

Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 85 of 2014

Reserved on: 09th November, 2016

Decided on: 19th November, 2016

Ajay Gautam Petitioner

Versus

Union of India & Others Respondents

Mr. Ajay Gautam, petitioner present in person.

Mr. Lalit Sharma, Standing Counsel for Union of India/respondent no.1.

Mr. A.S. Rawat, Senior Advocate with Mr. Sandeep Kothari, Brief Holder for the State/respondent no.2.

Coram: Hon'ble Rajiv Sharma, J.

Hon'ble Alok Singh, J.

Hon'ble Rajiv Sharma, J. (Oral).

A question of great public importance has been raised in this Public Interest Litigation. The petitioner has highlighted, the untold miseries suffered by the persons who were trapped in Kedarnath valley in the month of June, 2013

The northern State of Uttarakhand lies between 28.44" to 31.28" North latitude to 77.35" to 81.01" East longitude. The total area of this hilly State is 53.483 Square Km. constituting 1.63% of landmass of the India. The State comprises of 13 districts and 95 development blocks. This State has two divisions: western part is known as Garhwal and Eastern part is known as Kumaon. The State of Uttarakhand is also popularly known as *Dev Bhumi*. The Ganges and its several tributaries have developed one of the most fertile and prosperous plain of the World i.e. the North Indian Plain. The Garhwal region of Uttarakhand is the catchment area of Ganga and Yamuna rivers. Amongst all shrines of Uttarakhand, the 2

Chardham (four holly shrines), Kedarnath, Badrinath, Gangotri and Yamunotri are most popular.

H.G. Walton, ICS, in the "Gazetteer of Garhwal Himalaya" published in the year 1910 has described Kedarnath shrine as under:-

"Kedarnath, a temple situated in Patti Malla Kaliphat of pargana Nagpur, lies in north latitude $30^{\circ} 44' 15''$ and east longitude $79^{\circ} 6' 33''$ at an elevation of 11753 feet above the level of the sea. The temple is built on a ridge jutting out at right angles from the snowy range below the peak of Mahapanth. It stands near the head of the valley of the Mandagini on a level spot, and is a handsome building with a neat façade adorned on either side with niches and images. A tower behind built of grey stone and surmounted by a gilded pinnacle forms the adytum of the shrine. In front of the temple are rows of masonry houses owned by pandas, for the accommodation of pilgrims, while the pujaris or priests live to the right of the building. The present structure according to Mr. Traill is of recent constructions, the original building having fallen to ruin. It is dedicated to Sadashiu, the invisible form of Shiva, who fleeing from the Pandavas took refuge here in the form of a buffalo, and finding himself hard pressed dived into the ground, leaving his hinder parts on the surface; these are still an object of adoration. The remaining portions of the god are worshipped at four other places along the Himalayan chain; the arms (*bahu*) at Tungnath; the face (*mukh*) at Rudrnath; the belly (*nabhi*) at Madhmaheswar, and the hair (*jata*) and head at Kalpeswar. These together form the "Panch Kedar," the pilgrimage to which places in succession is a great ambition of the 3

Hindu devotee. The priests officiating at Kedar, Guptkashi, Ukhimath and Madhmaheshwar belong to the establishment of the *math* at Ukhimath, the head of which is the Rawal of Kedarnath. They are *jangam gosains (lingaits)* of the Birseb sect. At the other temples- Tungnath, Trijugi and Kalimath, the priests are local hillmen under the control of the Rawal. There are two routes to Kedarnath, one via Karanprayag, Chamoli and Tungnath and the other from Hardwar via Srinagar and Rudrprayag along the Mandagini river. These routes meet near the village of Nala about two miles above Guptkashi. Beyond Ukhimath and Guptkashi which face each other on opposite sides of the Mandagini the stages are Phata and Gaurikund. From the latter places to Kedarnath (11 miles the road is bad, intersected by numerous ravines and very undulating, but the scenery is as wild and rugged as any to be found in the Himalayas. There are hot springs at Gaurikund, which are looked upon with veneration. From time immemorial pilgrims from all parts of India have toiled through these mountains to visit the three great shrines of Gangotri, Kedar and Badri, all placed on the great group of snowy peaks, that separate the Alaknanda from the Bhagirathi river, which together form the Ganges. The second of these rivers, though much inferior in volume, is considered in the Puranas to be the more sacred. Although however the reputation of the Alaknanda does not equal that of the Bhagirathi, it is on the banks of the former that the most celebrated places of Hindu pilgrimage are to be found. Gangotri, a little below the spot where the Bhagirathi issues from its glacier, at the place where, according to Hindu mythology, the heaven-born goddess first descended upon the earth, is a spot of 4

