

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

MCC 1199/2017

In

Writ Petition (PIL) No.85 of 2014

Ajay Gautam

..... **Petitioner**

Versus

Union of India & others

... **Respondents**

Mr. Jitendra Chaudhary and Mr. Tapan Singh, Amicus Curiae, for the petitioner.

Mr. S.N. Babulkar, learned Advocate General assisted by Mr. K.N. Joshi, Dy. A.G., for the State of Uttarakhand.

Mr. Rakesh Thapliyal, A.S.G., for the Union of India.

Dated: December 18, 2017

Coram: Hon'ble Rajiv Sharma , J.

Hon'ble Alok Singh, J.

Per: Hon. Rajiv Sharma, J.

In sequel to the directions issued by this Court vide judgment dated 19.11.2016, the Chief Secretary of the State of Uttarakhand has filed the Affidavit of Compliance. The Court had issued the following directions to the respondents vide judgment dated 19.11.2016: -

“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 enroute

to Char Dham including for Devprayag, Sonprayag, Rishikesh, Badrinath, Rudraprayag, Gopeshwar, to check un-authorized 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 ecosensitive 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 Uttakhand.

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 enroute 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 Deprayag, 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.”

2. As far as Direction No.‘A’ is concerned, it is stated in the affidavit that the State Government has constituted 05 Special Investigation Teams. These are headed by SSP Pauri, SP Tehri, SP Uttarkashi, SP Chamoli and SP Rudraprayag. It is further averred in the affidavit that the search operations in inhospitable and high altitude areas was carried out in Kedarnath by the Teams headed by the S.H.O. Sonprayag. Thereafter, as per the report of SHO Sonprayag, search operations were accordingly carried out by these teams between 15th and 17th May, 2017. During the search operation, Team No.4 recovered remains of 06 persons. Last rites of these remains were carried out on 18th May, 2017 on the banks of ‘Sone River’ in accordance with religious rites. No human remains were recovered by other teams.

3. There were 4000 missing persons. Dead bodies of only 678 were recovered. 545 bodies were recovered in the year 2013. 63 bodies were recovered in the year 2014. 03 bodies were recovered in 2015, 60 in 2016 and 7 bodies were recovered in the year 2017. Samples for DNA Fingerprinting were sent in 667 cases. According to the reports, DNA fingerprints matched in 18 cases. All the DNA fingerprint samples were kept at Forensic Lab, Hyderabad. Dead bodies were disposed of as per government manual. The Panchayatnama of dead bodies was prepared.

Direction: - The Special Teams are directed to re-visit the places of disaster and to trace out the missing bodies and to cremate them with due honour after preserving their DNA's.

4. The Court had directed the State Government to prepare the development/master plans for the areas falling enroute to Char Dham including for Devprayag, Sonprayag, Rishikesh, Badrinath, Rudraprayag, Gopeshwar, to check un-authorized and haphazard construction in this area, within six months.

5. The State Government, in its affidavit, has undertaken that in sequel to the judgment of this Court, the Master Plans of Rishikesh, Srinagar, Gauchar, Gopeshwar and Badrinath located on the Chardham Yatra route have been prepared and are in force. In Devprayag and Sonprayag, the existing local development authority areas and ULBs and revenue villages falling within the periphery of 200 meters on either side of National and State Highways falling in the districts of Tehri, Pauri, Rudraprayag, Chamoli and Uttarkashi, have been declared as District Development Authority Areas by the Government. The State has also designated the Commissioner, Garhwal Division as Chairman, DM and ADM of the concerned districts as Vice – Chairman and Secretary of the District Development Authority respectively as per letter dated 13.11.2017. The State Government has also issued further directions as per annexure CA4 dated 17.6.2017 to all the statutory authorities in this regard.

