IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No.77 of 2017

Himanshu Chandola ……Petitioner

Vs.

State of Uttarakhand & others ……Respondents

With

Writ Petition (PIL) No.5 of 2014

Ashok Kumar ……Petitioner

Vs.

State of Uttarakhand & others ……Respondents

With

Writ Petition (PIL) No.136 of 2015

Shekhar Chandra Upadhyay ……Petitioner

Vs.

State of Uttarakhand & others ……Respondents

With

Writ Petition (PIL) No.18 of 2017

Jagat Singh ……Petitioner

Vs.

State of Uttarakhand & others ……Respondents

Present:-

Mr. C.K. Sharma and Ms. Sonia Chawla, learned Counsel for the petitioners.
Mr. S.S. Chauhan, learned Dy. Advocate General for the State of Uttarakhand.
Mr. Aditya Pratap Singh, learned Standing Counsel for the Uttarakhand Environment Protection and Pollution Control Board.
Mr. Prem Prakash Phartiyal and Pankaj Kumar Sinigh, learned Counsel for respondent nos. 6& 7.
Mr. Himanshu Gairola, learned Counsel holding brief of Mr. Vipul Sharma, learned Counsel for respondent no.23.

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Ramesh Chandra Khulbe, J.

Hon'ble Ramesh Ranganathan, C.J. (Oral)

All these Writ Petitions have been filed in larger public interest seeking a direction to the State Government and the State Pollution Control Board to cause an inquiry through a body of experts, and to take action against those industries which are causing environmental degradation, and are acting in violation of the guidelines prescribed in the Environment (Protection) Rules, 1986 and the Water (Prevention and Control of Pollution) Act, 1974.

2. It would suffice for the disposal of these four writ petitions to take note of the contents of, and the relief sought for in, WPPIL No.77 of 2017; and the directions issued by this Court, therein, from time to time. WPPIL No.77 of 2017 is filed by Shri Himanshu Chandola, an agriculturalist from Udham Singh

Nagar District, who complains of the failure of the respondents to take action against the recalcitrant industries which have caused severe environmental damage to the surrounding areas. He seeks a writ of mandamus commanding respondent nos.1 to 3, i.e. the State of Uttarakhand, the District Magistrate, Udham Singh Nagar and the Uttarakhand Environment Protection and Pollution Control Board to restrain the private respondents (industries causing pollution) from spreading pollution in the surrounding public areas, and to take action against them for causing water and air pollution. A mandamus is also sought commanding these private industries to ensure that they maintain the pollution standards as per the existing norms.

3. A Division Bench of this Court, by its order dated 17.08.2018, directed the Central Pollution Control Board to inspect each and every industry in the State of Uttarakhand, to ascertain whether or not the norms laid down under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Hazardous Wastes (Management and Handling) Rules, 1989, and the Environment (Protection) Rules, 1986 are being complied with, and thereafter submit its report to this Court.

4. The Central Pollution Control Board submitted its report stating that an inspection was caused of 793 (highly pollutant industries) red category industries in the State; their inspection revealed that 239 of such units were complying with the prescribed norms; 323 establishments in the red category were not complying with the prescribed norms; 159 units were closed; 43 units were not traceable; 26 units were still under construction; and 2 units could not be assessed as they were inaccessible.

5. The Division Bench had, in its order dated 14.02.2019, noted the submission urged on behalf of the State Pollution Control Board that the total number of red category industries in the State were 734, the number of units in the orange category was 2732, and those in the green category were 2700; during the year 2018-19, closure notices were issued to 214 and show cause notices were issued to 1812 units; and the State Pollution Control Board was taking prompt action whenever it found that the industries were not complying with the prescribed norms. The Division Bench, by its order dated 14.02.2019, directed the Central Pollution Control Board to furnish the list of 323 red category industries which were found not to be complying with the prescribed norms. The Member Secretary of the Uttarakhand Pollution Control Board was directed to inspect each one of these 323 red category industries, and take

action against the erring units, and submit an ‘Action Taken Report’ to this Court.

