

ITEM NO.1 Court 4 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s).2201/2021

BONANI KAKKAR

Appellant(s)

VERSUS

OIL INDIA LIMITED & ORS.

Respondent(s)

(WITH IA No. 92866/2021 - APPLICATION FOR PERMISSION, IA No. 67426/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 67425/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 72570/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 67424/2021 - STAY APPLICATION)

Date : 02-09-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MS. JUSTICE HIMA KOHLI

For Appellant(s) Mr. Siddharth Mitra, Sr. Adv.
Ms. Vasudha Zutshi, Adv.
Ms. Shruti Agarwal, AOR

For Respondent(s) Mr. Aman Lekhi, ASG
Mr. Harsha Peechara, Adv.
Mr. Ashish Kumar Tiwari, AOR

Mr. K.M. Nataraj, ASG
Mr. Gurmeet Singh Makker, AOR
Mr. Shailesh Madiyal, Adv.
Mr. Sharath Nambiar, Adv.
Vatsal Joshi, Adv.

Ms. Aishwarya Bhati, ASG
Mr. Ravindra Lokhande, Adv.
Mr. Sandeep Mahapatra, Adv.
Mr. T. Gopal, Adv.
Dr. Abhishek Atrey, AOR
Ms. Ambika Atrey, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 This appeal arises from a decision of the National Green Tribunal¹ dated 19 February 2021.
- 2 An oil ‘blow-out’ took place from Baghjan 5 Oil well of the first respondent, Oil India Limited² on 27 May 2020. As a consequence of the accident, extensive damage and destruction was caused to the biodiversity of Dibru Saikhowa National Park and Biosphere Reserve.
- 3 The NGT constituted a Committee of Experts chaired by Justice B P Katakey by an order dated 24 June 2020 to enquire into all aspects of the incident. In its preliminary report dated 24 July 2020, the Committee, *inter alia*, noticed that extensive damage was caused to (i) publicly owned resources, including Maguri-Motapung Wetland, DSNP, the eco-sensitive zone, including water bodies, air and wildlife; and (ii) private property of survivors in the affected villages.
- 4 The Expert Committee found that (i) OIL did not possess mandatory consent to establish and operate under Sections 25 and 26 of the Water (Prevention and Control of Pollution) Act 1974, and Section 21 of the Air (Prevention and Control of Pollution) Act 1981 when it started operations in Baghjan 5 Oil well in 2006. (ii) OIL does not have the requisite consent under the law to carry out drilling and testing of hydrocarbons in the specified well except for the years 2008-09, 2012-13 and 2018-19; and (iii) OIL does not possess authorization under Rule 6 of the Hazardous Waste (Management, Handling and Transboundary Movement) Rules 2016, which constitutes a violation of the conditions stipulated in the Environmental Clearance dated 11 May 2020.

1 “NCT”

2 “OIL”

5 By a subsequent progress report dated 31 October 2020, the Committee detailed widespread damage to the flora and fauna of the region, including:

- (i) Thirty five varieties of fish species belonging to thirteen families, many of which had been completely wiped out; and
- (ii) A drastic decline in water oxygen content which has resulted in a high rate of destruction of marine life.

6 The report recommended a comprehensive impact assessment along with an integrated ecological restoration plan for bioremediation of hydrocarbons polluting the soil and the wetland.

7 When the matter was taken up by the NGT, it noted that about 9,000 persons who had been displaced were placed in camps at an outlay of Rs 11.20 crores. About 3,000 affected families were paid an amount of Rs 30,000 each, apart from Rs 12 lakhs which was paid to eleven families, whose houses were burnt. OIL had accepted its liability to pay Rs 68 crores as compensation under a tripartite agreement between OIL, the victims and the Deputy Commissioner in terms of letters dated 25 September 2020 and 2 December 2020. In this backdrop, the NGT did not proceed further on the issue of compensation. In view of the gravity of the accident, which resulted in a massive fire which continued for almost six months, the NGT constituted the following three Committees:

- (a) A six-member Committee headed by the Secretary, Ministry of Petroleum and Natural Gas to affix responsibility for the failures of those involved and present at the incident and to lay down a road map for ensuring compliance of safety protocols;

- (b) A seven-member Committee to enquire into non-compliance of statutory provisions, including the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Hazardous Waste (Management, Handling and Transboundary Movement) Rules 2016 as well as the requirements of the Environmental Clearance in terms of the EIA notification dated 14 September 2006; and
- (c) A ten-member Committee headed by the Chief Secretary, Assam (with the Managing Director of OIL as one of its members) to assess the damage to and compensation for the restoration of Dibru Saikhowa National Park and Maguri-Motapung Wetland by taking over all surviving issues from the Committee chaired by Justice BP Katakey. The ten-member Committee was directed to submit its report within six months.

- 8 The dispute in the present appeal relates to the third of the above Committees which is chaired by the Chief Secretary, Assam.
- 9 During the course of the hearing, Mr Siddharth Mitra, Senior Counsel appearing on behalf of the appellant submitted that there is a genuine objection to the presence of the Managing Director of OIL as a member of the ten-member Committee. Moreover, it has been submitted that in laying down an extended time schedule of six months, the NGT lost sight of the urgency of the situation. Finally, it was also urged that the NGT has failed to direct any deposit towards the restoration of the environment in which event the work of restoration cannot commence in the immediate future.
- 10 This Court issued notice on 1 July 2021. On 23 August 2021, certain suggestions were placed before the Court on behalf of the appellant in regard to the re-

constitution of the Committee. Accordingly, the following order was passed:

- “1 The petitioner has placed suggestions before this Court in regard to expert members who should be associated with the work of assessing the damage and providing remedial compensation on account of the loss which has been caused to the environment, including the loss of biodiversity as a result of the blowout which took place at the oil field of OIL. A copy of the IA containing the suggestions shall be emailed to Mr K M Nataraj, Additional Solicitor General appearing on behalf of the Ministry of Environment, Forests and Climate Change for his response on the next date of listing.
- 2 The Court has been apprised of the fact that four out of six experts who have been suggested by the petitioner are conversant with the subject matter, having been associated with the work of the Committee constituted by the National Green Tribunal, headed by Justice B P Katakey.”

