

(1996) 07 AHC CK 0097
In the Allahabad High Court
Case No : Writ No. 23534 of 1995

Om Prakash Bhatt and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Citation : (1996) 07 AHC CK 0097

Hon'ble Judges : R.S.Dhavan, J and A.B.Srivastava, J

Final Decision : Allowed

Judgement

Ravi S. Dhawan and A. B. Srivastava, JJ.—The Commissioner, Kumaon and Garhwal, along with the Chairman of the Kumaon and Garhwal Mandal Vikas Nigam are present today in this matter. The issue plainly is about environmental consciousness in the regions in Kumaon and Garhwal, of the preservation of their natural environment and habitat and prophylactic action in preventing the disbalance of the environment and ecology of this region. All present today are agreed that Kumaon and Garhwal is part of a distinct ecosystem ; the Himalayan environment. Today's proceedings are limited to the extent on the discussion had today, as inevitably, for a more detailed examination, the Court will meet again.

2. The dumping of nonbiodegradable materials, regard being had to the projection with which the State of U. P. advertises these regions as tourist centres it makes the hills as part of a consumer's economy. On the mass consumption of fast consumer snacks or items classified as packaged fast foods, it is accepted even by the administration that there is no concerted all out effort, at present, to keep throw away plastics and metals away from the hills. Though, both the Commissioners of Kumaon and Garhwal submitted that they have initiated steps in pilot areas for the collection of plastic from being thrown all over the hill side.

3. Locally, the Commissioner, Kumaon, submitted that he is making the area of Nainital as a model area to induct consciousness that plastic plackets and

packaging materials are to be collected instead of being thrown so that it is recycled for other purposes. The Commissioner, Garhwal Division, has collected statistics on how plastic finds itself in unscheduled garbage dumps and the source from where it originates. The special survey was targeted to areas like Dehradun and Mussoorie. The summing up of this random survey is that this plastic throwing spree is part of mass consumption and by far the largest mass of it comes from institutions like Schools and Colleges, Government institutions and hotels. The survey is on record identifying the source and areas of plastic dumps.

4. But there is another dangerous phenomenon to be tackled. It is the scattering of plastics deep in the higher reaches of the mountains. There, retrieving it for recycling may be a difficult exercise. In this context steps need to be taken as a matter of urgency. This strewing of plastic on the higher reaches of the mountains and the valleys, either by tourists or by residents of hamlets and villages as a result of mass consumption is gradually and slowly creating an ecological imbalance. Layers of plastic get sandwiched between falling leaves and forest biodegradable materials. Plastic prevents nature from returning to earth nutrients which enrich it. It prevents rain water from percolating into the ground and preventing the trees from receiving it and natural streams and springs from being born. This delicate ecological balance is being lost by an alien phenomenon of consumerism."

5. The tourists from the plains consume and throw aluminium cans, plastic water bottles and glass bottles etc. on the hill side. This traffic comes in bus loads and packed cars which is difficult to monitor as also the items of mass consumption they bring with them. The officials present are agreed that as a first step a model answer has to be provided so that the message goes home that the delicate ecology of the mountains is to be protected not jeopardised. This message can best be covered from a trekking or a pilgrimage route. A beginning has to be made somewhere, so that similar preventive measures for other areas can be adopted.

6. The chalking out of a garbage cleaning exercise and the indiscriminate throwing of it will have to begin by educating the local population and regulating the tourist, the pilgrim and the trekkers to selectively retain these nonbiodegradable materials and throw only at specified points. To facilitate this arrangements will need to be made by the local administration and the State. Arrangements also will have to be made for public conveniences and for toilets. Mountains and fresh water streams are to be kept free of garbage, filth and open defecation. Rarely one finds public toilets on these pilgrimages or trekking routes. This causes extreme inconvenience to the trekkers and the pilgrims, the girls and the women especially. In the absence of public conveniences and toilets, the pilgrim, the tourist and the trekker alike use the mountain pathways as open toilets. This disturbs the esthetics of a pilgrimage or the concept of a mountain trek. Neither a pilgrimage nor a trek are meant to attack a mountain environment. Thus, an effort has to be made to clean these ancient rivers which

are otherwise the harbingers in India of a continuing but ancient civilisations on its banks. The cleaning effort must begin from its source.