the highest sanctity, but it fails to attract the crowds of pilgrims who every year visit the sources of the Alaknanda. How this preference of the less sacred stream had its origin cannot now be determined. Possibly the superior sanctity of the Bhagirathi may be only the poetical invention of a later age, which has failed to shake the traditional feeling, older than any books, that salvation was to be found more easily on the banks of the greater river.

Pilgrims begin to enter the hills after the fair at Hardwar. This great assemblage is held on the first day of the month of *Baisakh*, the commencement of the Hindu solar year, which corresponds with the entry of the sun into the sign of Aries or Mesha. According to our reckoning this takes place about the 25th of March. But in consequence of the erroneous calculation by the Hindu astronomers of the true length of the solar year, similar to the error which made it necessary for Pope Gregory to omit ten days from the calendar, the great day of the fair at Hardwar now falls on the 11th or 12th of April. Every twelfth year the planet Jupiter (Brihaspati) is in the sign of Aquarius (Kumbha) at the time of the sun's entry into Aries. These are occasions of peculiar sanctity and the fairs in these years, called *kumbh* after the Sanskrit name of Aquarius, are attended by vast multitudes of people. Every sixth year at the half *kumbh* the number of visitors is also very great. On the day of which the Hardwar fair is the anniversary the Ganges is said to have first appeared on the earth. Pious pilgrims flock from all parts of India to bathe in the sacred river and wash away their sins. At the present time a large and very conspicuous portion of the bathers at Hardwar come from the 5

Punjab and from distant parts of Rajputana. A small portion only of the bathers at Hardwar accomplish the pilgrimage to Kedar and Badri. The more bigoted Saivas visit Kedar only, and some Vaishnavas in like manner only pay their devotions at Badri; but the great mass of pilgrims attend both shrines. The Vaishnava worship is so much more popular in upper India that Badri is considered by far the more sacred of the two. There is little doubt that the Sankara Acharya is due the re-establishment of the efficacy of pilgrimages to the two great shrines, and it is probable that these institutions have retained to the present day much of the organization which Sankara himself gave to them. The institution of which the temple at Kedarnath forms a part is a good example of what we may fairly call the monasteries of the Hindus. The constitution of these establishments has been well described by Professor Wilson: "The maths, asthals or akharas" he writes "the residences of the monastic communities of the Hindus, are scattered over the whole country; they vary in structure and extent according to the property of which the proprietors are possessed; but they comprehend a set of huts or chambers for the mahant or superior and his permanent pupils, a temple sacred to the deity whom they worship, or the samadh or shrine of the founder of the sect, or some eminent teacher; and a dharamshala, one or more sheds or buildings for the accommodation of the mendicants or travelers, who are constantly visiting the math; ingress and egress are free to all and indeed a restraint upon personal liberty seems never to have entered into the conception of any of the legislators of the Hindus. The math is under the entire control of a mahant, with a certain number of 6

resident chelas or disciples; their number varies from three or four to thirty or forty, but in both cases there are always a number of vagrants or out-members; the resident chelas are usually the elders of the body with a few of the younger as their attendants and scholars; and it is from the senior or more proficient of these ascetics that the mahant is nominally elected. In some instances however where the mahant has a family, the situation descends in the line of his posterity; where an election is to be effected, it is conducted with much solemnity, and presents a curious picture of a regularly organized system of church polity amongst these apparently unimportant and straggling communities." Kedarnath, although of more importance than most institutions of the kind, is in all essential points a math similar to those which have been described in the preceding extract. The community belongs to the sect of Saiva ascetics called Jangama; and the mahant, or, as he is here called, the rawal, as well as his chelas, must all be people of Malabar. The Jangamas here, as everywhere else, worship Siva, or as he is more commonly known in these parts of India, Mahadeo under the form of the linga. Throughout these mountains Mahadeo, the god of everything terrible and destructive, is always represented by this emblem, a symbol of the belief that destruction implies generation in some other form, the belief that has the scientific basis that "nothing is lost." The worship has often been made a matter of reproach to Hindus, but in this part of India, as a rule, such accusations have no foundation. The worship of the linga, is free from all grossness and, to use the words of Professor Wilson, "it requires a rather lively imagination to trace any 7