6. A compliance report was, thereafter, filed by the State Pollution Control Board informing this Court that of the 323 red category industries, identified by the Central Pollution Control Board, 27 were under closure, 179 of these units satisfied the prescribed norms, and show cause notices were issued against the rest. It was also brought to the notice of this Court that the Common Effluent Treatment Plant at Gadarpur, District Udham Singh Nagar did not comply with the prescribed norms, and a complaint was made against them before the Court of the Civil Judge (Junior Division); and, since 90 industries were connected to this common effluent treatment plants, any action taken by the Board for closure of this treatment plant could adversely affect these ninety units for no fault of theirs.

7. The Division Bench, in its order dated 13.06.2019, observed that failure on the part of the common effluent treatment plant to adhere to the prescribed norms would necessitate action being taken against them irrespective of the consequences, as any damage caused to the environment is irreversible. The State Pollution Control Board was directed to furnish details of the nature of the deficiencies found in the common effluent treatment plant; the action required to be taken to bring discharge of effluents, from these plants, within the prescribed parameters; and the time frame required to rectify the deficiencies in the effluent treatment plants. During the course of hearing on 27.06.2019, the State Pollution Control Board informed this Court that the Common Effluent Treatment Plant at Sitarganj catered to 90 industrial units located in Udham singh Nagar; all these 90 industrial units, which generated industrial effluents, were connected with the common effluent treatment plant for treatment of waste water; stoppage of the common effluent treatment plant would require each individual units to commission their own treatment plants, and to operate it in such a manner that they achieved the discharge standards as prescribed under the Environment (Protection) Rules, 1986. The Division Bench recorded the submission of the State Pollution Control Board that notices would be issued informing all the 90 industrial units that they had to commission their own treatment facilities, and operate them in such a manner that they achieved the standard norms; they would be given two weeks’ time to comply with these requirements, and thereafter action would be taken against the Common Effluent Treatment Plant for failure to adhere to the prescribed norms.

8. The State Pollution Control Board further informed that the Common Biomedical Waste Treatment Facility at Gadarpur was also not found to be functioning properly; and it appeared that the health care facilities, which continued to generate biomedical waste, did not have a facility for effective treatment of biomedical waste, which had resulted in severe damage being caused thereby to the environment.

9. The Division Bench noted that there were two biomedical waste treatment facilities, one at Gadarpur in Udham Singh Nagar district, and another in Roorkee in Haridwar District; and if action were to be taken against the facility at Gadarpur, it may then require the biomedical waste generated in the entire State to be sent to Roorkee. Time was granted to the State Pollution Control Board to submit an affidavit in this regard.

10. Periodic reports have been filed by the Pollution Control Board regarding the action taken by them against the non-compliant Red Category Industries. It would suffice to take note of the contents of the latest affidavit filed in this regard. The said affidavit dated 17.02.2020 refers to show cause notices having been issued to 96 non-compliant red category industries; 80 of them had rectified the deficiencies and, therefore, the proposal to close these industries was revoked; one of these industries was directed to be closed and, after they had rectified the deficiency, the order of closure was revoked; 3 of these polluting industries had themselves closed their units, 11 Red Category Industries were under process after field verification, and 1 was pending field verification. With regards the 21 industries, to whom direction for closure was issued, the affidavit states that, after rectification of the deficiencies so pointed out, the order of closure was revoked for 20 industries, and the other industry had closed its unit.

11. While periodical monitoring of the functioning of these Red Category Industries is no doubt essential, we see no reason to keep these writ petitions pending in the files of this Court in view of the assurance of Mr. Aditya Pratap Singh, learned Standing Counsel for the State Pollution Control Board, that the Pollution Control Board is regularly monitoring the functioning of these red category industries; and action would be promptly taken against the recalcitrant units which failed to adhere to the prescribed norms.