6. It is also stated in the affidavit that the Uttarakhand Housing and Urban Development Authority

(UHUDA) has empanelled 08 survey firms and 12 consultant firms for carrying out GIS based surveys and preparation of Master Plans of the Authority areas respectively. Financial bids have been invited from the empanelled firms for undertaking GIS based surveys and preparation of base map of the Development Authority areas. It is also stated that after the procurement of base maps, the preparation of Master Plans would be initiated.

Direction: There shall be a direction to the State Government to prepare the master plans of development authorities within a period of six months from today based on G.I.S. based survey. The prayer for finalization of the master plan of development area within three years, as per the affidavit, is rejected. It is an urgent matter. It should not brook any delay. The planning map of Kedarnath area be also prepared within six months.

7. The State Government was also 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. The State Government was also directed to keep biometrics data of all the tourists/pilgrims by installing biometrics machines.

8. It is stated in the affidavit filed by the State Govt. that in accordance with the directions of this Court, the State has sought assistance of the Central Government for developing the State Code of Tourism for regulating tourism in the region. A communication was sent to the Central Govt. on 10.3.2017 vide Annexure CA5.

Direction: - There shall be a direction to the Central Government to look into the matter and to accord necessary assistance for developing the State Code of Tourism by the State Government within three months from today.

9. It is also stated in the affidavit that the State Government has undertaken the studies for assessing the carrying capacity of all the eco-sensitive areas and would accordingly restrict anthropogenic activities in these areas. It is further stated in the affidavit that the State Government keeps the photometric record of pilgrims and tourists who want to be registered with the State Government.

Direction: - The State Government is directed to prepare the assessing carrying capacity of all the eco-sensitive areas within six months from today.

10. The State Govt. was also directed to ensure that no untreated sewage is discharged in the rivers enroute to chardhams as well as Hem Kund Saheb.

11. It is stated in the affidavit that the DPR's of some towns on Chardham Yatra and Hemkund Sahib have been submitted to Government of India under Namami Gange Program. DPR's of other towns is also being prepared under this program.

Direction: There shall be a direction to the Central Government to accord necessary sanction to the D.P.R.'s submitted by the State of Uttarakhand qua towns on Chardham Yatra and Hemkund Sahib, within three months. The State is also directed to prepare the D.P.R.'s of other towns and send the same for necessary

sanction to the Govt. of India under NAMAMI Gange Programme within three months.

12. It is further stated in the affidavit that under the Namami Gange Programme, National Mission for Clean Ganga, Ministry of Water Resources, River Development and Ganga Rejuvenation, GoI has approved 9 projects vide letter dated 16.03.2017 and subsequently approved 05 projects vide letter dated 29.03.2017 for interception and diversion of drains and Sewage Treatment Plants for towns (Haridwar, Rishikesh, Muni Ki Reti, Kirtinagar, Srinagar, Rudraprayag, Karnprayag, Nandprayag, Gopeshwar, Joshimath and Badrinath) amounting to Rs. 815.06 crore.

13. The Central Government has also approved vide letters dated 16.01.2017 and 29.03.2017 for upgradation of existing Sewage Treatment Plant at Jagjeetpur Haridwar, Sarai Haridwar, Tapovan, Swargashram, Srinagar and Uttarkashi amounting to Rs. 56.37 crore. The Central Government vide letter dated 15.03.2017 has approved a sum amounting to Rs. 3.65 crore for pollution abatement and Ghat development in Kedarnath.

14. 01 project of Srikot Gangnali amounting to Rs. 10.09 Cr is pending with National Mission for Clean Ganga for approval.

15. The District Magistrates of all the Districts throughout the State of Uttarakhand are hereby directed to identify the premises, hotels, industries, commercial establishments, Ashrams, Deras etc. which are letting untreated sewage/sewerage into the major rivers and their tributaries within two weeks. All the drains emptying untreated sewage into the major rivers and their tributaries shall be sealed/diverted within three weeks from today. All the premises, hotels, industries, commercial establishments, Ashrams, Deras etc, identified by the District Magistrates, as ordered hereinabove, shall be sealed and their electricity/water connection shall also be disconnected within three weeks.

