

(1996) 10 AHC CK 0039
In the Allahabad High Court
Case No : Writ Petition No. 23534 of 1995

Om Prakash Bhatt and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:

Constitution of India, 1950 — Article 48
Environment (Protection) Act, 1986 — Section 3

Citation : AIR 1997 All 259

Hon'ble Judges : Ravi S. Dhavan, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : Sudhanshu Dhilya, for the Appellant; Chief Standing Counsel and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, J.—The Court is of the opinion that these proceedings must now draw to a close. The issue is not whether the petitions have to be allowed or dismissed as in matters of environment and ecology there is no such thing as winning or losing a case. This Court has repealed more than often and the Supreme Court has said so repeatedly that protecting the environment and ecology is a constitutional obligation and a fundamental duty of the citizen, the State not excluded.

2. This petition by Om Prakash Bhatt and others was basically brought to Court as the residents of the hills, particularly of Garhwal, and more particularly of the district of Chamoli, fell threatened by the invasion by State organisations and the erosion of the sanctity and the peace and tranquillity of the Bugiyal. Bugiyal, in Garhwal basically means meadows and pasture land which exists above a certain altitude in the mountains no different than the alpine meadows of Switzerland and Austria. Closer to home the meadows at Khilanmarg above Gulmarg in Kashmir are called "marg". The complaint to the Court was that these areas are pasture lands to the sheep and the shepherd. The submission was that the

Bugiyal is basically an ecosystem in itself and this delicate balance between ecology and environment has to be understood and respected. It cannot be defiled and the intricate balance of nature does not suffer the presence of aliens on these pasture lands as it keeps away the sheep and shepherd, thus, disturbing the ecology. This living phenomenon may be watched but cannot be tread upon.

3. The complaint is that the Garhwal Mandal Vikas Nigam (hereinafter, in short, the Nigam) had put up pre-fabricated lodging houses as a hotel for tourist on the slopes of a Bugiyal which is below the peak of the temple of Tungnath. This has happened at Chopla. Tungnath incidentally, is accepted and reported even by the State administration as one of the highest temples in India.

4. The next issue presented was that indiscriminate import of plastic and non bio-degradable material is playing havoc with the environment of the hills as each seasons plastic collects on the slopes of the hills to be covered by autumn leaves of one season and this exercise is repeated year by year with plastic being sandwiched between leaves preventing rain water from seeping and percolating into the hill slopes and causing another ecological disbalance the disappearance of little streams and water resources on which the hill people rely upon. This deposit of plastic materials also kills the green life on the slopes of the mountains.

5. The third aspect is about the tourist and trekking pilgrimage routes, where the tourist, the pilgrim and the trekker devoid of all civic sense with no respect of the environment throw non bio-degradable material on the slopes of the hills and the mountain routes are being littered with indiscriminate evidence of deliberately created garbage. Besides on these mountain routes commercial activity, like kiosks and tea shops at places where they ought not to be, has been encouraged by the State administration. Court's attention was drawn to the garbage strewn on the slopes of the hills right up to the glacier of Gomukh and of man made deposits of synthetic and nonbio-degradable materials at the source of the river Ganga at above 14,000 feet. Environmentalists have voiced concern on the receding glacier at Gomukh, the source of the river Ganga. A leading news agency reported that the glacier at Gomukh was drying up. Discussion on this dangerous retardation of the glacier at Gomukh has even been broadcast on the British Broadcasting Corporation. Today, as this matter is being considered by the Court, a national daily reports, summarised in effect, that the glacier at Gomukh is receiving the harmful impact of spreading deforestation and urbanisation and ill mannered anti-environment recreational visits of city dwellers to these regions. This newspaper highlights the worry of scientists of the glacier at Gomukh receding, reducing and shrinking. The "warming up" phenomenon is one factor, but this itself is related to many others.

6. Court's attention was also drawn to the activities like fishing by use of explosives and dynamite. It has also been submitted that the Court show concern to the events of forest fires in these regions of Kumaon and Garhwal, and give remedial directions for containing forest fires. This petition, cannot be a

broad spectrum case taking into account the entire subject of environment and ecology of Kumaon and Garhwal. In the circumstances, the Court confines the subject to first three aspects, at present.

7. The Court is grateful to the Commissioners of Kumaun and Garhwal divisions for attending the proceedings and showing concern to remedy the situation. Their presence, the Court acknowledges has definitely made a difference to the tenor of the proceedings and their participation has positively brought positive results by eliminating disputed questions of facts. The two Commissioners, in fact, joined the cause that indeed, environmental aberration had to be remedied. They were not at issues that unless remedial steps were taken in these matters .it may lead to an unremedial environmental disaster. The Court does have some reservations of one wing of the State Department, otherwise a statutory corporate body, being the Garhwal Mandal Vikas Nigam. In fact, but for the overt activity undertaken by this body, this petition on a complaint about upsetting the local ecology would not have been before the Court.

