

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

(Through Video Conference)

Original Application No. 417/2022

Niranjan Bagchi

Applicant

Versus

State of Uttarakhand & Ors.

Respondent(s)

Date of hearing: 25.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: None

Respondent: Mr. Rahul Verma, AAG for the State of Uttarakhand
Mr. Mukesh Verma, Adv. for UKPCB
Mr. Aman Rab, Adv. for MC, Dehradun

ORDER

1. The issue raised in this application is unauthorized raising of jhuggis on the dry river bed of river Rispana in Dehradun. The quality of water in all the four rivers has deteriorated because of domestic sewage, dairy waste and untreated industrial effluent being discharged into them. These rivers in turn discharge their pollution load in river Ganga at Haridwar. The number of jhuggis increase each year specially since municipal facilities are now available to them. Natural calamity in which overflowing river Rispana created havoc and washed away several habitations with loss of lives have occurred in Dehradun since 2013. Despite these happenings, persons are allowed to build jhuggis in the sensitive area of river bed knowing fully well that a catastrophe may be lurking.
2. According to the provisions of Article 21 read with article 48 (A) of the directive principles of State Policy, Right to Life includes right to have fresh air and healthy environment. Nobody has the right to create pollution

endangering the life of others on the grounds of commercial activities. This universe and living beings are creation of almighty called Bhagwan which means and includes” Chiti, Jal, Pawak, Gagan, Sameera, Panch Rachit Yah Adham Sareera”. These five words signify five elements of life:-

Bha = Bhum

Ga = Gagan

Wa = Vau

Aa = Agni

Na = Neer

3. When natural cycle of all five is disturbed due to mixing of poisonous or harmful material, it is nature of pollution. We are living in the age of technology where people use latest machines and other technological products to get our work done. We move from one place to another using modern transport system based on bikes, cars, buses, jeeps and trucks. We use air conditioners in our homes, offices and vehicles to maintain their temperature to desired level. Pollution is a situation when something is added to the natural environment which is not naturally there; natural environment is comprised of air, land and water. So any contamination in any of the element of environment will be regarded as pollution; however, nature of contamination is quite different in each component and may take many forms, land pollution, air pollution and water pollution.
4. Water pollution is a relatively new phenomenon, and one can safely utter that it is solely the result of industrial waste and sewage waste which is thrown into the rivers and oceans. However, there is significant contribution of our poor sewerage system to it. It has stuffed up marine life. Admittedly, it doesn't affect us in the short run but it does affect in the long run. We have seen societies suffering from water diseases because they have consumed filthy water. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the

environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship. This indicates that while applying the concept of “sustainable development” one has to keep in mind the “principle of proportionality” based on the concept of balance. It is an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.

5. Grievance of the applicant is that due to increase in population, enormous, unregulated and unplanned construction have been done on both sides of River, which is continuous and increasing rapidly. Illegal construction was done on huge scale on banks of river. In some places illegal colonies were developed by the local land mafia encroaching the bank of river causing enormous pollution and disturbing the natural streams of the river.
6. Section 3 of this The Environment (Protection) Act, 1986 Confers power on the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. 'Environment' includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. (Vide section 2(a) of the Environment (Protection) Act, 1986).
7. Section 2 of Water (Prevention and Control of Pollution) Act, 1974 defines the word -
 - (j) "stream" which includes-
 - i. River;
 - ii. Water course (whether flowing or for the time being dry);
 - iii. Inland water (whether natural or artificial)

- iv. sub-terranean waters;
- v. sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf;

(e) "Pollution " means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms but the state Government as well as State pollution control board and state Forest department have not taken any action to check Pollution, while they are statutory obliged to do so.

8. It is argued by the learned counsel for the applicant that Hon'ble Supreme Court of India in the case "Friends Colony Development Committee vs. State of Orissa and Other [(2004) 8 SSC 7331] observed as follows :-

“(In all developed and developing countries there is emphasis on planned development of cities which sought to, be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed there under. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety morals or general

welfare and ecological considerations; though unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.)”

9. It is further submitted that illegal constructions/encroachments upon riverbeds/banks, hills in the form causing harm to the environment of the river polluting natural water and danger for water bodies, defacing the beauty of the River and damage to the environment of the River, hills and the heritage sites of is irreversible and permanent. For that constructions of concrete buildings, cutting of trees near river sites and blowing up of the hills for vested interests will be a great loss to nature and environment. It is further argued that the water is the most essential requirement to sustain the human life and, therefore, there is need to preserve and protect it. The sources from which water is available is well known. Each source carries along with it special characteristics and bio-diversity which sustains the source. The courts are under obligation to see the protection and preservation of these water resources and Prevention of its contamination.

Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the “common effluent treatment plants”, within the purview of the

provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility.

