BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONAL BENCH, BHOPAL

Original Application No. 28/2013 (CZ)

AND

Original Application No. 17/2014 (CZ)

CORAM:

Hon'ble Mr. Justice Dalip Singh
(Judicial Member)

Hon'ble Mr. B.S. Sajwan
(Expert Member)

Original Application No. 28/2013 (CZ)

BETWEEN:

Bio Diversity Management Committee,
Through The President,
Shri Baiznath Chaurasia,
S/o Shri Babulal Chaurasia,
Aged around 60 years,
R/o Village Eklahara,
District –Chhindwara (MP)

…..Applicant

Versus

1. Western Coalfields Ltd.
   Through its Chairman & Managing Director,
   Coal Estate, Civil Lines,
   Nagpur (Maharashtra)

2. Coal India Ltd.,
   Through Chairman & Managing Director,
   5th Floor, Core-I & II, Scope Minar,
   Laxmi Nagar, District Centre,
   Laxmi Nagar
   New Delhi – 110 092

3. Union of India
   Through the Secretary,
   Ministry of Environment & Forests,
   Parya Varan Bhawan CGO Complex,
   New Delhi – 110 003

4. National Bio Diversity Authority,
Through its Chairman,
5th Floor, Ticel Bio Park, Taramani,
Chennai – 600 113 (Tamilnadu)

5. State Bio Diversity Board,
Through its Member Secretary,
26, 'Kisan Bhawan', 1st floor,
Arera Hills, Bhopal (M.P.)

.....Respondents

Counsel for Applicant : **Shri Deepesh Joshi, Advocate**
Shri Rohit Sharma, Advocate
Counsel for Respondent No. 1 & 2 : Shri Vishal Bhatnagar, Advocate
Shri Yogesh Bhatnagar, Advocate
Counsel for Respondent No. 3 : Shri Om S. Shrivastav, Advocate
Counsel for Respondent No. 4: Shri N.C.Das, Advocate
Counsel for Respondent No. 5 : Ms. Priyam Rawat, Legal Advisor

Original Application No. 17/2014 (CZ)

Bio Diversity Management Committee,
Through The President,
Shri Baiznath Chaurasia,
S/o Shri Babulal Chaurasia,
Aged around 60 years,
R/o Village Eklahara,
District –Chhindwara (MP)

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Through the Secretary,
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New Delhi – 110 003

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Ministry of Coal,
Shastry Bhawan,
New Delhi

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Through its Chairman & Managing Director,
Coal Estate, Civil Lines,
Nagpur (Maharashtra)

.....Respondents

Counsel for Applicant :	**Shri Deepesh Joshi, Advocate**
	Shri Rohit Sharma, Advocate
Counsel for Respondent No. 1:	**Shri Om Shankar Shrivastav, Advocate**
Counsel for Respondent No. 3:	**Shri N.C.Das, Advocate**
Counsel for Respondent No. 2 & 4 :	**Shri Vishal Bhatnagar, Advocate**
	Shri Yogesh Bhatnagar, Advocate

J U D G E M E N T

Dated : October 6th 2015

1) Whether the judgement is allowed to be published on the internet ----- yes / no

2) Whether the Judgement is to be published in the All India NGT Report ----- yes /no

MR. B.S. SAJWAN, EXPERT MEMBER

1. The Original Application No. 28/2013 has been filed under section 14 read with section 15 of the National Green Tribunal, Act, 2010 by the Bio Diversity Management Committee (for short 'BMC') represented by its President Shri Baiznath Chauraisa, S/o Shri Babulal Chaurasia, District Chhindwara (M.P.) seeking the following relief :

   1. *To direct the Respondent No. 1 & 2 to start sharing the benefit, as mandated under the provisions of Biological Diversity Act, 2002 with the Petitioner;*
   2. *To direct the Respondent No.4 i.e. National Biodiversity Authority to determine the exact percentage of equitable benefit sharing, so that the same can be made applicable to all concerned rationally and the equally and to get the same implemented as per the provisions of Biological Diversity Act;*
   3. *To direct the Respondent No.5 i.e. State Biodiversity Board to initiate appropriate action against persons/Companies, who are not obtaining prior approval from the State Biodiversity Board and to start penal action for imposing penalty for such violation, as mandated under the Act;*
   4. *Pass any other appropriate orders which this Hon'ble Tribunal deems just and proper for compensation against the arraying Respondents.*

2. Subsequently, the Applicant vide Misc. Application No. 142/2013 filed in O.A. No. 28/2013 sought amendments to the prayer under orders VI of Rule 17 of the Code of Civil Procedure seeking the following additional relief :

   "1(a) *To declare that 'Coal' is a biological resource, as defined under Section 2(c) of the Biological Diversity Act,2002 and letter*

Dated 02.09.2013 and 06.09.2013 are illegal and not binding on the Petitioner and have no force and are contrary to the objectives of the Biological Diversity Act, 2002 and thus, deserves to be quashed.''

3. The Respondent No. 1 & 2 in their reply to the Misc. Application No. 142/2013 opposed the prayer sought in the Misc. Application on the ground that the Applicant is introducing an entirely new prayer in the Original Application No. 28/2013 which is arising out of entirely new cause of action and that such an attempt is not permissible in the eyes of the law and deserves to be dismissed.

4. After hearing Learned Counsel for both the parties, the Tribunal in its order dtd. 15.01.2014 permitted the Applicant to withdraw the Misc. Application with liberty to file fresh application challenging the orders of Govt. of India and seeking the relief that has been mentioned in the Misc. Application.

5. Accordingly, the M.A. No. 142/2013 was dismissed as withdrawn and subsequently the Applicant filed Original Application No. 17/2014 seeking the relief which was earlier sought through the Misc. Application.

6. Accordingly, both the Original Application No. 28/2013 & Original Application 17/2014 are proposed to be dealt with together in so far as the issues raised and relief sought are concerned with O.A. No. 28/2013 as the main application.

7. The Applicant is a Committee constituted under Section 41 of the Biological Diversity Act 2002 and Section 23 of the Madhya Pradesh Biodiversity Rules 2004. The Said Committee was constituted on 14.04.20113 by a Local Body of Village Eklehara District Chhindwara (MP). The Applicant Committee was constituted for the purpose of promoting conservation, sustainable use, and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks

and breeds of animals and micro-organisms and chronicling of knowledge related to biodiversity.