resemblance in its symbol to the object which it is supposed to represent." The ceremonies to be observed by the pilgrims are very simple, consisting of a few prostrations, an embrace of the linga and the hearing of a short ritual and discourse from the officiating priest. The pilgrim carries away in copper jars from the sacred pool some water which is highly charged with iron and sulphur. Four miles from the temple is a precipice on the way to the Mahapanth peak known as the Bhairon Jhap, from which in former times devotees used to fling themselves; but this practice has been put a stop to. Those who designed to do the deed used to inscribe their names on the walls of the neighbouring temples.

The income of the temple of Kedarnath is derived from endowments consisting of 60 villages in this district with a *gunth* revenue of Rs. 1,090 a year, 45 villages in the Almora and Naini Tal districts with a *gunth* revenue of Rs. 808 a year, and a few in the native state of Tehri-Garhwal with an annual revenue of Rs. 250. Besides this the offerings made at the temple amount to Rs. 9,000 a year, but the temple is very much poorer than that at Badrinath. The *pandas* of Kedar extract from the pious a far larger income than that falling to the temple. Their total earnings may be estimated at about Rs. 40,000 a year.

The Rawal exercises temporal rather than spiritual authority over the affairs of the endowment. He never officiates himself at the shrine of Kedarnath, but appoints *chelas* to perform the service there and at the subordinate temples, himself remaining at Ukhimath. He is assisted by a council consisting of the temple officers and the *padhans* of 8

gunth villages. This council usually selects the Rawal, great weight being attached to the nomination of the deceased incumbent. The temple of Kedarnath remain open from May to October and during the winter the temple establishment retires to Ukhimath.”

In ‘*The Himalayan Gazetteer*’ Volume-3, published on 19th February, 1886 author *Edwin Thomas Atkinson* has discussed Kedarnath shrine as under:

The routes to Kedarnath are two, that *vid* Karnprayag, Chimoli Tungnath, and Ukhimath and that generally followed from Hardwar by Srinagar and Rudrprayag along the Mandakini river. Both routes unite at Kharaokoti and all the stages and resting places are separately noticed. Kharaokoti is 11 miles 5 furlongs and 36 poles from the temple. To Pati, where there is a bridge of 33 feet span, there is an ascent of 19 chains and descent 64 chains: to Saundwara (a 63-foot bridge) undulating for 89 chains. From Gaurikund (229 chains) the road is bad and intersected with numerous ravines, and very undulating. But from this place commences some of the wildest and most rugged scenery in the Himalaya. There are hot springs here, also an object of reverence. To Bhimudiyar the distance is 290 chains and to the Kedar bridge 324 chains.

The road follows the course of the river sometimes only a few feet and sometimes a thousand feet above, while on each side the mountains rise four to five thousand feet almost perpendicularly and clothed thickly with forest. So narrow is this gorge that it is possible often at five hundred feet from the bed of the river to throw a stone from one side to the 9

other. At intervals along the road there are magnificent cascades and numerous small tributaries pouring down in every possible form. At one point, the water comes from a considerable height in as perfect a jet as if it had been constructed by artificial means, and falls into a basin of rock which it has hollowed out for itself. The stream again rises from it almost unbroken and, forming an arch, descends on the road in spray. Higher up near Kedar some of the streams are nearly lukewarm and several of them are highly impregnated with sulphur. At Bhim-udiyar there are a number of caves cut out of the rock used as a halting place, and said to have been so used by the Kedarganga torrent almost due east until within a mile of the temple when it turns to the north. The atmospherical phenomena resembling the Barisal guns are observed here. The great pilgrim road constructed and marked out by Mr. Traill, while Commissioner of Kumaon, must have been a work of great labour and difficulty, and has resulted in saving the lives of thousands.

