

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
Civil Appeal No 2201 of 2021

Bonani Kakkar

... Appellant

Versus

Oil India Limited & Ors

... Respondents

O R D E R

- 1 This appeal arises from an order of the National Green Tribunal¹ dated 19 February 2021. The cases relates to the damage and destruction caused to the biodiversity of Dibru Saikhowa National Park and Boisphere Reserve due to a blow-out which took place from the Baghjan 5 Oil Well on 27 May 2020. Oil India Limited was in control and possession of the oil well.
- 2 The NGT constituted a Committee of experts. A preliminary report was submitted on 24 July 2020 after which on 31 October 2020, the Committee submitted a progress report. The NGT, by its impugned order, constituted three committees :
 - (i) A six member Committee to fix the responsibility for the failure of the individuals present at the incident and lay down a road map for ensuring compliance with safety protocols;
 - (ii) A seven member committee to enquire into the non-compliance of statutory provisions;

1 “NGT”

(iii) A ten member Committee to assess the damage to and restoration of the Dibru Saikhowa National Park and wet land and to take over all surviving issues from the earlier committee.

3 When the appeal was moved before this Court, in an order dated 1 July 2021, two specific grievances of the appellants were recorded. The grievances were set out in paragraph 5 of the order which extracted below :

“5 The precise grievance is two fold. Firstly, the earlier Committee had submitted a comprehensive report before the NGT: initially, a preliminary report which was followed by a progress report and, hence, the constitution of three new Committees will only delay the process. Secondly, for the determination of damages and compensation and for the restoration of the National Park and Wetland, a ten-member Committee has been constituted headed by the Chief Secretary, Assam in which the Managing Director of the Oil India limited has been inducted as a member. It has been submitted that this will be in breach of the principles of natural justice since the conduct of Oil India Limited is basically in issue and, hence, the Managing Director ought not to be a member of the Committee in any case.”

4 In a subsequent order of this Court dated 2 September 2021, the Court took note of the findings of the expert committee, which was initially appointed by the NGT, in its preliminary report dated 24 July 2020 as well as the findings in the subsequent report dated 31 October 2020. Paragraphs 4 and 5 of the order of this Court are extracted below :

“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.

- 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.”

The Court also noted that the report had recommended a comprehensive impact assessment alongwith a plan for bio-remediation of hydrocarbons polluting the soil and the wet land.

- 5 In its order dated 2 September 2021, this Court reconstituted the third committee constituted by the NGT. The third Committee, as reconstituted was directed to 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.”

The Court directed that the Committee shall make an interim determination of damages upon which suitable directions could be issued to Oil India Limited to deposit the amount for facilitating remedial measures.

6 The Committee appointed by this Court submitted its report dated 20 October 2021. A final report of the committee was submitted on 31 December 2021.

7 On 1 September 2022, this Court clarified that the pendency of the proceedings shall not come in the way of the disbursement of compensation to the affected villagers in accordance with law.

8 In view of the above narration of facts, it is evident that as a result of the interim directions of this Court, the third committee which was constituted by the NGT for the purpose of assessing the damage to the environment and restoration measures including measures for restoration of the Dibru Saikhowa National Park and the wet land stands superseded by the expert committee which has been constituted by this Court.

9 The Court is apprised of the fact that the other two committees are yet to commence their work in view of the stay granted by this Court on 1 July 2021. The petitioner has no grievance in regard to the constitution of the other two committees.

10 With the above factual background, it would be appropriate to remit the proceedings back to the NGT which shall take up the proceedings on the basis of the reports of the expert committee which was constituted by this Court. The reports of the expert committee shall be considered by the NGT. The NGT

shall hear such objections as the parties in the proceedings have, before issuing necessary directions on the aspects including restoration of the environment, reparation of environmental damage and compensation.

- 11 The other two committees, which have been constituted by the NGT, shall proceed to complete the task which has been assigned to them. In terms of the earlier directions, it is clarified that the pendency of the proceedings before the NGT shall not affect the disbursement of interim compensation to the affected villagers. The NGT shall, it is clarified, be at liberty to pass further directions in regard to assessing the compensation payable and for its disbursement to all the affected persons.
- 12 We keep open all the rights and contentions of the parties.
- 13 The order of the NGT dated 19 February 2021 shall stand modified to the extent of the constitution of the third committee in terms of the previous orders of this Court. The report of the third committee, as noted above, shall now form the basis of further proceedings by the NGT in regard to the canvass which has been covered by the committee on the assessment of damages to the environment and restoration measures including measures, for restoration of Dibru Saikhowa National Park and Maguri Motapung Wetland. The NGT shall proceed ahead on the basis of the report of the expert committee appointed by this Court, without awaiting the conclusion of the proceedings before the two other committees.
- 14 NGT is at liberty to issue appropriate directions for determining the modalities for the adjudication of final compensation and its disbursement, after taking

due account of the interim compensation which has been fixed in that regard.