8. It is the case of the Applicant that the Biological Diversity Act, 2002 (for short 'BD Act, 2002') was promulgated to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of the use of biological resources, knowledge, the matter connected there with or incidental there to. He further contends that the BD Act, 2002 came into operation as a consequence of the United Nations Convention on Biological Diversity (for short 'CBD') to which Govt. of India was as a signatory and which came into force on 29.12.1993. Pursuant to the enactment of BD Act, 2002, the Govt. of MP framed the Madhya Pradesh Biological Diversity Rules, 2004 which came into effect on 17.04.2004 wherein as per rule 23 certain powers were conferred for constitution of the BMC at Zila Panchayat, Janpad Panchayat, Gram Panchayat, Gram Sabha, Nagar Panchayat, Municipality and Municipal Corporation level. It is the contention of the Applicant that Respondent No.1 is extracting coal from various mines situated within the territorial jurisdiction of the BMC and that the operations of the Respondent No. 1 &2 at Chhindwara fall within the territorial jurisdiction of the Petitioner/Applicant. He further makes a reference to BD Act, 2002 wherein certain terms relevant to the case have been defined. The terms are :

"

(b) *"Biological Diversity" means the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco-system.*

(c) *"Biological resources" means plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material.*

(f) "Commercial utilization" means end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture, horticulture, poultry, dairy farming, animal husbandry or bee keeping.

(g) "Fair and equitable benefit sharing" means sharing of benefits as determined by the National Biodiversity Authority under Section 21.

(p) "Value added products" means products which may contain portions or extracts of plants and animals in unrecognizable and physically inseparable form."

9. In the light of the above definitions, it is the case of the Applicant that although section 21 of the BD Act, 2002 confers powers on the National Biodiversity Authority (for short 'NBA') for determination of equitable sharing benefits, even after more than 10 years of its constitution and after 7 years of constitution of State Biodiversity Board (for short 'SBB'), neither the Respondent No. 1 & 2 have obtained approval for commercial utilisation, nor have started sharing the benefits with the Applicant BMC. The Applicant further contends that although the Respondent no. 5 issued notice under section 7 read with section 24 of the BD Act 2002 to Respondent No. 1, the Respondents are not willing to share the benefits with the BMC and also not willing to pay the fee that may be levied by the BMC and are, therefore, in violation of the section 24 of the BD Act, 2002. The primary contention of the Applicant is that coal is 'biological resource' as is evident from its process of formation. As per the Applicant coal is a fossil fuel because it is formed from the remains of vegetation that grew as far as back 400 millions ago and that it is often referred to as 'buried sun shine' because the plant which formed coal captured energy from the sun through photosynthesis created the compounds that makes up plant tissues. By that logic, coal being of plant origin has to be

treated as a biological resource. Further, the main element in the plant material is carbon which gives coal most of its energy and, therefore, the Respondents No. 1 & 2 fall within the ambit of the BD Act, 2002 and are thus liable to share benefits with the Applicant. It is further contended by the Applicant that he has approached this Tribunal under Section 14 after several attempts by him whereby he has approached the Respondents No. 1 & 2 for equitable sharing of benefits arising out of use of coal; a natural biological resource did not result in any positive response. It is also his submission that even Respondent No.4, NBA has failed to discharge their statutory obligations of determination of equitable benefits under section 2 (g) read with section 21 of the Act. Further, the Respondent No. 5 has also failed to discharge their statutory obligation of taking action against Respondent No. 1 & 2 for extracting coal without prior intimation to SBB /Respondent No.5 as required under Section 7 read with Section 24 of the BD Act, 2002.

10. The Applicant is also aggrieved by the two letters issued by the Ministry of Environment & Forests & Climate Change, Govt. of India, dtd. 02.09.2013 by the Secretary, MoEF&CC & the letter dtd. 06.09.2013 by Section Officer, MoEF&CC / Respondent No. 3 wherein the Respondent has clarified that coal is not a biological resource and, therefore, does not fall within the jurisdiction of the BD Act, 2002. It is the case of the Applicant that not only the interpretation is wrong but even the Secretary of MoEF&CC / Respondent No. 3 has no authority to interpret the provisions of the BD Act, 2002 and issue instructions to any person to exclude any biological resources from the purview of the BD Act, 2002 and that the sole intent is to benefit to various coal companies.

11. The Applicant draws attention to the section 21 of the BD Act, 2002 which confers power on the NBA for determination of equitable benefit sharing and

Section 24 (2) of the BD Act, 2002 which confers powers on the State Bio Diversity Board (for short SBB) to prohibit and restrict any activity which in its opinion is found detrimental or contrary to the objectives and conservation and sustainable use of biodiversity or equitable sharing of benefits arising out of such activity. The case of the Applicant is that statutory authorities like NBA and SBB have failed in their legal obligation under the BD Act, 2002 to not only determine the mechanism and amount of benefit sharing but give effect to the various sections of the Act to regulate such activities and as a consequence thereof the BMCs are unable to levy and realise any fee under section 41 (3). Expanding further on categorisation of coal as a biological resources the Applicant cites certain studies which in their view reveal that the plant tissues found in coal also have DNA and, therefore have the same genetic component as all plants but the fossilized form causes degradation of DNA with when exposed to the air and, therefore, make it impossible for the DNA components to re-generate. The Applicant further contends that coal is both a 'biological resource' and 'biological diversity' and, hence, cannot be excluded from the purview of the BD Act, 2002.

12. In support of his contention to categorize coal as a biological resource the Applicant has also drawn attention to the notification dated October 26, 2009 issued by the Respondent No. 3 under section 40 which seeks to exclude certain items of biological resources from the preview of the BD Act 2002. His contention is that since coal has not been excluded from the purview of the Act in the notification, coal is a biological resource under the BD Act 2002.

13. The Respondents No. 1 & 2 per contra submit that coal is governed by Mines & Mineral (Development & Regulation) Act, 1957 (for short 'MMDR' Act) and the said enactment relates to mines and minerals of which coal is a specified major mineral listed in first schedule of the MMDR Act. Further the

Section of MMDR, Act confers powers to make rules and levy charges on coal only upon the Central Government and as a result of this the State Government and its authority do not have competence and jurisdiction to levy any charges. Furthermore, the section 9 of the MMDR Act authorises the States to levy royalty on the grant of leases for mining and that this is the only form of charge which a State can levy under the Act. Further adverting to the section 41 (3) of the BD Act, 2002 the Respondents No. 1 & 2 contend that the BD Act, 2002 authorises the levy by BMCs by way of collection fees from any person for collecting or accessing any biological resource for commercial use. However, under the MMDR Act only the Central Government can make rules with respect to levy or any charges on minerals. The Respondents No. 1 & 2 further go on to argue that categorising coal as a biological resource will lead to confusion as two different statutes would be in contradiction of each other. The Respondent No.1and 2 in support of their contention refer to the various judgments of Hon'ble Supreme Court as listed below :

a. *That the Hon'ble Supreme Court in* ***Iridium India Telecom Ltd. v. Motorola Inc. (2005) 2 SCC 145, Talchar Municipality v. Talchar Regulated Market Committee, (2004) 6 SCC 178 and P.V. Hemlatha v. Kattam Kandi Puthiya Maliackal Saheeda, (2002) 5 SCC 548*** *has held that in case of a conflict between provisions of two statutes, the specific provision prevails over the general provision. The MMDR Act being a specified statute, enacted for the regulation of minerals, will prevail over a general statute, i.e. the Biological Diversity Act.*
b. *That even if one assumes that the Biodiversity Management Committee has power to levy collection fee or any person, even then the said power cannot be exercised in the present matter. The Hon'ble Supreme Court in* ***Hingir-Rampur Coal Co. Ltd. and Ors. v. The State of Orissa and Ors. AIR 1961 SC 459*** *has categorically held that a fee is charged only when a service is rendered in return of that. There is always an element of quid pro quo while levying a fee.*
c. *That the Hon'ble Supreme Court in* ***State of W.B. v. Kesoram Industries Ltd. and Ors, (2204) 10 SCC 201*** *relying on the Hingir-Rampur case further held that there has to be some form of benefit in lieu of a charge, for it to be termed as a fee.*
d. *That the principle was again reiterated in* ***Sona Chaindi Oal Committee and Others v. State of Maharashtra (2005) 2 SCC345.*** *The Hon'ble Supreme Court held that there has to be a reasonable relationship between the Service rendered and the charge levied.*