8. We refer to this aspect because by this time the Court was expecting that the main cause for the grievance of the petitioners would be removed by the Nigam by acquiescing to the situation that the occupation of the Bugiyal below the temple of Tungnath and on the spur of Chopta should be removed. No such response has come. In fact, in a printed note, on its behalf, the views of the Nigam are contained in the note of the Commissioner, Garhwal division. It appears that the Commissioner, Garhwal division, apprised the Director, Tourism (Hills) and the Chairman and Managing Director of the Nigam about the removal of this complex and shifting it to another place. This aspect of the Commissioner's caution is contained at page 3 of the note of the meeting dated 24 September 1996. In reference to this, the response from the Nigam was that this complex was established by the funds of the Government of India after due clearance from the Government of Uttar Pradesh and the Government of India. The Tourism Department has spent a lot of money on the construction of this complex. This complex takes the pilgrims and the tourists to the highest temple in the world "Tungnath". Tungnath temple is visited by pilgrims since centuries. Removal of these facilities from Chopta or Dugalbitta area will not benefit the area.

9. Merely because money has been spent is no ground to degrade ecology and environment. While conforming uses in urban planning were not permitted to be compromised by the Supreme Court, when it was held that such violations were illegalities which were not curable *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, , Town Municipal Council, Udipi*. The violation of environment cannot continue and upsetting an ecological balance will be judged with even more strict standards. That money has been spent by the Nigam on putting prefabricated structures and tents on the Bugiyal was a misplaced expenditure. The Bugiyal belongs to the people. It is an ecosystem in itself. Nature has tailored it. It is not for man to erode the sanctity

of this area. It must be resumed to nature to provide for whom it was meant; the sheep, the shepherd, the wild flowers, the micro-organism and the plant and insect life below the turf and in the shrubs at that altitude. Clearly, putting a tourist lodging house on a Bugiyal was a mistake. The Court had during the seasons 1994-95 and 1995-96 not interfere with the Nigam's occupation with this sensitive area. As the Court has expected that by this time the Nigam would see the reality and unwind its occupation of running a camp tourist resort there. There is a danger looming on the horizon. If a State financed tourist camp has been planted on the Bugiyal, there are other five star hotel groups waiting to encroach on this beautiful and tranquil area nestling in the mountains. The Court is afraid that the Nigam will have to unwind its occupation of the Bugiyal next season before the end of March 1997. The Chief Conservator of Forests (Mills) will ensure that this will be done. Further, no allotment should be made in respect of occupation of the pasture lands and the meadows that are the Bugiyals. This eco-system is to be preserved.

10. Insofar as the pilgrimage and trekking route in these areas of the hills is concerned, the Court finds from the note drawn by Ms. Eva Sharnia, Deputy Conservator of Forest, Uliar Kashi Forest Division, Uliar Kashi, as placed before the Court, has taken into account the directions given by the Court in its order of 12 July 1996, which read as under:

12-7-1996.

Hon'ble Ravi S. Dhavan, J.

Honble A.B. Srivastava, J.

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 disconnect-system; 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.

The dumping of non-biodegradable 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.

Locally, the Commissioner, Kumaon, submitted that he is making the area of

Nainital as a model area to induct consciousness that plastic packets 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 the 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.

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 resuming 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 mountain ecological balance is being lost by an alien phenomenon of consumerism.

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 conveyed 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.

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 non-biodegradable 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 barbingers in India of a continuing but ancient civilisation on its banks. The cleaning effort must begin from its source.

The model route which is being suggested for bringing in these measures first is the pilgrimage or the trekking route on the sector Gangotri-Gomukh-Tapovan.

The Court has discussed this matter with the Commissioners, Gumaon 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.

It was indicated to the court that some of these facilities do exist at Chirbhasa. It was accepted by those incharge 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 or 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 Art. 51A 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 effort they may have made, as of date, to control the situation. It is reported to the Court that for the 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.

For remedial measures in context, 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 of his route. 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 kilometers.

(iii) Between Gangotri and Chirbasa kiosks or tea shops will be managed, monitored and controlled by the Garhwal Mandal 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 non-biogradable and prevent the littering of it on the mountain side or the streams. It will be collected, separating metal and non-metal, 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 trust-deposit for further directions.

