywood units has been wrongly taken as nil which is against the observations of the CEC, appointed by the Hon'ble Supreme Court, in its report dated 08.12.2009 filed before the Hon'ble Supreme Court on 15.12.2009. Actual consumption capacity of each and every existing unit is available with the forest department but the same has not been furnished. Figure of availability of timber is not factually correct as trees which cannot be felled have also been included. The same have been highlighted by the applicant in the following table:

Sr. No.	Species Name	Common Name	Total
1.	<i>Acacia Arabica</i>	BABUL	2,29,655
2.	<i>Azadirachta Indica</i>	NEEM	1,85,935
3.	<i>Dalbergia Sissoo</i>	SHEESHAM	3,07,600
4.	<i>Eucalyptus Species</i>	EUCALYPYUS	28,00,947
5.	<i>Ficus Religiosa</i>	PIPAL	61,000
6.	<i>Holoptelea Integrifolia</i>	CHIL-BILL KANJU	82,606
7.	<i>Mangifera Indica</i>	MANGO	11,50,947
8.	<i>Morus Species</i>	MULBERRY	15,506
9.	<i>Prosopis Juliflora</i>	Keekar	14,387
10.	<i>Syzygium Cumini</i>	JAMUN	1,26,108
11.	<i>Bombax Ceiba</i>	COTTON TREE	3,27,612
12.	<i>Madhuca Latifolia</i>	MAHUA	1,93,585
13.	<i>Populus species</i>	POPLAR	15,01,518
14.	<i>Artocarpus Heterophyllus</i>	JACK FRUIT	22,272
15.	<i>Tectona Grandis</i>	TEAK	48,390
16.	<i>Terminalia Arjuna</i>	ARJUN	16,934
17.	<i>Aegle Marmelos</i>	JAPENSE BITTER ORGANGE	2,617
18.	<i>Acacia Lenticularis</i>	INDIAN PLUM	32,430
19.	<i>Zizyphus Mauritiana</i>	SAL	25,230
20.	<i>Shorea Robusta</i>	INDIAN KINOO	29,828
21.	<i>Pterocarpus Marsupium Roxb</i>	Bijasaal	1,196
22.	<i>Acacia Catechu</i>	Khair	3,829
23.	<i>Rest of Species</i>		8,50,345
	Total		80,30,477

12. Total availability, according to the applicant, should be taken as 43,02,465 cubic mtrs. per annum as per following table:

“

SR. NO.	NAME OF SPECIES	AVAILABILITY
1.	<i>EUCALYPTUS</i>	<i>28,00,947 Cubic Mtrs.</i>
2.	<i>POPLAR</i>	<i>15,01,518 Cubic Mtrs.</i>
	<i>TOTAL</i>	<i>43,02,465 Cubic Mtrs.</i>

”

13. In support of its stand that total available of timber is 65,540 cubic mtrs., the applicant has relied upon letter dated 07.12.2015 of the office of Principal Chief Conservator of Forest, UP. It is also submitted that with the installation of new advanced machineries, consumption of existing units will go up by four times. With regard to availability of forest cover, it is stated that extent of recorded forest area (RFA) is 16,592 sq. km which is only 6.88% of its geographical area in UP as against target of 33% (as per the India State of Forest Report 2019). Any further wood based industry/saw mills may adversely affect the existing forests.

14. We have given due consideration to the rival contentions and analyzed the data furnished on behalf of the State.

15. It is well settled that wood based industries/ saw mills can be allowed only after ensuring timber and raw material availability to sustain such industries. This has to be determined in actual terms and not on mere assumption. In the present case, we find it difficult to accept the stand of the State of Uttar Pradesh that there was availability of timber/raw material to sustain new WBIs/saw mills. In the Affidavit filed on behalf of the State of Uttar Pradesh, in compliance of order of this Tribunal dated 18.12.2019, it has been stated that total potential availability of the Timber per year

