

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

Original Application No.417/2022
(I.A No. 206/2024, I.A No. 205/2024, I.A No. 204/2024)

Niranjan Bagchi Applicant(s)
Versus
State of Uttarakhand & Ors. Respondent(s)

Date of hearing: 13.05.2024

**CORAM: HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: None
Respondents: Mr. Neeraj and Mr. Rudra Paliwal, Advocates for State of Uttarakhand.
Mr. Kaushal Gautam and Ms. Vanshika Singh, Advocates for Respondent No. 3 UKPCB.
Dr. Aman Rab and Mr. Devang Mishra Advocates for Respondent No. 4 - MC Dehradun.
Ms. Sonika, DM Dehradun (through VC).
Mr. Gaurav Kumar, IAS And Mr. Gopal Ram Bineval, PCS for MC Dehradun.

ORDER

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1. These three application have been moved by respondents 1, 2 and 5 with the prayer that cost of Rs. 1,00,000/- on each of the said respondents imposed vide order dated 01.04.2024 be waived.
2. We have gone through the said applications as also the subsequent reports placed on record and find that there is still non-compliance on the part of the respondents and there is no reason which justify waiver of cost imposed vide order dated 01.04.2024.
3. In view thereof, all three IAs are hereby rejected.

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4. The issue raised in this application is that there is huge unauthorized raising of jhuggis on the dry river bed of river Rispana in Dehradun.

5. On account of such encroachment, there are huge discharge of untreated domestic waste, dairy waste and industrial effluent in the river.

6. Various orders were passed from time to time, directing the respondents to take appropriate action in the matter.

7. In the last order, on 01.04.2024, considering complete failure on the part of respondents in taking effective steps, this Tribunal observed as under:

“6. The proceedings before this Tribunal cannot be treated as part of adversarial litigation where the State or its instrumentalities may opt out to remain absent and suffer ex-parte proceedings. On the other hand, the State and its instrumentalities are under constitutional and statutory obligations to protect and improve environment and ensure compliance with environmental norms and, therefore, the State and its instrumentalities have to ensure their representation through duly authorised representatives/Counsel before this Tribunal.

7. Non-appearance of respondents no. 1 (State of Uttarakhand), 2 (Principal Secretary, Urban Department, State of Uttarakhand) and 5 (District Magistrate, Dehradun) today has the effect of causing unnecessary adjournment and delaying appropriate resolution of the environmental issues involved in the case. Such deliberate non-appearance warrants imposition of appropriate costs for unnecessary adjournment thereby caused.

8. Section 26 of the National Green Tribunal Act, 2010 declares noncompliance of the order passed by this Tribunal an offence and prescribes the punishment for the same. In view thereof, the concerned Government Officers are liable to prosecution but instead of ordering there prosecution outright we consider in appropriate to give them on more opportunity to comply with the order passed by this Tribunal.

9. In these facts and circumstances respondents no. 1 (State of Uttarakhand), 2 (Principal Secretary, Urban Department, State of Uttarakhand) and 5 (District Magistrate, Dehradun) are directed to pay costs of Rs. 1,00,000/- each. The costs be deposited within one month with the National Green Tribunal Bar Association, Principal Bench, New Delhi. The amount of costs so deposited shall be utilized for providing legal aid to the applicants not represented by any lawyer for effectively presenting their case before this Tribunal and creating facilities for the litigants visiting this Tribunal for hearing of cases filed by them.

10. List for further consideration on 13.05.2024.

11. The Registry is directed to send a copy of this order to respondents no. 1 (State of Uttarakhand), 2 (Principal Secretary, Urban Department, State of Uttarakhand) and 5 (District Magistrate, Dehradun) requiring them to deposit costs as directed above and to file their compliance report at judicialngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF at least one week before the date of hearing hereby fixed.”

8. Today also, we do not find any improvement on the part of respondents and even cost of Rs.1,00,000/- imposed upon respondent 1 (State of Uttarakhand), respondent 2 (Principal Secretary, Urban Department, State of Uttarakhand) and respondent 5 (District Magistrate, Dehradun) has not been deposited.

9. In the facts and circumstances, we find it a fit case for initiation of prosecution of the concerned officers as was also observed in the order dated 01.04.2024.

10. At this stage, Ms. Sonika, District Magistrate, Dehradun has appeared and on the question of demarcation of Flood Plain Zone of river Rispana, made a statement that the same shall be completed and demarcation will be done within two months from today. She made this statement and rendered undertaking before this Tribunal appearing through virtual mode in person.

