

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

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**ORIGINAL APPLICATION NO. 19/2014
(M.A. NO. 216/2015 & M.A. NO. 1027/2015)**

IN THE MATTER OF:

Dr. Kashmira Kakati
'Heaven', Madhuban Hill,
Government Press Road,
P.O. Bamunimaidam,
Guwahati-781021, Assam.



Versus

....APPLICANT

1. Union of India
Through the Secretary
Ministry of Environment and Forests
Paryavaran Bhawan, CGO Complex
Lodhi Road, New Delhi 110003
2. State of Assam
Through the Chief Secretary
Block C, 3rd Floor, Sachivalaya
Dispur, Guwahati 781006
3. Principal Chief Conservator of Forests and Chief Wildlife
Warden
Forest Complex, Bashishtha, Guwahati
Assam-781039
4. Assam State Pollution Control Board
Through its Member Secretary
Pollution Control Board, Assam
Bamunimaidan, Guwahati- 781021
5. Indian Oil Corporation Limited
East Point Tower,
4th Floor, Bamuni Maidan Guwahati-781021
6. National Highway Authority of India
G 5 & 6, Sector-10, Dwarka,
New Delhi
7. Oil India Limited
P.O. Udayan Vihar
Narengi, Guwahati-781171

8. Coal India Limited
5th Floor, Core- I & II, Scope Minar
Laxmi Nagar District Centre
Laxmi Nagar, New Delhi-110092
9. District Magistrate, Tinsukia District
Office of the Deputy Commissioner,
Tinsukia-786126, Assam.
10. Divisional Forest Officer,
Office of the Divisional Forest Officer
Tinsukia Wildlife Division
Tinsukia, Assam-786125
11. Digboi Town Committee
12. Public Works Building & National Highway
Department, Assam.

.....RESPONDENTS

COUNSEL FOR APPLICANTS:

Mr .Sanjay Upadhyay, Ms. Eisha Krishan and Ms. Upama Bhattacharjee, Advs.

COUNSEL FOR RESPONDENTS :

Ms. Sakshi Popli, Adv. for Ministry of Environment, Forest and Climate
Change Respondent No.

Mr. Neeraj K. Gupta and Mr. Ranjeet Kumar, Advs. for Respondent No. 8

Mr. Shuvodeep Roy, Adv. and Mr. Sayooj Mohandas, Adv. for State of
Assam Respondent No. 2, 3, 9,

Mr. V.N. Koura, Mr. Anupam Roy and Ms. Angeli K. Dayal, Adv. for IOCL
Respondent No. 5

Ms. Bhavana Duhoon, Adv.for Respondent No. 6 & 13

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Dr. Justice Jawad Rahim (Judicial Member)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Reserved on: 20th July, 2017

Pronounced on: 8th December, 2017

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT
Reporter?

DR. JUSTICE JAWAD RAHIM, (JUDICIAL MEMBER)

1. The applicant, Dr. Kashmira Kakati, wildlife biologist claiming
to be of international repute has initiated this action under section

14 read with section 18 of National Green Tribunal with a serious concern for protection of elephant population in the country and more particularly highlights the lack of legal mechanism to protect “elephant reserves” or “elephant corridors”.

2. While raising several other significant issues relating to national conservation concerns regarding elephant reserves/corridors, which according to him, are prime habitats of these pachyderms also highlights the apathy of the Government in timely action. He has also highlighted the Government’s unmindful and erratic grants of permission thereby allowing the private individuals and corporate bodies to carry out construction activity for an oil dispatch terminal in Golai Elephant Corridor; construction of a bypass through the forest which according to him is without prerequisite of Forest Clearance and bisecting Bogapani corridor which connects Upper Dehing via Bogapani tea estates through a rail line and highway; dumping of Digboi municipal waste in the reserve forest; discharge of coal mine effluents into the reserve forest; construction of private commercial business in the close proximity to the reserve forest and activities which destroy the pristine elephant habitat and endanger the contiguous zone for movement of elephants.

3. He has furnished further details to justify action and has highlighted his recent studies on carnivores of Dihing Patkai Wildlife Sanctuary, Upper Dihing Reserve Forest at Boghapani Corridor to illustrate that it is an eco-system a home to atleast 47 species of mammals including 19 carnivores with 7 wild cat species,

the highest diversity of wild cat has confirmed by any single study. It is an important breeding habitat in India of the white-winged wood duck which is globally endangered and vegetation type Assam Valley Tropical Evergreen Forest which is geographically restricted forest type. He has referred to Namdapha and some adjoining areas of Arunachal Pradesh and a small fragments in upper Assam, which has significant biodiversity.

4. As regards aquatic life is concerned he has referred to 70 species of fish and crucial aquatic life forms which is now threatened despite several representations to protect the area. The area in respect of which he has sought first attention is South Brahmaputra elephant range known as the Dihing-Patkai Elephant Reserve established on 17th April, 2003 by the Project Elephant which is 937 sqm reserves according to 2005 census conducted by the Elephant Task Force. It has elephant population of 295. The East and the West block of Upper Dihing Reserve connected by 6-7 km stretch of patta land called the Golai Corridor.