14. The Respondents No. 1 & 2 further state that the definition of the term biological resource as provided under section 2 (c) of the BD Act, 2002 is exhaustive and only includes plants, animals, micro organism and their genetic material and by-product and since coal does not fall in any of the above categories it cannot be termed as biological resource. The Respondents further go on to contend that coal is combustible, sedimentary and organic rock and, therefore, cannot be compared to a living organism. It takes approximately 300 million years to form coal and thus it is fossil and by no stretch of imagination coal can be categorised as biological resource as defined in the Act. The Respondents also contend that Convention on Biological Diversity defines "genetic material" as material of plant, animal, microbial or other origin containing functional unit of heredity. The functional unit of heredity being DNA, the half life of DNA is stated to be 521 years under ideal conditions. In support of this they quote a study carried out by a New Zealand Scientist and published in Proceedings of Royal Society of Biology (2012). The ideal conditions for DNA survival is that it should be in a dried state, should be vacuum packed and frozen at about -80º C. However, coal being a fossil fuel traces back its origin to 63 to 300 million years. Furthermore, coal is formed under high temperature and high pressure and, therefore, got converted into fossil and consequently invalidates the claims of the Applicant that coal has genetic material of plants. It is also contended by the Respondents No. 1 & 2 that coal being a 'value added product' is outside the scope of the Application of the in terms of Section 2 (c) of BD Act, 2002. The Act clearly defines "value added products" which contains portion or extract of plant and animal in unrecognisable and physically inseparable form. On the

aforementioned grounds, the Respondents No. 1 & 2 pray for dismissal of the Application.

15. The Respondent No. 3/MoEF&CC and Respondent No. 4/NBA in their joint affidavit rebutted the contention of the Applicant with regard to categorisation of coal as a biological resource. The Respondents also have contended that by plain interpretation of the term biological resource in section 2(c), coal cannot be categorized as biological resource. The Respondents invited attention to the Supreme Court Cases, namely, *Nelson Motis v UOI (AIR 1992 SC, 1981) and State of Jharkhand v Govind Singh (AIR 2005 SC 294)* to aver that when words of statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences. The Respondents have further contended that although BMC may levy charges by way of collection fee from any person for accessing or collecting any Biological Resource for commercial purposes from area falling within its territorial jurisdiction, the Applicant has never been prevented by the Respondents from this right being enforced under Section 41 (3). The Respondents, however, by way of clarification point out that although Applicant has a benefit sharing right under the BD Act, 2002 the legal right claimed by the Applicant under Section 41 (3) is distinct, different and separate from the determination of equitable sharing of benefits as envisaged under Section 21 of the BD Act, 2002. The Respondents further states that the legal right of the Petitioner under Section 41 is only with respect to the levying charges by way of collection fee from any person from accessing for collecting any Biological Resource for commercial purposes from areas falling within its territorial jurisdiction which is different from what is envisaged under Section 21 which provides for equitable benefit sharing by the Respondent No. 1 &2 in respect of approvals granted under Section 19 & 20 of the Act. The

Respondents No. 3 & 4 in their averments to Coal being categorised as Biological Resource have furnished expert opinions of the Secretariat of Convention on Biological Diversity, Geological Survey of India, Zoological Survey of India & Botanical Survey of India. The summary of expert opinion given by the aforementioned organization are reproduced :

Secretariat of the Convention on Biological Diversity

The question raised is best addressed by reference to Article 2 of the Convention on the use of terms for the purpose of this Convention. This article provides that "biological diversity" means the variability among living organisms from all sources... The same article provides that "biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity and that "genetic material" means any material of plant, animal microbial or other origin containing functional units of heredity.

In our view, this terminology makes clear that the Convention on Biological Diversity deals with living organisms. Moreover, this interpretation is supported by the many decisions of the Conference of the parties since the entry into force of the Convention 20 years ago, which have focused on living organisms, including genetic material (but exclusive of human genetic material). Finally, the fact that the Convention on Biological Diversity is often referred to as the Convention on "life on earth" is also indicative of its scope and purpose.

Geological Survey of India

Coal (meant "mineral of fossilized carbon") is a combustible black or brownish-black sedimentary rock usually occur in rock strata or veins called coal seams. It is surely a "solid fuel" but in international Energy Agency (IEA) scheme it is mixed with "derived fuel". The definition of coal is according to the United Nations Economic Commission for Europe (UNECE, Geneva)-"a sedimentary rock composed mainly of hydrocarbons containing in weight more organics than in-organics". Coal is of vegetable origin converted to hard coal by geological processes in geological past and can be regarded as an organic sedimentary rock. The main factor in the formation of coal has been the accumulation and partial decay of vast quantities of woody materials to formed peat. Peat is the precursor to coal. The modern definition of a coal seam as per ISO 14180 is a coal seam is a stratum or sequence of strata composed of coal as a significant component and significantly different in lithology to the strata above and below it". It is laterally persistent over a significant area and will be of sufficient thickness to warrant as an individual unit. Additionally, there is an unavoidable relation between coal and coal seam concepts because the proportion of organics in organics depends on the volume of matter integrated. A single maceral (constituents of coal) contains always

more than 50% organic matter, but it is not coal because it is not a rock. Similarly, a large thick horizontal tree trunk is not also a coal seam by reasons of minimum thickness and extension. Considering all the above facts, the coal resource may be considered a geological resource than a biological one.

Zoological Survey of India

Inviting the above references and subject, I am to inform you that as per the CBD article-2, biological resources included genetic resources, organisms or parts thereof, populations, or any other biotic components of ecosystem with actual or potential use or value of humanity whereas and BD Act, 2002, Chapter-1, defines biological resources as plants, animals and micro-organisms or parts or potential use or value, but does not include human genetic materials. In the context of coal as biological resources, although not exhaustive, the CBD and BD Act in general define the biological resources in terms of living resource and not of biological materials of dead or fossilized in nature.

Also, the Nagoya Protocol emphasized on access to genetic resources and the fair and equitable sharing of benefits arising from their utilization and coal although biological in origin but devoid of any heritable genetic material, metabolic reactions and genetic expression.