7. The model route which is being suggested for bringing in these measures first is the pilgrimage or the trekking route on the sector GangotriGomukhTapovan.

8. The Court has discussed this matter with the Commissioners, Kumaon and Garhwal and the Chairman Kumaon and Garhwal Mandal Vikas Nigam, of these regions. To begin with the following measures are suggested :

Let a beginning be made that on these routes between Gangotri Bhujvasa, Gomukh and Tapovan, there will be adequate facilities to receive garbage and prevent open defecation by the installation of public toilets.

9. It was indicated to the Court that some of these facilities do exist at Chirbhasa. It was accepted by those in charge of administration and present, that these facilities at present are at one point alone on the 22 kilometre pilgrim route and are not enough. It accepted that such facilities be planned and available at convenient intervals so that no pilgrimage or trekker clutters the pilgrimage route with garbage nor is inconvenienced in the absence of public toilets to use mountain pathways. A scheme should check tourists, pilgrims and trekkers from throwing packaging materials and plastic wrappers of chips and fast foods etc., bottles of mineral water, cans of soft drinks or glass bottles or fruit juice packs on the pathways on the mountain side as garbage. For this purpose receptacles or garbage bins will need to be located throughout the route. It is reported to the Court that between Gangotri and Gomukh there are about 40 kiosks, a figure indicated by the Commissioner, Garhwal. The number of these kiosks are increasing day by day. Regulated and spread out a kiosk or a mountain tea shop will meet a necessity of a trekker or a pilgrim, A cluster of them will be a nuisance and a disaster with its consequential effects on the environment and the ecology of the mountains. The tea shops are to be regulated. One fact is clear that the State administration cannot run away from its obligation set in the Constitution of India, Part IVA, under Article 51 A for strict monitoring and protecting the environment. Fortunately, at present in these higher reaches of the mountains the State administration or its agencies still need to do more with whatever after they may have made, as of date, to control the situation. It is reported to the Court that for tourist traffic touring the hills and at most resorts the largest network of inns, rest houses and hotels have been established by the Mandal Vikas Nigams in Kumaon and Garhwal. A little more obligation will need to go along with the hotel industry run by the State.

10. For remedial measures in contest, the Court will take up the route from the top of the glacier at Gomukh. After hearing the heads of administration in these regions present today and discussing the remedial steps, the following safeguards and directions need to be spelled out.

(i) Commissioner, Garhwal Division, feels that the route between Bhojvasa and Gomukh is too near the glacier and it is not necessary to have kiosks or tea

shops on this route. The Court agrees with him. The Court agrees with him because too much habitation and the consequential effects of it will have a warming effect and occasion a temperature rise. This will have a direct effect on the glacier, which is Gomukh. The glacier will then recede leaving fragmented blocks of ice tearing away from it. Let man made activity not disturb this natural himalayan phenomenon at Gomukh.

(ii) Between Gangotri and Bhojwasa public conveniences as toilet facilities will be spread at periodic intervals of four kilometres.

(iii) Between Gangotri and Chirbasa Kiosks or tea shops will be managed, monitored and controlled by the Garhwal Mandai Vikas Nigam. On this route it will be located at two places only, excluding Chirbasa. At each of these places there shall not be more than two kiosks. Adequate arrangements shall be made to receive the packaging material which is nonbiodegradable and prevent the littering of it on the mountain side or the streams. It will be collected, separating metal and nonmetal and brought down from the hill to be dealt with under a scheme to be formulated by the Commissioner, Garhwal. He is given the liberty to be in touch with the manufacturers of these materials to receive it for recycling and pay the requisite refund, which when received, the Commissioner will keep in a trustdeposit for further directions.

(iv) Every kilometre of the GangotriGomukhTapovan route shall have containers, bins or receptacles to receive these thrown away wastes of packaging. Each of the receptacles or bins shall be marked in Hindi and English to signify biodegradable, nonbiodegradable, metal and glass. Each receptacle with a distinctive but separate colour to identify the category of garbage, for example, may carry the message: SAVE, HIMALAYAN ECOLOGY/DO NOT LITTER/INSERT GLASS BOTTLES HERE. This garbage will need to be brought down, for ultimate recycling or change of its chemical composition in incinerators.