5. Describing the topography of the area he states that Upper Dihing East and Upper Dihing West Block between Golai-Pawai Elephant Corridor is one of only two remaining locations at which the elephant can cross between the East and West Block of Upper Dihing Reserve Forest. Therefore, he seeks an order to protect the habitat and Bogapani corridor to save not only the elephant habitat but also to preserve the eco-sensitive zone seriously threatened by the commercial and un-permissible activities. Some more literature titled "Right of Passage: Elephant Corridors of India report 2005"

and the report of Director Project Elephant and Principal Chief Conservator of Forest (Wildlife) Assam. He has alleged failure on the part of the MoEF to take notice of the said material and factual information supplied for timely action.

6. It is further alleged that respondent no.1- MoEF has granted Environmental Clearance to respondent no.5 the Indian Oil Corporation Ltd. (referred to as IOCL) to construct a product dispatch terminal for its Digboi Refinery of 50 acres land falling directly within the Golai Corridor. That, construction, if allowed, will nearly block the entire Golai Corridor i.e. approx. 600 meters of 950 meters width. It will increase inflow and outflow of traffic which is estimated to be more than 200 trucks in a day by IOCL itself, resulting in mushrooming of dhabas, hotels, garages, some of which appears to have already been constructed. It will restrict free passage and movement of the elephant to the corridor exposing them to heavy traffic and increasing human-elephant encounters and accidents. The applicant apprehends such activity will cause heavy disturbance to wildlife and inhabitant, significantly reduce employment opportunity for local communities alienating them further from the conservation and closing off avenues to earn even regular income. He alleges in this fact situation it was incumbent on the Government to have implemented the recommendations in the *Gajah Report* on elephants and is produced five guidelines for civil works and habitat protection as mentioned in *Gajah Report* produced as annexure A-4.

7. Narrowing down on the construction activity of oil product dispatch terminal by respondent no.4 it is alleged it is within the elephant corridor. The respondent no.5 obtained environmental clearance vide letter dated 5th September, 2007 for its new product dispatch terminal under Digboi Refinery in Ramnagar, Disytrict Tinsukia, Assam but the information relating to environmental sensitivity of the area provided by respondent no.5 at serial no. 3 of para III of TOR submitted for such clearance was incorrect and said fell within the elephant habitat which was suppressed. However, it is evident from the admission in the letter submitted while applying for amended EC mentions this aspect and is therefore, not disputable. He has produced copy of the TOR containing wrong information provided by respondent no. 5 regarding environment sensitivity of the area to obtain EC on 5th September, 2007 for its new project at annexure A-5.

8. He has further quoted the subsequent letter of the respondent no.5 submitted to MoEF on 13th June, 2008 stating that the aforementioned EC was granted on forest land which is recognized as "Elephant Habitat" the said letter is at annexure A-6. Again through a letter dated 10th December, 2008 respondent no. 5 requested MoEF to amend the EC dated 5th September, 2007 to effect the change of terminal to an alternative site in Digboi Golf Course, Golai, District Tinsukia, Assam which is at annexure A-7. The main ground against the project are that the Expert Appraisal Committee on 22/23. 12.2008 recommended the proposal for EC for an alternative site under para 7(ii) of the EIA Notification, 2006

which allowed the Expert Appraisal Committee to decide the due diligence necessary, including the preparation of an EIA and public consultation. That, no site specific environment assessment or fresh public hearing was conducted and the most important TOR were revised and the information regarding the ecological importance of the area was hidden decision making authorities on such insufficient material and incorrect material respondent no.5 has obtained EC for alternate site from respondent no.1- MoEF vide letter dated 20th March, 2009 which is in complete violation of EIA Notification, 2006 thus he has assailed the EC for alternative site also.

9. The applicant has accused respondent no. 5 of frustrating its own undertaking given in initial and subsequent revision application in category III under the head of Environmental Sensitivity Section 3, it was stated that the project would not be located in an area used by protected, important or sensitive species of flora and fauna for breeding, nesting, foraging, resting, overwintering, migration but contrary to it the proposed terminal falls directly within one of the most integral elephant corridor of the area. The relevant piece of document is at annexure A-9.

10. Several other circumstances and incidents apart from factual information as mentioned by the applicant in the application to bring home the point the project in question has not received due scrutiny of the Competent Authority and recipient of such grant, namely, respondent no. 5 is guilty of violating provisions of Hazardous Waste Rules, 2003 and failure to provide information to

public at large about grant of EC and and non-conducting of public consultations.

11. Regarding respondent no. 6 it is alleged that National Highway Authority of India has also started construction under the National Highway bypass around Digboi Town project which envisages a 6-lane expressway in future which would not only run through the Dihing-Patkai Elephant Reserve and the East Block of the Upper Dihing Reserve Forest but also directly bisect and destroy the eastern portion of the Golai Corridor. He relies on the field report by Divisional Forest Officer, Digboi conducted on 6th May, 2009 of the proposed bypass which he found was definitely causing fragmentation of the forest harming its integrity. He refers to the said report of the Divisional Forest Officer dated 18th August, 2009 to show that it contains specific report that the proposed project alignment of bypass passes through the reserve forest which has habitat of wild elephants and its recommendation to protect it. The letter is at annexure A-10. He has also referred to finding of the Committee constituted by Deputy Commissioner, Tinsukia who surveyed the proposed alignment of NH-38 bypass and submitted a list of suggestions to mitigate the effect of proposed road which include installation of flyovers at Golai and Bogapani Corridors as well as noise reducing equipments between Bogapani and Golai among other recommendations. The letter of DFO to district Collector, Tinsukia with suggestions on Digboi bypass were very material and has been ignored. He relied on the said letter of the DFO dated 26th August, 2009 annexure A-11 general grounds urged

by him regarding Digboi Town municipal waste dumping in reserved forest. He has accused respondent no. 11 The Municipal Corporation of Digboi town for allegedly turning the Digboi Elephant reserve into an indiscriminate ground for dumping the garbage and Municipal waste of entire town and respondent no. 5 for operating an open dump within the said reserve areas. Thereby violating the Municipal Solid Waste Rules, 2000, Bio-medical Waste (Management and Handling) Rules 1998 and the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2010 and relied on the photographs. The other ground urged by him is discharge of untreated effluent by IOCL into the reserved forest.