- 15 The disbursement of the interim compensation should be effected expeditiously and within a period of two months from the date of this order.
- 16 The Appeal is accordingly disposed of.
- 17 Pending applications, if any, stand disposed of.

.....CJI
[Dr Dhananjaya Y Chandrachud]

.....J.
[V Ramasubramanian]

.....J.
[J B Pardiwala]

New Delhi;
January 23, 2023.
-GKA-

ITEM NO.6

COURT NO.1

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)

([as per r.p dt. 15.11.22 list top of the Board.]

IA No. 92866/2021 - APPLICATION FOR PERMISSION IA No.106558/2022
- APPROPRIATE ORDERS/DIRECTIONS IA No. 106557/2022 - APPROPRIATE
ORDERS/DIRECTIONS IA No. 67426/2021 - EXEMPTION FROM FILING
AFFIDAVIT IA No. 67425/2021 - EXEMPTION FROM FILING C/C OF THE
IMPUGNED JUDGMENT IA No. 106559/2022 - EXEMPTION FROM FILING O.T.
IA No. 135266/2021 - EXEMPTION FROM FILING O.T. IA No.135270/2021
- INTERVENTION APPLICATION IA No. 135265/2021 - INTERVENTION
APPLICATION IA No. 72570/2021 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES IA No. 67424/2021 - STAY APPLICATION)

Date : 23-01-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Ms. Shruti Agarwal, AOR

For Respondent(s) Mr. Parag Tripathi, Sr. Adv.
Mr. Sridhar Potaraju, Adv.
Mr. Sudhir Mishra, Adv.
Mr. Guichang Pou Gangmei, Adv.
Ms. Simran Gupta, Adv.
Mr. Mrigank Mehta, Adv.
M/S. Trust Legal, AOR

Ms. Aishwarya Bhati, ASG
Mr. Ravindra Lokhande, Adv.
Mr. Sandeep Mahapatra, Adv.
Mr. T. Gopal, Adv.
Mr. Nring Chamwibo eliang, Adv.
Mr. Abhishek Atrey, AOR
Mr. Babanjit Singh Mew, Adv.

Mr. Manvendra Singh, Adv.

Mr. K.M. Nataraj, A.S.G.

Mr. Gurmeet Singh Makker, AOR

Mr. Shailesh Madiyal, Adv.

Mr. Sharath Nambiar, Adv.

Mr. Vatsal Joshi, Adv.

Mr. Sugosh Subramanyam, Adv.

Mr. Nalin Kohli, Sr. A.A.G.

Mr. Debojit Borkakati, AOR

Mr. Devansh Mohta, Adv.

Ms. Liz Mathew, AOR

Ms. Shahrukh Alam, Adv.

Mr. Vikram Rajkhowa, Adv.

Ms. Vasudha Jain, Adv.

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

- 1 The appeal is disposed of in terms of the signed order. The operative part of the signed order reads as under :

“10 With the above factual background, it would be appropriate to remit the proceedings back to the NGT which shall take up the proceedings on the basis of the reports of the expert committee which was constituted by this Court. The reports of the expert committee shall be considered by the NGT. The NGT shall hear such objections as the parties in the proceedings have, before issuing necessary directions on the aspects including restoration of the environment, reparation of environmental damage and compensation.

11 The other two committees, which have been constituted by the NGT, shall proceed to complete the task which has been assigned to them. In terms of the earlier directions, it is clarified that the pendency of the proceedings before the NGT shall not affect the disbursement of interim compensation to the affected villagers. The NGT shall, it is clarified, be at liberty to pass further directions in regard to assessing the compensation payable and for its disbursement to all the affected persons.

- 12 We keep open all the rights and contentions of the parties.
- 13 The order of the NGT dated 19 February 2021 shall stand modified to the extent of the constitution of the third committee in terms of the previous orders of this Court. The report of the third committee, as noted above, shall now form the basis of further proceedings by the NGT in regard to the canvass which has been covered by the committee on the assessment of damages to the environment and restoration measures including measures, for restoration of Dibru Saikhowa National Park and Maguri Motapung Wetland. The NGT shall proceed ahead on the basis of the report of the expert committee appointed by this Court, without awaiting the conclusion of the proceedings before the two other committees.
- 14 NGT is at liberty to issue appropriate directions for determining the modalities for the adjudication of final compensation and its disbursement, after taking due account of the interim compensation which has been fixed in that regard.
- 15 The disbursement of the interim compensation should be effected expeditiously and within a period of two months from the date of this order.
- 16 The Appeal is accordingly disposed of.
- 17 Pending applications, if any, stand disposed of."

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed order is placed on the file)