

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

.....

**Miscellaneous Application No. 787/2015 & 1006/2015  
In  
Original Application No. 38/2011**

**IN THE MATTER OF:**

**ROHIT CHAUDHARY**

P.O. Lohujan, Village – Garmur  
Bokakhat – 785612  
Dist. Golaghat, Assam

...Applicant

**VERSUS**

**1. UNION OF INDIA**

Through the Secretary  
Ministry of Environment, Forest and Climate Change  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi-110003

**2. STATE OF ASSAM**

Through its Chief Secretary,  
Assam Sachivalaya Complex  
Dispur, Guwahati  
Assam-781006

**3. DEPARTMENT OF FOREST**

Government of Assam  
Through the Principal Chief Conservator of Forests (WL)  
Basistha, Guwahati  
Assam-781029

**4. THE MANAGING DIRECTOR**

Numaligarh Refinery Limited  
Co-ordination Office  
Tolstoy House, 6<sup>th</sup> Floor  
15-17 Tolstoy Marg  
New Delhi-110001

## **5. MEMBER SECRETARY**

Assam Pollution Control Board,  
Bamunimaidan,  
Guwahati-781021, Assam

## **6. NATIONAL BOARD FOR WILDLIFE**

Through the Secretary  
Ministry of Environment, Forest and Climate change  
Paryavaran Bhawan,  
Jorbagh, Lodhi Road, New Delhi-110001

...Respondents

### **Counsel for Applicant:**

Mr. Ritwick Dutta, Mr. Rahul Choudhary and Mr. Rohit Choudhary, Advs.

### **Counsel for Respondents:**

Ms. Panchajanya Batra Singh, Adv. for Respondent No. 1  
Mr. Shuvodeep Roy, Adv. for Respondent No. 2  
Mr. Upamanyu Hazarika, Sr. Adv., Ms. Reshmi Rea Sinha and  
Mr. T. K. Majumdar, Mr. P. Sinha and Mr. Paul Roy Pashe, Advs.  
for Respondent No. 4

## **JUDGMENT**

### **PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)**

**Hon'ble Prof. A. R. Yousuf (Expert Member)**

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

**Hon'ble Mr. Ranjan Chatterjee (Expert Member)**

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**Reserved on: 16<sup>th</sup> December 2015**  
**Pronounced on: 24<sup>th</sup> August 2016**

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- 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?**

### **Mr. Ranjan Chatterjee, (Expert Member)**

1. The applicant has filed the present application against non-compliance of the judgment of the Tribunal dated 7<sup>th</sup> September 2012 in the case of Rohit Chaudhary Vs. UOI (O.A. No.

38/2011). The application was filed against the alleged illegal activities including operation of stone crushers, brick kilns, tea factories and other polluting activities in the No Development Zone (in short 'NDZ') that was demarcated by the Ministry of Environment, Forest and Climate Change (in short 'MoEF') vide Notification dated 5<sup>th</sup> July, 1996 around the Numaligarh refinery in Assam.

2. 'MoEF' issued the Environmental Clearance (in short 'EC') for the refinery on 31<sup>st</sup> May 1991. The 'MoEF', while issuing the 'EC' in the office memorandum, specifically directed that:

(a) The refinery should be situated as far to the eastern side of the site as possible, to ensure that there is maximum possible distance from the eastern boundary of the Kaziranga National Park.

(b) The residential site should not be to the west of the refinery as it is only 19.5 kms from the boundary of the Kaziranga National Park.

(c) A 'NDZ' must be notified before the project construction starts within a radius of 15 kms, all round the refinery site, except towards the North West, where the 'NDZ' would extend into the eastern boundary of the Kaziranga National park.