10. The lack of protection of river floodplains from damaging impacts like encroachment and diversion for 'developmental projects' is a tragedy that affects both the river as well as those who encroach it adversely. The river suffers as it is unable to occupy and transport flood waters downstream during high rainfall events (monsoon in particular). It is unable to recharge aquifers, wet the lands along its banks or provide life-sustaining conditions to plant and animal habitats along the river margins and banks. Damage to floodplains harms the riverine ecosystem, lessens groundwater recharge capacity and poses threats of flash floods. "People too suffer an immense loss of life and property, including loss of public infrastructure like bridges, roads, schools etc., during high floods."

11. The Hon'ble Supreme Court, vide judgment dated 30.07.2009 in D.D.A. vs. Rajendra Singh, 2009 (8) SCC 582, referred to the definition of floodplain in the dictionary as follows:

“ xxx

xxx

xxx

24. Though there is no statutory definition for "riverbed" and "floodplain" from the statute, the dictionary meaning of the same is as under:

"Riverbed" has been defined as the area over which the river flows. In the Thames Conservators Case [1897] 2 QB 335 at 337 it was held that the word riverbed denotes that portion of the river which in the ordinary or regular course of nature is covered by the waters of the river.

The "bed of the river" was defined as the area covered by the river and is the space sub-adjacent to the river over which it flows between the banks. It is the space

between the banks occupied by the river at its fullest flow.

12. Floodplain zoning has been accepted as an important nonstructural strategy for flood management. The basic concept of floodplain zoning is to regulate land use of floodplains to restrict damage caused due to floods. The floodplain zoning, therefore, aims at determination of locations so that flood damages are reduced to minimum. A very restrictive activity can be allowed in that area. It is not only to protect the areas from damage resulting from floods and failure of water protective measures, but is also useful in reducing the damage caused due to drainage congestion, particularly in urban areas. The Commission claims to have prepared a model bill relating to flood plain zoning. This model bill provides for different categories based of priorities in f flood plain. The floodplain must be demarcated, kept free from any permanent developments and wherever it is possible, it should be restored to its original position.

13. Thus, it is necessary to call upon the authorities to demarcate the floodplain for the flood of once in 25 years and to prohibit any kind of development activity in the area in question. Furthermore, the Committee should consider restoration of the area and wherever necessary, even demolish the properties, which are likely to be dangerously exposed to the flood and are even affecting the ecology and bio-diversity and flow of the river.

14. Being an integral part of the river, floodplain of the river requires protection. Floodplains play significant role in maintaining the bio-diversity and aquatic life of the river. It's significance cannot be overlooked, in terms of environment and ecology. There are numerous dimensions involved while identifying the floodplains. It is required to

categorize it into different zones, namely, No Development Zone, Regulated Zone and a Free Zone for development. The principle of Sustainable Development itself justifies the classification of floodplains into such zones for protecting the river. This Tribunal in the case of Manoj Misra (supra) had the occasion to deal with the concept of floodplain, its zoning and management.

15. In its reply filed by the Municipal Corporation, it has been submitted that demarcation of the flood plain zone of the river and tapping discharge of untreated sewage in the river falls within the ambit of Irrigation Department, Dehradun and Payjal Nigam, Uttarakhand. These departments are directed to take action for demarcating the land and to identify and to protect. It has further been submitted that vide notification dated 26.07.2021, the special provision for Urban Bodies and Authorities Act, 2018 under Section 4 (2) and 4 (3) have been amended and directions have been issued to maintain status quo and no punitive action can be taken against the encroachers established alongside the river Rispana till the year 2024.

16. The state notification conflicts with the notification issued by the Ministry of Water Resources, River Development and Ganga Rejuvenation notification dated 07.10.2016 under which section 42 provides as follows;

42. Giving of prior approval in certain matters:

- (a) engineered diversion and storage of water in River Ganga without affecting the flow of water downstream of the River Ganga;*
- (b) construction of bridges and associated roads and embankments over the River Ganga or at its River Bank or its flood plain area;*
- (c) construction of Ghats or extension of any existing Ghat;*
- (d) construction of jetties;*

(e) construction of permanent hydraulic structures for storage or diversion or control of waters or channelisation of River Ganga or its tributaries;

(f) deforestation of hill slopes and notified forest and other eco-sensitive areas;

(g) any other activity which contravenes the principles laid out in paragraph 4 which the National Mission for Clean Ganga may specify.

17. Considering the above facts, the state of Uttarakhand, Pollution Control Board and Collector are directed to submit its report as applicability of the notification which is in contravention of notification dated 07.10.2016 (SO3187 (E), MoEF & CC.

18. Accordingly, we direct the Secretary, Environment, Uttarakhand to re-examine the matter and to take appropriate action. We further direct the Secretary, Environment, Uttarakhand, State Pollution Control Board, the Collector and Municipal Commissioner to take immediate action for removal of encroachment from the public land/ river body and to ensure the compliances of the environmental act. Public property cannot be made subject of encroachment. Further Action Taken Report be filed within four weeks.

List it on 17.10.2023

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

July 25, 2023
O.A No. 417/2022
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