The sources of the Ganges were objects of veneration and of pilgrimage long before the foundation of the temples which now exist there. Austerities and acts of devotion performed in the Himalaya seem to have had a special virtue from the most ancient times. We find examples of this virtue from the most ancient times. We find examples of this in the extracts from the sacred books already given in the previous volume.”

The Kedarnath area received an unprecedented heavy rainfall between 14.06.2013 to 17.06.2013. The Chorabari Lake collapsed due to cloudburst. Millions of tons of debris and boulders were carried by flashflood 10

downstream. Several roads, buildings and other structures were washed away. Final estimated death toll is more than 10,000 persons while more than 3,000 persons went missing. Several News channels have telecasted programmes on Kedar Valley and have shown human bodies strewn all over the place. The dead bodies were also buried under the debris of boulders, pebbles, talus and silt clay. Many people died due to hunger, thirst hypothermia and without any medical aid. It is also highlighted in the petition that the large number of tourists visit the State throughout the year. According to the petitioner, there should be a restriction on mass tourism in eco-sensitive zones especially in Char Dhams, Valley of Flowers and several glaciers and snouts. The petitioner has also shown his concern about haphazard and unplanned construction being carried out at Devprayag, Sonprayag, Rishikesh, Badrinath, Rudraprayag, Gopeshwar, Rudrapur. The population of these cities is increasing manifold. The unplanned growth is also a major threat to the whole river system of the State. Non-degradable solid wastes and several pollutants are being dumped in the rivers without treatment which is polluting the river. The heavy transport vehicles, including trucks and buses are threatening the fragile ecology of the area due to emission of smoke.

The petitioner has taken up the issues with the State Government from time to time, as per the averments made in the petition.

We have also gone through the photographs placed on record. The Court is of the considered view that the State Government should have deployed Doppler Weather Radar (DWR), Automatic Weather Station (AWS), Radiosonde/Rawinsonde in advance. The cloudburst has led to the collapse of Lake which resulted into massive 11

floods in the area downstream causing massive loss of the human life as well as to the property. The colossal loss was caused to houses, crops and other infrastructure. Thousands of lives were lost and thousands went missing. The State Government should have taken immediate steps to preserve the D.N.A. samples of the dead bodies and to identify them with their family members. The State has framed the D.N.A. scheme, but later on, for the reasons best known to it, the same has been withdrawn. According to the petitioner, thousands of dead bodies are still lying buried under the debris, boulders, pebbles in Kedar Valley area. Right to descent and dignified cremation/burial is a fundamental right.

The haphazard unplanned urbanization has also taken heavy toll of environmental and ecology in the eco-sensitive area of Char Dham. The human activity near Glaciers has led to their rapid depletion. The eco-tourism is required to be regulated by fixing quotas and after due registration of tourists in computers.

The people cannot be permitted to go indiscriminately near the glaciers. There is an urgent requirement of planned growth in all the towns falling en-route of Char Dham by preparing development/master plans under the relevant Town and Country Planning Act as well as the Municipal laws. The State Government should ensure that the traffic en-route to Char Dham is regulated and heavy transport vehicles should not be permitted on these roads except belong to armed forces and para-military forces. The pollutants emitted by the heavy transport vehicles are trapped in the atmosphere causing green house effect. 12

The tendency of the citizens to permit the flow of sewage, directly into the rivers, is deplorable. No sewage or drain should open into the rivers.

The aquatic life of rivers is also adversely affected. The quality of river water has gone down drastically. The water of river Ganges is not fit for drinking. The coliform has increased to an alarming level. It is the duty of all of us to preserve, protect and safeguard the environment and ecology. The State should make endeavour to protect the environment and safeguard the forest and wildlife as per Article 48-A of the Constitution of India. It is the fundamental duty of all of us to protect and improve the National Forests like wildlife, as is provided under Article 51-A(g) of the Constitution.

The State was never prepared for such a massive tragedy. The State machinery was paralyzed. It never rose to the occasion. The rescue operations were delayed, which further compounded the miseries of the helpless people trapped in the area. The State should have managed the disaster effectively and properly by involving all the agencies like Army, Air Force, National Disaster Relief Force, Paramilitary Forces and local Police at the earliest.