(iv) Every kilometre of the Gangotri Gomukh-Tapovan route shall have containers, bins or receptables to receive these throw away wastes of packaging. Each of the receptables or bins shall be marked in Hindi and English to signify biogradable. non-biogradable. metal and glass. Each receptable 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 a Bhojvasa. a lodging house of the Garhwal Mandal Vikas Nigam. It is four kilometres from Gomukh. In providing light and fuel for cooking and hot water to in-tourist 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 panels for electricity and a solar water heating system for hot water. This will eliminate the generator for ultimate stand by emergencies. As the Garhwal Mandal Vikas Nigam seeks these energy saving devices 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 Himachal Pradesh had put a penal sales tax on plastic with a planned move on a theme that its entry into Himachal Pradesh would virtually be banned and plastic packaging will have to 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 Himachal Pradesh. The Act is yet to be enforced. The ban on plastic from entering the hills or discouraging is much better than collecting the garbage. But, the High Court under the Constitution, cannot legislate. Let this legislation of Himachal 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 non-biodegradable materials damaging the ecology of the mountains in this State.

(vii) The occupation on 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 some where 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. Eroding 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) To reach Gangotri, on the way lies a village known as Harsil, This is basically a military camp. But, even military occupation as a habitat 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 as 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 belts on the higher reaches. The

garbage in the stream contaminates the Bhagirathi, Those incharge of cleaning up (he Ganga will need to see this stream passing through Harsil. But here it will need the co-ordination 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.

The next date on this matter to receive the report, the Commissioner, Kumaon and Garhwal, suggest may be on 12 September, 1996".

Reverting to the note as a report for the Court as drawn by the Deputy Conservator of Forest, Uttarkashi, the Court is informed by this report that the pilgrimage and trekking route, for the sector Gangotri to Gomukh is being planned and monitored to retain and not disturb the environment of this region, efforts are being made to implement it. The Court considers this a laudable effort. At least it is a step in aid to begin with the exercise in rectifying a situation and get attuned to the nature and environment of these regions.

11. It is the suggestion of the Court that as these proceedings must close, the exercise which the State administration has adopted for the trekking pilgrimage route Gangotri to Gomukh, be adopted for other routes of pilgrimage/trekking routes in the hills including Mimsiyari to Gilarn glacier and beyond. It is understood that these pilgrimage/trekking route will include the popular routes to the shrines of Badrinath, Kedarnath, Hemkund and Yamnotri. If this is done, it will be a beginning to a dedicated effort in cleaning the pilgrimage/trekking routes, eliminating the warming effect by indiscriminate use of kitchen stoves and burners by shops and kiosks engaged in commercial activities, providing facilities of toilets and receptacles and bins for receiving garbage. This in itself, as an effort, will go a long way in planning to preserve the ecology and environment of these areas.

12. To discourage the entry of plastics and non-biodegradable materials into the hills, the State administration brought to the notice of the Court that it is adopting a legislation from the neighbouring State, i.e., Himachal Pradesh. The process has begun and a legislation is contemplated to prevent, control and discourage plastic shopping bags, wrappers and other non-biodegradable materials from being brought to the hill areas. The Court is informed by a report that the name of the legislation which is on the anvil and is being drafted, will be Uttarkashi Environment Protection and Pollution Control Act, 1996. As the State of Uttar Pradesh is already considering a legislation for the purpose of discouraging plastic and like material to be kept away from the hills, the Court is of the opinion that another effort has been made in meeting the principle of protecting the ecology of this area. It will not be appropriate for the Court to make any comment on the proposed legislation except that it ought to be brought into effect for the entire area of the hills with due speed and as a matter of urgency.

13. Mr. Rama Shanker Shukla Chief Conservator of Forest (Hills), Kumaun and

Garhwal has addressed the Court. He explained certain difficulties which were in the way of his Department in meeting with the totality of the programme for protecting the environment and ecology of this region. One aspect which he brought out glaringly was the fact that in the Environment (Protection) Act, 1986, in fact, for all practical purposes, there is no representation of any agency to co-ordinate with his Department on the subject which has engaged the attention of the Court. He mentioned that he has not come across any officer taking the obligation under this Act and exclusively for this purpose. The picture he gave to the Court was that if the authorities were to be identified whose business and obligation it is to protect environment, the checker-board is puzzling. He apprised the Court with the reality, but fairly accepted that there is no dedicated programme by one agency to show concern and execute efforts, the like of which engaged the attention of the High Court. All that the Court can comment on (his is that as of now the reports are coming in on the world media on protection and saving the environment. The attention is on India. The subject is the dwindling population of the tiger. The comment of a leading news agency was that India has lost the political will to protect the environment. The Court draws the attention of the authorities to Articles 48-A of the Constitution of India. Let this subject of environment and ecology not be taken so lightly as nature does not spare any one and law alone is not going to solve any problem. Insofar as ecology and environment is concerned, it has been there ever since civilisation itself began. The guidelines to preserve it will come from nature itself. The law is only the logic of it. The Constitution of India makes it a fundamental duty to bend to nature [Article 48-A and Article 51-A(g) of the Constitution of India], In this regard, neither any citizen nor the State should disregard the edict of the Constitution.