3. The Applicant in the M. A. No. 787/2015, has prayed that the directions in judgment of the Tribunal in the case of Rohit Chaudhary Vs. Union of India and Ors. (O.A. No. 38/2011) be strictly implemented and that the comprehensive Action Plan

and Monitoring Mechanism framed by the 'MoEF' and State Government be reviewed to include a more effective monitoring mechanism, to make sure that there is no illegal encroachment in the 'NDZ'; and ensure implementation of the judgment passed by this Tribunal and Notification of 1996.

4. The applicant has also prayed that (i) all the work including excavation and felling of trees for the Golf Course, in the area in question should be stopped immediately, so as to prevent further degradation of the environment (ii) the refinery to pay compensation for destruction of prime forest land in the No-Development Zone. (iii) The refinery to restore the forest land, including the excavated area and the area where the wall has been built illegally. (iv) The excavated land to be restored, and there has to be plantation of suitable plant varieties in the area after consultation with biologists, and maintain them.

5. It is the contention of the Applicant in the M.A. that the boundary wall to the extended residential colony has been constructed without prior 'EC' or any permission of the Central Government. This wall has come in the way of the elephant corridor, leading to death of an elephant as shown in a video clipping submitted by the Applicant.

6. The Applicant also contended that 'EC' does not mention construction of any wall. The residential colony which is being built within this boundary wall; forms a part of the elephant corridor.

7. It has been further brought out by the applicant that as per the report of Assam Forest Department, over a period of time 12 elephants have died as a result of construction of the said wall.

8. The applicant further contends that the Township extension area lies within the Deopahar Proposed Reserve Forest area (in short 'PRF') notified by the government of Assam, vide Notification dated 18<sup>th</sup> August, 1999. As per the letter of the Divisional Forest Officer (in short 'DFO') to the Deputy Manager of Numaligarh Refinery Limited (in short 'NRL') dated 21<sup>st</sup> February 2011 and the above notification:

“The western boundary of the 'PRF' goes along the NH-39 and from that point the southern boundary runs along NH 39 upto the crossing point at Rajgarh and then along the Rajgarh, the eastern boundary of the 'PRF' goes and meets at the northern point of the same”.

9. According to 'NRL', the boundary wall to protect the property, surrounding the land acquired (total area about 67 bighas) in 2004 to 2006 for extension of existing township was constructed in the year 2011. 'NRL' has stated that the wall is essential for the safety of their residents.

10. 'NRL' further contended that the township extension land in issue is tea garden land and there are tea bushes and 201 shade trees for which permission was sought from DFO and only 149 trees have been cut. On 11<sup>th</sup> April 2012, 'NRL' wrote to 'DFO' intimating about construction of residential accommodation with application to cut the tea plantation and uprooting shade trees. The 'DFO' granted the permission, subject to two conditions:



1. Active participation by the 'NRL' management in addressing man animal conflict in the area around 'NRL' by providing resource and logistic support annually.
2. The field logistic requested during the year 2013-14 to be provided.

11. By a letter dated 10<sup>th</sup> October 2015, the SEIAA Assam informed the Chairperson of the Tribunal that the DFO had urged for cancellation/suspension of the 'EC' on the grounds that the boundary wall and golf course were not included in the proposal submitted by 'NRL' for the extension of their township (Phase-III).

12. The SDO Bokakhat in his letter No. BRQ3/2003/406 dated 4<sup>th</sup> August 2015 addressed to D.C. Golaghat, stated that some portion of the land already included in the draft notification dated 18<sup>th</sup> August 1999, for proposed Deopahar Reserve Forest, was also acquired for extension of 'NRL' Township, to which forest department had not objected earlier before the said Collector. Only after construction of the boundary wall by 'NRL' for their proposed township, the DFO Golaghat raised objection that the wall is causing disturbance in free movement of elephants and further that it was constructed on the land notified for proposed Deopahar RF. Respondent No. 4 has further added that though forest department had raised objections after the said land was acquired and handed over to 'NRL', however, after a joint survey of revenue and forest departments, the same was resolved. In the joint survey as per

the Respondent no. 4, the DFO had agreed in favour of re-alignment and exchange of land, in lieu of the land where 'NRL' authority had constructed the wall.