It has also come on record that 20 rescuers have died while saving the lives of the people trapped in the valley. The Indian Army, Air Force and Paramilitary Force have shown exemplary courage and devotion to their duty by saving thousands of lives in the Kedar Valley. The Court places on record, its appreciation for Yeoman services rendered by them. The State Government if had prepared contingency plans, in advance, the loss to human life and property could be minimized. The State 13

machinery swung into action very late resulting into massive loss to the life and property.

There is no scientific disposal of municipal waste in the towns enroute to chardhams. The municipal waste is dumped in open and during the rainy season, it is carried to rivers.

The Central Government has framed Municipal Solid Wastes (Management and Handling) Rules, 2000 under the Environment Protection Act, 1986. The municipal authority, under Rule 4 of the Rules, is responsible for implementation of these Rules. Sub-Rule (2) of Rule 5 lays down that the District Magistrate or the Deputy Commissioner of the concerned district shall have overall responsibility for the enforcement of these Rules within their territorial jurisdiction.

The Central Pollution Control Board and the State Pollution Control Board or the committee are required monitor the compliance of the standards regarding the maintenance of ground water, ambient air etc.

All the municipal authorities, as per the Rules, were required to setup waste processing and disposal facilities by 31.12.2003 and to identify landfill sites for future use and making sites ready for disposal by 31.12.2002.

According to Schedule II prepared under Rules 6 (1) and (3), 7 (1), littering of municipal solid waste is prohibited in cities, towns and in urban areas notified by the State Governments. Item No. 2 of the Schedule II provides segregation of municipal solid wastes. Item No. 4 provides transportation of municipal solid wastes. Processing of municipal solid waste is provided under Item No.5. Disposal of municipal solid waste is provided under 14

Item No.6.Schedule III provides of Specifications for Landfill Sites.

All the municipal bodies enroute to char dhams and Hemkund Sahib are required to set up waste processing and disposal facilities. It is the duty of the every municipal authority to implement the provisions of these rules including Schedule I, II, III and IV in letter and spirit.

The State Government is required to constitute Special Teams comprising of National Disaster Relief Force, Paramilitary Forces and local Police, to trace out dead bodies still lying buried in the Kedar Valley. The Team should be headed by the Officers of suitable ranks, adequately equipped with the latest technology to trace all the dead bodies still lying in the area.

Similarly, the restrictions are required to be imposed for the visitors to the Valley of Flowers National Park. The ecology of the Valley of Flowers is fragile. No person shall be permitted to cause harm to the flowers and vegetation in the valley. State Government till date has not put any restrictions on the use of plastics in the Valley of Flowers. Plastics are causing great threat to the environment and ecology of the Valley of Flowers.

Their Lordships of Supreme Court in **2014 Volume 4 Supreme Court Cases 574** have held that the principle of sustainable development which has been construed by the Supreme Court as an integral part of Article 21 of the Constitution deserves to be applied to town and urban planning throughout the country. The preparation of master plan/town planning schemes has to be made keeping in view the issue of sustainable capacity of the particular city/urban area. Paragraph 11 reads as under:-

The requirement of keeping open spaces at the ground level should be read in this context. The recreational areas and greens in the multi-storied buildings have to be scrupulously safeguarded. The problem with the existing municipal and town planning statutes is that they factor only two out of the three compelling needs. The first need is that of keeping recreational areas for residents. The third entirely different and equally, if not more compelling, is the need to assess the sustainable capacity of the city and to balance the development with the capacity. The Principle of sustainable development which has been construed by this Court as an integral part of Article 21 of the country. This requires a thorough assessment of the environmentally sustainable capacity of every city/urban area. The preparation of master plan/town planning schemes has to be made keeping in view the issue of sustainable capacity of the particular city/urban area.”

The Court places on record, its appreciation for the petitioner for highlighting the very important issue .

Accordingly, the writ petition is allowed by issuing the following mandatory directions: -

- A. The State Government is directed to constitute the Five Special Investigation Teams headed by the Officer not below the rank of S.S.P. to trace the dead bodies, lying scattered/buried in the Kedarnath area. The Special Investigating Teams shall comprise of the officers drawn from the National Disaster Relief Force, Police Force, Paramilitary Forces and local Police. The State Government after tracing the dead bodies shall prepare the DNA profile and inform the family members of the deceased. The State Government

after completing all codal formalities shall perform the last rites as per Hindu, Sikh, Christian and Muslim religion.

