

Item Nos. 03 & 13

Court No. 1

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

(By Video Conferencing)

I.A. No. 30/2020

(For modification/recall of order dated 24.6.2020)

IN

Original Application No. 43/2020(EZ)

Bonani Kakkar

Applicant(s)

Versus

Oil India Limited & Ors.

Respondent(s)

AND

I.A. No. 31/2020

(For modification/recall of order dated 24.6.2020)

IN

Original Application No. 44/2020(EZ)

Wildlife and Environment
Conservation Organisation

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 02.07.2020

**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**

Mr. Mukul Rohatgi, Senior Advocate with Mr. Parthive K.
Goswami and Mr. Rahul Pratap, Advocates for OIL – Applicant in IAs –
original respondent in the OAs

Mr. Siddhartha Mitra, Senior Advocate with Ms. Shruti Agarwal,
Advocate – for original applicants – opposite parties in IAs

ORDER

1. This order will dispose of I.A. No. 30/2020 in O.A. No. 43/2020 (EZ) and I.A. No. 31/2020 in O.A. No. 44/2020(EZ) as both the

applications are same for all purposes, seeking modification/recall of common order passed by this Tribunal on 24.6.2020 in two original applications filed on same issue.

2. The issue pertains to claim for compensation to the victims and to the environment on account of damage in an incident of oil well blow out on 27.05.2020 at Baghjan in the Tinsukia District of Assam and other consequential events that followed. Case of the applicants is that Baghjan Oil well set up by the Oil India Limited (OIL) released **propane, methane, propylene** and other gases causing damage to bamboo groves, tea gardens, banana trees and betel nut trees in the area and also spread into the Dibru-Saikhowa National Park which, according to the Applicant, records over 40 mammals, 500 species of birds, 104 fish species, 105 butterfly species and 680 types of plants including a wide variety of rare orchids. The area harbours tiger, elephant, wild buffalo, leopard, hoolock gibbon, capped langur, slow loris, Gangetic dolphin, besides critically endangered bird species such as the Bengal Florican, White Winged Duck, Greater Adjutant stork, White rumped vulture, slender billed vulture as well as the rare and endemic Black-breasted parrotbill. The oil also spilled into the Dibru river causing a film of oil in the river that passes through the Maguri-Motapung wetlands, an Important Bird and Biodiversity Area, and along the Dibru Saikhowa National Park. The Maguri-Motapung Wetland, located less than 10 km from Dibru-Saikhowa National Park, is a part of the Dibru-Saikhowa Biosphere Reserve (DSBR) and hosts some of the most vulnerable species of birds such as Swamp Francolin, Marsh Babbler, Greater Adjutant and Pallas's Fish-eagle, Red-headed Vulture and White-bellied Heron, and over 80 species of fish. River Dibru is a tributary of River Lohit which then forms river Brahmaputra in the lower reaches. Brahmaputra river

system is also a home to Gangetic dolphins. As a result of the blow-out, there was also a fire on 09.06.2020. The applicant has also stated that the blow-out has left behind huge volumes of residue as gas condensate which is a mixture of chemical compounds that are toxic for land and vegetation and is a known carcinogen. The blowout is not only hazardous to the health of the people but also severely affect their livelihood whose occupation is mainly agriculture, fishing and animal rearing. **1610 families were displaced as a result of the gas leak.**

3. This Tribunal, vide order dated 24.06.2020, considered the material placed on record by the applicants in two cases being OA 43/2020(EZ) and OA 44/2020(EZ) and issued notice. The Tribunal also constituted an Expert Committee headed by a former Judge of the Gauhati High Court with seven other members as follows:

- 1 Hon'ble Mr. Justice B.P. Katakey, : Chairman
former Judge of the Gauhati High Court.
- 2 Member Secretary, Central Pollution : Member
Control Board (Online, if travel is restricted due to Covid-19)
- 3 A senior expert from Council of : Member
Scientific and Industrial Research (CSIR)
(Online, if travel is restricted due to Covid-19)
- 4 Dr. Sarbeswar Kalita, Professor and : Member
Head of the Department of Environment Science, Guwahati University
- 5 Shri. Abhay Kumar Johari, IFS : Member
(retired), Former Member Biodiversity Board
- 6 Shri Ajit Hazarika, Ex-Chairman, : Member
ONGCL
- 7 Member Secretary/Senior
Scientist, Assam State Pollution Control Board
- 8 District Magistrate, Tinsukia : Member
District, Assam

