

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2201 OF 2021**

IN THE MATTER OF:

Bonani Kakkar

... Petitioner(s)

Vs.

Oil India Limited & Ors.

... Respondent(S)

INDEX

| Sl. No. | Particulars | Pg. No. |
|----------------|--------------------|----------------|
| 1 | Counter Affidavit | 1-11 |
| 2 | Court fee | 12 |
| 3 | Proof of service | 13 |



**FILED BY
DEBOJITBORKAKATI, AOR CC:2102
STANDING COUNSEL FOR STATE OF ASSAM
Email:d.borkakati@gmail.com
Mobile:9810045734**

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2201 OF 2021**

IN THE MATTER OF:

Bonani Kakkar

... Petitioner(s)

Vs.

Oil India Limited & Ors.

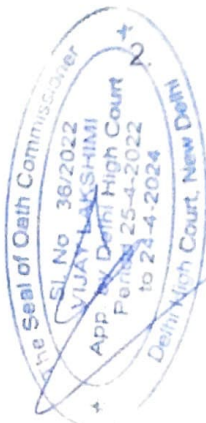
... Respondent(S)

**COUNTER AFFIDAVIT FILED ON BEHALF OF
THE STATE OF ASSAM , RESPONDENT NO.4**

I, Dhruva Jyoti Nath, Assistant Resident Commissioner and OSD, Government of Assam, Assam Bhawan, 1 Sardar Patel Marg, New Delhi-110021, do hereby solemnly affirm and state as follows:

1. That, I am Assistant Resident Commissioner and OSD, Government of Assam, Assam Bhawan, New Delhi-110021. Therefore I am competent to swear to this counter affidavit and duly authorized to affirm and swear this affidavit on behalf of Respondent No.4, State of Assam.

In the instant matter this Hon'ble Court vide order dated 01.11.2022 has directed to implead the answering Respondent, having due regard the recommendations which have been submitted in the report of the Committee appointed by this Court. The said Committee under the



Chairmanship of Shri B. P. Katakey, Hon'ble retired Judge, Gauhati High Court submitted two reports to this Hon'ble Court:-

- (i) Interim report dated October 20, 2021 titled 'Damage Assessment and Restoration Plan of Dibru Saikhowa National Park and Maguri-Motapung Wetland'.
 - (ii) Final report dated December 31, 2021 titled 'Damage Assessment and Restoration Plan of Dibru Saikhowa National Park and Maguri-Motapung Wetland'.
3. A close look at the Interim Report dated October 20, 2021 and the Final Report dated December 31, 2021 reveals some crucial observations made by the committee. The Committee observed that there has been wide spread damage to the flora and fauna of Dibru Saikhowa National Park and Maguri-Motapung Wetland [at Page No. 56 to 59 of the Final Report dated December 31, 2021]. In the interim report dated October 20, 2021, the Committee recommended OIL to deposit Rs. 2500 Crores to undertake :-

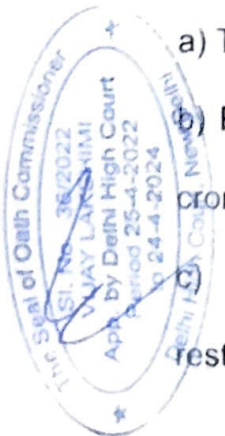
- i) Systematic study for tracking pollutants in various attributes of the blowout site of MMW & DSNP (water, soil, sediments, vegetation, species and others),
 Implementing baseline assessments including site characterizations for ecological restorations of blowout sites, DSNP & MMW,
 Implementing ecological restoration plan,



- iv) Covering the risk of prohibiting harvest of land based and wetlands products, should these be found to be contaminated with pollutants,
- v) Covering the cost of comprehensive health insurance of all the people and livestock living in and around the drilling pad area, the DSNP and MMW and
- vi) Upgrading management plans for DSNP and MMW, site management plan of drilling areas and their implementation costs for 3 years. And in this context, the Committee clarified that the aforementioned cost does not constitute the ecological value of the damages rather a tentative cost to undertake steps to redress the damages.

4. Paragraph 111 of the Final Report deals with redressal of damage inflicted by Baghjan accident. It observes that redressing the damage and also putting in place systems and institutional mechanisms so that the future risks for oil and gas related accidents are minimized, will require a cost of Rs. 1,196 crores. This includes :

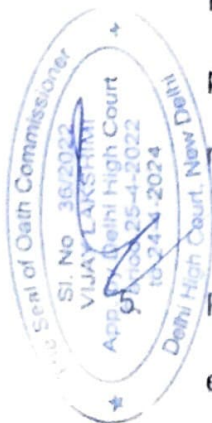
- a) The costs of ecological restoration of the accident site: Rs. 139 crore;
- b) Ecological restoration of Dibru-Saikhowa Biosphere Reserve; Rs. 432 crore' and,
- c) Addressing livelihood and socioeconomic aspects related with restoration; Rs. 625 crore.



The Committee is of the opinion that the costs of ecological restoration (items a and c referred is para 111) are directly attributed to the Baghjan accident and should be borne by OIL. Costs related to Ecological Restoration of DSBR may be shared between Government (as the ultimate custodian of the ecological assets with a direct responsibility of upkeep of these assets) and OIL (as a direct beneficiary of healthy ecosystems and an important stakeholder in the ecosystem management. In executive summary of the Final Report at page v point no. 11, the Government has been qualified as Government of Assam.

Hence Rs. 432 crores as the Ecological Restoration Cost of DSBR to be shared between Govt. of Assam and OIL considering huge damage and loss of biodiversity due to Baghjan Blowout in temporal and spatial extent. The same is in divergence to the Interim Report dated October 20, 2021. It is submitted that , the Expert Committee' opinion regarding sharing the Costs related to Ecological Restoration of DSBR between Government and OIL may kindly be reviewed on the basis of "Polluters- Pay Principle" and in view of the fact that State Government is a victim in this case. However it is reassured that State Government will put in earnest effort in proper implementation of the ecological restoration plan by utilizing the manpower and expertise of Environment & Forest Department and PCBA.

Polluter pays principle ("PPP") is a well-recognized principle of environmental law both at the international level and domestic level in



India. At the international level, there are several multi-lateral environmental treaties that have incorporated PPP. At the domestic level, PPP is part of environmental law in India at least since this Hon'ble Court declared it to be so in the mid-1990s.

PPP, as understood in the context of environmental law in India, seeks to impose the financial burden on polluters to compensate the victims, damages to their property and environmental damages. In *Indian Council for Enviro Legal Action & Ors. v. Union of India & Ors.*, 91996) 3 SCC 212 this Hon'ble Court has expressly implemented the Principle of "Polluter Pays" , as the Court ruled that, under Section 3 and Section 5 of the Environment (Protection) Act, 1986, the Court has the authority to undertake steps to put such a rule into effect. It was introduced under Principle 16 of the Rio Summit of 1992 which specified that the polluter must principally pay for the pollution charges.

6. Point no. 41 in the Interim Report, the Committee proposes the Forest Department (working with expert agencies) to constitute an 'ecological restoration steering committee' which would be tasked with: a) Approving an ecological restoration plan. b) Monitoring and review of progress of implementation of restoration plan."

However, the executive summary of Final Report at point no. 5 (c) it opines constituting an 'ecological restoration steering committee' which would be tasked with reviewing and approving an ecological restoration



plan, and monitoring the progress of implementation. It also indicates the Committee may be set up under the District Commissioner (Tinsukia) and have representation of all major stakeholders (such as Pollution Control Board Assam, OIL, Forests, Fisheries, Tourism, Eco Development Committee, local tour operators) and also have external restoration specialists on board.

It may be noted that Member Secretary, PCBA was present at Baghjan site during August 27-28, 2022 and November 13, 2022 to implement and guide the restoration technique which was carried out following Miyawaki method of dense plantation. Senior Officials from OIL were also present on both the occasions. The entire event of the restoration has been documented through still photography and video recording.

7. That point 5c of the executive summary of Final Report refers to constitution of an 'Ecological Restoration Steering Committee' which would be tasked with reviewing and approving an ecological restoration plan, and monitoring the progress of implementation. The Committee may be set up under the District Commissioner (Tinsukia) and have representation of all major stakeholders (such as Pollution Control Board Assam, OIL, Forests, Fisheries, Tourism, Eco-Development Committee, local tour operators) and also have external restoration specialists on board.

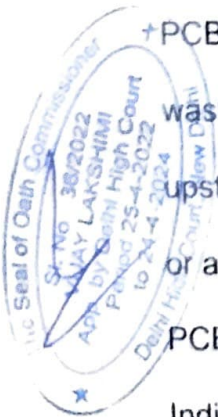


It is stated that as per report of PCBA, bio-remediation of the degraded site has been completed by the Agency engaged by OIL. Moreover, restoration of the site has been initiated jointly by PCBA and OIL through dense plantation. Entire plinth area of BGN#5 has been covered by plantation. With the active participation of PCBA's trained manpower on Miyawaki method of dense plantation, the plantation has been done for eco restoration of the entire plinth area. As recommended by the Committee, Government of Assam will initiate the process for constitution of the said Ecological Restoration Steering Committee.

8. At point no. 43 of the Final Report, the Committee recommends establishment of an office of "Contaminated Site Remediation and Technology Innovation" under PCBA for management of the hazardous waste sites as per CPCB guidelines to protect the environment and the health of the public at large. In view of the extensive oil and gas operations in the state, it is recommended that the existing infrastructure and human capacity of PCBA is substantially augmented. It is stated that

PCBA is already working on proper implementation of the Hazardous waste Rules in the State. OIL being a major occupier in the State, the upstream industry has been guided and directed to set up a captive TSDF or a TSDF in PPP mode.

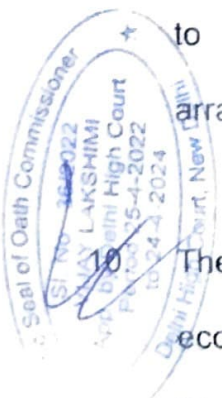
PCBA has already been involved in several rounds of discussion with Oil India Limited for setting up a Common TSDF in the State. PCBA has been



in touch with a few major player of hazardous waste treatment facility in the country towards setting up a TSDF in the State for proper management of the hazardous waste. In this regard representative from M/s Ramky Sustainability, Hyderabad visited Oil India Ltd. during November 4-5, 2022 for identification of site.

9. In point no. 3 of executive summary of the Final Report the Committee mentions about various studies on insects, herpeto-fauna, fish, birds and mammals indicated it will take 2 to 21 years for species population to recover from losses due to condensate impact. Under Restoration and Management costs it is mentioned that infective ecosystem monitoring systems to assess ecosystem health, and absence of infrastructure even at the state level to monitor contaminants related with oil and gas industry. Putting in place effective ecosystem inventory, assessment and monitoring system to assess the efficacy and efficiency of restoration and management arrangements. The above indicative points in the Final Report are open ended and hence Government of Assam will endeavour to address through appropriate infrastructural and institutional arrangement.

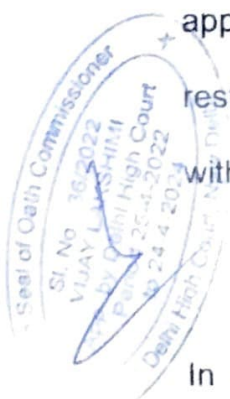
The Committee in its Final Report has recommended for making ecological disaster management and resilience as an integral part of District Disaster Management Plan. The DDMP should be rectified, with a



detailed Hazard-Capacity-Vulnerability-Capacity Assessment being the basis, and healthy ecosystems considered as an integral part of the disaster resilience building interventions.

While dealing with to afforestation, of the Final Report emphasized on the following:

- i) Identifying restoration options-with specific focus on nature-based solutions which use native species.
- ii) Afforestation needs to be taken up in the area of influence (soon after remediation of the contaminated mediums), using native species, in consultation and participation of local communities.
- iii) Based on the discussion with PCBA and OIL, it is evident that the parties are planning an afforestation project in the Baghjan blow out site. A vital part of directing the management and clean-up of oil-contaminated ecosystems lies in understanding the impacts of oil on indigenous microbial communities and identification of oil degrading microbial groups using both culture-dependent and molecular approaches and combining the same with tree based remediation approaches. Utilizing such a combined approach for ecological restoration of gas condensate impacted soil will help OIL deliver in line with Sustainable Development Goals 15- Life on Land.



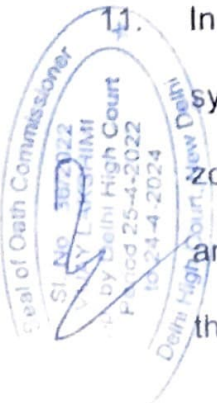
In sync with the aforesaid observations of the Committee regarding afforestation, the Deputy Commissioner, Tinsukia has been shared with

a copy of the report for necessary compliance with regard to making ecological disaster management and resilience as an integral part of District Disaster Management Plan

Accordingly a MoU was signed between OIL and PCBA on 21st July, 2022 for restoration of the site by adopting Miyawaki method of dense plantation for which PCBA has the expertise. Accordingly, the restoration plan was carried out by planting nearly 35,000 trees of more than 50 local species covering the entire plinth area of Baghjan Well on 28.08.2022 with participation of local communities.

With regard to verification of data uploaded by OIL on plan / progress in the online collaboration platform by PCBA as Recommended by the Committee in Chapter 4 of the Report , PCBA has received a report on "Assessment of Air, Water and Soil Quality in Baghjan Oil Blow Out the site & its Vicinity, Tinsukia, Assam" carried out by CSIR-North East Institute of Science and Technology (NEIST), Jorhat as entrusted by Oil India Ltd. The report is being evaluated by PCBA.

11. In the context of zone of influence, the Committee observed necessity of system of comprehensive health insurance of all persons living in the zone of impact (considering all communities residing around the MMW and DSNP, as well as those residing within 5 km radius of the BG-5) so that the health risks are covered. The State Government has seriously



taken note of such observations and resolved for its sincere compliance. Government of Assam will make earnest effort in implementation of all the recommendations with manpower and expertise of the Forest Department and PCBA

- 12. The answering Respondent reserves it right to file a detailed counter affidavit if required.
- 13. I say that the averments of facts stated above are true to my knowledge and derived from the records, no part of it is false and nothing material has been concealed from.

[Handwritten Signature]

DEPONENT

Assistant Resident Commissioner &
Officer on Special Duty
Assam Bhawan, New Delhi

VERIFICATION
I, the above named deponent do hereby verify the contents of the above my affidavit are true and correct to my knowledge and no part of the same is false and nothing material has been concealed therefrom.

I, the above named deponent do hereby verify the contents of the above my affidavit are true and correct to my knowledge and no part of the same is false and nothing material has been concealed therefrom.

Verified at New Delhi on this 6th day of December, 2022.

06 DEC 2022

[Handwritten Signature]

DEPONENT

Assistant Resident Commissioner &
Officer on Special Duty
Assam Bhawan, New Delhi



I S/o D/o / W/o *Durbes. Debceyit*
Verified by Ms. *Debceyit*
do hereby solemnly affirm before
me on *06/12/22* SI. No. *36/2022*
true and correct of my knowledge.

Oath Commissioner, New Delhi

[Handwritten Signature]

Government of NCT OF DELHI
e-Court Fee and Printing Charges



District : New Delhi

Date & Time : 20-JAN-2023 06:48:12

Establishment : Supreme Court of India

Stockholding Reference No. : EPSDL2012014806188085

Party Details

Diary No : 10940/2021

Party Name : DEBOJIT BORKAKATI

Transaction Date and Time : 20-JAN-2023 06:48:12

Transaction No : 20Jan2023064811_19313_109402021

Cause Title : BONANI KAKKAR Vs OIL INDIA LIMITED

e-Court Fee Receipt No. : DLCT2002A2352G513

e-Court Fee : Rs. 20

SC Printing Charges : Rs. 0

Total Amount : Rs. 20

(Rupees Twenty And Paise Zero Only)

Note : Additional Online Payment Convenience fees / Processing Charges might be applicable as per payment method selected by the user.



DLCT2002A2352G513

Statutory Alert : The authenticity of this e-Court fee receipt should be verified at www.shcilestamp.com . Any discrepancy in the details on this receipt and as available on the website renders it invalid. In case of any discrepancy please inform the Competent Authority. This receipt is required to be verified & locked by the Court official for further process in the Court.

1915



Debojit Borkakati <d.borkakati@gmail.com>

Advance copy of Counter Affidavit in CA 2201/ 2021 BONANI KAKKAR VS. OIL INDIA LTD. AND ORS.

1 message

Debojit Borkakati <d.borkakati@gmail.com>

Fri, Jan 20, 2023 at 7:13 AM

To: "abhishekatrey@gmail.com" <abhishekatrey@gmail.com>, GurmeetSingh Makkar <gs.makkar@gov.in>, "lizmathew.law@gmail.com" <lizmathew.law@gmail.com>, Gaichangpou Gangmei <gaichangadvocate@gmail.com>, Shruti Agarwal <agarwalshruti@hotmail.com>

Dear all

Please find the attached Counter Affidavit filed on behalf of the State of Assam in the aforesaid matter.

Regards

Debojit Borkakati
Advocate-on-Record,
Standing Counsel for the State of Assam
Supreme Court of India



CA in Bonani Kakkar.pdf

3088K