12. In conclusion he has summed up to say threat to wildlife from toxic pollutants from Coal India Ltd's abandoned coal mine within Jeypore RF and Dihing-Patkai Elephant Reserve is imminent and is continuous threat to the life of the elephant and other life forms. For example he has referred to toxic yellowish-orange water that flows out of old mines abandon coal mines of respondent no. 8- Coal India Ltd within Jeypore RF and Dihing-Patkai Elephant Reserve.

13. Local encroachment in that area is also highlighted and thus seeks directions from this Tribunal to direct the States to discharge its constitutional obligation and fulfil the mandate of Public Trust Doctrine in the present case not only to safeguard the human and animal life particular in legal recognition to the elephant corridors/elephant reserves. He has sought following reliefs in this

case. The application has meet with serious resistance from respondent nos. 5, 8, 10 and 11.

14. The defence of the respondent no. 5. The Indian Oil Corporation Ltd (IOCL) in its counter has disputed every ground urged by the applicant and challenged him to prove. In its written submission it was submitted that as regard location of oil dispatch terminal of the IOCL at Digboi refinery in Assam the oil refinery at Digboi is India's oldest refinery commissioned in 1901 for refining crude oil products in Assam. It has been renovated from time to time modernised and expanded to bare the state of art and least causing ill effects. That the refinery and its permission are in area of nearly 1500 acres surrounded with forest on north, east, west and fields and populated areas on the south. In the past the products from the refinery were primarily vacated and transported to Tensukia through the Digboi Tensukia pipeline but due to pilfering of oil from the Digboi Tensukia pipeline which escalated over the ears and reached levels which are affecting the refinery operations, IOCL was compelled to construct a proper oil dispatch terminal for alternative transportation and distribution of petroleum products manufactured at the refinery by road and rail.

15. They relied on the letter dated 5th September, 2007 of the MoEF granting EC for constructing the refinery and proclaimed that they have done the project activity lawfully but noticing the part of the elephant habitat was involved by a letter dated 13th June, 2008 addressed to the Director, MoEF. It is informed that it will shift the site to its own to the new location on non-forest land near the Golai

Golf Course on the southern side of refinery and Digboi town which comprise of agricultural fields and constructions. It is this present new location is 7 km away from the reserved forest for the elephants. They have relied on the proceedings before the MoEF and its letter dated 20th March, 2009 by which the proposal was accepted and fresh EC has been granted for an alternative site. Respondent no. 5 have also referred to the resistance from the local population and the environmentalists regarding the alternative site but they claim in order to address the concerns of various interest groups a meeting was held on 16th June, 2009 at the Conference Hall of the Deputy Commissioner, Tinsukia and an amicable solution was found to the satisfaction of all the concerns. They referred to presence of the applicant Dr. Kashmira Kakoty, Wildlife biologist in the meeting and content that he was also fully convinced of the project safety. He further content that the only three main issues concerning regarding municipal garbage dump, construction of bypass and the location of ODT was highlighted which was referred to the Committee and the Committee's recommendation were exchanged with all the stakeholders. It terminated in the Government of Assam which in turn address letter to the Inspector General of Forests (project Elephant) to the MoEF that it has conducted a visit on 25th September, 2009 with the Sectary level Officer and made suggestive action. It provided necessary exchanges of information on elephant corridor to keep it free from the layout of the proposed oil terminal. They have made a provision for green belt development in the area and its only after

such preventive and protective action the alternative site was approved. They have highlighted further details in para 21 of the reply of the respondent no. 5. The letter issued by Government of Assam through Deputy Commissioner dated 25th May, 2010 granting NOC for sitting up a market terminal subject to terms and condition laid down by the MoEF in EC is also produced and relied.

16. Respondent no. 6 and 13 have filed their replies, additional affidavit and also written submission. As most of the grounds and contentions are similar in these pleadings we prefer to refer to the substance of their respective contentions. The contention of the respondent no. 6 is that it is National Highway Authority of India which is constituted under Section 3 of the National Highways Authority of India Act, 1988 for the purpose of development, management and maintenance of the National Highways or stretch thereof and vested or entrusted to it such powers as a necessary by Central Government. Pertaining to National Highway but under Section 11 of National Highways Authority of India Act, 1988, the Central Government by Notification of Official Gazette, the stretch of National Highway 38 around Digboi Town Project in the State of Assam has not been entrusted to it (respondent-6) but the work is entrusted to other Authority and therefore it has denied liability to answer any of the statement in the application. It seeks to excuse itself from these proceedings.