The Committee is also granted liberty to co-opt as member or seek opinion from any other expert/ experts or institution/institutions including Wildlife Institute of India (WII), Dehradun, if felt necessary. The terms of reference on which the Committee is to give a report are:

- i. Cause of gas and oil leak;
- ii. Extent of loss and damage caused to human life, wildlife, environment;
- iii. Damage and health hazard caused to the public;
- iv. Whether any contamination has been caused to water, air and soil of the area of the oil well and its vicinity;
- v. Extent of contamination of water of the Dibru river due to the oil spill;
- vi. For the purpose of (iv) and (v) above, it may be necessary to get the air quality monitored and, samples of soil and ground water of the area as well as the water of river Dibru downstream of the oil spill tested;
- vii. Impact on the eco sensitive zone of the Dibru-Saikhowa National Park and Maguri-Motapung Wetland;
- viii. Impact on agriculture, Fishery and domestic animals in the area;
- ix. Whether there were any mitigation measure put in place by OIL to offset the incidents such as the one in question;
- x. Persons responsible for the fire incidents and the cause of failure to prevent the incident;
- xi. Assessment of compensation for the victims and cost of restitution of the damage caused to property and the environment;
- xii. Preventive and remedial measures;

xiii. Any other incidental or allied issues.

The Committee is also to dwell on the action taken thus far either by the Government or by the OIL or by any other agency and the expenditure incurred towards mitigation. Opportunity is also to be provided to the Respondent OIL to give its views and submissions.

The Tribunal also directed deposit of an interim amount of Rs. 25 crores to meet the cost of remediation of the damage to the environment, bio-diversity, human, wildlife and public health subject to final assessment.

4. We have heard Shri Mukul Rohatgi, learned Senior Counsel appearing for OIL in support of the applications filed by the OIL for modification/recall of the order dated 24.06.2020 which have been opposed by the Original Applicants represented by Shri Mitra, Senior Advocate.

5. It is submitted by Shri Rohtagi that the order passed by this Tribunal did not take into account the fact that on the same issue proceedings have been taken before the Gauhati High Court. The Central as well as State Governments have ordered enquiries. The Tribunal also did not take into the fact that the company itself has taken several measures for rehabilitation of the displaced families by setting up relief camps and providing food and other facilities. **The OIL has also deposited a sum of Rs. 4.83 crores with the District Magistrate, Tinsukia District as an interim relief for the affected families as per directions of the District Magistrate. The OIL has also set apart a budget of more than Rs. 130 crores towards operation cost in controlling the blow-out at Baghjan.** It has also hired international experts for remediation for the damage caused on account of the blow-

out and is undertaking requisite remediation and rehabilitation works. He submitted that the Committee is unnecessary and so is the direction to deposit the amount of Rs.25 crore with the District Magistrate as the **OIL is public Sector undertaking committed to compensate the victims and restitute the environment. It will pay whatever amount required on its liability being ascertained, apart from voluntary steps already taken.**

6. We do not find any ground for recall of the impugned order but are inclined to modify it with regard to immediate deposit of Rs.25 crore in view of the discussion as shall follow. Even though the order was passed *ex-parte*, the basis of the order remains even after considering the present IAs and after hearing learned senior counsel. Incident and damage remain largely undisputed. The Committee has been asked to undertake site visit and compile relevant information necessary for adjudication of the issue falling within the jurisdiction of this Tribunal under sections 14 and 15 of the NGT Act read with section 20. The Committee is also to consider the viewpoint of the OIL which would include steps already taken or planned for rehabilitation of the victims and restitution of the environment. Other enquiries are not a substitute for the information sought to be gathered by this Tribunal for exercise of its jurisdiction which is *sui generis* as laid down in Bhopal Gas Peedith Mahila Udyog Sangathan case (2012) 8 SCC 326 and Meghalaya Mining case, (2019) 8 SCC 177. Other enquiries are perhaps for discharge of functions of State and Central Govt under different statutes. Proceedings before High Court may involve several issues while this Tribunal is mandated by the statute to perform its functions within the four corners of its jurisdiction. Actions initiated by the company are in discharge of its duties but the same does not end jurisdiction of this Tribunal. Under

the law, liability for compensation of occupier undertaking hazardous activity is absolute in view of MC Mehta v UOI, (1987) 1 SCC 395. Further, liability of the Occupier as well as concerned the regulatory authorities of the State and Central govt has to be undergone under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996. In these circumstances, recall of order constituting Committee to compile all relevant facts and data in a transparent and fair manner is not called for. Doing so will be failure of the Tribunal to exercise its jurisdiction. All steps taken by the OIL can also be looked into by the Committee in the course of its recommendations.