Considering the above and also coal being a natural resource of non-value added product, in my opinion, coal should not be considered as a biological product for sharing benefits from extracting coal from the mines and BD Act is not applicable on the access and benefit sharing on such product.

Botanical Survey of India

The convention on biological diversity (CBD) describes biological diversity – or biodiversity – as the variety of life on Earth and the natural patterns it forms. This diversity is often understood in terms of the wide variety of plants, animals and microorganisms. So far, about 1.75 million species have been identified. Biodiversity also includes genetic differences within each species – for example, between varieties of crops and breeds of livestock. Chromosomes, genes, and DNA-the building blocks of life-determine the uniqueness of each individual and each species. Yet another aspect of biodiversity is the variety of ecosystem such as those that occur in deserts, forests wetlands, mountains, lakes, rivers, and agricultural landscapes. These three levels (species diversity, genetic diversity, ecosystem diversity) interact in an extremely complex manner, and these interactions provide the life support of all species.

Our understanding of Coal

Most of our coal was formed about 300 million years ago from dead plants whose remains accumulated in swampy areas layer over layer and eventually forming a soggy, dense material called peat. This initial processes of disintegration and decomposition were brought about by the action of bacteria and other microorganisms (bio-chemical change), resulting in formation of peat. Over long periods of time, both seas and rivers deposit sand, clay and other mineral matter resulted in burying this peat. Sandstone and other sedimentary rocks which form in course squeeze water from the peat and force volatile substances to escape. Increasingly deeper burial and the heat associated with it through geochemical process gradually transform the peat material in to coal. The greater the depth of burial, the process of metamorphism increases with coal primarily consisting of carbon, along with variable quantities of other elements such as hydrogen, sulphur, oxygen and nitrogen.

Biological Diversity Act (2002) and Biological Resources

Biological resources exhibit characteristics such as normal growth and reproduction. Basically they infer to attributes of life. CBD article 2 defines biological resources as "genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity." Biological Diversity Act (2002) defines biological resources as "plants, animals and micro-organisms or parts thereof, their genetic material and by products (excluding value-added products) with actual or potential use or value, but does not include human genetic material. "Biological resources comprise of the living organism which are renewable. The member secretary of Madhya Pradesh State Biodiversity Board is of the opinion that "Coal is a fossil fuel formed when ancient plants got buried in the earth crust for millions of years and were converted into peat. "They going by BDA'S definition of a biological resource, coal is a genetic material of plants."

Why coal is not a biological resource*!*

The organic matter buried under layers of sediment under intense heat and pressure produced carbon-rich components millions of years ago which is now used as fossil fuel. In spite of vegetable origin, these processes, both biochemical and geochemical, leave coal without any trace of life!

It was contended that coal is a genetic material of plants. But genetic materials do have replication/regeneration ability, a property of life, and calling coal a genetic material, which does not have this ability, is not scientifically justified. Biological resources are renewable resources whereas coal is non-renewable energy resource. Moreover, none of the Member Nations of Convention on Biological Diversity have adopted /included coal as a bioresource.

In conclusion, the spirit of the convention on biological diversity (CBD) is to identity and safeguard the variety of living organisms of all kinds-animal, plants, fungi and microorganism at species, genetic and ecosystem level, and their sustainable utilisation. Coal which is otherwise known as the non-renewable fossil does not represent any of these levels of biodiversity (species level, genetic or ecosystem level), is not a biotic component of ecosystem, and therefore in my firm opinion, is not a biological resource.

16. The Respondents No. 3 & 4 have also controverted the Applicant's contentions that since coal has not been excluded by way of any official notification dated October 26, 2009 under section 40 of the BD Act, 2002, the coal would be covered by the BD Act, 2002 and would, therefore, qualify to be called a biological resource. The Respondents further contended that since coal does not qualify to be a 'biological resource' it is automatically excluded from the purview of the BD Act, 2002 and, therefore, there is no necessity to specifically exclude this under the notification issued by them under section 40 of the Act.

17. The Respondents No. 3 & 4 in the light of the aforementioned clarifications, have requested that the Application be dismissed.

18. The Respondent No. 5/State Bio Diversity Authority have supported the contention of the Applicant that coal is a biological resource considering the fact that coal which is a fossil fuel is formed from the remains of vegetation and, therefore, is a part of the plant material because it remains in the plant and, therefore, falls within the definition of biological resource. Consequently the Respondent No. 1 & 2 are under obligation to pay the fee levied by the Applicant as per the requirements under section 41 (3) of the BD Act, 2002. The Respondent No. 5 further states that the purposes of the Act will be defeated if narrow construction of the definition or provision of the Act are drawn to exclude from its purview the commercial utilisation of any biological

resource and go on to point out that since coal has not been excluded from the purview of Section 40 in terms of the notification issued by the Respondents No. 3 & 4, the Respondents No. 1 & 2 are under obligation to pay the fee that may be levied by the Applicant.

19. The Applicant in their rejoinder have reiterated their earlier contention that coal being of plant origin should be treated as a biological resource and consequentially the Applicant is entitled to levy fees for access to the biological resources falling within their jurisdiction but also share in the benefits which the coal company (Respondent No. 1 & 2) have been making in thousands of crores on account of the business generated from coal extracted from within the jurisdiction of the Applicant. Rebutting the contention of the Respondent No 1 and 2, the Applicant in the Rejoinder points out that mere fact that coal is covered under the Mines and Minerals (Development and Regulations) Act 1957 does not take away the right of the Applicant Committee to claim their right under the BD Act, 2002 as coal is a biological resource. The Applicant further contends that coal as a fossil fuel actually contains parts of plants or its by-products formed due to natural pressure and temperature under anaerobic conditions and hence it is a biological resource as defined under section 2© of the BD Act 2002.

20. We have heard the Learned Counsel for the parties.

21. The BD Act, 2002 is a result of the International Convention on Biological Diversity, 1992 to which the Govt. of India is a signatory and which entered into force in December, 1993. The Convention on Bio Diversity, which itself was the one of the important outcomes of United Nation Conference on Environment & Development held at Rio de Janeiro in 1992 where nation states, concerned with rapidly declining natural resources, biological and

dependence of communities across the globe on a biological resources for food and medicines, agreed on common action to conserve biological diversity for the benefit not only of the present but future generations. The Convention accordingly called upon the nation states, signatories to the Convention to take legislative, legal and administrative steps for conservation of biological diversity, its sustainable use and equitable benefit sharing mechanisms as well as for protection of the associated traditional knowledge. It is against this back drop that Union of India enacted the BD Act, 2002. The preamble of Act lays down in its aims and objects which are reproduced :

> *"An act to provide for conservation of Biological Diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto;*
>
> *WHEREAS India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto;*
>
> *AND WHEREAS India is a party to the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992;*
>
> *AND WHEREAS the said Convention came into force on the 29th December, 1993;*
>
> *AND WHEREAS the said Convention reaffirms the sovereign rights of the States over their biological resources;*
>
> *AND WHEREAS the said Convention has the main objective of conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilisation of genetic resources;*
>
> *AND WHEREAS it is considered necessary to provide for conservation, sustainable utilization and equitable sharing of benefits arising out of utilization of genetic resources and also to give effect to the said convention;"*

22. In the light of the facts averred by the Applicant as well as the Respondents in their respective affidavits and submissions made during the hearing, the following issues arise for consideration :

1. Whether coal is a biological resource as defined in terms of the section 2(C) of Biological Diversity Act 2002.

2. Whether there has been any violation of the Biological Diversity Act 2002 by the Central Government by issuing letters dated 02-09-2013 and 06-09-2013.

