

GAHC010075832020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL/29/2020

MRINMOY KHATANAR AND ANR.

2: AMAR JYOTI DEKA

VERSUS

UNION OF INDIA AND 9 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE, INDIRA PARYAVARAN
BHAWAN, JORBAGH ROAD, NEW DELHI- 110003

2:MINISTRY OF ENVIRONMENT AND FOREST AND CLIMATE CHANGE
NER OFFICE
LAW U SIB
LUMBATNGEN
NEAR MTC WORKSHOP
SHILLONG- 7930211

3:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM
ENVIRONMENT AND FOREST DEPTT
DISPUR
GUWAHATI- 06

4:THE CHIEF SECRETARY
TO THE GOVT OF ASSAM
DISPUR SECRETARIAT COMPLEX
GUWAHATI- 06

5:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
H BLOCK
2ND FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI- 781006
ASSAM

6:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST (WILDLIFE)
H BLOCK
2ND FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI- 781006
ASSAM

7:NATIONAL BOARD FOR WILDLIFE
REP. BY THE STANDING COMMITTEE OF NATIONAL BOARD FOR
WILDLIFE
MIN OF ENVIRONMENT
FOREST AND CLIMATE CHANGE (WILDLIFE DIVISION)
6TH FLOOR
VAYU WING
INDIRA PARYAVARAN BHAWAN
JORBAGH ROAD
NEW DELHI- 110003

8:STATE BOARD FOR WILDLIFE
REP. BY ITS CHAIRMAN
DISPUR SECRETARIAT COMPLEX
GUWAHATI- 06

9:COAL INDIA LIMITED
COAL BHAWAN
PREMISE NO. 04 MAR
PLAT NO AF-III
ACTION AREA -1A
NEW TOWN
RAJARHAT
KOLKATA- 700156

10:CHIEF GENERAL MANAGER
NE COAL FIELDS
COAL INDIA LIMITED
SUB DIV MARGHERITA
DIST- TINSUKIA
ASSAM
PIN- 786181

11:NATIONAL BIODIVERSITY
AUTHORITY

12:STATE BIODIVERSITY
BOARD
ASSAM

Advocate for the Petitioner : MR. D K DAS

Advocate for the Respondent : ASSTT.S.G.I.

Linked Case : PIL/36/2020

BASANTA DEKA

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY SECRETARY
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
(MoEF AND CC)
GOVT. OF INDIA
NEW DELHI.

2:THE NATIONAL BOARD OF WILD LIFE (NBWL)

REP. BY THE CHAIRPERSON
MINISTRY OF ENVIRONMENT

FOREST AND CLIMATE CHANGE
(MoEF AND CC)
GOVT. OF INDIA
NEW DELHI.
3:THE STATE OF ASSAM

REP. BY ITS CHIEF SECRETARY
ASSAM SACHIVALAYA
DISPUR
GUWAHATI-06.
4:THE ASSAM STATE BOARD FOR WILD LIFE (SBWL)

REP. BY THE CHAIRPERSON
DEPTT. OF ENVIRONMENT
GOVT. OF ASSAM
ASSAM SACHIVALAYA
DISPUR
GUWAHATI-06.
5:THE GENERAL MANAGER

M/S COAL INDIA LTD.
COAL BHAWAN
PREMISE NO.004
MAR
PLOT NO.AF-III
ACTION AREA 1A
NEWTON RAJARHAT
KOLKATA-7000156.
6:THE GENERAL MANAGER

M/S NORTH EASTERN COAL FIELDS LTD.
COAL INDIA LTD.
BLACK DIAMOND TOWERS
G.S. ROAD
GUWAHATI.
7:NATIONAL BIODIVERSITY
AUTHORITY
8:STATE BIODIVERSITY
BOARD
ASSAM.

Advocate for : MR. T GOGOI
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS.

Linked Case : PIL/39/2022

MRINMOY KHATANAR AND ANR
S/O. LT. BIJOY CH. KHATANAR
R/O. NARIKALBARI PATH
M.T. ROAD
GUWAHATI-781024
ASSAM.

2: AMAR JYOTI DEKA
S/O. LT. BHABENDRA NATH DEKA
R/O. HOUSE NO.20
NAMONI PATH
KARBI PATH
MOTHER TERESA PATH
P.O. BAMUNIMAIDAM
P.S. GEETANAGAR
GUWAHATI-781021
ASSAM.
VERSUS

THE UNION OF INDIA AND 11 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
INDIRA PARYAVARAN BHAWAN
JORBAGH ROAD
NEW DELHI-110003.