in the State of Uttar Pradesh is 80.30 lakh cubic meters, which includes 2.56 cubic meters from the Government Forest and 77.74 lakh cubic meters from Trees Outside Forest (TOF). Out of 80.30 lakh cubic meter 71.8 lakh cubic meters is stated to be available from 22 different species and 8.50 lakh from the other species. Out of 22 species, there are 10 species which are prohibited from felling from individual and uncultivated holdings as per the Government of Uttar Pradesh Notification of 07.01.2020 which contribute 20.75 lakh cubic meter. Out of the rest of the species, the major contribution is from Eucalyptus (28 lakh cubic meter) and Popular species (15 lakh cubic meter) total of which is 43 lakh cubic meter. When FSI report says 77 lakh cubic meter of industrial wood is potentially available in the State of UP from Trees Outside Forests (TOF), it means that on the basis of the inventory of trees outside forests, 77 lakh cubic meter can be available annually, if the farmers harvest them. Thus, the figure is not actual but presumptive. It does not exclude the timber which may not be harvested immediately or in the near future. The potential volume of wood provided is not, thus, actual production. This has been arrived at using *Von Mantel* formula which takes into account species wise growing stock and rotation age. At the national level survey¹, the standard error percentage is around 5%, at State level around 15% and at the district level it is 25 – 30%. For species wise estimates, the standard error is still higher. Such standard error has not been kept in mind in the report filed by the State. In view of this, the Eucalyptus and Poplars that will be actually available for wood based industries in UP will not be 43

¹ INDIA STATE OF FOREST REPORT 2019

lakh cubic meter as assumed by the State of U.P., but will only be about 32 lakh cubic meter and other species not more than 10 to 12 lakh cubic meter. Therefore, the total timber available for consumption every year from all the species including those from Government Forest will be of the order of 40 to 45 lakh cubic meter per year, as against assumed availability of 80.30 lakh cubic meter. Our comments remain the same with respect to the ISFR 2019 filed today.

16. Based on satellite data of October – December 2015, the total growing stock in TOF as per FSI report of 2017 was 88.340 lakh cubic meter and potential production of industrial wood from TOF was 70.6 lakh cubic meter and total production from Government Forests during 2015-2016 was 2.11 lakh cubic meter. During the period between 2013 and 2017, TOF has gone up by 7.82 percent, therefore, the potential availability of industrial wood from TOF should be assumed to be about 76 lakh cubic meter. In our view, potential availability of 77.74 lakh cubic meter from TOF as given in affidavit appears to be overestimation. In order to arrive at accurate assessment of timber that will be available for consumption by the industries, it is necessary to have District wise, species wise and diameter-class wise inventory. Such a study, if not already done, can be assigned to FSI who have undertaken similar studies for many States like Punjab and Maharashtra and others. It is only after such credible study and assessment that any further decision ought to be taken.

17. It has been mentioned in the Affidavit of the State that during 2019 there were 6,686 saw mills/wood based industries operating

in the State of Uttar Pradesh and the capacity of these units is 41.5 lakh cubic meter per year. Therefore, the total Timber that will be actually available for new industries as per the data given in the Affidavit of the State is not going to be more than about 2 lakh cubic meter per year. It, therefore, appears that the Timber that has been allotted for new wood based industries by the State Level Committee (SLC) of wood based industries which is 18 lakh cubic meter appears to be absurdly unrealistic. In view of our above comments, such allotment will be against the tenets of principle of sustainable development, precautionary principle and public trust doctrine. Allowing more number of saw mills/WBIs, than the carrying capacity, will, in the given facts and circumstances, undermine these principles.

18. We are, therefore, satisfied that there will be hardly any industrial wood actually available for new wood based industries, based on above data made available by the State. In these circumstances, if new industries are allowed to open, based on wrong estimation of availability of timber, a situation may arise when there may not be any timber to be allotted to the unit or the industry may resort to illegal means to procure round timber in order to keep its unit afloat. Such a situation may not be allowed to come up in view of 'Precautionary' principle of environmental law. State should therefore make an inventory species wise and district wise and also have species wise consumption data of all the wood based industries and their capacity to utilize them and not proceed with the present proposal till further exercise of making inventory and assessment of actual availability of timber / raw material is done.

19. In view of above, we quash notice dated 01.03.2019 issued by the State of UP for establishing new wood based industries/ saw mills and all provisional licenses given in pursuance thereof.

