

Appeal No.04/2020/EZ

Appellant(s)

Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Respondent(s) : Ms. Anamika Pandey, Advocate for R-1 (in Virtual Mode),
Mr. Parthiv K. Goswami, Sr. Advocate a/w
Mr. Rahul Pratap, Advocate for R-2 (in Virtual Mode),
Mr. Shyambar Deb, Advocate for R-3 (in Virtual Mode),
Ms. Malabika Roy Dey, Advocate for R-4

ORDER

1. In this Appeal, the order dated 11.05.2020 granting Environmental Clearance (EC) in favour of the Respondent No.2, M/s Oil India Limited, for drilling seven wells for Hydrocarbon exploration is under challenge.
2. Earlier, the Tribunal had adjourned the Appeal *sine-die* on the ground that the issue relating to exemption from public hearing granted under the notification dated 16.01.2020 was pending for consideration before the Hon'ble Supreme Court. The said order of the Tribunal was challenged in Civil Appeal No.2040-2041 of 2022. Hon'ble Supreme Court by order dated 15.04.2024 had disposed of the Appeal by observing as under:-

“1. The National Green Tribunal (for short, “The NGT”) by the impugned orders has posted the appeal filed by the appellants sine die for the reason that the issue relating to

exemption from public hearing granted under notification dated 16.01.2020 is pending consideration before this Court.

2. Ms. Anitha Shenoy, learned senior counsel appearing for the appellants, submits that the appellants have challenged the environmental clearance before the NGT by way of an appeal on various grounds including that of public hearing. Although, according to her, the notification dated 16.01.2020 does not apply to the facts of the case as the exemption from public hearing in the present case was given on 20.07.2017.

3. It is also a matter of record that environmental clearance was granted on 11.05.2020 after the notification dated 16.01.2020. Whatever may be the case, Ms. Anitha Shenoy, on instructions, has stated that the appellants herein (appellants before the NGT) would press their appeal on other grounds except the ground of exemption from public hearing irrespective of the fact whether the exemption was granted in the year 2017 or 2020.

4. In that view of the matter, we modify the impugned order(s) permitting the NGT to proceed with the hearing of the appeal on grounds other than exemption from public hearing.

5. The issue of public hearing will not be raised by the appellants either before the NGT or even before this Court if an appeal/petition is decided against the appellants.

6. The appeals stand disposed of.

7. Pending applications shall stand disposed of.”

3. Learned Counsel for the Appellant submits that in view of the above order of the Hon'ble Supreme Court he will not be pressing the ground of public hearing but will be arguing the Appeal on other grounds.
4. One of the grounds raised in this Appeal is that the Environmental Clearance (EC) has been granted without considering the impact of

the Project on the biodiversity. The Final Technical Report on the Bio-diversity Impact Assessment Study for the proposed Seven Extended Reach Drilling Wells Beneath Dibru-Saikhowa National Park, Assam for Oil India Limited, Duliajan has been prepared by Assam State Biodiversity Board, Guwahati in collaboration with International Union for Conservation of Nature & Natural Resources (IUCN), New Delhi subsequently in July, 2023.

5. Hence, one of the issue that arises for consideration is, if the Competent Authority is required to re-examine/re-consider the Environmental Clearance (EC) in the light of the Biodiversity Impact Assessment Study Report which has been subsequently received.
6. Learned Counsel for the Appellant in this regard has referred to the order of the Hon'ble Supreme Court dated 25.07.2017 which has been quoted in the order dated 07.09.2017 passed in I.A. No.3934 in W.P. (C) No.202 of 1995, *T.N. Godavarman Thirumulpad Vs. Union of India & Ors.*, wherein the Hon'ble Supreme Court had directed as under:-

“xxxxxx xxxxxx xxxxxx

In view of the above, the application is allowed. However, we make it clear that the Oil India Limited will also be bound by the undertaking dated 25.07.2017 as mentioned in the letter of Dr. R. Dasgupta, Executive Director (Corporate Affairs) for Chairman and Managing Director:

- i) OIL will carry out Bio-diversity Impact Assessment study through Assam State Biodiversity Board, for which budgetary offer have already been obtained on 12th May, 2017.
- ii) OIL will carry out subsidence study followed with taking mitigation measures, in order to ensure that there

is no impact in the forest surface above the reservoir at height 3,900 to 4,000 mtr, due to extraction of hydrocarbon from the reservoirs.

iii) All mitigation measures will be in place in case of any eventuality causing Oil Spillage inside the Park area such as – Install Blow Out Preventer at well head and provide necessary valves in the Production installations located outside the Park area. Standard Operating Procedure (SOP), approved by the competent authority, pertaining to Oil Spillage, will be strictly adhered to.

iv) Undertake schedule test and inspection of the area periodically in order to assess any abnormality in the surface area above the reservoir inside the Park.

v) OIL will also ensure strict compliance of the conditions stipulated in EIA Notification, 2006 for both inside the Park areas as well as ESZ area of it.”

7. The submission of the learned Counsel for the Appellant is that the Environmental Clearance has been issued subsequent to the above direction of the Hon’ble Supreme Court, therefore, the said direction of the Hon’ble Supreme Court ought to have been carried out.
8. In the light of the above, the request for short adjournment has been made by the Counsel for the MoEF&CC to obtain instructions in respect of re-examination/re-consideration of the Environmental Clearance.
9. Affidavit dated 11.07.2024 has been filed by Respondent No.4, Assam State Biodiversity Board. The affidavit is taken on record.
10. Learned Counsel for the Oil India Limited submits that he has not received the copy of the Biodiversity Impact Assessment Study Report. Learned Counsel for the Assam State Biodiversity Board submits that she will supply copy thereof by tomorrow.

11. **List on 03.09.2024.**

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Prakash Shrivastava, CP

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B. Amit Sthalekar, JM

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Dr. Arun Kumar Verma, EM

July 18, 2024,
Appeal No.04/2020/EZ
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