2:MINISTRY OF ENVIRONMENT

FOREST AND CLIMATE CHANGE
NORTH EASTERN REGIONAL OFFICE
LAW-U-SIB
LUMBATNGEN
NEAR MTC WORKSHOP
SHILLONG-7930211.

3:THE STATE OF ASSAM

REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT.
DISPUR
GUWAHATI-781006.

4:THE CHIEF SECRETARY TO THE GOVT. OF ASSAM

DISPUR SECRETARIAT COMPLEX
GUWAHATI-781006.

5:THE COMMISSIONER AND SECRETEARY TO THE GOVT. OF ASSAM

MINES AND MINERALS DEPTT.

DISPUR
GUWAHATI-781006
ASSAM.
6:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE

H-BLOCK
2ND FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI-781006
ASSAM.
7:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (WILDLIFE)

H-BLOCK
2ND FLOOR
JANATA BHAWAN
DISPUR
GUWAHATI-781006
ASSAM.
8:THE NATIONAL BOARD FOR WILDLIFE

REP. BY THE STANDING COMMITTEE OF NATIONAL BOARD FOR WILDLIFE
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE (WILDLIFE DIVISION)
6TH FLOOR
VAYU WING
INDIRA PARYAVARAN BHAWAN
JORBAGH ROAD
NEW DELHI-110003.
9:STATE BOARD FOR WILDLIFE

REP. BY ITS CHAIRMAN
DISPUR
SECRETARIAT COMPLEX
GUWAHATI-781006.
10:THE DIRECTOR OF GEOLOGY AND MINING

OFFICE OF THE DIRECTORATE OF GEOLOGY AND MINING
KAHILIPARA
GUWAHATI.
11:COAL INDIA LTD.

COAL BHAWAN
PREMISE NO.-04 MAR
PLOT NO. AF-III
ACTION AREA-1A
NEWTOWN

RAJARHAT
KOLKATA-700156.
12:CHIEF GENERAL MANAGER

NORTH EASTERN COALFIELDS
COAL INDIA LTD.
SUB-DIV. -MARGHERITA
DIST. TINSUKIA
ASSAM-786181.

Advocate for : MR D K DAS
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 11 ORS

Linked Case : PIL/45/2020

BIBEK DAS AND ANR

2: PANKAJ KUMAR DAS
S/O- LATE LAMBODAR DAS
R/O- H NO. 49
BYE LANE 3
SREENAGAR
R G BARUAH ROAD
P.S- DISPUR
DIST- KAMRUP (M)
ASSAM
PIN- 781005
VERSUS

THE UNION OF INDIA AND 7 ORS
REP. BY THE SECRETARY
MIN OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
GOVT OF INDIA
NEW DELHI- 110001

2:NATIONAL BOARD FOR WILDLIFE
REP. BY THE DIRECTOR OF WILDLIFE PRESERVATION
PARYAVARAN BHAWAN

LODI ROAD
NEW DELHI- 110001
3:MIN OF MINES
GOVT OF INDIA
REP. BY ITS SECRETARY (MINES)
NEW DELHI- 110001
4:THE STATE OF ASSAM
REP. BY PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
DEPTT OF ENVIRONMENT AND FORESTS
GOVT OF ASSAM
ARANYA BHAWAN
PANJABARI
GUWAHATI
ASSAM
PIN- 781037
5:DEPTT OF MINES AND MINERALS
GOVT OF ASSAM
REP. BY ITS ADDL CHIEF SECRETARY TO THE GOVT OF ASSAM
ASSAM SECRETARIAT
GUWAHATI- 781006
ASSAM
6:THE DIVISIONAL FOREST OFFICER
DIGBOI FOREST DIVISION
P.O- DIGBOI
DIST- TINSUKIA
ASSAM
PIN- 786171
7:THE GENERAL MANAGER
COAL INDIA LIMITED
COAL BHAWAN
PREMISE NO. 04
MAR
PLOT NO AF III
ACTION AREA - 1A
NEW TOWN
RAJARHAT
KOLKATA- 700156
WEST BENGAL
8:THE GENERAL MANAGER
M/S NORTH EASTERN COALFIELDS COAL INDIA LIMITED
BLACK DIAMOND TOWERS
GS ROAD
GUWAHATI
ASSAM
PIN- 781006
9:NATIONAL BIODIVERSITY
AUTHORITY.

10:STATE BIODIVERSITY
BOARD
ASSAM.