- B. The State Government is directed to prepare the development/master plans for the areas falling en-route to Char Dham including for Devprayag, Sonprayag, Rishikesh, Badrinath, Rudraprayag, Gopeshwar, to check unauthorized and haphazard construction in this area, within a period of six months from today.
- C. The State Government is further directed to take steps to put restrictions on mass tourism in eco-sensitive zones, in order to save the glaciers by preparing the National Code of Tourism and Pilgrims on the analogy of Kailash-Mansarovar Yatra.
- D. The State Government is directed to frame the Rules to regulate the mass movement of pilgrims to religious places in the State of Uttarakhand.
- E. The State should keep biometrics data of all the tourists/pilgrims by installing biometrics machines.
- F. All the Urban Bodies should ensure that no untreated sewage is discharged in the rivers enroute to chardhams as well as Hem Kund Saheb.
- G. The State Government is also directed to install advanced Warning Systems in Char Dham areas including Doppler Weather Radar, Automatic Weather Station (AWS), Radiosonde /Rawinsonde, within a period of three months from today.

- H. The State Government is also directed to construct sufficient number of Inns/Sarais to house the pilgrims at a distance of every ten kilometers en-route Char Dhams and Hemkund Sahib.
- I. All the roads leading to Char Dhams should be metalled and it shall be the responsibility of the Chief Engineer to maintain the Roads.
- J. The State Government is directed to construct emergency stores at safer and suitable places enroute to char-dhams and Hemkund Sahib at a distance of 10 kilometers each. The stores shall be equipped with blankets, sheets, ration, Gas, water, condensed milk in sufficient quantity. State Disaster Rescue Force should be deployed in these stores throughout day and night at the time of Yatras.
- K. Public Works Department (PWD) is also directed to deploy latest machinery in the area to maintain the roads and to clear the roads immediately in case of any natural calamity during Yatras.
- L. Bharat Sanchar Nigam Limited (BSNL) is also directed to prepare contingency plans to restore the telecommunication immediately in the eventuality of natural calamity.
- M. Municipal Councils Devprayag, Sonprayag, Rishikesh, Badrinath, Rudraprayag, Gopeshwar, Rudrapur are directed to implement the Municipal Solid Wastes (Management and Handling) Rules, 2000 and to ensure the scientific disposal of the municipal wastes. District Magistrates of the concerned Districts as per sub-rule (2) of Rule 5 of the Rules, 2000 shall have over all responsibility

for the enforcement of the provisions of these Rules within the territorial limits of their jurisdiction. The Rules be implemented within a period of six months from today, failing which, District Magistrates of the concerned Districts shall be liable to face the contempt proceedings.

N. The State Government is also directed to construct shrines between the Govind Ghatt and Govind Dham.

O. The State Government is directed to fix quotas for the visitors/tourists coming to the Valley of Flowers to save degradation of the environment. Entry to the National Park, Valley of Flowers should be made on the basis of online permits with a reasonable fee. The Authorities must take a undertaking from the tourists/visitors that they would not cause any harm or damage to the flower or vegetation in the Valley of Flowers.

P. The entire Valley of Flowers is declared plastic free zone except the use of water bottles. The entry of water bottles shall be made at the time of entering into the park and the empty bottles are required to be deposited with the authorities at the exit point of the park. Bottles thus received by the authorities at the exit points shall be destroyed by deploying sufficient number of machines. There shall be a complete ban of chips, cookies, Maggies and eatables wrapped in plastics in the entire Valley of Flowers.

Q. Any person causing threat, damage and harm to the flowers and vegetation shall be liable to pay environmental penalty of Rs.10,000/-. The Divisional Forest Officer concerned is permitted to

take cognizance of damage caused to the flowers and vegetation in the Valley of Flowers and impose penalty till the law is enacted by the State. The amount of penalty shall be used for preservation of environment and ecology of the Valley of Flowers.

(Alok Singh, J.) (Rajiv Sharma, J.)

19.11.2016

Jitendra