- 11 As the above order indicates, many of the experts, whose names have been suggested by the appellant, have been associated with the work which was assigned by the NGT by constituting an expert committee in the first place. We had requested Mr K M Nataraj, Additional Solicitor General to indicate after seeking instructions from the Ministry of Environment, Forests and Climate Change³ on whether and, if so, which of the names which have been proposed by the appellant would be acceptable to act as members of the Committee. In requesting Mr K M Nataraj to take these instructions, we must clarify that there is no doubt about the expertise of the members suggested by the appellant. The object, however, was to ensure that the work can progress with a sense of expedition so that the task of remediation can be taken up in the near future. MOEF&CC has responded in a fair and objective manner by accepting most of the suggestions.

- 12 After hearing Mr Siddharth Mitra, learned Senior Counsel appearing on behalf of the appellant, Mr K M Nataraj, Additional Solicitor General, who appears for MOEF&CC, Ms Aishwarya Bhati, Additional Solicitor General for the Ministry of Petroleum and Mr Aman Lekhi, Additional Solicitor General for OIL, we are of the considered view that the third Committee constituted by the NGT (as noticed earlier), needs to be reconstituted. The NGT has constituted a Committee consisting of ten members. Such a large Committee would find it difficult to convene meetings at relatively short intervals, which is necessary to ensure that the work of implementing remedial measures is taken up with expedition. The NGT has directed that the Chief Secretary of Assam should be the Chairperson of the ten-member Committee. Consistent with the responsibilities of office which are entrusted to the Chief Secretary, we are of the view that it would not be appropriate to assign the task to the Chief Secretary personally. The task before the Committee combines facets of an adjudicatory nature with expert domain knowledge on issues pertaining to environmental concern. The precautionary principle can be espoused by domain experts who have both knowledge and experience in ecological conservation. The work must be taken up with priority and every possible step has to be taken for restoration of the environment. OIL must bear the cost of restoration. The principle of strict liability has to govern. There can be no tomorrow until we preserve the environment here and now.
- 13 The NGT was in error in allowing the presence of the Managing Director of OIL as a member of the Committee. The terms of reference to the Committee include assessment of the damage to and restoration of Dibru Saikhowa National Park and Maguri-Motapung Wetland. Besides, the Committee is to take over all surviving issues from the earlier Committee. The presence of a representative of OIL as a Member of the Committee would lead to a conflict of interest and would not contribute to the fairness of the outcome. An entity against whom there are allegations of a dereliction obligations under the law cannot sit in judgment over

its own conduct. OIL can be heard by the Committee, but permit the presence of one of its senior officers would make it a judge in its own cause. OIL should not be a member of the Committee.

- 14 Consequently having heard counsel, we direct that the ten-member Committee constituted by the NGT shall be substituted by a Committee to be chaired by Justice B P Katakey, former Judge of the Gauhati High Court. Since Justice B P Katakey has already conducted a substantial amount of work in assessing the damage due to the accident, pursuant to the entrustment of the task by the NGT, there is no reason why the Committee should not have the benefit of the work which has already been done and the experience of its Chairperson. We accordingly direct that the Committee shall consist of the following members:
- (i) Justice B P Katakey, former Judge of the Gauhati High Court ...Chairperson
 - (ii) Dr Ritesh Kumar, Director, Wetlands International South Asia
 - (iii) Mr G S Dang, ex-Deputy Director, Indian Institute of Petroleum, Dehradun
 - (iv) Mr Qamar Qureshi, Professor, Wildlife Institute of India
 - (v) Mr Bedanga Bordoloi
- 15 The Committee is requested to take up the work at its early convenience and to submit its final report within three months. The Committee would be at liberty to co-opt or hear any other expert as is necessary for facilitating its task. The MOEF&CC shall depute a nodal officer to facilitate all logistical arrangements for the Committee. The Committee shall make an interim determination of the damages within a period of one month so that a suitable direction can be issued to OIL to deposit the amount for facilitating remedial measures. The Committee shall also be at liberty to recommend other interim remedial measures and

suggest final remedial measures in the course of its eventual report. To facilitate the work of the Committee, we direct OIL to deposit an amount of Rs 50 lakhs with the MOEF&CC within a period of one week from today so that necessary steps can be taken to facilitate the meetings and work of the above Committee. All concerned, including the Chief Secretary of the Government of Assam, the Central and State Pollution Control Boards and OIL are directed to cooperate with the Committee and to provide all logistical assistance to the Committee and its members to facilitate work. The officials of the Government of Assam shall also render all necessary assistance when called upon to do so.

- 16 The interim report shall be submitted in a sealed cover to the Registrar (Judicial) of this Court, upon which the present appeal shall be listed before this Court within two weeks of the receipt of the report for further directions.
- 17 List the appeal on 21 October 2021.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER