

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

IN THE MATTER OF:-

Bonani Kakkar

...Appellant

Vs.

Oil India Ltd. & ors.

...Respondents

**SHORT SUMMARY OF THE FINAL REPORT DATED 31 DECEMBER
2021 OF THE EXPERT COMMITTEE AND SUGGESTIONS THEREON
SUBMITTED BY THE APPELLANT**

Date	Particulars
27 May 2020	Blow Out from Baghjan 5 well of Oil India Limited
9 June 2020	Fire and explosion
	The above caused extensive damage and destruction to parts of the Dibru Saikhowa Biosphere Reserve (DSBR). Located to the south of the Dibru Saikhowa National Park (DSNP), and within the DSBR, lie the Maguri Motapung Wetlands (MMW).

I. FINAL REPORT SUMMARY:-

Particulars (from the Final Report dated 31 December 2021)	Page Nos.
EXECUTIVE SUMMARY:	i-v
The Baghjan accident was a failure on part of OIL in ensuring necessary health, safety and environmental safeguards; equally responsible are <ul style="list-style-type: none"> - a) complete and comprehensive violation of principles of eco-sensitive zone notification by MoEFCC - b) absence of any meaningful baselines and management plan for the DBSR and MMW - absence of infrastructure at state level to monitor contaminants related to oil & gas industry etc. 	@ para 1 pg. i
Two fundamental challenges for ecological restoration in this case- <ul style="list-style-type: none"> 1) concentration of environmental contaminants released by the blowout need to be brought to a safe level 2) damage to ecosystem components and processes need to be restored- this will take a much longer time (2-21 years for species population to recover from the condensate impact) 	@ para 3 pg. ii

Condensate from Baghjan well no. 5 spread in a 2 km radius and contaminated surrounding environment- less than 2 km of this area has been remediated	@ para 4 pg. ii
CHAPTER 1- BACKGROUND AND TERMS OF REFERENCE	PG. 1-10
The region around DSBR is a hotspot of oil and gas production in Assam- in Baghjan alone 31 wells have been drilled for hydrocarbon exploration by OIL- around 8 wells are located within 2 km boundary of National Park	@ para 6 pg. 2 @ pg. 12
<ul style="list-style-type: none"> - Committee met 33 times to address the terms of reference assigned. - Field visits held during 7-11 October 2021 and 15-18 November 2021; stakeholder consultation meetings held, etc. 	@ pg. 3
Committee has been guided by the precautionary principle since ecosystems are complex wherein ‘surprise’ rather than ‘predictability’ is the norm	@ para 18 pg. 21
OIL faced a similar situation due to blowout at Dikom, Diburagh in 2005 but OIL still not complying with environmental safeguards	@ para 19 pg. 21
CHAPTER 3: AN OVERVIEW OF FINDINGS OF STUDIES AND COMMITTEES ON BAGHJAN ACCIDENT”	PG. 23-24
Several reports and studies commissioned for the Baghjan accident mostly sponsored by OIL or Govt. of Assam <ul style="list-style-type: none"> - Committee of Experts under the chairmanship of Justice B.P. Katakey constituted by Hon’ble NGT in OA No. 43 of 2020 (EZ) - Report of Committee of Mr. MK Yadav, IFS, Additional Chief Conservator of Forest & Chief Wildlife Warden constituted by Govt. of Assam 	@ para 24-26 pg. 23
Committee observed based on information made available by OIL that: <ol style="list-style-type: none"> 1) No containment measures were taken to avoid spread of the spilled gas condensate 2) No attempt was made to trace the contaminants of concern in respect of soil contamination 3) Though a few sites in the affected areas have been remediated, the main area in and around the blowout site still awaits bioremediation 	@ para 28 pg. 24
CHAPTER 4: RESTORING THE BLOWOUT SITE AND ADJOINING AREAS OF INFLUENCE:	Pg. 25-46