17. The National Highways & Infrastructure Development Corporation Limited (NHIDCL) which is now entrusted with the

development and realignment of NH-38. It is impleaded as respondent no. 13 in this case.

The Stand of the thirteenth Respondent (Respondent No. 13)

18. The substance of defence of respondent no. 13 The National Highways & Infrastructure Development Corporation Limited for short NHIDCL is that by virtue of the task of realignment and improvement of Section 20 to 53 km of which covers the bypass of Digboi, Margherita & Ledo in Assam. The project road is a bypass from 20km from NH-38 and terminates at 53 Km. Initially, the project was being executed by Public Work Department Government of Assam but from 26th June, 2015 by virtue of Gazatte Notification the construction work is awarded to it and executed by one KMC-SPVIL company.

19. It is material to note that they have categorically stated no construction has commenced in relation to the project as require Forest Clearance from Divisional Forest Officer, Digboi, Assam under Forest Conservation Act, 1980 is awaited. Thus, they contended that grievance of the applicant is pre-mature and as the project is not been executed no order from this Tribunal is necessitated.

20. Before we proceed further and refer the stands of the other respondents we would note what transpired during the proceedings in this Tribunal from the inspection of this application. On 12th March, 2014 noticing that the grievance of the applicant is also against the public works and national highways department, Government of Assam and Digboi Committee, we directed its

impleadment and subsequently directed deletion of the name of respondent no. 11, Guhawati Municipal Corporation which we found was not in a party.

21. Consequently, M.A. No. 122 of 2014 was allowed. Thereafter as the case proceeded further the applicant reiterated urgency to seek interim order against the Indian Oil and Oil India Limited alleging it was indulging in acts detrimental to the environment causing adverse affects.

22. It would suffice the record applicant's main allegation was Digboi town municipal committee was indulging in dumping municipal waste and similarly Indian Oil Company was also indulging in similar acts. However, the said respondents raised a dispute regarding location of coal mines and dumping site within the 10 km of elephant reserve. A joint team of MoEF, State Pollution Control Board, Assam and representative from RFRI, Jorhat was constituted to conduct physical inspection and survey of the area.

23. Subsequently, the town committee Digboi, Indian Oil and Oil India Limited were directed to show cause as to why they should not be directed to pay compensation for restoration of environment, degraded by their acts, particularly elephant corridor area and to take various punitive and preventive measures to stop further pollution of the environment.

24. The Committee submitted its report to which we shall refer at a later stage. However we will refer at this stage to the affidavit filed by S.K. Senapati on behalf of Oil India Limited respondent no. 7 by

way of show cause in terms of our direction dated 04.02.2015. The said affidavit is also by way of reply to the applicant averment and hence we would prefer to extract herein the relevant statements of the respondent no. 7.

Stand of the Seventh Respondent (Respondent No. 7)

25. According the respondent no. 7 applicants allegation against it is only few. They deny that it is releasing untreated oil, processing affluent into the open slug pits and seepage areas around oil rigs in Digboi oil field. They deny its doing so.

26. The respondent no. 7 has further averred applicant has made baseless allegations about seepage of crude petroleum with bubble discharges of the natural gas. According to it natural seepages of crude petroleum with bubble discharges of the natural gas is along the base of the Jaipur-Tipam-Digboi range of hills and in the valley of Buri-Dehing river near Margherita. It is a natural process which is continuing for decades in Assam and it was recorded as such in the report of Lient Wilcox with reference to oil in Assam as early as in 1825 and subsequently re-inspected reports/records rash of 'military' discoveries of oil seepage in Northeast India: They have relied on report of Major A. White: Lt. W. Bigge in the 1837. It is further contended that Digboi Oil field has number of oil seepages which discharge oil naturally as a natural process. The natural oil and gas is found mainly within Tipam formation in Digboi field.

27. After referring to it the respondent no. 7 has taken a plea that oil debris referred to the petition is several years old and thereafter even Digboi oil field has completely dried up. There is no

exploration activity in the past several years from 1971. It is, therefore, their case that the respondent no. 7 is not carrying out any oil exploration or processing activity in and around Digboi oil field which falls within Upper Dehling RF (East Block) and the Dihing-Patkai Elephant Reserve.

28. The respondent no. 7 has referred to the meeting conducted by Mr. N.K. Das, Head EPA, OIL, Digboi on 16.06.2009 in which this issue was discussed with the applicant Dr. Kashmira Kakati, therefore, they deny the allegations made by the applicant. Regarding alleged seepage even now. Referring to the photographs filed by the applicant on 05.11.2014 they contended it only shows old infrastructure lying in the unused oil fields and does not show any oil exploration activity by respondent no. 7.

29. As could be seen the main line of defence of respondent no. 7 is that Digboi oil field was identified by the erstwhile Assam Railway & Trading Co with Assam Oil Company, in 1889 almost 126 years ago. Later on Burmese oil company, UK took over the operation in 1921 and the respondent no. 7 came into existence in 1959 result of joint venture between Government of India and Burmese Oil Company. The oil field was developed and was operational only till 1971 by drilling only 1001 wells. However, after several geo-scientific studies the exploration and development activity has been stopped from 1971 and the respondent no. 7 company was nationalised in the year 1981 as a Government of India undertaking.