3. Whether the Applicant is entitled to levy fee for extracting coal from areas falling within its jurisdiction.

Discussion on Issue No. 1

23. In order to answer the issue no.1, we may refer to the definition of certain terms as per Section 2 of the BD Act 2002 reproduced in para 8 (*supra*). The term Biological Diversity consists of two words, biological and diversity. The term biological has its origin in the word "bios" which as per Oxford Dictionary ***relates to life or living beings.*** The word diversity refers to the diversity that exists among living organisms within species, between different species, and between eco-systems. In other words, biological diversity connotes variety of life forms, and the ecological roles they perform and the genetic diversity they contain within themselves- a definition which has been universally accepted both by the Convention on Biological Diversity as well as the United Nations Environmental Programme. The Applicants in their affidavit contended that the coal is not only a biological resource but is also a part of and covered under biological diversity. However, during the course of the hearing the Learned Counsel for Applicants made the submission that coal may not qualify as a biological diversity and, therefore, did not press for its inclusion under the term "biological diversity". However, in so far as categorisation of coal under biological resources is concerned, Learned Counsel for the applicant vehemently argued that coal is formed as a result of geo-chemical process over billions of years ago when plants and micro-organisms got buried under earth's crust and were subjected to high temperature and pressure and got converted into coal in a fossilised form. For the reason that coal is largely of plant origin, is rich in carbon and, therefore, retained the characteristics of a plant and hence a biological resource.

24. The Learned Counsel for the Respondent No. 3 and 4 in their averments during the course of hearing have argued that in spite of coal being of vegetable origin, the organic matter from plants buried under layer of sediment under intense heat and pressure for millions of years has got converted into fossil fuel and as a result of these processes, both bio-chemical and geo-chemical, leave coal without any trace of life.

25. The Learned Counsel for the Respondent no. 3 further advanced the argument that biological resources are renewable and exhibit characters of growth and reproduction. These are the primary attributes of life. Any material or resource which does not possess these attributes cannot be categorised as a biological resource. To buttress their argument the Ld Counsel for Respondent No. 3 has adverted to the opinion expressed by the Convention of Biological Diversity and by the Botanical Survey of India. The Secretariat of the CBD has clearly expressed the view that the term biological resources as defined by the CBD clearly deals only with living organisms. Further, this interpretation is supported by many decisions of the Conference of Parties since entry into force of the conventions 20 years ago which have focussed on living organisms including genetic material (but excluding of human genetic material) and finally that the Convention on Biological Diversity is often referred to as 'Convention on Life on Earth' and is thus indicative of the scope and purpose of the term "biological resource" as defined in the Article 2 of the CBD. The Ld Counsel for Respondent No.3 further refers to the opinion of the Botanical Survey of India who have also opined that genetic material do have ability for replication and regeneration, a property of life, and calling coal a genetic material, which does not have this ability, therefore, is not scientifically justified.

26. One of the key objectives of the BD Act, 2002 is conservation of biological diversity. The definition of the word 'conservation' as defined in the 'World Conservation Strategy' of the International Union of Conservation of Nature and Natural Resources (IUCN – a UN body) in respect of living resources is the management of human use of the biosphere so that it may yield greatest sustainable benefit to the present generation while maintaining its potential to meet the needs and aspiration of future generation. The conservation of living resources in other words is concerned with plants, animals and micro-organisms and with those non living elements of environment on which they depend. The living biological resources have two important properties, the combination of which distinguishes them from non living resources. They are renewable, if conserved, and they are destructible, if not. The biological resources have capacity to grow, reproduce and evolve. They are amenable to conservation – '*in-situ'* and '*ex-situ'*. Coal has no capacity to grow, evolve and reproduce. It is not amenable to *in-situ* and *ex-situ* conservation. It is a fixed and finite resource, the extent of which is pre-determined in time and space. There is no way in which human or technical intervention can help to increase the extent of coal present in a particular geographical area over time. On the sheer yardstick of its lack of amenability to conservation in the manner described above, coal does not have characteristic of a living biological resource.

27. Advancing his rebuttal of the coal as a biological resource, Ld Counsel for Respondent No. 3 points out that biological diversity refers to the diversity that exists in the form of species richness in a particular ecosystem, differentiations that exist among plants, animals, and micro-organism in morphology and their genetic make-up. Biological resource, however, is the assemblage of the different plants, animals and organisms with their attendant differentiations

and diversities. In other words, biological diversity is subsumed within the term biological resource. Consequently, if coal does not qualify to be covered under biological diversity, as per submission of the Ld Counsel for the Applicant during the hearing, it also does not merit to be categorised as a biological resource.

28. At this stage, it may be appropriate to also refer to the definition of certain terms used in CBD relevant to the issue under consideration :

> *"Biological resources*
> '*Biological resources' includes genetic resources, organisms or parts thereof, populations or any other biotic component of eco-systems with actual or potential use or value for humanity.*
>
> *Genetic Resource*
> "*Genetic Resource" means genetic material of actual or potential* value.
>
> *Genetic Material*
> *"Genetic material'' means any material of plant, animal, microbial or other origin containing functional units of heredity."*

29. One of the important components of 'Biological Resource' is the 'genetic resource' which in turn means any genetic material which has actual or potential use and contains functional units of heredity. The DNAs (Deoxy Ribonucleic Acid) are the functional units of heredity and, therefore, any genetic material from plants, animals or microbes which have functional units of heredity, that is DNA, will qualify to be included within the ambit of 'Biological Resource'. Absence of the functional units of heredity will automatically disqualify the material to be classified as genetic resource and consequently as biological resource. Though BD Act 2002 includes the terms genetic material in the definition of biological resource, the term itself has not been defined in the Act. Its definition, however, can be drawn from the CBD text being the parent text on biological diversity. Conceptual core of the terms genetic resource and biological resource is therefore the same and, irrespective

of the different words and style, both genetic resources and biological resources convey the same thing. The interpretation of the definition of biological resource, as in the Article 2 of the CBD, and that given under the BD Act, 2002, although apparently look somewhat at variance with each other, particularly, in the way it has been described in Section 2(c) of the BD Act 2002, however, exploring it further, the conclusion is inescapable that both the definitions lead to the same conclusion. Any material which does not have the genetic make-up or in other words DNA, cannot be qualify to be a heritable genetic material and hence cannot also be called a biological resource.