13. The importance of animal corridors, in the protection of rare and endangered animals as listed under the schedule 1 of the Wildlife (Protection) Act, 1972, laying stress on the protection of their environment, in the light of EP Act 1986, hardly needs emphasis. It is contended by the Respondent No. 4, that the elephant corridors do not have any legal sanction under the Wildlife (Protection) Act. Yet the Applicants vehemently argued that the elephant corridors are of paramount importance for the migration of elephants between their habitats and the preservation of their gene pool.

14. The Elephant Task Force (also known as the Gajah report on securing the future of elephants in India) dated 31<sup>st</sup> August 2010 of the 'MoEF', states that:

“Elephants cannot survive simply through strict protection of a few parks and sanctuaries. A sole focus exclusively on Protected Areas, vital as they are, is inadequate for the long term conservation of this keystone species. On account of the habitat loss, shrinkage and degradation of its distribution range, the future of Asian elephants is a challenge. Fragmentation of the available habitats has further confined most of the populations to smaller habitation islands. It further added that maintaining the integrity of these corridors is important for the long term survival of their habitats”.

15. Coming to the Golf Course, it is the Applicant's contention that 'NRL' has felled a large number of trees, flattened some

undulating landscape with heavy machines and denuded the land of its forest cover. The mining and excavation of the site has been inspected by the forest department and their officers reportedly seized volumes of sand, stone etc. Some M/s Jai Shree Krishna Contractors were engaged for construction and maintenance of 9 hole Golf Course for a period of eighteen months commencing from 1<sup>st</sup> December 2014. As a result the fertile top soil was removed, leaving the land unproductive.

16. As indicated in the report of the Assistant Conservator of Forests, Assam dated 27<sup>th</sup> July 2015, 'NRL' has cleared dense forest vegetation on the North-Eastern portion of the land to build a golf course in violation of condition No. 4 of the 'MoEF' letter dated 18<sup>th</sup> August 1994. As per the condition No. 4 of the letter, "Township site should not involve any forest area". The site inspection pictures (taken on 11<sup>th</sup> July 2015) clearly show the sharp contrast between the neighbouring forest area of high canopy density and the area of golf course with no trees at all. The surrounding areas have forest cover with canopy density of around 70-80 per cent.

It is significant to notice here that the applicant has placed on record Google images of the Golf course and the area surrounding it over a 5 year period. The images relate to the years 2010, 2011, 2014 and 2015. Comparative examination of these Google images show that at one time considerable portions of the area covered under the Golf course had dense forest. The trees have been removed/felled and the hill converted into a flat



plane with heavy machinery for the purpose of constructing the Golf Course. It is further on record that all this was done by 'NRL' without permission of Competent Authority. Examined from that point of view, it is evident that there has been unauthorised and illegal felling of trees and the hillock has been converted into a flat Golf Course. This has its own environmental and ecological impacts.

17. One of the questions before us is whether the land where the wall has come up, is a part of the elephant corridor? To this end, we find from the letter of DFO Golaghat to Deputy General Manager, 'NRL' dated 21<sup>st</sup> February 2011 that:

“Deopahar is regarded as a rich bio-diversity spot with full of wild flora and fauna and it is also a major corridor for the wild animals, particularly for the elephants. The elephants use this corridor to move from the Karbi Hills to Dhansiri river for their water requirement through this Deopahar forest only. Unfortunately, this corridor has been breached at many points by various construction and major part by the construction of 'NRL' Township between Deopahar and Dhansiri river. Due to loss of this corridor, the herd of elephants has to stray in human habitation resulting in huge loss of life and property”.

Further the letter dated 27<sup>th</sup> May 2015 by DFO Golaghat to Member Secretary, SEIAA, Assam, Guwahati, states that:

“The proposed project site which has been duly acquired by 'NRL' is situated very close to Deopahar 'PRF' and also serving as an important elephant corridor and breeding habitat that links to Kaziranga-Karbi Anglong landscape”.