7. We may refer to a recent order of this Tribunal dealing with another tragedy on account of toxic gas leak at Vizag being order dated 2.6. 2019 in OA 73/2020 In re: LG Polymer Chemical Plant wherein similar pleas of a company were rejected. **It was observed that safety of citizens and the environment are of great concern calling for strict action for failure at all levels and strengthening the regulatory mechanism.** While the State must take action against its erring authorities for such failure, MoEF&CC must review its monitoring mechanism, criminal or other administrative issue may be gone into in any other proceedings, adjudication of liability of the company with regard to compensation by this Tribunal is not debarred. The Tribunal direct the State and Central Govts to perform their duties as per 1989 and 1996 Rules and other provisions. Operative part of some of the directions in the said case is:

“Restoration plan may be prepared by a Committee comprising two representatives each of MoEF&CC, CPCB and three representatives of State Government to be named by the Chief Secretary, including the

District Magistrate, Vishakhapatnam and such other concerned Departments within two months from today. MoEF&CC will be the nodal agency for the purpose.

Final quantification of compensation may be assessed by a Committee comprising representatives of MoEF&CC, CPCB and NEERI. The said Committee will be at liberty to associate/co-opt any other expert institution or individual. The Secretary, MoEF&CC may ensure constitution of such Committee within two weeks from today. The Committee may give its report within two months thereafter. MoEF&CC will be the nodal agency for the purpose.

The Chief Secretary, Andhra Pradesh may identify and take appropriate action against persons responsible for failure of law in permitting the Company to operate without statutory clearances within two months and give a report to this Tribunal

The MoEF&CC may also constitute an Expert Committee to suggest ways and means to revamp monitoring mechanism to check and prevent violation of environmental norms and preventing any such recurrence in future in any of the establishments dealing with hazardous chemicals. A special drive may be initiated in this regard. An action taken report may be furnished within three months from today.”

8. We may now consider the prayer for deferment of the direction to deposit a sum of Rs.25 crore with the Distt. Magistrate to meet the liability for compensation to the victims and the cost of restoration of the environment. Shri Rohtagi has stated that some amount has been deposited with the Distt. Magistrate but, it is not clear whether the amount has been disbursed or not and what the disbursement plan for relief to the victims is, apart from shelter and food which are said to have been provided. The Committee has been requested to suggest the amount of compensation which will include suggesting disbursement and restoration plan. The OIL is stated to have set apart more than Rs.25 crore and Shri Rohtagi also categorically assures that OIL being a public sector undertaking, there will be no difficulty in promptly making available whatever amount required for discharge of its liability. In view of this assurance, we defer our direction for deposit of Rs. 25 crore till the actual amount and its disbursement plan are worked out in the light

of the report of the Committee after considering viewpoint of victims as well as the OIL. However, adequacy of steps taken by OIL will have to be looked into by the Committee and then by this Tribunal following due process of law.

9. Accordingly, the applications including I.A. No. 32/2020 which is formal stand disposed of in the above terms. The Chief Secretary, Assam may give action taken report with regard to the liability of the concerned officers of the State and MoEF&CC may also consider this incident in its report to be filed in OA 73/2020 relating to revamping of regulatory framework and strategies to ensure that such incidents do not occur to prevent harm to public health and environment and to ensure further safety norms and safeguards.

List for further consideration on the date already fixed i.e. 29.07.2020.

A copy of this order be sent to the Chief Secretary, Assam, Secretary MoEF&CC, Justice Katakey and other members of the Committee by email.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

July 2, 2020
I.A. Nos. 30 & 32/2020
In OA 43/2020 with
IA 31/2020 in OA 44/2020
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