30. Commercial utilization of biological resources and associated genetic material for crop and livestock improvement through genetic interventions have been the causes of bio-piracy and misappropriations of traditional knowledge and the associated intellectual property rights of the communities The Section 3, 4, 5, 6, 20 & 21 of the BD Act, 2002 seek to regulate the use of biological resources and the equitable sharing of benefits arising out of the commercialisation of genetic resources. However, the use of biological resources is premised on the assumption that biological resources which primarily consist of the genetic material of plants, animals & micro-organisms are amenable to genetic interventions. Such genetic interventions are possible only if the integrity of genetic structure present in the genetic material is intact. There is no credible scientific evidence available, nor has it been advanced by the Learned Counsel for the Applicant, to suggest that coal is a genetic material which is amenable to scientific interventions for bringing about genetic improvement in other plants and animals or can be subjected to genetic improvements through genetic interventions from other plants, animals or micro-organisms. The inability of coal to be used as a genetic material

automatically makes it a candidate unsuitable to be categorised as biological resource.

31. Adverting to the definition of 'Biological Resource' in Section 2 (c) which means plants, animal and micro-organisms or parts thereof, their genetic material, any resource or material which does not have genetic configuration does not qualify to be categorised as a 'genetic resource' and, therefore, by implication cannot be categorised as biological resource. Coal is the complex material formed by mix of substances; plant remains and mineral matters and goes through various geo-chemical and bio-chemical processes which are not completely understood due to burial under heat and pressure over time. Since it has taken millions of years to form coal from a mixture of plant remains and minerals, and no trace of plant DNA could be found in coal in any form, it will be improper term coal as a genetic material. There are claims which have been made in the scientific world of DNA having been isolated from dinosaur bones preserved for over of 80 million years. However, the validity of this DNA has been questioned by large body of scientific communities. There are also contrary scientific studies carried out which suggest that the half life of DNA is about 521 years based on experiments carried out in New Zeeland on fossilised bones of certain extinct species of birds and published in the Royal Society of Biology(2012). The study further brings out that once a plant or animal cell, the basic unit of life, dies enzymes start to break down the bonds between nucleotides that form the back bone of DNA and micro organism speed the decay. The study examined 158 bone samples belonging to three different species of extinct giant birds called moa and concluded that even if preserved at ideal temperature of (- 5° C) effectively every bond between nucleotides will be destroyed in about 6.8 million years and DNA would cease

to be readable by about 1.5 million years and, therefore, would not be provide any meaningful information on the original plant or animal species.

32. From the forgoing it is amply clear that coal, although indisputably of plant origin, does not in a fossilised form, after millions of years being buried under the earth, retain any genetic characteristics which can be linked to the plants, or to the vegetation from which the coal was originally formed. There is no scientific study to date which suggests that coal has a genetic structure and that it is similar to that of plants. It is a fossilized form though some of the chemicals like carbon are similar to those present in plants and that alone is not enough to suggest that coal by any stretch of imagination is biological in its character and configuration on the ground. That coal does not have any genetic structure and, therefore, is neither a genetic material nor a genetic resource and accordingly does not qualify to be called a biological resource.

33. We will now proceed to examine whether coal is a part of plant or animal or a by-product of plant, animal or micro-organism as contended by the Applicant. The term by-product as defined in the Oxford Dictionary refers to *an incidental or secondary product made in the manufacture or synthesis of something else.* Similarly, the term as defined in the Law Lexicon (3rd Edition, 2012) refers to *a secondary or additional product. The word by-product is a common English word and is defined in Murray's English Dictionary as a secondary product, a substance of more or less value obtained in the course of a specific process though not its primary object (State of West Bengal vs Kunjlal, AIR 1950, Cal 573).* Thus by including by- product within the definition of biological resource the BD Act 2002 only seeks to give protection to the by-products which plants, animals and micro-organisms produce and which are capable of being exploited in such a way as to threaten the conservation of the very plants, animals and micro-organisms from which

such by-products have been obtained or may be obtained. By way of illustration gums, resins and honey are by-products of plants and animals. Since these by-products have a potential for exploitation of the plant or animal from which these by products are obtained, the legislature in their wisdom have included by-products of plants and animals within the ambit of biological resource under section 2© of the BD Act 2002 and thereby to secure protection to the concerned plants and animals whose by-product are in use or have potential uses in future. The Applicant has vaguely contended that coal is not only a by-product of the plants but also a part thereof. Considering that a by-product is something which is incidental to something else being produced, there is a contradiction in the averments of the Applicant. While on the one hand Applicant contends that coal is itself a product of plant origin due to fossilization process, on the other it is contended that that it is a by-product. Notwithstanding the contradiction in the stand of the Applicant we find no merit in the vague assertion of the Applicant that coal is a by-product of plant in the absence of any direct correspondence to any plant and the fact that coal is a mineralized form of plant as a result of the fossilization processes. In so far as the contention that coal is a part of the plant, we may refer to the meaning of the term 'part'. The Oxford Dictionary defines 'part' *as amount or section which when combined with the others makes up whole of something, an element or constituent that is essential to the nature of something.* By this definition, only such parts which when joined together will form the 'whole' can be interpreted to be part of the 'whole'. In respect of the plants and animals only parts like leaves, fruits and bones etc which are part of the plant and animal, have genetic configuration same as that of the plant or animal of which they are part can be categorized as part of the plant or animal. Such linkage does not operate in vacuum. There has to be a linkage and a direct

correspondence to a specific plant or animal of which it alleged to be a part of. The inescapable conclusion, therefore, is that coal cannot be treated either as a part of the plant or a by-product thereof.

34. The Respondent No. 1 & 2 in their averments made in the affidavit, while disputing the claim of the Applicant to categorisation of coal as a biological resource, have opined without admitting that coal at best could be treated as a "value added product" of plant and animal. We are, however, not going into the merit of this contention for the fact that in the very definition of biological resources under section 2 (c) value added products have been explicitly excluded from the definition of biological resources. Therefore, notwithstanding the contention of the Respondent No. 1 & 2, we are not going into the question whether coal is a value added product of plant, animal or micro organism or not.