30. At this juncture it is necessary to record till 1981 the respondent no. 7 was a private undertaking with foreign collaboration and is thus answerable for its operation till 1971 and also answerable for the adverse affects caused to the environment since thereafter. According to the respondent no. 7 it was nationalised in the year 1981 therefore companies namely Oil India and the Burmese oil company UK cannot evade legal actions for the past.

31. There further contention is that it is not guilty of violating provisions of Section 24 (1) of Environment Protection Act 1986 or the Hazardous Waste (Management, Handling & Trans-boundary Movement) Rules 2008).

32. It is appropriate to record further statements of the respondent no. 7 which is as follows:

“12. It is further submitted that the debris mentioned in the para 22 of the Application, pertains to decades old deposition in seven pits inside Dehing-Patkai Wildlife Sanctuary for a total quantity of 2,820 cubic meters out of which the Answering Respondent has already cleared 970 cubic metres of oily debris totally from three pits (Well No. 19, 512 & 513) by 30.01.2014 and the same has been degraded in an environmentally friendly manner by using bio-remediation measures. Out of the remaining 1,850 cubic metres of oily debris from the remaining four pits, 830 cubic metres of oily debris has already been removed from the pits and the same is being degraded through Bio-remediation measures at present. The answering respondent humbly submits that it had taken remedial measures from July 2010 itself and more than 70% oil debris have already been treated through Bio remedial measures and remaining 30% are being treated and will be cleared very soon.

13. The Answering Respondent also submits that it has Awarded a Contract to ONGC TERI Biotech Limited on 23.07.2010 at a cost of Rs. 3,80,91,175/- for ex-situ bio-remediation of contaminated soil by construction of 5 HDPE lined bioremediation pits measuring 30 X 30 metres each and refilling of the excavated contaminated land by fertile soil. Further, the Answering Respondent awarded a new contract to M/s. Balmer Lawrie & Co. Limited on 23.12.2014 vide Contract no. 5108661/CDI at a cost of Rs. 8,71,88,500/- for processing and disposal of oily sludge from various production installation of OIL, including the remaining sludge from Dehing-Patkai Wildlife Sanctuary area. Copies of the contracts entered into with ONGC TERI Biotech Ltd dated 23.07.2010 and contract entered into with M/s. Balmer Lawrie & Co. Limited dated

23.12.2014 are annexed herewith and marked as Annexed R-1 and R-2 respectively.

14. The Answering Respondent has also set up a Biomediation site near well 139 outside the forest area with huge investment, for treatment of oily debris and restoration of land through scientific techniques to ensure healthy environment and ecology. Copies of the photographs showing pre-action and post action status of the pits are annexed herein and marked as Annexure R-3.

15. It is further submitted that the samples of the streams, drains going out of Digboi Oil field and surrounding areas are being regularly examined and tested by the ISO 9001:2008 certified in-house laboratory of the Answering Respondent to ascertain the water quality as prescribed, however no abnormality has been observed till date. In addition to this, pollution control board Assam also collects samples for its examinations form time to time, however no adverse report has been given by it.

33. The stand of respondent no. 8- Coal India Limited is that it is a coal company which is a successor (inheriting) mining lease more than 84 to 100 years ago has been continuously mining areas. It has not seen any movement or presence of elephants in and around the mining area. The respondent no. 8 claims it has substantiated this aspect when the team of Wildlife authorities of Assam inspected the mining area as a part of procedure of awarding forest clearance for some of the additional new projects and the same by accepted by the Competent Authorities.

34. It is further contented that the Bogapani elephant corridor is 20.71 km away and the Golai Elephant Corridor is 14.80 away from the nearest coal mines. The mines of the respondent no. 8 are situate beyond 10 km of eco-sensitive zone of Dehing-Patkia Wildlife sanctuary. They rely on the letter of the Divisional Forest Officer, Digboi which is at page 274. They define coal mine effluent are being discharged without recommended treatment procedure conforming to standards prescribed under Environment Protection Acts and Rules made thereunder including Air (Prevention and

Control of Pollution) Act and Water (Prevention and Control of Pollution) Act, 1974. They contend the treated effluents are continuously subject to various test in different laboratories of Pollution Control Board which have certified it harmless.

35. They further contend that the discharges are treated with quick lime and soda ash to neutralize the toxic elements in its discharge to the natural drain system. Small quantity of discharge is also get neutralized with heavy water flow in the natural drainage system like rivers and nalas during monsoon period due to high natural water to mine discharge volumetric ratio. Due to location of mines in higher altitude the discharge is carried by natural drainage away from the reserve forest to the low lying plain areas which has no effect on plants and wildlife of the forest areas. There is no a violation or incidences of harm tyo the aquatic life of the natural drainage system due to the discharge. They further contend that the mechanised effluent treatment plant is installed to treat mine effluent water and only treated water is released to surface drainage system. It conforms to GSR 422(E) Notification dated 19th May, 1993 and 31st December, 1993. They deny coal mines of respondent no.8 falls in the area of study by the applicant i.e. within Dihing Patkai wildlife sanctuary, upper Dehing Reserve forest, and Bogapani corridor as regards the closed mines are concerned they contend that Jeypore Mining Lease lie along the foothills of beside the Stat Highway, located at the boundary of Jeypore Reserve Forest. The corridor of elephants are not

obstructed or trespassed by the respondent no- 8 for its mining operations.

