

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

Original Application No. 417/2022

Niranjan Bagchi

Applicant

Versus

State of Uttarakhand & Ors.

Respondents

Date of hearing: 16.12.2024

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: None for the Applicant.

Respondents: Ms. Anjali Rajput Advocate for Respondent No. 1.
Mr. Savin Bansal DM, Dehradun (through VC).
Mr. Kaushal Gautam and Ms. Snehpreet Kaur, Advocates for Respondent No. 3 (through VC).
Dr. Aman Rab and Mr. Devang Mishra Advocates for Respondent No. 4.
Mr. Gaurav Kumar, Municipal Commissioner Dehradun (through VC).
Dr. R. Rajesh Kumar, Secretary Irrigation.
Mr. Vinay Garg and Ms. Neetu Rawat, Advocates for Respondent no. 8.

ORDER

1. Mr. Niranjan Bagchi resident of B-605, Panache Valley, Dehradun has sent letter petition dated 11.04.2022 to this Tribunal, which was treated and registered as Original Application No. 417/2022, complaining about unauthorized raising of jhuggis on the dry river bed of river Rispana in Dehradun.

2. This Tribunal, vide order dated 12.07.2022, constituted a Joint Committee to verify the factual position and take remedial action by following due process of law and submit its report.

3. Report of Joint Committee was filed vide email dated 03.11.2022 mentioning about encroachment in the land of river Rispana and discharge of untreated sewage/effluent in the same.

4. In view of the averments made in the application and observations made in the report of the Joint Committee, this Tribunal impleaded (1) State of Uttarakhand through Chief Secretary, Government of Uttarakhand, (2) Principal Secretary, Urban Department, State of Uttarakhand (3) State PCB, (4) Commissioner, Municipal Corporation, Dehradun, and (5) District Magistrate, Dehradun as respondents no. 1 to

5. In the course of hearing, this Tribunal impleaded (6) Uttarakhand Payjal Nigam, Dehradun, (7) Uttarakhand Jal Sansthan, Dehradun and (8) Mussoorie Dehradun Development Authority as Respondents No. 6, 7 and 8.

5. Pursuant to notices, reports/replies were filed by the respondents which are on record of the case.

6. This Tribunal observed that three substantial questions relating to environment are involved in the present case:-

- i. Demarcation of Flood Plain Zone of River Rispana;
- ii. Identification of encroachments on river bed of River Rispana and removal thereof; and
- iii. Tapping discharge of untreated sewage in river Rispana.

7. So far as demarcation of Flood Plain Zone of river Rispana is concerned, statement was made by the District Magistrate, Dehradun on 13.05.2024 that the demarcation of Flood Plain Zone will be completed within two months. Report dated 22.07.2024 was filed by the District Magistrate, Dehradun. Vide order dated 24.07.2024 this Tribunal granted two months further time to State of Uttarakhand to complete the work of demarcation of Flood Plain Zone in the light of observations made with further direction that in case of non-compliance, the Chief Secretary, Uttarakhand shall appear before the Tribunal on the next date.

8. This Tribunal noticed in its order dated 15.10.2024 that interim Notification under Section 8 of the Uttarakhand Flood Plain Zoning Act, 2012 has been published and directed submission of further progress report regarding number of objections received and time required for disposal of the objections and also ordered personal appearance of the District Magistrate, Dehradun and the Principal Secretary, Irrigation Department.

9. Progress report dated 13.12.2024 has been filed. In the progress report it has been mentioned that total number of 132 objections have been received and approximately 45 days are required for disposal of the same.

10. Further progress report regarding further steps taken be filed by the District Magistrate, Dehradun at least two days before the next date of hearing hereby fixed.

11. So far as the question of identification of encroachments in the river bed of River Rispana is concerned, it may be observed that the Joint Committee has mentioned in its report that number of *jhuggi basties* have been set up in dry river bed of River Rispana.

12. Reply has been filed by UKPCB vide email dated 06.02.2024. In the reply it has been mentioned that a meeting under the Chairmanship of Principal Secretary, Government of Uttarakhand was held on 24.08.2023 and considering the conflict between the provisions of the Uttarakhand Special Provisions for Urban Local Bodies and Authorities Act, 2018 and the notification dated 07.10.2016 issued by Ministry of Jal Shakti, Government of India, letters were written to the State Law Department for legal opinion.

13. On 13.05.2024 the Commissioner, Municipal Corporation, Dehradun made statement that all the encroachments made on Flood Plain Zone of river Rispana will be removed by 30.06.2024. Report dated 23.07.2024 has been filed by Municipal Corporation, Dehradun. In the report it was mentioned that the task force identified 89 encroachments out of which 69 encroachments have been removed. Mr. Raj Panjwani, Senior Advocate appeared on behalf of Municipal Corporation, Dehradun and stated that remaining encroachments which are identified by Task Force shall also be removed within one month. He also stated that with respect to protected category of encroachers, recommendation for steps for rehabilitation by State Government shall be made within two months and, thereafter, final steps shall be completed expeditiously. Report dated 14.10.2024 has been filed by Municipal Corporation, Dehradun. In the report it has been submitted that 20 encroachments were exempted for removal and 69 encroachments were removed.