16. It is further stated in the affidavit that the bidding process for all the projects has been started by the implementing agency, Uttarakhand Peyjal Nigam.

Direction: - There shall be a direction to the Uttarakhand Pey Jal Nigam to complete all the codal formalities and to commence the Sewerage Treatment Plants within three months from today and also to complete the same within a further period of twelve months.

17. It is further stated in the affidavit that regarding pollution abatement works en-route to Hemkund Sahib, the letter has been sent by State Program Management Group (SPMG) on 12.12.2017 (Annexure CA8) to National Mission Clean Ganga for conditional assessment by Water and Power Consultancy Services, Ministry of Water Resources, River Development and Ganga Rejuvenation (WAPCOS).

Direction: - The competent authority is directed to consider the communication made by the State Program Management Group within a period of three months from today.

18. The State Government was also directed to install the advanced Warning Systems in Char Dham areas including Doppler Weather Radar, Automatic Weather Station (AWS), Radiosonde /Rawinsonde, within a period of three months.

19. In this regard, it is stated in the affidavit that India Meteorological Department (IMD), Government of India is the Nodal Agency for providing warnings with regard to meteorological phenomenon. It is stated that there are 05 Departmental Observatories of IMD at Dehradun, Pantnagar (Airport), Mukteshwar, Tehri and Jolly Grant (Airport) besides 25 Automatic Weather Stations (AWS) and 21 Automatic Rain Gauges (ARG) installed at different places across the state.

20. The Government of India has formulated the Integrated Himalayan Meteorology Program (IHMP) under which meteorological observation and instrumentation related infrastructure in the State is being strengthened. It is further stated that 60 AWS, 25 ARG, 16 Surface Field Observatories and 12 Automatic Snow Gauges were to be installed across the State. It is also stated that under the World Bank funded project, the State Government will install various Hydro meteorological instruments across the State. It is further stated that 03 Doppler Weather Radars would be installed in the State under IHMP at Dehradun, Nainital and Pithoragarh. The land has been finalized for the installation of Doppler

Radar in Mussoorie and IMD has requested the Institute of Technology Management (ITM) of Defence Research and Development Organization (DRDO) to transfer the land. Similarly IMD is in the process of finalizing the land for the installation of Doppler radars in Nainital and Pithoragarh.

Direction: - The process be completed within six months and 03 Doppler Weather Radars be made functional within six months from today.

21. The State Government was directed to construct sufficient number of Inns/Sarais to house the pilgrims at a distance of every ten kilometers enroute Char Dhams and Hemkund Sahib. It is stated in the affidavit that sufficient residential facilities operated by GMVN and private operators are available on Chardham Yatra and Hemkund Sahib route. The details have been brought on record vide Annexure No.CA10.

Observation: - The Court is of the considered view that still there is a requirement of sufficient number of Sarais/accommodation in the Char Dhams and Hemkund Sahib taking into consideration the topography and geography of the area to save the lives of pilgrims.

22. The State Government was directed that all the roads leading to Char Dhams should be metalled and it shall be the responsibility of the Chief Engineer to maintain the Roads.

23. In this regard, it is stated in the affidavit that all the roads on the Chardham route are painted and metalled. These are maintained by the Ministry of Road Transport and Highways, Government of India through

Public Works Department (PWD) and Border Roads Organization (BRO). The Public Works Department deploys heavy earth moving machinery in the vicinity of identified landslide prone areas along the National Highway. In addition to that, Ministry of Road Transport and Highways, Govt. of India, is undertaking Chardham Pariyojana for improving the road network of 889 kilometers leading to Chardham and Kailash – Mansarovar. Salient features of the same are as under:

- (a) Widening of formation width of road to 12 meters and metaling in 2 lane with paved shoulder, i.e. 10 meters wide
- (b) Construction of 12 major and 60 minor bridges
- (c) Construction of 12 bypasses in densely populated towns
- (d) Construction of elevated roads at 03 locations
- (e) Construction of 02 two lane road tunnels
- (f) Treatment of 29 chronic landslide zones

It is stated that the Pariyojana is worth Rs.11,700.00 crore and land acquisition and forest land clearance is under progress. Copy of the same has been annexed as Annexure CA-11.