14. Equally important are the pronouncements of the Supreme Court. In the matter of *Indian Council for Enviro-Legal Action v. Union of India*, the Supreme Court was concerned that an industry had affected the water of the wells, streams and aquifers in a village in Rajasthan. The Supreme Court posed and answered a question on environmental degradation. The question "Pursuit of profit has absolutely drained them of any feeling for fellow human beings - for that matter anything else. And the law seems to have been helpless. Systemic defects?" In the answer, as a preface to the judgment, the Supreme Court said, "It is such instances which have led many people in this country to believe that disregard of law pays and that the consequences of such disregards will never be visited upon them -- particularly if they are men with means. Strong words indeed -- but nothing less would reflect the deep sense of hurt, the hearing of this case has instilled in us. The facts of the case will bear out these opening remarks." The Supreme Court reiterated the intent of the Constitution in Articles 48-A and 51-A(g) *Indian Council for Enviro-Legal Action and Others Vs. Union of India (UOI) and Others*, *Indian Council for Enviro-Legal Action v. Union of India*. On the aspect of a depleting forest cover in the State of Madhya Pradesh, the Supreme Court in the case of *Pradeep Krishen Vs. Union of India and Others*,

commented. "If one of the reasons for this shrinkage is the entry of villagers and tribals living in and around the Sanctuaries and the National Parks, there can be no doubt that urgent steps must be taken to prevent any destruction or damage to the environment, the flora and fauna and wildlife in those areas." On its concern and placing its concern on its constitutional obligations to protect the environment and prevent its pollution and degradation, the Supreme Court in yet another matter of *India Council for Enviro-Legal Action v. Union of India* (1996) 4 JT (SC) 263, spelled out an obligation on these matters of environment and ecology on the High Courts also. It observed. "The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology."

15. Then a new jurisprudence emerges at the end of deliberations at the 1987 meet - the World Commission on Environment and Development. The deliberations are known as the Brundtland Report (after the Prime Minister of Norway). The Supreme Court has referred to this international meeting on environment and the above report. Principles on environment protection have been adopted by the Supreme Court, one, the main is the principle of "Sustainable Development". The other two follow from the first: "The precautionary Principle" and "The polluter pays". Noticing these measures in safeguarding the ecological balance and environment the observations of the Supreme Court in *Vellore Citizens Welfare Forum Vs. Union of India* and others, are relevant:

"11..... We are, however, of the view that "The precautionary Principle" and "The Polluter Pays" Principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:

(i) Environment measures -- by the State Government and the statutory authorities -- must anticipate, prevent and attack the causes of environment degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

12. "The polluter pays" principle has been held to be a sound principle by this

Court in Indian Council for Indian Council for Enviro-Legal Action and Others Vs. Union of India (UOI) and Others, . The Court observed, "We are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country." The Court rules that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on". Consequently the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas." The "Polluter Pays" Principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

16. The directions given to the Nigam, to withdraw occupation of its camp site on the slope of the Bugiyal below the temple of Tungnath and above Chopta are to be carried by this public sector state organisation running a hotel at this place. The Chairman and Managing Director of the Organisation will ensure that the direction is followed and implemented by 31 March, 1997. Hereinafter hotels and tourist lodges will ensure following the precautionary principle. There are several open patches made available by nature where barren terrain exists to take in tourist lodges provided they are spread out widely. The Chief Conservator of Forests (Hills) for Kumaun and Garhwal can indicate the specific sites in consultation with the village Panchayats.

17. The other remedial measures referred to by the Court in its order of 12 July 1996 be carried out by the Commissioners of Kumaun and Garhwal, the District Magistrates concerned with the Conservator of Forests and the Chief Conservator of Forests (Hills), Kumaun and Garhwal, coordinating.

18. These proceedings are closed as they will not serve any purpose to keep them pending. Should any person, in reference to these regions and the subject matter of these petitions only, at any stage have any grievance, he can always address the Court for further redress on the subject. Let these proceedings be consigned.

19. The Court places on record its appreciation of the manner in which these proceedings were managed and conducted by the Chief Standing Counsel, Mr. Prabodh Gaur, the Standing Counsel, Mr. Krishna Prasad, Mr. Yashwanil Verma as a friend of the Court, Mr. Sudhanshu Dhuliya for the petitioners, and the Commissioners of the Kumaun and Garhwal divisions, Mr. R. S. Tolia, IAS Mr. Subhash Kumar. IAS and Mr. Brij Mohan Vohra, IAS, who replaced the former

Commissioner.

20. On observations made by the Court and with the directions contained in this order, the record is consigned for the present.

21. Order accordingly.