Advocate for : MS. D GHOSH
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 7 ORS

Linked Case : PIL/30/2020

VIKRAM RAJKHOWA AND ANR.
S/O SRI JYOTI PRASAD RAJKHOWA
R/O NARIKAL BARI
P.S GEETANAGAR
GUWAHATI-781024
DIST. KAMRUP(M)
ASSAM

2: SANTANU BARTHAKUR
S/O SRI AWANI BARTHAKUR R/O GANESH MANDIR PATH
NEW GUWAHATI
P.S. NOONMATI
DIST. KAMRUP(M)
ASSAM
VERSUS

THE UNION OF INDIA AND 16 ORS.
REP. BY THE SECRETARY MINISTRY OF ENVIRONMENT FOREST AND
CLIMATE CHANGE (MOEF AND CC)
GOVT. OF INDIA
NEW DELHI

2:THE SECRETARY
MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE GOVT. OF
INDIA

NEW DELHI

3:THE CHAIRPERSON
STANDING COMMITTEE OF NATIONAL BOARD FOR WILD LIFE (NBWL)
MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE GOVT. OF
INDIA

NEW DELHI

4:THE CHAIRPERSON
NATIONAL BIODIVERSITY AUTHORITY (NBA)
MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE GOVT. OF
INDIA

NEW DELHI

5:THE CHAIRPERSON

FOREST ADVISORY COMMITTEE (FAC)
MINISTRY OF ENVIRONMENT FOREST AND CLIMATE CHANGE GOVT. OF
INDIA

NEW DELHI

6:THE COMMISSIONER AND SECREATRY
ENVIRONMENT AND FOREST DEPTT. GOVT. OF ASSAM
SACHIVALAYA

DISPUR

GUWAHATI-781006

ASSAM

7:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
ARANYA BHAWAN

PANJABARI

GUWAHATI

8:THE DIVISIONAL FOREST OFFICER
DIGBOI FOREST DIVISION

P.O. DIGBOI

DIST. TINSUKIA

9:THE CHAIRPERSON
STATE BOARD FOR WILD LIFE (SBWL)

ASSAM

DEPTT. OF ENVIRONMENT AND FOREST
GOVT. OF ASSAM

ASSAM SACHIVALAYA

DISPUR

GUWAHATI-781006

10:THE CHAIRPERSON
ASSAM STATE BIODIVERSITY BOARD (ASBB)

DEPTT. OF ENVIRONMENT AND FOREST

GOVT. OF ASSAM

ASSAM SACHIVALAYA

DISPUR

GUWAHATI-781006

11:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
MINES AND MINERALS DEPTT. ASSAM SACHIVALAYA

DISPUR

GUWAHATI-781006

12:THE DEPUTY COMMISSIONER
TINSUKIA

O/O DEPUTY COMMISSIONER

BORGURI

DIST. TINSUKIA

13:THE DIRECTOR GENERAL OF POLICE
ASSAM

ASSAM POLICE HEAD QUARTERS

ULUBARI

GUWAHATI-781007

14:THE SUPERINTENDENT OF POLICE
TINSUKIA
O/O THE SUPERINTENDENT OF POLICE
BORGURI DIST. TINSUKIA

15:THE STATE OF ARUNACHAL PRADESH
REP. BY ITS CHIEF SECREATRY
ITANAGAR ARUNACHAL PRADESH

16:THE GENERAL MANAGER
M/S COAL INDIA LTD. COAL BHAWAN PREMISE NO. 004 MAR
PLOT NO. AF-III ACTION AREA-1A
NEWTOWN RAJARHAT KOLKATA-700156

17:THE GENERAL MANAGER
M/S NORTH EASTERN COALFIELDS
COAL INDIA LTD. BLACK DIAMOND TOWER
GS ROAD GUWAHATI
KAMRUP (M) ASSAM

18:NATIONAL BIODIVERSITYAUTHORITY.

19:STATE BIODIVERSITY
BOARD ASSAM.

For the petitioners : Mr. D.K. Das, Advocate
Mr. V. Rajkhowa, petitioner-in-person

For the respondents : Mr. P.N. Goswami,
Additional Advocate General, Assam
Mr. K.P. Pathak, Standing Counsel, Forest

Mr. M.Z. Ahmed, Senior Advocate
Assisted by Mr. A.K. Dutta,
Standing Counsel, Coal India Ltd.

Mr. R.K.D. Choudhury,
Deputy Solicitor General of India

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUMAN SHYAM

30-03-2023

This bunch of PILs and associated interlocutory applications involve issues of great importance. The petitioner No.1, a practising Advocate of this Court, has tried to highlight the depleting forest in the Saleki Proposed Reserve Forest under Digboi division and the illegal mining activities being carried out in this area, particularly being attributed to the respondent Coal India Ltd.