Baghjan no. 5 as per information provided by OIL is situated over a plot of land measuring a minimum of 27.55 bighas and 3.8 km ² has been the area of influence or the gas condensate spread area.	Para 29 pg. 25
Baghjan No. 5 blowout has been ascribed as one of the biggest on-shore blowout in the world in terms of the magnitude and complexity.	@ para 31 pg. 25
Committee visited the site on 18 November 2021 and observed, inter alia, that significant portion of the site was visually contaminated; significant quantities of hazardous wastes were found lying around; etc.	@ para 35 pg. 25
Bio-remediation had been limited to a very small area and had not been implemented in the Baghjan No. 5 accident site- there was a lack of clarity on way forward.	@ para 36 pg. 27
Committee was surprised to note the inadequacy of infrastructure and human resources even in government agencies like PCB Assam	@ para 38 pg. 32
<u>Committee could not see any concrete plan of action for restoration and therefore recommends the following:</u> <u>Responsibility Assignment Matrix for Site Restoration: Comprising of OIL, PCB Assam, Government of Assam; Various Agencies</u>	@ para 42 pg. 37
Monitoring and Maintenance Plan: a) Annual site visit for five years by Chairman PCBA etc. (pg. 41) b) Governance of remediation and restoration project ideally needs to be Government led- office of Deputy Commissioner (Tinsukia) should be the initiating organization (43) - <u>Committee recommends that the Govt. of Assam establishes an office of “Contaminated site remediation and technology innovation under PCBA-</u> it is recommended that the existing infrastructure and human capacity of PCBA is substantially augmented. (pg. 43) -	@ para V pg. 41
CHAPTER 5: RESTORING THE DIBRU SAIKHOWA NATIONAL PARK AND MAGURI POTAPUNG WETLANDS	Pg. 47-82
The Baghjan accident and impact on wetland and surrounding forest area -	Pg. 56- 59

<ul style="list-style-type: none"> - Evidence of fish diseases and mortality, reduced sightings of several wetland species; toxic PAHs in water, soil sediments and fish tissues- are carcinogenic and affect physiology of animals and reduce immunity; wetland oxygen declined; loud sound above even industrial level, etc. @ para 46 pg. 56 - Mass mortality of species as a result of oil contamination; toxins released by blowout may persist in soils and sediments affecting flora and fauna for a long time- @ pg. 57 - 64000 kg of condensate containing heavy hydrocarbons might have fallen in a 3 km radius of the blowout- nearly 24 ha around the flame was severely burnt and 102 ha partially burnt - @ para 50 pg. 58 - Loss of 26% of odonates and 48% of lepidopterans; 177 carcasses of 4 species recorded- it will take 2-21 years for species populations to recover- @ para 51 pg. 58 - 87 species of fishes were reported from MMW reduced to 25 species with widespread death of fishes- fish species richness declined by 71%- @ para 51 pg. 58 - Decline in bird diversity, death of several species- bird richness declined by 85% in wetland- @ para 53 pg. 58 - Death and reduction of several mammal species- hollock gibbon gave birth to a dead baby; ganges dolphin died; population declined by 89%- @ para 54 pg. 59 - Condensate on vegetation continued to persist- no systematic tracing of contaminants was done- @ para 55 pg. 59 	
<p>Current monitoring mechanism:</p> <ul style="list-style-type: none"> - DFO Tinsukia is the nodal officer for MMW- @ para 61 pg. 60 - Management plan of DSBR is does not find any mention of oil and gas well drilling and production operations and no plan to deal with any accident- @ para 66 pg. 61 - MMW management plan not implemented- @ para 67 pf. 62 - Existing mechanisms for monitoring of MMW and DSNP are rudimentary; PCB does not have the capacity and infrastructure to monitor the contaminants- @ para 68 pg. 62 - Wetland Rules 2017 not complied with and Disaster Management Plan inadequate- paras 69,70 @ pg. 63 - OIL has no protocol to address oil/ condensate spills- critical lapse- @ para 71 pg. 63 	Pg. 60-63
<p><u>Proposal for Restoration-</u></p>	<p>Para 82 @ pg. 66</p>