35. Whether or not coal is a biological resource also needs to be examined in the context and purpose for which the BD Act, 2002 was enacted. The aims and objects of the BD Act, 2002 as stated in para 21 (*Supra*) bring out that Indian Parliament enacted the BD Act,2002 in pursuance of the fact that it was a signatory to the convention. The Convention on Biological Diversity was the result of the sustained international effort at recognising the intrinsic value of biological diversity and of the ecology, genetic, social, economic, scientific, educational, cultural re-creational and aesthetic values of biological diversity and its component and the role that it plays in sustaining life on the biosphere and that there has been considerable negative impact on the biological diversity due to human activities. The international community under the aegis of United Nations Conference on Environment and Development at Rio de Janeiro in 1992 finalised the text of (Convention on Biological Diversity)

which got signed by 168 nation states and came into effect on 19th December, 1993. The convention while recognising the sovereign rights of the nation states on their biological resources seeks their commitment to taking appropriate policy and legislative actions for conservation of biological diversity, sustainable use of its components and equitable sharing of the benefits arising out of the use of biodiversity and the associated traditional knowledge. A common thread runs across all the 42 Articles of the Convention which suggests that the convention seeks to lay down a road map for conservation and sustainable use or biological resource and the biological diversity. It is difficult to escape the conclusion that the convention only deals with the conservation and sustainable use of genetic resources and the living organism of plant, animal and micro organism. Neither the Convention document nor all the subsequent meetings of the Conference of Parties (COPs), of which nation states are members, give any indication or suggestion that the Convention would have been concerned with any other material or resources other than living organisms or their genetic material. Considering that coal as a mineral resources occurs in almost of the countries across the globe, if the intention of the international community was to include coal within the ambit of the CBD, the issues would have been brought up and discussed at some point of time during past more than 20 years since the Convention was first signed and ratified. This has been also confirmed by the Convention Secretariat in their communication to the MoEF & CC/ Respondent No. 3 indicating that the coal is not a biological resource considering the CBD only deals with living organism and genetic materials thereof.

36. Advancing his argument further for categorisation of coal as a biological resource the Learned Counsel for the Applicant refers to notification dated October 26th, 2009 issued by the Respondent No. 3 under Section 40 of the BD

Act, 2002 exempting certain biological resources, particularly, species of medicinal plants, horticulture crops, vegetables, roots, tubers, flowers and plantation and aromatic crops from the provisions of the BD Act, 2002. As the language of the notification itself suggests, the notification seeks to exclude certain crops and plants, which are categorized as Biological resource, from the purview of the BD Act, 2002 and consequently the plants and crops listed in the notification will not require any permissions for collections from the SBBs or the NBA or the BMCs as the case may be. To draw an inference that since coal has not been specifically excluded, the provisions of Section 41 (3) and Section 2 (c) will apply to coal and, therefore, the Respondents No. 1 & 2 are liable to pay the fee levied by BMCs for collection from within their jurisdiction. We are of the view that this is a fallacious interpretation of the notification and, therefore, do not have any legs to stand either on merits or on the legal interpretation.

37. Before we part, in so far as the discussion on issue No. 1 is concerned, one also needs to look at the intentions, aims and objectives behind an enactment and that the terminology used in the enactment must harmonise with the objective of the legislation. The preamble of the BD Act, 2002, as well as the definition of the terms only cover living organisms or their genetic material. Even the tone, tenor or content of the discussions held in Parliament, a copy of which has been placed on record by the Applicant, does not remotely suggest that legislature favoured inclusion of coal or other fossil fuels within the ambit of BD Act, 2002, therefore, even on the principle of "purposive construction" we do not see any justification to categorise coal as a biological resource.

38. On the principle of purposive Construction we may also refer to Supreme Court case -*Surjit Singh vs. Mahanagar Telephone Nigam Ltd in Civil Appeal No. 5354 of 2002-JT 2008(5)SC325*.

> *"As observed in the Constitution Bench decision of this Court in R.L. Arora vs. State of Uttar Pradesh and others 1964 (6) SCR 784:*
>
> *"Further, a literal interpretation is not always the only interpretation of a provision in a statute, and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made."*
> *(emphasis supplied)*
>
> *24. Hence it follows that to interpret a statute one has to sometimes consider the context in which it has been made and the purpose and object which it seeks to achieve. A too literal interpretation may sometimes frustrate the very object of the statute, and such an approach should be eschewed by the court.*
>
> *25. In Hindustan Lever Ltd. Vs. Ashok Vishnu Kate others 1995(6) SCC 326 (vide para 42) this court observed:*
> *"Francis Bennion in his statutory Interpretation Second Edn., has dealt with the functional Construction Rule in Part 16 of his book. The nature of purposive construction is dealt with in Part xx at p.659 thus:*
> *"A purposive construction of an enactment is one which gives effect to the legislative purpose by- (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or*
> *(b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction)".*

At P.661 of the same book, the author has considered the topic of "Purposive Construction" in contrast with literal construction. The learned author has observed as under:

"Contrast with literal construction – Although the term "Purposive Construction is not new, its entry into fashion betokens a swing by the appellate courts away from literal construction. Lord Diplock said in 1975: `If one looks back to the actual decisions of the [House of Lords] on question of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions'. The matter was summed up by Lord Diplock in this way-..I am not reluctant to adopt a purposive construction where to apply the literal meaning of the legislative language used would lead to results which would clearly defeat the purposes of the Act. But in doing so the task on which a court of justice is engaged remains one of construction, even where this involves reading into the Act words which are not expressly included in it." (emphasis supplied)

……..

……..

Maxwell also states:

"The words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained."

56. Thus, in both systems of interpretation, the Mimansa system as well as Maxwell's system it is emphasized that the intention of a statute has often to be seen to properly interpret it, and it is not that the court can never depart from the literal rule of interpretation. It all depends on the context, the subject matter, the purpose for which the provision was made, etc. "

39. In the result, we are of the view that on the principle of purposive construction, coal cannot be categorised as a biological resource as the purpose and object of the BD Act, 2002 was to provide for conservation of plants, animals and other organisms and their genetic material.

40. While deciding whether coal is a biological resource for the purpose of the BD act 2002, we also need to examine whether by bringing coal within the

definition of biological resource, the object of conserving biological diversity be served any better? We are of the view that bringing Coal within the definition of biological resource within the BD Act 2002, if at all, will only dilute the specific focus which the BD Act 2002 has sought to place on conservation of living genetic resources, not only for the benefit of present but also future generations. Also, if coal is treated as a biological resource, by similar analogy, fossil fuel like petroleum and natural gas may also sought to be categorised as a biological resource for the purpose of the BD act 2002 as both these fossil fuels also have plant origin. Similarly, if coal is to be treated as a biological resource, being of plant origin, should not sugar which is also of plant origin, made from sugarcane plant after sugarcane is subjected to a physic-chemical process and also the fact that it retains Carbon as one of its main constituents be also categorized as biological resource? Mere fact that coal is of plant origin cannot and should not make it eligible to be called a biological resource. Such extensive and over arching meaning to the term biological resource in case of coal will lead to absurd consequences not only for the very definition of term but also the consequences for implementation, which will go much beyond what the legislative intent, objective and purpose would have been.

41. In the light of the aforesaid, we have no hesitation in concluding that coal does not qualify to be a biological resource and does not come within the purview of the Biological Diversity Act, 2002. The issue no.1 is accordingly answered in the negative.