In the final report submitted to Asian Elephant Conservation Fund of USFWS (United States Fish and Wildlife Service) by Aaranyak, it has been reminded with that:

“Golaghat and its adjoining area is a rugged landscape. The landscape plays a vital role in migration of elephants from large grasslands of Kaziranga National Park to undulating hills of Nagaland through Karbi-Anglong. Survey was conducted in 1973 by Survey of India, Government of India on the topo sheet no. 83F/10, 83F/14, 83F/15, 83F/16 the total forest cover in 308.89 km<sup>2</sup> (excluding Kaziranga) which was the largest elephant habitat including the seven Reserve Forests and adjacent areas of Karbi-Anglong”.

18. We may notice that some shadow of doubt has been cast by the Respondents upon the letters dated 21<sup>st</sup> February 2011 and 27<sup>th</sup> May 2015. It is contended that these letters had been issued by DFO with a biased mind and the letter dated 27<sup>th</sup> May 2015 as an afterthought. We do not consider it necessary to go into the merit or otherwise of this contention. From the portions reproduced above from different letters and reports, it is clear that it is an elephant corridor. This finding is further fortified by an authentic document which is a notification of the Government of Assam dated 18<sup>th</sup> August 1999. This notification was issued in exercise of the powers conferred under section 5 of the Assam Forest Regulation of 1891. Schedule A of this notification declared the Proposed Deopahar Reserved Forest. It even provided its boundaries. According to the specified boundary in the notification; to the North was Numaligarh Tea Estate and Numaligarh Garden Road; to the East is a footpath

forming the boundary between Deopahar and Kaltoni Pahar and part of Rajgarh; to the South; National Highway No. 39 and to the West; National Highway No. 39. Schedule-B of this notification makes a reference to this area being rich in wildlife. It was specifically recorded in the notification that this is also a regular migratory route of elephants. The project proponent has filed on record as Annexure 19, the map showing layout of 'NRL' Township area in Numaligarh Deopahar Kaziranga Extension. The part which has been impugned in the present case, that is, the township extension has been clearly demarcated and its boundaries completely tally with the boundaries stated in the notification in question. These documents conclusively establish that there was and there is in existence an elephant corridor which has been obstructed by the construction of the wall, which is injurious to wildlife and has its adverse impacts on environment and ecology.

19. From the above mentioned letters of DFO Golaghat dated 21<sup>st</sup> February 2011 and 27<sup>th</sup> May 2015, the video clipping where an elephant has died after hitting against the said wall and the applicant's affidavit referring to 12 elephants having died due to construction of said wall, it is clear that the 'NRL' has constructed the boundary wall in 2011 for the proposed expansion of Phase-3 of their residential complex and the said wall is coming in the way of the elephant corridor. The said wall is also encroaching upon the Deopahar 'PRF' as well as the 'NDZ'.

20. The barbed wire and razor's edge fencing along the said wall is extremely dangerous to the elephants and other wild life passing through the vicinity. As a result, some elephants have died after the wall came up, as brought out in the video clipping given by Applicant. The elephant corridors have to be preserved to protect their habitats from fragmentation. They are of prime importance for migration of elephants from one habitat to another. We find that the wall and the proposed township are in violation of the 'NDZ' order.

21. As per the guidelines from the National Board for Wildlife, no power fencing can be erected on the elephant corridor. Further, fencing material is to be of certain specification and the source of power should be solar or battery, so that it does not cause life hazard to the elephants and this has to be strictly complied with.

22. Further, to restrict the entry of elephants on the golf course side, a high rise wall had been constructed during Phase-I of the township which draws the boundary between the highly dense Deopahar Forests and the Golf Course. This wall also has barbed wire with razor's edge fencing which is injurious to elephants.