<ul style="list-style-type: none"> - <u>Constituting an ecological restoration steering committee which would be tasked with a) approving an ecological restoration plan and b) monitoring and review of progress of implementation of the restoration plan</u> - <u>Committee recommends the State Government constitutes a panel of experts for implementing these studies- @ para 83 pg. 67</u> 	
<u>CHAPTER 6: RESTORATION COSTS AND FINANCING</u>	Page 83-84
<ul style="list-style-type: none"> - Apart from OIL, equally responsible are <ul style="list-style-type: none"> a) Violations of principles of eco-sensitive zone notification by MoEFCC, GoI b) Absence of management plans for MMW and DSNP (State govt. responsible) <p style="text-align: center;"><u>Costs (Rs. 1,196 crore) divided into-</u></p> <ul style="list-style-type: none"> - Ecological restoration of the accident site- Rs. 139 crore- to be borne by OIL - Ecological restoration of DSBR (DSNP and MMW)- Rs. 432 crore- shared between Govt. of Assam and OIL - Addressing livelihoods and socio-economic aspects- Rs. 625 crore- to be borne by OIL <p>(In the Interim Report, the Committee had indicated an estimate of Rs. 2,500 crore. However, the final costs are lower in view of positive impacts of flood pulses on the environment, remediation work already undertaken by agencies hired by OIL, etc. Figures are still ballpark and may be firmed up during the course of management planning)</p>	Page 83-84 read with para 11 @ pg. 5

II. SUGGESTIONS OF THE APPELLANT:-

A) ON SITE RESTORATION-

- The Responsibility Assignment Matrix (RAM) suggested by the Expert Committee (pg. 37 of the Final Report) lays down the agencies responsible for restoration of the blowout site.
- The Committee further suggests a Monitoring and Maintenance Plan (pg. 41 of the Final Report) which includes an annual site visit schedule for five years to be

undertaken by Chairman PCBA alongwith designated personnel from CPCB, Senior Management of OIL, Dy. Commissioner Tinsukia and site remediation contractor.

- The Committee recommends that the governance of the remediation and restoration project needs to be Government led and the office of the Deputy Commissioner (Tinsukia) should be the initiating organization (pg. 43 of the Final Report)
- The Committee recommends that Govt. of Assam establishes an office of “Contaminated site remediation and technology innovation” under PCBA responsible for management of hazardous waste sites as per CPCB Guidelines.

B) ON RESTORING THE DSBR AND MMW-

- The Committee recommends constituting 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
- Committee recommends that State govt. may constitute a panel of experts for implementing the plan. (-pg. 66-67 of the Final Report)

THE APPELLANT HUMBLLY SUBMITS AND SUGGESTS THAT:

- The Committee itself notes that inadequacy of infrastructure and human resources in PCB Assam.
- It is undisputed that OIL has been operating in the area without the mandatory consents, compliances and clearances which shows the complicity of PCB Assam
- Absence of management plans for MMW and DSNP (State govt. responsible)
- **As such the Hon’ble Supreme Court may assign MoEFCC (Govt. of India) as the nodal monitoring and overall accountable body for the site remediation and DSBR/MMW restoration.**
- **The site remediation and DSBR/ MMW restoration may be a time bound process and monitored by this Hon’ble Court.**
- **The ballpark figure recommended by the Expert Committee to be borne by OIL be deposited by OIL with the nodal agency appointed by this Hon’ble Court.**
- Vide the impugned order dated 19th February 2021 passed by the Hon’ble NGT, the Hon’ble Tribunal had constituted the following two committees in addition to the formation of the committee challenged in the present Civil Appeal:
 - (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;

- Vide order dated 1st July 2021, this Hon'ble Court had stayed the operation of the impugned judgment and order of the NGT dated 19 February 2021 in Original Application No 43/2020/EZ. **It is humbly prayed that the said stay be vacated such that the work of the abovementioned two committees may be commenced.**

SUBMITTED BY:

SHRUTI AGARWAL

Advocate for the Appellant

15th November, 2022