24. The Court expects that the work, as mentioned hereinabove, would be completed within a time bound manner. The construction of roads in the hilly areas is of utmost importance. Construction of roads in the State is of strategic importance. The residents of hilly areas have a fundamental right to connectivity, as enshrined under Article 21 of the Constitution of India.

25. The State Govt. was 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 were ordered to be equipped with blankets, sheets, ration, Gas, water, condensed milk in sufficient quantity.

26. In this regard, it is stated in the affidavit that the GMVN/KMVN have been instructed to ensure availability of necessary stores as directed by the Hon'ble Court in all its rest houses on Chardham Yatra/Kailash – Mansarovar Yatra route. The S.D.R.F. has also been directed to deploy its units on Chardham Yatra / Kailash–Mansarovar Yatra route as directed by the Court.

27. The State Government was 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.

28. It is stated in the affidavit that both PWD and BRO are well equipped with all modern machines which have already been deployed during the previous years to ensure early opening of roads. It is further stated that the MORTH had sanctioned a sum of Rs.20.98 crores for purchase of various equipments and machinery in the year 2014-15 and the same has been procured. A Contingency Plan /SOP has been prepared by BSNL for prompt restoration of its services after any disaster. Copy of contingency plan/SOP is annexed as Annexure No.CA13.

29. The Court had directed the Municipal Councils of Devprayag, Sonprayag, Rishikesh, Badrinath, Rudraprayag, Gopeshwar and Rudrapur to implement the Municipal Solid Wastes (Management and Handling)

Rules, 2000 and also 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 were given the responsibility for enforcement of these Rules within their territorial jurisdiction within six months.

30. In this regard, it has come in the reply that in order to ensure compliance of Municipal Solid Waste (Management and Handling) Rules, 2000 in all the towns along the Chardham Yatra route, necessary directions have been issued to the District Magistrates vide Annexure CA14.

Direction: - There shall be no dumping of garbage on both sides of major rivers as well as their tributaries within a radius of 01 kilometer from the edges of the banks, as the crow flies, within one week from today. The District Magistrates/SDMs shall identify the new sites within one week from today and the garbage already dumped on the banks of rivers and its tributaries is ordered to be removed within one week and the same shall be disposed of in a scientific manner. It is made clear by way of abundant precaution that no garbage shall be dumped/thrown in forest areas. The District Magistrates/SDMs of the respective areas shall be personally responsible to obey the order punctually.

31. Now, as far as construction of shrines between the Govind Ghat and Govind Dham is concerned, it is stated by the State Govt. that the competent authority in the Departments of Culture and Religious Affairs are exploring the possibilities of establishing the Shrines at

appropriate places between Govind Ghat and Govind Dham.

Direction: - Necessary steps be taken within six months from today.

32. The Court had directed the State Govt. to fix quotas for the visitors/tourists coming to the Valley of Flowers to save degradation of the environment. The State Govt. was directed to get an undertaking from the tourists/visitors that they would not cause any harm or damage to the flowers or vegetation in the Valley of Flowers. The entire Valley of Flowers was ordered to be declared plastic free zone except the use of returnable water bottles.

33. In this regard, the State Govt. has averred in its compliance affidavit that upper limit of 300 persons per day is put on the entry of visitors/tourists to the Valley of Flowers. The letter of the Forest Department dated 10.03.2017 has been annexed as Annexure CA-15. Web portal for online booking has been developed by the NIC. The process of making payment gateway and SMS gateway is being done.

Direction: - The web portal, as undertaken, be made operational within six months from today.