23. It is also evident that the 'NRL' while making the Golf course, has denuded the hill covering about 5 hectares of a large number of trees, without any approval of the Central Government or compensatory afforestation, despite its being in

the 'NDZ'. They have flattened the hill and removed the precious top soil to make the golf course, thereby leading to environmental degradation.

24. Even though the applicants have challenged the golf course on the ground that it does not have 'EC', it is seen from the records that the area is duly acquired and does not need a separate 'EC' as was stated in the letter dated 12<sup>th</sup> October 2015 sent by SEIAA to Chairperson of the Tribunal. However, before denuding the hill and uprooting the trees, they ought to have taken the clearance from Competent Authority and raised compensatory afforestation, which was not done.

25. Apart from the violations under the Forest Conservation Act, 1980 and Clause 34 of the Assam Forest Regulations 1891, 'NRL' also violated condition No. 2 of the letter of the 'MoEF' dated 18<sup>th</sup> January 1994 by initiating construction of the golf course without the prior consent of the Director, Town and Country Planning, Assam. Condition No. 2 of 'MoEF' letter reads as follows:

“Land use planning of the colony and land around it should be finalized in consultation with the State Town Planning Department”.

There is no record of the golf course proposal ever having been approved by or in consultation with the Assam State Town Planning Department, which was a condition precedent.

26. Even though the applicant has prayed against non-compliance of the judgement of the Tribunal dated 7<sup>th</sup> September



2012 in the case of Rohit Chaudhary Vs. Union of India & others (O.A. No. 38/2011), the same were not being pressed. The Original Application was filed against the illegal activities including the operation of stone crushers, brick kilns, tea factories and other polluting activities in the No Development Zone ('NDZ') demarcated by the 'MoEF' notification of 5<sup>th</sup> July, 1996. However, these issues do not find adequate elaboration in the present pleadings. Nonetheless, it hardly needs reiteration that these are directions of the Tribunal which have to be complied with.

27. Meanwhile, the Government of Assam vide notification no. FRW. 5/2012/717 dated 10<sup>th</sup> August 2015, has drawn up a Comprehensive Action Plan in 2015. The said Committee was tasked to prepare a Comprehensive mining plan around Kaziranga National Park so that animal corridors are not damaged any further. The Committee is also expected to prepare a restoration plan of the areas covering the damaged corridors due to mining. The Committee held its first meeting on 8<sup>th</sup> September 2015. Further the Assam Pollution Control Board had taken the GPS coordinates of all industries falling under the 'NDZ' and categorised them under red, orange and green, based on their severity in polluting the environment. A few stone crushers were also closed down. However, these steps are inadequate, compared to the enormity of the problem and thus, needs to be pursued vigorously, to implement the directions of the Tribunal.

The Hon'ble Supreme Court has held in Writ Petition (civil) 202 of 1995 *T. N. Godavarman Thirumulpad Vs. Union of India & Ors.* as follows:

“1. Natural resources are the assets of entire nation. It is the obligation of all concerned including Union Government to conserve and not waste these resources. Article 48A of the Constitution of India requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Under Article 51A, it is the duty of every citizen to protect and improve the natural environment including forest, lakes, rivers and wild-life and to have compassion for living creatures. In the present case, the question is about conservation, preservation and protection of forest and the ecology. When forest land is used for non-forest purposes, what measures are required to be taken to compensate for loss of forest land and to compensate effect on the ecology, is the main question under consideration. Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation, development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In the ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long lasting. Such development would be counter productive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use.”

28. The Hon'ble Supreme Court in its landmark judgment referred to as the *T. N. Godavarman case* dated 12<sup>th</sup> December 1996, held that the Forest (Conservation) Act, 1980 was enacted with a view to check “further deforestation” and was to apply to all forest irrespective of the nature of ownership or classification thereof. Hence, Section 2 of the Forest (Conservation) Act, 1980 puts a restriction on further deforestation of “forest land” and would apply to any land which at the time of enactment of the Forest (Conservation) Act, 1980 was “forest land” irrespective of

its classification or ownership. This is exactly the view taken also by the CEC in its recommendations dated 10<sup>th</sup> September 2003 in IA No. 727 of 2001 in W.P. (C) No. 727 in the matter of *T.N Godavarman Vs. Union of India & Ors* and in the matter of *Farmers Welfare Association Vs. Union of India & Ors* along with other records and the report of the CEC dated 10th September, 2003.