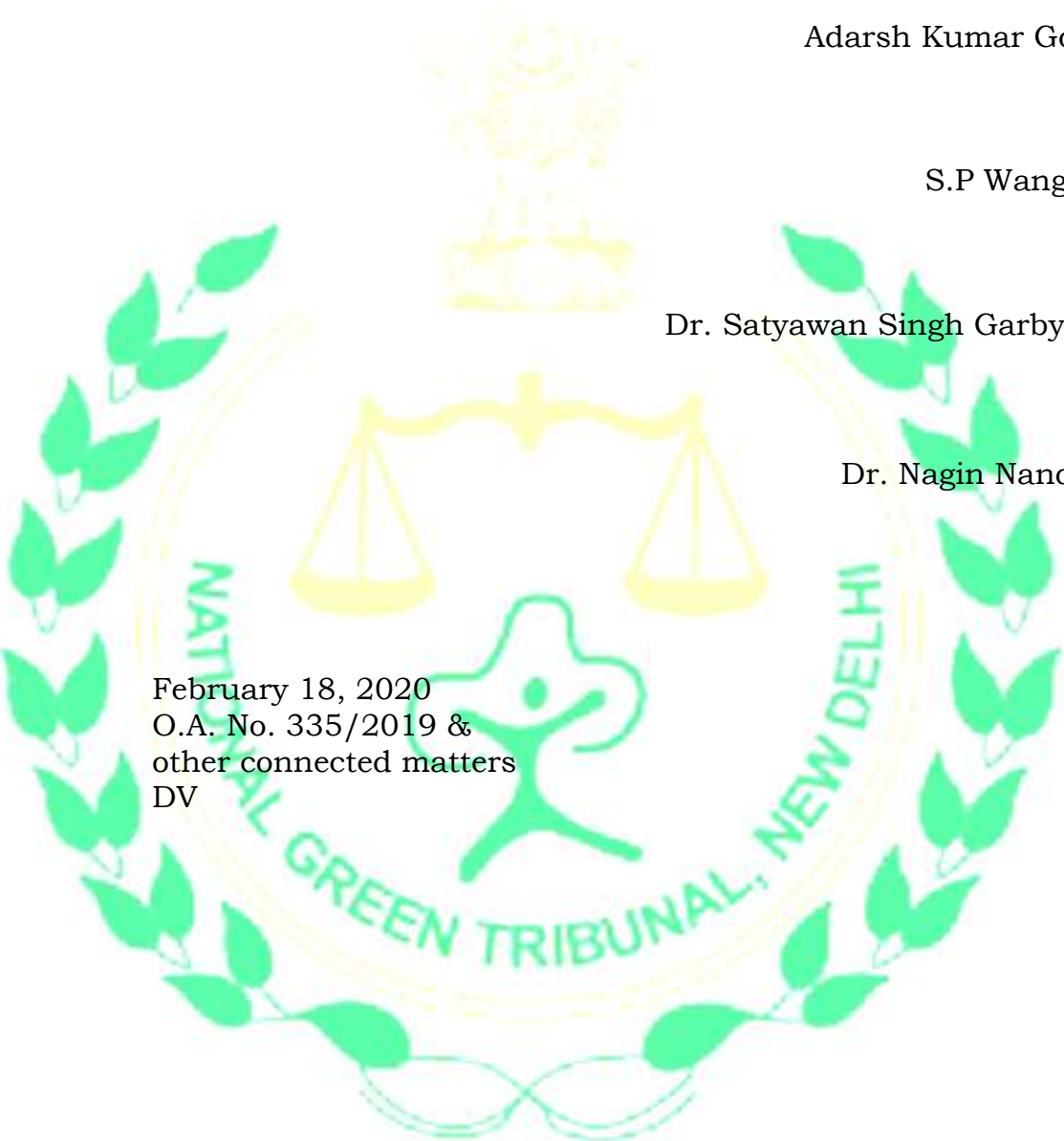
The applications are disposed of accordingly.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM



February 18, 2020
O.A. No. 335/2019 &
other connected matters
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