12. Mr. C.K. Sharma, learned Counsel, appearing on behalf of the petitioners, would submit that, instead of keeping the writ petitions pending in the file of this Court, it would suffice if this Court were to grant liberty to the

petitioners, in case any violation of the environmental laws by any of these red category units comes to their notice, to again invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

13. Granting the petitioners liberty as sought for, and considering the submission urged, on behalf of the State Pollution Control Board, that the Board would periodically monitor the functioning of these red category industries and take action against those who do not adhere to the prescribed environmental norms, we see no reason to keep the writ petitions pending on the file of this Court on these issues.

14. As the waste disposal facility at Gardarpur was not functioning properly, this Court was of the view that it may be in the best interest of the State to have a few more such facilities; and, since the cost of establishment of these facilities is extremely high, the State should explore the possibility of inviting private players to establish such facilities or to establish them in the Public Private Partnership mode.

15. In it affidavit filed before this Court, the State Pollution Control Board stated that, in the Minutes of the Meeting held on 04.12.2019, consisting of official of Urban Development, Health and Family Welfare Department and the Uttarakhand Pollution Control Board, it was decided that Common Effluent Treatment Plants (CETP) should be installed in industrial areas where the density was more; it was their opinion that a technical study should be conducted for the establishment of CETPs at the industrial areas in Bhagwanpur, Bantakhedi and Kashipur; for installation of the CEPTs in these areas, an initiative for a subsidized package being extended by the Department of Industrial Development was proposed to be introduced in order to encourage investors of local regions to establish and operate such plants; the existing two facilities were in the plain areas; and the proposal before the Pollution Control Board was considered for private investors for installation of such facilities at Narender Nagar in Tehri District and in Almora (hilly areas of the State). Invitations for expression of interest were also issued, was given wide publicity in the leading daily newspapers, and was also hosted on the website of the Board.

16. In its affidavit dated 17.02.2020, the Regional Officer of the Pollution Control Board states that 9 firms participated pursuant to the expression of interest, of which 3 were found to have technically qualified; the Pollution Control Board had shortlisted a firm namely, “The Just Environment

(Toxic Links), Delhi"; they were asked to make a presentation on 24.02.2020; thereafter 30 days' time was required to finalize the modalities; the shortlisted firm was thereafter required to prepare an inventory of the biomedical waste, in each of the 13 districts, within 300 days for submission of the final report; and, based on the report of the firm, the size of the units is required to be finalized.

17. Mr. Aditya Pratap Singh, learned Standing Counsel for the Pollution Control Board, states that the shortlisted firm would commence its exercise of collecting inventory, from the healthcare facilities in all the 13 districts of the State, from the 1st of April, 2020; and, in terms of the expression of interest, they are required to submit their report within 300 days from 01.04.2020. He would further submit that, since a decision has already been taken to establish two more waste disposal facilities in Tehri and Almora districts of Uttarakhand, action would be taken, on receipt of the report of the shortlisted firm, to decide on the size of the unit required to be established to cater to the waste generated by these healthcare facilities; and, thereafter, bids would be invited from those willing to establish such disposal facilities in these two districts of the State. He assures this Court that necessary action would be taken, within a prescribed time frame, for establishment of these waste disposal facilities in the two districts of Tehri and Almora.

18. As it does appear to us that the State Pollution Control Board has been taking action against the recalcitrant Red Category Industries in the State, and since efforts are underway to establish two additional bio-medical waste disposal facilities in the hilly region of the State, i.e. in Tehri and Almora districts, we record the assurance of the learned Standing Counsel, appearing on behalf of the State Pollution Control Board, that prompt action will be taken by the Pollution Control Board in this regard. All the four writ petitions are closed giving the petitioners liberty, in case any such need arises in future and these red category industries are found to have violated the prescribed environmental norms, to avail their judicial remedies in accordance with law.

19. All the four writ petitions are disposed of accordingly. No costs.

(Ramesh Chandra Khulbe, J.) **(Ramesh Ranganathan, C.J.)**

16.03.2020

Balwant/Sukhbant