29. On that basis, no development can be justified which has adverse effect on the environment. The present case is of such nature and clearly calls for a strict action. The principle of sustainable development enunciates that the development and environment should go hand in hand. In the case of *Intellectuals Forum, Tirupathi Vs. State of A.P* 2006(2) SCR 419; 2006(3) SCC 549 INSC 86 the Supreme Court held as under:

“In the event of conflict between the competing interests of protecting the environment and social development, this Court in the case of *M.C. Mehta Vs. Kamal Nath*, 1997(1) SCC 388, in paragraph 35 held as under:

"The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibility, who under the pressures of the changing needs of an increasingly complex society find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not for the Courts. If there is a law made by Parliament or the State Legislatures, the Courts can serve as an instrument for determining legislative intent in the exercise of powers of judicial review under the Constitution. But, in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resource and convert them into private ownership or commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use

unless the Courts find it necessary, in good faith, for the public and in public interest to encroach upon the said recourses."

This court in the case of *Essar Oil Vs. Halar Utkarsh Samiti*, [2004 (2) SCC 392] was pleased to expound on this. Their Lordships held:

"This, therefore, is the sole aim, namely, to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed, the very existence of humanity and the rapid increase in population together with the consequential demands to sustain the population has resulted in the concreting of open lands, cutting down of forests, filling up of lakes and the pollution of water resources and the very air that we breathe. However there need not necessarily be a deadlock between developments on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other. "

A similar view was taken by this Court in the case of *Indian Council for Enviro-Legal Action v. Union of India*, [1996 (5) SCC 281, Para 31] where their Lordships said:

"While economic development should not be allowed to take place at the cost of ecology or by causing widespread environmental destruction and violation; at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment should go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment."

30. In *Forward Foundation Vs. State of Karnataka and Ors.* (O.A. No. 222 of 2014), the National Green Tribunal held as follows:

".....there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for



protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development ...it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands.”

31. It is thus evident that there has been destruction of the environment. Hence the ‘NRL’ shall be liable to pay the environmental compensation based on the principle of polluters pay and precautionary principle. In the case of *Vellore Citizens Welfare Forum Vs Union of India & Ors.* (1996 AIR SC 2715) the Supreme Court held that:

"The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means.

- (i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent' and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental degradation.
- (iii) The "Onus of proof" is on the actor or the developer/industry to show that his action is environmentally benign.

"The Polluter Pays" principle has been held to be a sound principle by this Court in the case of *Indian Council for Enviro- Legal Action Vs. Union of India* J.T. 1996 (2) 196. The Court observed, "We are of the opinion that any principle evolved in this 'behalf should be simple, practical and suited to the conditions prevailing in this country". The Court ruled that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person



by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

32. Before concluding, we may revisit some of major issues that were dealt with:-

1. From the rival contentions and the documents on record, it is clear that a high wall has been constructed in 2011 for the proposed new township with barbed wire fencing which comes in the way of elephant corridors. At the same time the importance of elephant corridors for migration and regeneration of their species has been fully brought out in the foregoing paragraphs.
2. As to the question whether the said wall is in violation of the 'NDZ' notification of 'MoEF' issued in 1996, it has been brought out that the 'NDZ' had laid down a condition that there should be no construction within a radius of 15 kms from the refinery. This wall clearly falls within the 'NDZ'.
3. As to the question whether the proposed land for 'NRL' township Phase-III falls within the Deopahar 'PRF', the

answer is in the affirmative, based on the letter no. BRQ3/2003/406 dated 4<sup>th</sup> August 2015 of Sub Divisional Officer Bokakhat, addressed to Deputy Commissioner Bokakhat, stating clearly that some portions of the land already included in the draft notification (Deopahar 'PRF') dated 18<sup>th</sup> August 1999 was also acquired for the extension of 'NRL' township. Thus, there is over lapping between the lands of Deopahar 'PRF' and proposed 'NRL' township (Phase-III).