(v) The ultimate lodging facility on this route officially provided and recognised is at Bhojvasa, a lodging house of the Garhwai Mandai Vikas Nigam. It is four kilometres from Gomukh. In providing light and fuel for cooking and hot water to intourist residents fossil fuel is burnt. It is carried to this height near the glacier, as liquid petroleum gas (LPG) and kerosene oil for the generator. This contributes to warming and pollution both. The priority in this region and the perspective in reference to the environment of the area requires preventing the cutting of forest wood for fire and the use of fossil fuel. This can be eliminated by using solar pannels for electricity and a solar water heating system for hot water. This will eliminate the generator for ultimate stand by emergencies. As the Garhwal Mandai Vikas Nigam seeks these energy saving devises to harness solar energy for hotel needs, the State of U.P., ought to encourage it.

(vi) Commissioner, Garhwal, brought to the notice of the Court on the last occasion that a neighbouring State is seriously contemplating an exercise to prevent the entry of plastic itself by legislation. He mentioned that Himanchal

Pradesh had put a penal sales tax on plastic with a planned move on a theme that its entry into Himanchal Pradesh would virtually be banned and plastic packaging will give way to biodegradable materials like paper packaging. The Commissioner, Garhwal, has placed before the Court a copy of the Act which has been passed recently by Himanchal Pradesh. The Act is yet to be enforced. The ban on plastic from entering the hills or discouraging it is much better than collecting the garbage. But, the High Court under the Constitution, cannot Legislate. Let this legislation of Himanchal Pradesh be brought to the notice of the State administration. It is the concern of the Court that Uttar Pradesh should come forward with equal concern to take preventive measures for plastic and nonbiodegradable materials damaging the ecology of the mountains in this State.

(vii) The occupation of the meadows and pasture lands by the hotels of Mandal Vikas Nigams with lodging houses is one of the causes of conflict which brought this writ petition into Court. It appears somewhere down the line the views of the hill people were not understood or were misunderstood when they complained that the bugiyal (meadow) as a concept has to be accepted and respected as part of the ecological balance of nature. Erroding a Himalayan bugiyal is a matter which has been made an issue in this petition. The meadows and the pasture lands, essentially that is what a bugiyal is at the higher reaches of the mountains of Garhwal and Kumaon are only for the sheep and shepherd. This area should not be encroached upon. Rather to pass a direction today, the Court considers it appropriate to leave it to the Commissioner and the Chairman of the Mandal Vikas Nigam to present a plan to the Court without causing inconvenience to the tourists of this season, so that these meadows and pasture lands remain in their natural state for the purpose for which nature carved it out. These suggestions will be presented to the Court by the two Commissioners and the Chairman, Kumaon and Garhwal Mandal Vikas Nigam, on the next date when the Court convenes next.

(viii) 1b reach Gangotri, on the way lies a village known as Harsil. This is basically a military camp. But, even military occupation as a habitation brings in commercialisation. The surroundings are beautiful and this village has been used by the film industry. It is advertised as a tourist resort and has a PWD Inspection Bungalow as also a Hotel of the Garhwal Mandal Vikas Nigam. To enter the village one has to pass through a very small passage and it is very difficult to pass two vehicles at a time. This in itself could be a serious situation if an occasion arises for military movement, Military traffic should not be obstructed. The narrow passage which leads to the village is a bottleneck with civil encroachments. This aspect needs to be monitored by the State administration. Commissioner, Garhwal, draws the attention of the Court to the fact that this matter can be taken up and discussed at the Civil Military Liaison Conference. It should ideally at every given time two military trucks ought to pass easily.

The stream which runs through Harsil is packed with garbage. This is a mountain

stream which brings in fresh water, as the snow melts on the higher reaches. The garbage in the stream contaminates the Bhagirathi. Those incharge of cleaning up the Ganga will need to see this stream passing through Harsil. But, there it will need the coordination from the military as well. In the circumstances, the Court leaves this matter in the hands of Commissioner, Garhwal, to seek the help of the military administration in cleaning up the stream.

11. The next date on this matter to receive the report, the Commissioners, Kumaon and Garhwal, suggest may be on 12

September, 1996 Order accordingly.