36. Referring to the allegations in para 24 of the application it submits that the only allegations against it is threat to wildlife from toxic pollutant from Coal India Limited's abandoned mine within Jeypore RF and Dihing-Patkai Elephatn Reserve. Quoting the said paragraph from the application they contend it is factually incorrect and even otherwise it is not abandoned mine but a mine which is abandoned only for mining activity and is properly maintained by it. They relied on the report submitted by Joint Inspection Committee constituted by this Tribunal report dated 16th March, 2015. The report is silent and raises no question against the respondent no. 8 however it has on its own volition stated that respondent no. 8 agrees to handover the lease hold Jeypore and Dilli RF to the State Government after proper reclamation, realignment, rehabilitation vis.a.vis protection of air, water and land as per mine closure under Mines Closure Guidelines, 2009 amended in 2012 and 2013 and restoration scheme is already under preparation accordingly. MPC of all mines in Makum Coalfields of Northe Eastern Coalfields are filed with the Government. As regards ground urged by the applicant in M.A. No 1027 of 2015 filed in O.A. No. 19 of 2014 they contend that applicant is trying to enlarge the scope of proceedings, they submit that its mining operations were questioned for the first time in this application. Whereas such activities are going on for several decades. It claims to have submitted an application for grant of forest clearance under the Act for renewal of the mining

lease contending that the grounds in the application do not merit any action against it (respondent no.8) seeks dismissal of the application.

37. We have heard the Learned Counsel for the applicant and the respondents and amongst the respondents, respondent nos. 6 and 13 have made their case clear that the respondent no. 6 is not executing the project to construct NH-38 while the respondent no. 13- NHIDCL while admitting it is the project proponent for NH-38 has placed on record that the project is not being executed as of now. Therefore, we do not wish to express any opinion with regard to applicant's contention that the said project needs environmental clearance or that there is need for re-alignment of the project of NH-38. Hence, to that extent we reserve liberty of the applicant to seek any action in law in future if the circumstances warrants.

38. As far as respondent no. 8-Coal India Ltd is concerned the applicant's grievance against it is that it is operating its coal mines within the elephant reserve thereby directly adversely impacting the elephant reserve and elephant habitat. The applicant asserts that the mines of respondent no.8 is within the elephant reserve and is effecting the elephant habitation severely. Whereas the respondent no.8 has pleaded and brought on record that it is successor of the lease and is operating from 84 to 100 years and that its mining area is not within the elephant reserve. They rely on the inspection report of the team of Wildlife Authority of Assam who inspected the area and they are further placed on record that Bogapani Elephant Corridor is 20.71 km away and 71 km away and the Golai

Elephant Corridor is 14.80 away from the nearest coal mines. The applicant has not disputed this statement. The applicant has also not disputed contention of the respondent no.8 that the coal mines are beyond 10 Km of eco-sensitive zone at Dihing-Pataki Wildlife Sanctuary. As is mentioned in the letter of the DFO, Digboi Division.

39. As regards the alleged discharge of effluent is concerned there is a categorical statement from respondent no. 8 that whatever is the industrial discharge from the coal mine it is released only after recommended treatment procedure is followed conforming the standards prescribed under the Environment (Protection) Act and Rules made thereunder including the provisions of Air and Water Act.

40. As regards alleged yellowish toxic released from the abandoned coal mines it has placed on records that the effluent was tested and it conforms to GSR 422 (E) dated 19th May, 1993 and 31st December, 1993 Notification. The applicant has not disputed this statement either except denial shinplaster.

41. As far as closed mines are concerned which are at Jeypore Mining location is shown as foothills of Upper Dihing but not near the Dihing-Patkai Wildlife Sanctuary. The applicant has sought directions to the Government to hand over the said abandoned coal mines at Jeypore to the Forest Department for its maintenance. The undertaking given by respondent no. 8 declaring its willingness to hand over the said mines is an answer to the relief sought in the

application. Therefore, further orders that could be passed has to be modulated accordingly, against the Coal India Limited.

42. Now, we come to the main grievance of the applicant which is against the respondent no. 7 –Oil India Limited against them the applicant has seriously alleged that it is releasing untreated oil processing effluents into open sludge pits and seepage areas around oil rig in Digboi oil field which falls within Upper Dihing RF and Dihing-Pataki Elephant Reserve in violation section 24(1) of the Water (Prevention and Control of Pollution) Act, 1974. From the applicants case against respondent no. 7 and the grounds in defence certain facts have come on record. Respondent no. 7 admits it is now the Oil Company but it has come into existence from 1959 earlier as a joint venture of the Government of India and Burma Oil Company which is nationalised in the year 1981. It admits that respondent no. 7 has taken over Digboi Oil fields from erstwhile Company. The applicant has not disputed the contention of the Oil India Limited that presently it is not in commercial production of crude oil from the oil field in question and as also not processing the oil. Therefore, they deny they are releasing oil processing effluents in the open sludge pits on the ground that there is no discharge of the effluents as there is not production at all. However, they contend that notwithstanding the above contentions to prevent any seepage through rain water step are taken They further urged that they have installed several oil water separators have been constructed in selected locations to arrest any accidental discharge of oily water through

drains/streams and they claim to have collected samples from 14 locations every month for its proper testing and monitoring.

43. The report relied by them certifying the quantity of prescribed pollutants in the industrial discharge has not crossed the permissible point. No abnormality is detected in the water quality discharged.