4. The township extension is proposed to be located to the west of the refinery, which is contrary to the conditions laid down in the Environmental Clearance of 1991.
5. It is surprising to find as to how can a notified area under 'PRF' be readjusted and exchanged by two officers of the State Government, without following the proper procedure and approval by the Competent Authority.
6. From the facts on record, it is quite clear that the construction of the golf course using heavy machinery has certainly led to destruction of the tree cover and denuding the hills, causing environmental degradation.
7. As regards the Tribunal's directions for a Comprehensive Action plan and monitoring mechanism, the Government of Assam has complied by setting up a Task Force Committee vide notification no. FRW.5/2012/717 dated 10<sup>th</sup> August 2015 to prevent illegal encroachments in the 'NDZ' and ensure implementation of the Tribunal's orders. However,

these efforts need to be pursued by the Assam State Government much more vigorously to effectively implement the directions of the Tribunal.

33. In conclusion, we issue the following directions:

1. As regards the wall with barbed wire fencing which comes in the way of Elephant Corridor, the same should be demolished. The area, where the wall has come up and the proposed township is to come up is a part of Deopahar 'PRF'. It also falls within the No-Development Zone notification, issued by the 'MoEF' in 1996. Thereby, any non-forest activity thereon would be in violation of the decision of the Apex Court in the *T. N. Godavarman case (1996)*. Thus, the wall should be demolished within a period of one month and the proposed township should not come up in the present location.
2. Further, for causing environmental damage by destruction of forest cover and flattening of the hill to build the golf course, the 'NRL' will pay environmental compensation of Rs. 25,00,000/- (Rupees Twenty Five lakhs) to the Assam Forest department, which is to be kept in a separate bank account for the restoration of the area and improving the environment adjoining the 'NRL' complex and to reduce man animal conflict.
3. Respondent no. 4, 'NRL' will also make compensatory afforestation of ten times the number of trees felled. The

plant varieties, suitable to the area in consultation with biologists, may be planted.

4. In keeping with the letter and spirit of the notification for 'NDZ', the Government of Assam and the 'MoEF' will ensure that no development activities whatsoever take place within a radius of 15 kms of the 'NRL', which could lead to pollution and congestion, in compliance with the said notification dated 5<sup>th</sup> July, 1996. In furtherance thereof, we direct that the judgment of this Tribunal in O.A. No. 38/2011 be strictly implemented, thereby the polluting activities of the stone crushers, brick kilns & others be immediately closed. We direct the Government of Assam to vigorously implement the directions of the Tribunal by having frequent meetings of the Task Force Committee and effective implementation of their decisions.

5. The Government of Assam is directed to urgently take steps as per law to finally notify Deopahar 'PRF' into Reserved Forest under Section 17 of the Assam Forest Regulations 1891, to prevent further loss to the ecology of Deopahar, which is in close proximity to Kaziranga National Park (15-20 Km) and is also used as an elephant corridor.

34. With the above directions, we dispose of the Miscellaneous Application Nos. 787/2015 and 1006/2015 filed in Original Application No. 38/2011.

**Justice Swatanter Kumar  
Chairperson**

**Justice M.S. Nambiar  
Judicial Member**

**Prof. A.R Yousuf  
Expert Member**

**Bikram Singh Sajwan  
Expert Member**

**Ranjan Chatterjee  
Expert Member**

**New Delhi  
24<sup>th</sup> August, 2016**

**NGT**