

(2016) 11 UK CK 0001
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 174 of 2013

Tara Singh Rajput

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 7 FLT 216

Hon'ble Judges : Alok Singh and Rajiv Sharma, JJ.

Bench : Division Bench

Advocate : None, for the Petitioner; Mr. R.S. Bisht, Brief Holder, for the State; Mr. Sandeep Kothari, Advocate, for the Lake Development Authority/Respondent No. 4

Final Decision : Disposed Off

Judgement

Rajiv Sharma, J. (Oral)—Heard.

2. Considering the gravity/sensitivity of the matter, we deem it fit that the Ministry of Environment & Forests, Union of India, be added as party respondent. Registry is, accordingly, directed to carry out the necessary amendment in the memo of parties.

3. The scope of this petition is enlarged in order to protect and preserve the environment and ecology of the entire State.

4. The question of a great public importance has been raised in this petition, whereby, the issue of felling of trees indiscriminately as well as the unauthorized construction(s), in the close vicinity of Bhimtal Lake area, is alleged to have been raised.

5. The Court has taken judicial notice of the grave threat caused to the fragile ecology and environment of the area abutting the Lakes including the flora and fauna. The main cause of degradation of environment and ecology in the areas

surrounding lakes is un-authorised and haphazard constructions being carried out in these areas.

6. Accordingly, the directions are hereby issued that no fresh/further construction shall be carried out within the radius of two kilometers, as the crow flies, in and around Bhimtal, Nainital, Khurpatal, Sattal, Nauckuchiylal Lakes, without getting assessed the bearing capacity of the areas from a specialised institution like National Environment Engineering Research Institute, Nagpur (NEERI). This exercise shall be undertaken within a period of two months and be completed within six months from today. The bearing capacity shall be assessed taking into consideration the topography and geography of the area, existing population, infrastructure available including natural resources like availability of portable water, capacity and sustainability. The further construction(s) shall take place only as per the recommendations made by the NEERI, Nagpur.

7. There shall also be a complete ban on the felling of trees within the radius of five kilometers in and around Bhimtal, Nainital, Khurpatal, Sattal, Nauckuchiylal Lakes.

8. If any governmental agency seeks to raise the construction, it shall be done by that agency only after moving an appropriate application seeking specific permission of this Court.

9. The District Magistrate, Nainital as well as the Chairman, Lake Development Authority, Nainital, shall be personally responsible to comply with this order in letter and spirit.

10. The Court also takes judicial notice of the fact that there is a large scale degradation of environment/ ecology in the Himalayas. The glaciers are rapidly depleting/receding. The colour of glaciers has also turned to black. Glaciers are the source of mighty rivers including Ganges and Yamuna. The rapid depletion of glaciers may lead to drying up of rivers causing immense miseries to the people in Uttarakhand and other States. It is the duty of all of us to protect the glaciers and to restore them to their pristine glory. The human activities around glaciers, the haphazard constructions and de-forestation has played havoc with the environment and ecology of the area.

11. Out of three percent fresh water available on earth, 67 percent of water is stored in glaciers and ice-caps. Himalayan Glaciers alone contribute/supply 30-40 percent of water. Millions of lives are dependent on these rivers. There are about 9575 glaciers distributed in the States of Jammu and Kashmir, Himachal Pradesh, Uttarakhand, Sikkim and Arunachal Pradesh, as per the data provided by Geological Survey of India, Ministry of Mines, Government of India. Gangotri Glacier itself is more than 30 kilometers long and covers an area of about 148 square meters.

12. Gangotri Glacier is the source of river Ganga and Yamnotri Glacier is the source of river Yamuna. Yamnotri Glacier is situated at a height of 6387 meters

from the sea level. Furthermore, there is less amount of snow due to climatic change. Melting of glaciers has outpaced the snowfall. There is also a rise in the average temperature of the earth.