44. They placed reliance on the joint inspection Committee report and we also feel appropriate to refer to it. The relevant portion of the finding recorded by the Joint Inspection Team so far as it relates to respondent no.7 and necessary for our purpose is extracted below....

“ii) OIL-SPILL FROM THE OIL INDIA LIMITED (O.I.L.) OILFIELD:

The Committee has visited the oilfields of Oil India Limited at site/pit near well 153. The size of the pit is about half hectare which is a mix of thick oil and water. The O.I.L. officials accompanying the Committee informed that Spill is not due to any kind of dumping but a natural seepage.

a) This seepage whether natural or dumped is likely to damage the surrounding forests if it overflows to surrounding forest especially during monsoons. According to the O.I.L. officials this seepage is being lifted and transferred to the ex-situ bio-remediation site. The Committee also visited the Bio-remediation site and were informed that the bio-remediation is being done through third party. It was observed that bio-remediation is being done with a capacity of 160 cum.

O.I.L. officials instructed to vacate the bio-remediated soil, after being duly certified as safe, to make way for fresh spill to be treated. Using modern technology available, the spill needs to be sealed as far as possible.

b) The Committee also observed such natural seepage as seen in Well no. 1 of Digboi Oilfield. The phenomenon though natural such spillage’s damage on restricted and dwindling wildlife habitat cannot be ruled out.

(Photos of the Oilfield Spill are enclosed as Annexure-2)”

45. Be that as it may there is clear admission in the statement of respondent no. 7 that there is discharge of effluent and seepage

from the abandoned mines. The finding of the Joint Inspection team observes that it had directed officials of Oil India limited to vacate the biomedical soil after been duly certified as safe to make way for fresh spill to be treated using modern technology, this spill needs to be sealed as far as possible. Of course the Committee noticed natural seepage in drain no. 1 of Digboi oil field even though the phenomia is natural such seepage has damaging effect on dwindling wildlife habitat and therefore, appropriate order needs to be passed in this regard.

46. It is not in dispute that Oil India Limited is a Government Instrumentality. Therefore, it is also bound by the doctrine of public trust and also amenable for action under the principle of 'Polluter Pays'. In this regard from the admitted aspects it is clear that even the Committee Constituted by this Tribunal observed seepage from well from No. 1, Digboi Oil Field. Though it is a natural phenomenon, but such spillage has damaged or capable of damaging wildlife habitat and the environment and humbly ignored by the Oil India.

47. Consequently, a detail evaluation of the environment damage is essential. No precautionary principle has been followed by the Oil India Limited or the Ministry concerned. This has been happening for several years and despite show cause issued by the Tribunal nothing is on record to show, this company has taken action any preventive protective and remedial action. In the circumstances we deem it necessary to pass appropriate order in this regard to direct payment of amount towards environmental

compensation, but the quantification shall depend on the extent of damage it has caused. This would be possible only after getting all said factors relating to environmental damage consequent to such inaction on their part of evaluated by an Expert Committee. Therefore appropriate order shall be passed in this regard.

48. Now coming to the issue relating to protection of elephant population and the relief that could be granted, we take note of the following:-

- a. Corridors, in the larger space of ecological conservation, occupy a unique niche. Their role and vitality in species conservation is well documented, but their definition is a source of constant confusion. They have been generally understood to be 'Linear landscape elements, meant to establish/facilitate connectivity across habitats and increase survivorship by increasing the diversity of specific gene pools'. In more technical parlance, ecological literature defines corridors as a 'fundamental landscape element (the other two are patch and matrix), being narrow strips of land which differ from the matrices on either side'.
- b. A wildlife corridor, habitat corridor, or green corridor is an area of habitat connection wildlife populations separated by human activities or structures (such as roads, development, or logging). This allows an exchange of individuals between populations, which may help prevent the negative effects of inbreeding and reduced genetic diversity (via genetic drift) that often occur within isolated populations. Corridors may also

help facilitate the re-establishment of population that have been reduced or eliminated due to random events (such as fires or disease).

- c. Nature Reserve is an area of land that is protected and managed in order to preserve a particular type of habitat and its flora and fauna which are often rare or endangered.
- d. Goa foundation case in Public Interest Litigation filed in WP No. 460 of 2004 wherein the Hon'ble Apex Court has directed the Government of India to convene a meeting of State Governments and decide about the "eco-sensitive area" and till such decision is taken and notified, the radius of 10 Km. shall be treated as "eco-sensitive area".

The Eco Fragile Zone. It is true that the Government of India in its Eleventh meeting of the National Board for Wildlife held on 21st February, 2002 has formulated "Wildlife conservation Strategy 2002" adopting the principle that lands falling within 10 Km. of boundaries of national parks and sanctuaries should be notified as eco fragile zones under section 3(2)(v) of the Environment (Protection) Act 1986 and Rule 5 (viii) and (x) of the Environment (Protection) Rules.

The Wild Life (Protection) Act, 1972 ('WLPA') is the major statute in this regard. It provides for the notification and management of protected areas such as sanctuaries, tiger reserves and national parks – but fails to address habitat connectivity in a concrete way.