11. On the issue of discharge of polluting material through sewage (treated-not meeting the parameters/untreated) in the river, Mr. Gaurav Kumar, Municipal Commissioner, Nagar Nigam, Dehradun, who is present in person, made a statement that he shall take all possible steps to ensure that within two months, no such discharge is allowed in the concerned river.

12. Coming on the question of encroachment, Mr. Gaurav Kumar, Municipal Commissioner, Nagar Nigam, Dehradun made a statement before Tribunal that all the encroachments made on Flood Plain Zone of the river concerned shall be removed by 30.06.2024.

13. However, subsequently, there is a retraction on this statement and it is said that removal of encroachment involves a long drawn procedure and, therefore, it may not be possible completely to observe the procedure by 30.06.2024, hence, encroachment may not be completely removed by that date.

14. Stand of Municipal Commissioner, Nagar Nigam is really unfortunate in as much as this matter is pending for the last almost one year and 10 months before this Tribunal and still encroachment on the Flood Plain Zone of the river Rispana, Dehradun is continuing and respondents, in particular, respondent 4, have not been able to completely remove encroachment from the bank of the river, which is causing ultimately discharge of polluting material with effluent in the river and thereby, polluting water.

15. In this way, it is evident that it is virtually admitted position on the part of respondent 4 that Section 24 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act, 1974**') is not being complied with and in fact, it is being breached since last several

years and continuously even till date by allowing discharge of polluting material in the river Rispana.

16. Violation of Section 24 of Water Act, 1974 is an offence under Section 43 of Water Act, 1974 which reads as under:

43. Penalty for contravention of provisions of section 24.—

Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

17. Section 47 deals with “offences by companies” and reads as under:

“47. Offences by companies.—

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-

For the purposes of this section,—

(a) “company” means any body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

18. Supreme Court in the case of **Noorulla Khan vs. Karnataka State Pollution Control, 2021 SCC online SC 601** referring Section 47 in the context of Municipal Corporation has held that every officer in-

charge of day to day function is guilty of an offence under Section 47 of Water Act 1974 and to be prosecuted.

19. Where the offence is committed by Government Department, it is the head of the Department who is deemed to be guilty of offence as provided in Section 48.

20. After we dictated order to this extent, Sh. Gaurav Kumar, Municipal Commissioner stated that he abide by the stand taken earlier that all the encroachment on the river bank site shall be removed in accordance with law by 30.06.2024.

21. In view of the above stand, we defer further order with regard to prosecution of the said officer under Section 24 read with Section 43 and 47 of Water Act, 1974 and grant indulgence to complete the action of removal of encroachment by 30.06.2024.

22. Respondents 1, 2 and 5 are directed to deposit the cost as imposed vide order dated 01.04.2024 within three days from today. We make it clear that in case, the cost directed vide order dated 01.04.2024, is not deposited within three days, Member Secretary, Uttarakhand Pollution Control Board (hereinafter referred to as '**UKPCB**') shall initiate prosecution of respondents 1, 2 and 5 for committing an offence under Section 26 of NGT Act, 2010 by filing requisite complaint before the concerned Magistrate and submit a compliance Report within one month.

23. We hope and trust that various officials who have made statement before Tribunal by appearing in person or through virtual mode or physically, shall comply with the undertaking/ directions above so as not to give any occasion to this Tribunal to proceed further for non-compliance of the said undertaking.

24. We have enquired from the learned counsel appearing for respondent 3 as to what action it has taken for non-compliance on the part of concerned respondents by discharging polluted effluent in the river but neither satisfactory reply has been given nor any material showing any action taken by respondent 3 against the violators, has been placed on record.

25. In view of thereof, we direct Member Secretary, UKPCB to take appropriate, punitive, preventive and remedial action within one month and submit compliance Report and to remain present in person before Tribunal on next date.

26. We also direct that in case of non-compliance of the undertaking on the part of various officials as noted above, Principal Secretary, Urban Development, State of Uttarakhand; District Magistrate, Dehradun and Commissioner, Municipal Corporation, Dehradun shall remain present before Tribunal on the next date.

27. All the above concerned officials shall file their compliance Report(s) before the next date.

28. List this matter on 24.07.2024.

Sudhir Agarwal, JM

Dr.Afroz Ahmad, EM

May 13, 2024
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