13. The endeavour be made by the concerned authorities for removal of the encroachments in these fragile areas forthwith. There shall also be a direction that no new permanent construction/buildings shall come up within the radius of twenty five kilometers, as the crow flies, from the edges of all the glaciers throughout the State of Uttarakhand.

14. The burning of fossil fuel within a radius of 10 kilometers from the edges of glaciers is hereby banned. The State Government is directed to provide the Liquefied Petroleum Gas (LPG) and Kerosene Oil, in abundance, to the people living in these areas to mitigate their hardships by involving Oil Companies.

15. Use of plastic, in any form, may it be carry bags, plastic bottles, plastic wrappers, is totally prohibited within the radius of 20 kilometers of glaciers. The State machinery shall put up Nakas every 20 kilometers short of every Glacier in the State of Uttarakhand to enforce the directions. However, in the larger public interest, as a special case, the Army and Para-Military Forces are permitted to set up the infrastructure taking into consideration the environment and topography of the area.

16. The Chief Secretary, State of Uttarakhand, is directed to prepare the guidelines for permitting the persons to go in the close proximity of glaciers, if necessary, by issuing limited passes, to save the depleting/receding glaciers. It shall be open to the State Government to impose a reasonable cess/fee, by terming it Glacier Tax, on the persons visiting the areas near the glaciers. The amount realized by way of Glacier Tax shall be used only for the benefit of people visiting the area including the pilgrims.

17. The Ministry of Environment and Forests, Union of India is also directed to issue directions declaring all the hill stations, throughout the State of Uttarakhand and Glaciers, as eco-sensitive zones under the Environmental Protection Act, 1986, if not already notified, within a period of three months from today.

18. The State Government is further directed to provide all the basic facilities for the pilgrimage visiting Yamnotri and Gangotri. The Chief Secretary of the State is also directed to monitor the presence of pollutants near the glaciers and to take all necessary steps to reduce the pollution in the area. The State Government shall provide round the clock duly qualified doctors after every 2 kilometers of the track. All life saving medicines shall be provided by the State authorities including Oxygen free-of-cost. If the need be, the endeavour shall be made to airlift serious/critical patients by deploying the State Helicopters to the nearest hospital, where all the medical facilities are available.

19. The State Government is also directed to ensure that no Pooja Samagri is left

behind near the glaciers by the pilgrims.

20. The latest prevailing weather conditions shall be notified to the pilgrims visiting Yamnotri and Gangotri on hour to hour basis by installing the Display Boards throughout the route/tracks at a distance of 2 kilometers.

21. The quality of water in Ganges and Yamnotri and other rivers is deteriorating. The level of oxygen has come down. The untreated sewerage including industrial waste is dumped into the holy rivers by unscrupulous people. The State agencies have failed to implement the environmental laws to protect the rivers. Accordingly, there shall be a direction to all the Municipal Corporations, Municipal Councils, Nagar Panchayats situate on the banks of Ganges and Yamuna to set up Sewerage Treatment Plans (STPs), if not already constructed, within a period of six months from today. The State shall provide necessary funds to the local bodies for the construction of STPs. There shall be a constant monitoring of quality of water of Ganges and Yamuna rivers after every 24 hours. The same shall be made public by the State Government on day-to-day basis in Electronic/ Print media and All India Radio.

22. The pollution is also increasing in all the towns of Uttarkhand due to open burning of waste and leaves. All the Executive Officers of Municipal Corporations, Municipal Councils, Nagar Panchayats are directed to ensure that there is no open burning of garbage, waste and dry leaves within their respective jurisdiction. The defaulters may be booked under the Environmental Protection Act and other environmental laws.

23. It has taken million of years for the nature to form the glaciers. This cannot be permitted to be lost forever by one or two reckless/irresponsible generations. The environment and ecology is required to be preserved for today as well as for the future generations.

24. With the aforesaid mandatory directions, this public interest litigation petition is disposed of.