- e. One of the most important hurdles in protection of these identified corridors is that they do not have any legal protection under Wildlife (Protection) Act or the Environment (Protection) Act.
- f. Lack of sound land use policies in elephant habitats has resulted in fragmentation of habitat or escalation of elephant-human conflict. This is especially so as many of the corridors fall in private land and human used (road and rail) areas.
- g. Lack of awareness among stakeholders about the existence and importance of the linkages has also resulted in loss and degradation of the corridors, especially in areas where rail and roads passes through. This leads to human settlement and various development activities coming on either side of road/rail tracks.
- h. Lack of fund to secure the corridor by either land purchase/voluntary relocation of people or through community intervention. The total grant for this under XI Five Year Plan in the Project Elephant is only about Rs. 15 Crores which is insufficient consideration real estate costs in India, In addition NGOs such as the Wildlife Trust of India have put in additional resources to secure corridors but this is far from adequate to satisfy the national need.
- i. Protected Area are being created to provide inviolate habitat to our dwindling wildlife and under wildlife protection Act, 1972, four categories of protected Areas are included, National Parks, Wildlife Sanctuaries, Conservation Reserves and

Community reserves can be declared under the said Act, 1972 by the Government.

49. In the circumstances it will suffice to dispose of the present application with the following directions subject to the observation made in the text of the judgment in the para-supra.

50. For the aforesaid reasons discussed in the text of the Judgment we shall make the following direction to be complied by the Central Government and State Government with a view to protect the elephant population and other related issues:

- 1) The Central Government shall in exercise of the power conferred by Section 5 of the Environment Protection Act, 1986 and read with the provisions of Wildlife (Protection) Act 1972 declare the area inhabited or used by elephants as conservation reserves.
- 2) We direct registration of separate case against the Coal India Limited and Oil India Limited for further enquiry in the matter relating to adverse effect caused to the environment consequent to the act of commission and omission in respect of oil extraction and coal extraction in their respective mines.
- 3) Declare Bogapani Corridor which connects upper Dehing via Bogapani tea estates as forming part of the elephant corridor and issue notification in this regard.

- 4) Conduct a Survey of the elephant population in each state and consequently declare the area surrounding thereto as eco-sensitive zone.
- 5) Declare south Bramhaputra elephant ranges know as Dihing-Patkai Elephant reserve established on 17th April, 2003 by project elephant as the elephant reserve/elephant corridor.
- 6) We Hereby restrain the Digboi Town Municipal Corporation from dumping municipal waste and garbage in Dithing-Patkai Elephant Reserve.
- 7) Respondent No. 7 i.e. Oil India Limited to forthwith stop releasing of untreated oil effluent in open sludge pits and seepage areas around oil rigs in the Digboi Oil field which falls within upper Dihing RF (East Block) and the Dihing-Patkai Elephant Reserve.
- 8) We hereby direct Coal India Limited to prevent discharge of toxic pollutant i.e. yellowish-orange water flowing out of old mines, abandoned by it within Jeypore RF and Dihing-Patkai Elephant Reserve.
- 9) We direct Digboi Town Committee, Assam not to allow any construction activity in and around the Digboi reserve.
- 10) We direct the State of Assam to work out a viable solution for handing over of the abandoned Coal mine of the Coal India Limited to the Forest Department for its

proper maintenance and to prevent harm to the flora and fauna.

- 11) We restrain permanent structure including residence in and around Golai Corridors by the Municipalities and Respondent Nos. 5, 6, 7 & 8 or private individuals.
- 12) We direct Central Government to exercise its power under Section 5 of the Environment Protection Act, 1986 and Wildlife Protection Act, 1972 to give legal recognition and status to the elephant corridors at Golai and Bogapani and other areas to ensure free passage of the endangered wildlife animals.
- 13) Respondent No. 1 to mandate before any proposed development within the established elephant habitat a prior wildlife clearance from the standing committee of the national board of wildlife is mandatory.
- 14) The Respondent No. 1 shall consult project elephant to specially assess the impact of development as part of EIA process and ensure such assessment under Section 36 (4) of the Bio Diversity Act.
- 15) We further direct the State Governments to constitute a State Level Committee comprising of Senior Officers headed by the Chief Conservator of Forest to conduct survey of the elephant population in each district in the State and demarcate the area of their habitation.

- 16) In the first instance the committee shall complete survey within a period of one year and submit the report to the Core Committee.
- 17) The Core Committee shall be constituted by the Central Government through Ministry of Environment, Forest & Climate Change to be headed by officer not below the rank of Additional or Joint Secretary in the Ministry who shall examine the report received from each State and to recommend declaration of area inhabited by the elephants as elephant reserve or elephant corridors by the Central Government an elephant reserve.
- 18) The core committee shall recommend to the Central Government further action in the matter relating to protection of elephants, declaration of elephant corridors, elephant reserves and for such other direction as may be necessary to fulfil the recommendation as contained in the Gajah (The Report of the Elephant Task Force)
- 19) The State level Committee and Core Committee shall submit its report to the Tribunal within a period of one year from now and the Applicant will be entitled to approach this Tribunal for further direction as the circumstances may require.

51. With the above direction Original Application No. 19/2014 is disposed of with no order as to costs.

52. In view of the above M.A. No. 2016/2015 and 1027/2015 are disposed of as the main application stands disposed of.

Swatanter Kumar
Chairperson

Dr. Jawad Rahim
Judicial Member

Raghuvendra S. Rathore
Judicial Member

Bikram Singh Sajwan
Expert Member

New Delhi
08th December, 2017

NGT