

(2019) 02 UK CK 0072

In the Uttarakhand High Court

Case No : Writ Petition (PIL) No. 05 Of 2019

Kishore Singh Bisht & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Environment (Protection) Act, 1986 — Section 3, 6, 25
Solid Waste Management Rules, 2016 — Rule 11, 15, 16, 20

Citation : (2019) 02 UK CK 0072

Hon'ble Judges : Ramesh Ranganathan, CJ; R.C. Khulbe, J

Bench : Division Bench

Advocate : Niranjana Bhatt, B.P.S. Mer, Vinay Kumar, Rajeev Singh Bisht

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. Heard Shri Niranjana Bhatt, learned counsel for the petitioners, Shri Rajeev Singh Bisht, learned counsel for the Nagar Palika Parishad, Uttarkashi (respondent no. 10), Shri B.P.S. Mer, learned Standing Counsel for the State of Uttarakhand and Shri Vinay Kumar, learned counsel for the Uttarakhand Jal Vidyut Nigam Ltd. (respondent no. 7) and, with their consent, the writ petition is disposed of at this stage.

2. This writ petition is filed, in larger public interest, seeking a writ of certiorari to quash the order passed by the Additional Commissioner(Administration)/ Additional Director Urban Development, Garhwal Mandal dated 30.10.2018, whereby a decision was taken by the respondents to take possession of the subject land; a writ of mandamus restraining the respondents from dumping garbage over the land situated in Village Kansain, Block Bhatwari, District Uttarkashi belonging to Uttarakhand Jal Vidyut Nigam Ltd.; and a writ of mandamus commanding the respondents to immediately remove the garbage which had been dumped over the land situated in Village Kansain, Block

Bhatwari, District Uttarkashi, belonging to Uttarakhand Jal Vidyut Nigam Ltd.

3. The complaint, in this writ petition, is regarding the action of the Nagar Palika Parishad, Uttarkashi in dumping garbage, generated within its territorial limits, in Village Kansain located, beyond the territorial limits of the Nagar Palika Parishad, Uttarkashi, on land belonging to the Uttarakhand Jal Vidyut Nigam Ltd.

4. We had, by our order dated 11.01.2019, directed the Uttarkashi Nagar Palika Parishad not to dump garbage beyond its territorial limits; not to dump garbage within the flood-zone of the river Ganges; and not to dump garbage within the precincts of the Uttarakhand Jal Vidyut Nigam Ltd. without the prior written consent of the Board of Directors of the Uttarakhand Jal Vidyut Nigam Ltd.

5. Shri Rajeev Bisht, learned counsel for the Nagar Palika Parishad, Uttarkashi, would today draw our attention to the Solid Waste Management Rules, 2016 (hereinafter referred to as the "2016 Rules") in support of his submission that an obligation is cast, in terms of the 2016 Rules, on the State Government to provide a dumping yard for each municipality, or for a cluster of municipalities/villages; the 2016 Rules are comprehensive and provide adequate safeguards against dumping of solid waste/garbage in Rivers and Lakes; and, since the tourist season is to commence in the first week of May, the State Government be directed to identify and provide a dumping yard, if need be on acquisition of the required land, before commencement of the tourist season.

6. Shri Vinay Kumar, learned counsel for the Uttarakhand Jal Vidyut Nigam Ltd., would submit that, consequent on a decision being taken by the Uttarakhand Jal Vidyut Nigam Ltd., its Managing Director had, vide letter dated 07.02.2019, informed the Secretary (Energy) of the unwillingness of the Uttarakhand Jal Vidyut Nigam Ltd. to provide its land, for the purposes of a dumping yard, for the Uttarkashi Municipality. As the Uttarakhand Jal Vidyut Nigam Ltd. has expressed its unwillingness to provide land for a dumping yard, the Nagar Palika Parishad, Uttarkashi cannot dump garbage in the said land.

7. The 2016 Rules were made by the Government of India in the exercise of the power conferred on it under Section 3, 6 and 25 of the Environment (Protection) Act, 1986, and in supersession of the Municipal Solid Waste (Management and Handling) Rules, 2000. Rule 11 of the 2016 Rules prescribes the duties of the Secretary, In-charge, Urban Development in the States and, under sub-section 1(f) thereof, the Secretary, Urban Development Department in the State, through the Commissioner or Director of Municipal Administration or Director of local bodies, shall ensure identification and allocation of suitable land to the local bodies within one year for setting up of processing and disposal facilities for solid wastes and incorporate them in the master plans (land use plan) of the State or, as the case may be, cities through metropolitan and district planning committees or the town and country planning department. Rule 15 of the 2016 Rules prescribes the duties and responsibilities of local authorities and village Panchayats of census towns and urban agglomerations, and Rule 16 prescribes

the duties of the State Pollution Control Board or the Pollution Control Committee. Rule 20 of the 2016 Rules prescribes the criteria and actions to be taken for solid waste management in hilly areas and thereunder, in the hilly areas, the duties and responsibilities of local authorities shall be the same as mentioned in Rule 15 with additional clauses (a) to (f) of Rule 20.

8. In terms of Rules 15 and 16, specifications for sanitary landfill sites have been stipulated in Schedule I to the 2016 Rules. Part A of Schedule I prescribes the criteria for site selection and clause (vii), thereunder, stipulates that the landfill site shall be 100 meters away from a river, 200 meters away from a pond, 200 meters away from Highways, Habitations, Public Parks and water supply wells and 20 Km. away from Airports or Airbase. However in a special case, landfill site may be set up within a distance of 10 and 20 Km away from the Airport/Airbase, after obtaining No Objection Certificate from Civil Aviation Authority/Air Force, as the case may be. The said clause further stipulates that the landfill site shall not be permitted within the flood plains as recorded for the last 100 years, zone of coastal regulation, wetland, critical habitat areas, and sensitive eco-fragile areas.

9. It is evident, therefore, that any landfill site to be identified by the Secretary, Urban Development, for the disposal of solid waste generated in the Nagar Palika Parishad, Uttarakashi, must satisfy the criteria stipulated in Part A of Schedule I to the 2016 Rules, more particularly clause (vii) as referred to hereinabove.

10. As Uttarkashi is a prominent religious site, located near the origin of the River Ganges, and people in large numbers visit the area from the first week of May each year, it is but appropriate that the second respondent identifies a landfill site, and identifies and allocates suitable land to the Nagar Palika Parishad, Uttarkashi, for setting up of a processing and disposal facility for solid waste, in accordance with the 2016 Rules including Schedule I thereto, with utmost expedition and, in any event, not later than two months from today (i.e. on or before 27th April, 2019).

11. Let a certified copy of this order be furnished to all the parties by 28.02.2019.

12. The Interim Order passed earlier shall continue to remain in force till necessary action is taken, as directed hereinabove, by the second respondent.

13. The writ petition is, accordingly, disposed of. No costs.