14. The Commissioner, Municipal Corporation has appeared before this Tribunal through VC and submitted that 69 encroachments have been removed as mentioned in report filed vide email dated 23.07.2024 and 14.10.2024. Photographs have been enclosed in support thereof.

15. We have seen the photographs and we find from the photographs that the encroachments have been partially removed.

16. On being asked, the Commissioner, Municipal Corporation, Dehradun could not disclose as to when the *jhuggi basties* have been set up in dry river bed of river Rispana, how there could be partial removal of alleged unauthorized encroachments.

17. It may be observed here that in the course of proceedings, it has been pointed out that the Uttarakhand legislature has enacted the Uttarakhand Reforms, Regularization, Rehabilitation, Settlement and Prevention of Encroachment of the slums located in the Urban Local Bodies of the State Act, 2016 and the Uttarakhand Special Provisions for Urban Bodies and Authorities Act, 2018. Under Sections 4(2) and 4(3) of the above said Act, directions have been issued to maintain *status quo* and in view thereof, no action for demolition/removal of encroachments can be taken against the encroachers/owners/occupiers of *jhuggies* established in the river bed of river Rispana till the year 2024.

18. As mentioned in the reply filed by UKPCB vide email dated 06.02.2024 (as noticed above), reference was made to the State Law Department for legal opinion, but no further reply has been filed regarding legal opinion furnished by State Law Department and further action taken on the same.

19. We are of the considered view that in case of conflict between the provisions of the Uttarakhand Special Provisions for Urban Local Bodies and Authorities Act, 2018 and the notification dated 07.10.2016 issued by Ministry of Jal Shakti, Government of India, the latter having being issued under the Environment Protection Act, 1986 will prevail as Section 24 of

the Environment Protection Act, 1986 contains provisions to the effect that that in case of any such conflict the Environment Protection Act, 1986 will prevail. Section 24 of the Environment Protection Act, 1986 reads as under:-

“24. Effect of other laws. □

(1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.”

20. No residential establishments can be set up in the dry riverbed of river Rispana as no permanent construction can be raised within prohibited Flood Plain Zone of river Rispana and in view thereof jhuggi basties established on dry riverbed within the prohibited Flood Plain Zone of river Rispana will be liable to be demolished. In view of the Section 24 of the Environment Protection Act 1986, the above mentioned legislations enacted by Uttarakhand Legislature ordering maintenance of status quo will not be *prima facie* legal and binding to the extent of such conflict.

21. The Chief Secretary, Government of Uttarakhand is directed to place the matter before the Government of Uttarakhand for initiating appropriate legislative and executive measures within one month for removal of the encroachments from the river bed/Flood Plain Zone of river Rispana for requisite compliance with the provisions of the Environment Protection Act, 1986, Rules made and Notifications issued under the same and directions given by Hon’ble Supreme Court and this Tribunal qua prohibition of construction within Flood Plain Zone.

22. State of Uttarakhand and its Authorities-Respondents No. 1 ,2, 4, 5 and 8 are directed to file their responses by way of affidavits, at least three days before the next date of hearing hereby fixed, regarding the steps taken for removal of the encroachment in the riverbed of river Rispana.

23. We also consider personal appearance of the Principal Secretary, Urban Development, Principal Secretary, Irrigation, Commissioner of Municipal Corporation, Dehradun, District Magistrate, Dehradun and Vice Chairman, Mussoorie Dehradun Development Authority to be essential for assisting this Tribunal in just and proper adjudication of the questions involved and they are accordingly directed to remain present before the Tribunal on the next date of hearing hereby fixed.

24. In reply filed by UKPCB vide email dated 06.02.2024, it was mentioned that the work of tapping of 177 drains of River Rispana is being carried out by Uttarakhand Payjal Nigam and Uttarakhand Jal Sansthan, Dehradun and monitoring of performance of Sewage Treatment Plants is being carried out by UKPCB.

25. However, no up to date progress report has been filed by UKPCB, Payjal Nigam and Uttarakhand Jal Sansthan, Dehradun.

26. UKPCB, Payjal Nigam and Uttarakhand Jal Sansthan, Dehradun are directed to file further progress report at least three days before the date of hearing next date of hearing fixed giving all requisite details regarding steps taken for tapping of discharge of untreated sewage/effluent in River Rispana and also regarding functioning of the STPs already established and steps taken for setting up of new STPs required to be established for treatment of sewage/effluent generated.

27. List on 13.02.2025 for further proceedings/considerations/orders.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

December 16, 2024
Original Application No. 417/2022
AB