Discussion on Issue No. 2

42. The Learned Counsel for the Applicant have contended that the MoEF & CC/Respondent No. 3 have no powers to issue letters dated 02-06-2013 and

06-09-2013 by way of clarification to the NBA on the definition of coal as a 'biological resource' as such powers are restricted to 2 years after the enactment of the Act under section 65 of the BD Act 2002 and, therefore, such letters being clarificatory in nature are not binding on the Applicant and cannot take the shape of directions/regulation or the provisions of law as mandated but under the BD Act, 2002. Adverting further on this, the Learned Counsel for the Applicant has specifically drawn attention to the Section 65 of the Act which reads

Section 65: Power to remove difficulties

(1) if any difficulty arises in giving effect to the provisions of this Act the Central Government by order not inconstant with the provision of this Act remove the difficulty:
Provided that no such order shall be need after the expiry of a period of 2 years from the commencement of this Act.
(2) Every order made under the Section shall be laid as soon as may be after it is made each House of Parliament.

43. The Learned Counsel for the Respondent No. 3 in their rebuttal have referred to Section 48 of the Act which is reproduced below :

"**Section 48**: **National Biodiversity Authority to be bound by the directions given by the Central Government.**

1. *Without prejudice to the forgoing provisions of this Act the NBA shall in the discharge of its functions & duties under this Act be bound by such directions on questions on policy as the Central Government may give in writing to it from time to time:*
Provided that the NBA shall as far as practicable be given opportunity to express its views before any direction is given under this sub section.
2. *The decision of the Central Government whether a question is one of policy or not shall be final."*

44. A perusal of the two letters under reference would indicate that they are only in the nature of communication from MOEF&CC/Respondent 3 to the NBA/Respondent No. 4 indicating the views of the MoEF&CC in so far as the interpretation on whether coal is a biological resource or not is concerned.

Though the Section 48 of the Act empowers the Ministry to give directions to the NBA and which unless contested by the NBA, are binding on the NBA, the perusal of the letter dtd. 17.06.2013 placed on record in their affidavit by the Respondents No. 3 & 4 clarifies the position. The letter addressed by the Secretary, NBA to Dr. Sujata Arora, Director, MoEF & CC clearly mentions that the NBA is of the opinion that coal cannot be considered as a 'biological resource' since its use as a fossil fuel does not fit within the kind of use envisaged under Section 2 (f) of the BD Act, 2002. The letter would suggest that independent of the letters issued by the MoEF & CC/ Respondent No. 3 to the Respondent No.4/NBA, which are adverted to by the Applicant, the NBA has taken its own independent conscious decision not to categorise the coal as a 'biological resource'. In fact the letter of 17-06-2013 is of date earlier than the letters impugned by the Applicant. In other words, even before such letters were written by the Respondent 3 to Respondent 4, the latter (NBA) had independently taken a view that coal cannot be treated as a biological resource. The question of issuing any direction or clarification, therefore, becomes redundant and cannot be called in to question as alleged by the Applicant. This is further strengthened by a letter dtd. 16.12.2013 written by Advisor (Law), NBA addressed to Shri Ramgopal Soni, Member Secretary of MPSBB/Respondent No.5 which has been placed on record by Respondents No. 1 & 2, wherein the NBA has clarified to the Respondent No. 5 on the issue as to whether coal is a 'biological resource'. The relevant para of the letter is reproduced below :

> "*It is hereby clarified that on the issue of whether coal is a 'biological resource' or not, the NBA and the MoEF & CC have unequivocally concluded that coal is not 'biological resource' under Section 2 (b) of the Biodiversity Rules, 2004. In fact the letter goes on to give directions under Rule, 12 (XIV) of the BD Act, 2002 which NBA is empowered to do to MPSBB on the subject stated above.*"

Considering that NBA/Respondent No. 4 and MoEF & CC/ Respondent No. 3 have filed a joint affidavit and have taken a common stand in so far as interpretation of the term 'biological resource' is concerned, we do not hold the view that Section 65 (1) has in any way has been contravened. In fact, the Respondent No. 4 had also issued directions to the SBB/Respondent No. 5 clarifying that coal is not a 'biological resource' and that Section 41(3) which requires prior permission from the BMCs is not a legal requirement in the case of coal extracted by the Respondents No. 1 & 2. We, therefore, hold that the NBA has formed its own independent opinion on categorization of coal as a biological resource and there has no breach of BD Act 2002 by Respondent No. 3 by writing letters dated 02-09-2013 and 06-09-2013.

45. In the light of the discussions hereto before, we answer the issue no. 2 in the negative.

Discussion on Issue No. 3

46. The BD Act, 2002 seeks to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising out of use of 'biological resource' knowledge and for matter connected therewith and incidental thereto. The mechanisms and modalities for benefit sharing are to be worked out by the NBA in terms of Section 21 of the Act. Benefit sharing, however, is directly linked to the commercial utilisation achieved by user of the 'biological resource'. The Section 41 of the BD Act, 2002 relates to regulation of the 'biological resources' at the local level and mandates the NBA & SBBs to consult the BMCs while taking decision on the use of 'biological resource' and

the knowledge associated with such resources occurring within the territorial jurisdiction of the BMCs. The Section 41 of the Act reproduced below :

"**Section 41: Constitution of Biodiversity Management Committees-**

(1) *Every local body shall constitute a Biodiversity Management Committee within its area for the purpose of promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivators, domesticated stocks land breeds of animals and micro organisms and chronicling of knowledge relating to biological diversity.*

Explanation – For the purposes of this sub-section, -

(a) "cultivar" means a variety of plant that has originated and persisted under cultivation or was specifically bred for the purpose of cultivation;

(b) "folk variety" means a cultivated variety of plant that was developed, grown and exchanged informally among farmers;

(c) "land race" means primitive cultivar that was grown by ancient farmers and their successors.

(2) *The National Biodiversity Authority and the State Biodiversity Boards shall consult the Biodiversity Management Committees while taking any decision relating to the use of biological resources and knowledge associated with such resources occurring within the territorial jurisdiction of the Biodiversity Management Committee."*

47. The section 41(3) empowers Biodiversity Management Committees to levy charges by way of collection fee for accessing or collecting any biological resources for commercial purpose from area falling within their territorial jurisdiction. It is the case of the Applicant that coal being a biological resource, the Respondent No. 1 and 2 are under legal obligation to pay them collection fees for accessing the area and collecting the biological resource, that is, coal. In the light of the discussion on issue no. 1 wherein the question whether coal is a biological resource has been comprehensively covered and discussed and based on the discussions and having regard to the conclusion

that coal is not a biological resource, it follows that the Respondent No. 1 and 2 are not liable to pay any collection fees for accessing or collecting coal from the area falling within the territorial jurisdiction of the Applicants nor are the Applicants entitled to levy any fees for collection of coal on Respondent No. 1 and 2.

48. We therefore, answer the issue no. 3 in the negative.

49. **With the above mentioned observations, we dispose of the O.A. No. 28/2013 & O.A. No. 17/2014.**

50. **No order as to costs.**

(Mr. Justice Dalip Singh)
Judicial Member

Bhopal:
October 6th , 2015

(Mr. B.S. Sajwan)
Expert Member