Addressing this Court on the prayer for interim stay, the learned counsel Mr. D.K. Das, representing the petitioner in PIL 29/2020 and PIL 39/2022 drew attention of this Court to the letter dated 17.11.2020 written by Ministry of Environment Forest and Climate Change to the Deputy Conservator of Forests, Assam the contents whereof are reproduced hereinbelow for the sake of ready reference;

“Sir,

I am directed to refer to the letter no. BPKJ/GOM/Notice/2020-2021/20 dated 29.09.2020 on the subject mentioned above and to say that the proposal for diversion of 98.59 ha of Forest Land for Tikok Open Cast Project in Saleki PRF under Digboi Division by North Eastern Coalfield, Coal India Ltd., Assam has been examined by the Forest Advisory Committee (FAC) constituted by the Central Government under section-3 of the Forest (Conservation) Act, 1980 and the present status of the said proposal in the Ministry is as follows:

i. The proposal for use of 98.59 of Reserve Forest land from Saleki proposed reserve forest of Dehing Patkai Elephant Reserve for Tikok OCP coal mining was submitted to this Ministry in 2013 and the said proposal was examined by the FAC in its meeting held on 10-11 June, 2013 and 28.11.2019.

ii. FAC in its meeting held on 28.11.2019 had thorough deliberation and discussion with Dy DG Regional Office, Shillong. The matter was also discussed with the representatives of user agency. After discussion, it was observed that the Site Inspection carried was out by Regional Office, Shillong. It was clearly

pointed out that the user agency is continuing with mining activity over the forest area after the proposal was recommended by the FAC in 2013. It also conveyed that the user agency is continuously working in the area after expiry of original lease period in 2003. In this regard, FAC observed that the violation done by user agency since 2003 to 2013 had been appropriately discussed in 2013 by FAC and accordingly it had recommended appropriate action. As on date, the State Govt. should not have allowed mining in the area prior to final approval under the FCA 1980. There has been gross neglect on this account on behalf of the State Govt. After perusing all records and facts related to the project proposal FAC recommended the proposal for approval of Stage-I with Standard, General and following specific conditions:

- a. State Govt. to abide by all conditions as specified in its recommendations of FAC on dated 10-11th June, 2013.*
- b. In addition to above, the State Govt. shall take action for the violation, carried by the user agency after 10-11th June 2013, as per para 1.21 of the Comprehensive Guidelines dated 28th March 2019.*
- c. The State Govt. shall inquire into the matter of gross violation and identify officials responsible for this violation and action should be taken against them under intimation to the MoEF & CC.*
- d. User agency shall not carry out any work in violation of the provisions of the FCA 1980 till all penalty and compensatory levis are deposited and Stage II approval for the project is granted by MoEF & CC.*
- e. Chief Wild Life Warden shall submit his independent comments as requested by MoEF & CC vide letter dated 5.8.2013.*

iii. *Based on the recommendations of FAC, in-principle approval was granted by the Ministry, on 26.12.2019.*

iv. *The compliance report from the State Govt. is awaited and final approval under the Forest (Conservation) Act, 1980 has not been accorded by this Ministry.”*

Mr. D.K. Das submitted that as the Central Government itself has observed that the user agency, i.e. the Coal India Ltd. is continuing the mining operation even after

expiry of the original lease period, it should be restrained from carrying out the mining operation in violation of the provisions of the Forest (Conservation) Act, 1980 till all penalties and compensatory levis are deposited and Stage II approval for the project is granted by MoEF & CC.

Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India submitted that as a matter of fact, the Coal India Ltd. has stopped its mining activities in the reserved forest areas and the mining activities are actually being carried out by other persons/entities.

Be that as it may, undisputedly it is the obligation of MoEF & CC in collaboration with the State Government to ensure that illegal mining activities are not carried out within the State of Assam which is home to the pristine forests which are virtually the lungs of the earth. Thus, we direct that the concerned officials of the Central Government, in collaboration with the responsible officers of the Assam State Government, shall ensure that the mining activities being undertaken by the Coal India Ltd. shall not be allowed unless the conditions mentioned in the aforequoted letter are satisfied. Immediate steps shall also be taken to ensure that all illegal mining activities in the area in question are stopped forthwith.

List on **27.04.2023**.

JUDGE

CHIEF JUSTICE

Comparing Assistant