34. It is also stated in the affidavit that the Valley of Flowers National Park has been declared as plastic free zone. In order to ensure that plastic water bottles and other plastic products are disposed of in an environment friendly manner, a mechanism has been developed vide order dated 08.03.2017. It is further stated that no tourist be allowed to carry any plastic wrapped eatables

inside the Park except water bottles and empty water bottles are also brought back. Letter dated 8.3.2017 of Chief Wildlife Warden is annexed as Annexure CA16.

Direction: - National Parks including Tiger Reserve, Elephant Reserve, Jim Corbett and Rajaji National Park are ordered to be declared plastic free zones. No visitor shall be permitted to carry out plastic carry bags except 02 water bottles each. Empty water bottles shall be handed over to the staff at the exit points. Persons manning at entry and exit points shall ensure due compliance of the order.

35. The Court is disturbed and alarmed at the rate at which unnatural deaths of almost all animals including tigers and elephants are taking place.

Direction:- The State Government is directed to constitute special cadre of Tiger/Elephant Protection Force in Corbett National Park as well as Rajaji National Park to protect the tigers and elephants from poaching within a period of 03 months from today. The existing staff along with the supporting staff of national parks be increased within a reasonable period to improve the patrolling in the sensitive areas. We also recommend to the State Government to remove the encroachments from the vital corridors including at Sunderkhal between Dhikuli and Dhangadi on the banks of River Kosi. The State is directed to take effective steps for rehabilitation of the persons who are affected/displaced. The persons who have encroached upon the land belong to the lowest strata of society. Their settlement must be carried out with due sensitivity.

36. The Anti-Poaching Drive should be carried out throughout the year. The obsolete weapons of forest guards i.e. Rifles shall be replaced at least by semi-automatic weapons to instill the fear and deterrence in the minds of poachers. The Central Government is expected to grant necessary permission within three months for upgrading the weapon system. It is made clear that the revenue generated by all the National Parks shall exclusively be used for the upkeep and maintenance of national parks. The revenue generated by the National Parks including Jim Corbett and Rajaji National Park shall not be diverted by the State Govt. for any other activity/purpose.

37. The Court cannot lose sight of the massive tragedy which created havoc, more particularly, in Kedarnath Valley and other parts of the State. Thousands of lives were lost and an equal number are still missing. Thousands of pilgrims and tourists were also injured. The Court recommends to the State Government to provide insurance cover to all the pilgrims visiting the Char Dhams at a reasonable premium. It shall be open to the State Govt. to tie-up with the Life Insurance Corporation or any other government owned life insurance company. The corpus generated is permitted to be used to improve the environment and ecology of the fragile Yamunotri, Gangotri, Kedarnath and Badrinath areas/valleys.

38. The State Govt. has shown required sensitivity in the matter. These directions are issued in larger public interest to safeguard the lives of pilgrims and to save the fragile environment and ecology of the area and

for providing necessary infrastructure and wherewithal for the safety of pilgrims and tourists including wildlife and trees. The Court expects that all the directions, issued hereinabove to the State Govt. and its agencies, would be complied with in letter and spirit within the time framed hereinabove.

39. It is our constitutional, legal, social, moral and pious responsibility to preserve, conserve, protect, sustain and maintain the rivers in their pristine glory. Rivers are life giving beings. Rivers must be permitted to flow without pollution for the future generations. We must value the water. Water is essential for sustainable development. Rivers are sacred and cultural entities.

40. Before parting with the order, the Court places on record its appreciation for the sincere efforts made by the State Government and other agencies towards the implementation of judgment dated 19.11.2016.

41. At the same time, the Court also records its appreciation for the assistance rendered by Mr. S.N. Babulkar, learned Advocate General assisted by Mr. K.N. Joshi, Dy. A.G., for the State of Uttarkahand, Mr. Rakesh Thapliyal, learned Assistant Solicitor General to the Govt. of India and Mr. Jitendra Chaudhary and Mr. Tapan Singh, Amicus Curiae appointed by this Court.

42. Civil Misc. Application (MCC 1199/2017) stand disposed of in the above terms.

(Alok Singh, J.)

Rdang

(Rajiv Sharma, J.)