

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
HON'BLE SRI JUSTICE RAKESH THAPLIYAL

06TH SEPTEMBER, 2023

WRIT PETITION (PIL) No. 225 OF 2021

Akash Vashishtha.

...Petitioner

Versus

The State of Uttarakhand and others.

...Respondents

Counsel for the petitioner. : Mr. Rakshit Joshi and Ms. Arti Adhikari,
learned counsels.

Counsel for the State of : Mr. C.S. Rawat, learned Chief Standing
Uttarakhand. Counsel for the State of Uttarakhand.

Counsel for the Union of India. : Mr. Aazmeen Sheikh, learned Standing
Counsel for the Union of India.

Counsel for the State Pollution : Mr. Aditya Pratap Singh, learned
Control Board. counsel.

Counsel for the MDDA/SADA. : Mr. Vinay Garg and Mr. Rahul Consul,
learned counsels.

ORDER : (per Sri Vipin Sanghi, C.J.)

The Ministry of Environment and Forests, in exercise of the statutory power conferred under Section 3(2)(v) of the Environment (Protection) Act, 1986, and Rule 5(3)(d) of the Environment (Protection) Rules, 1986, issued a notification on 01.02.1989 on the subject of Restrictions on Location of Industries, Mining Operations and other Development Activities in Doon Valley, which, at

that point of time, fell in the State of Uttar Pradesh. In relation to tourism, the notification required the preparation of a Tourism Development Plan (TDP), to be prepared by the State Department of Tourism, which was required to be approved by the Union Ministry of Environment & Forests.

2. Similarly, in relation to land use, a Master Plan of development and Land Use Plan of the entire area, was required to be prepared by the State Government, with the approval of the Union Ministry of Environment & Forests. The said notification also dealt with the aspects of location and setting up of industrial units and mining. In respect of all the aspects covered by the said notification, the approval of the Union Ministry of Environment & Forests was made mandatory.

3. However, no Tourism Development Plan was prepared by the State Department of Tourism. The State of Uttarakhand came into being on 09.11.2000. Even thereafter, the State has not taken any steps for preparation of the Tourism Development Plan.

4. When the present Public Interest Litigation came up before this Court on 13.06.2023, we had passed the following order :-

“1. Mr. Rakshit Joshi, learned counsel for the petitioner.

2. Mr. B.S. Parihar, learned Standing Counsel with Mr. S.S. Chaudhary, learned Brief Holder for the State.

3. Mr. Rahul Consul and Mr. Vinay Garg, learned counsels for respondent MDDA.

4. Mr. Azmeen Sheikh, learned Standing Counsel for the Union of India.

5. On the last occasion, when the matter was heard, our attention has been drawn to the Notification dated 01.02.1989, issued by the Ministry of Environment and Forest, Government of India, in relation to restrictions on location of industries, mining operations and other development activities in the Doon Valley, in the erstwhile State of Uttar Pradesh.

6. By the said Notification, the Central Government had imposed restrictions on the enumerated activities in Doon Valley. The enumerated activities were, firstly location, setting of industrial units; secondly Mining; thirdly tourism; fourthly grazing, and; lastly land use. It was left to the State Department of Tourism to prepare a Tourism Development Plan (TDP) with the approval of the Union Ministry of Environment and Forest. As aforesaid, the purpose of preparation of TDP was to impose restrictions, inter alia, in relation to the activity of tourism in the Doon Valley.

7. It has been over 34 years, since the issuance of the Notification dated 01.02.1989, but the tourism development plan has not been prepared by the State Tourism Department.

8. Today, written instructions have been tendered in Court by Mr. Parihar, according to which, the State has no plan of developing a Tourism Development Plan. This situation is completely unacceptable, as the failure on the part of the State Department for Tourism in preparing the TDP defeats the statutory Notification, issued by the Central Government under Section 3(2)(v) of the Environment (Protection) Act, 1986, and Rule 5(3)(d) of the Environment (Protection) Rules, 1986.

9. *We direct the Secretary, Tourism, Government of Uttarakhand, to remain present during the hearing of this petition, on the next date, either physically, or virtually.*

10. *An affidavit shall also be filed by the State explaining its inaction in preparing the TDP in terms of the Notification dated 01.02.1989, the purpose whereof, as aforesaid, was to place restrictions on tourism activity in the Doon Valley.*

11. *List the matter on 25.07.2023."*

5. In pursuance of the order dated 13.06.2023, the State filed its counter affidavit, and compliance affidavit. The same was examined on 25.07.2023. After examining the same, we had passed, *inter alia*, the following order :-

"7. We have perused the same, and it appears to us that the respondents have not addressed the issues raised by the petitioner, and taken note of by us in our earlier order dated 13.06.2023. The affidavits filed by the respondent- State are bereft of any particulars, and the documents referred to therein have not been placed on record.

8. We direct the respondent- State to file a better affidavit, bringing on record, all the documents, and the policies claimed to have been formulated from time to time after the issuance of the Notification dated 01.02.1989 by the Ministry of Environment and Forest, Government of India.

9. The affidavit should specifically state as to what are the restrictions placed in the policy with regard to the location of industries, mining operations, and other development activities in the Doon Valley. It should specifically be stated whether the plans have been approved by the Ministry of Environment and Forest, or not.

10. The affidavit be filed, positively, within the next three weeks.

11. List on 06.09.2023.

12. On the next date, the Secretary, Tourism, Government of Uttarakhand, shall join the proceedings virtually.”

6. The State has now filed a supplementary compliance affidavit, along with an application seeking condonation of delay. Delay in filing the same is condoned, and the same is taken on record. A perusal of the said affidavit again shows that the State has not prepared the Tourism Development Plan. The Secretary, Tourism, Government of Uttarakhand – Mr. Sachin Kurve has joined the proceedings online, and we have heard his submissions.

7. He submits that Tourism has been categorised as an Industry, and, therefore, the Department of Tourism is not involved in the matter of compliance of the Central Government notifications issued under the Environment (Protection) Act, and the Environment (Protection) Rules. He submits that the State Pollution Control Board, and the Mussoorie Dehradun Development Authority (MDDA) are the concerned authorities looking into the matter. Along with the affidavit, the respondents have also placed on record the notification dated 06.01.2020, by which the earlier notification dated 01.02.1989 (popularly known as

the 'Doon Valley Notification') was amended by the Union Ministry of Environment, Forest and Climate Change. The said amendment was carried out on the basis of the letter issued by the Government of Uttarakhand on 10.04.2019, requesting amendment of the notification. Even after amendment of the Doon Valley Notification, the obligation of the State Department of Tourism to prepare the Tourism Development Plan, was retained, as also the obligation to get the same approved from the Union Ministry of Environment, Forest and Climate Change. Despite aforesaid being the position, till date, the Tourism Development Plan, for Doon Valley, has not been prepared.

8. Mr. C.S. Rawat submits that the State Government has addressed a communication to the Central Government, seeking exemption from the requirement of obtaining approval of the Union Ministry of Environment, Forest and Climate Change. Along with the affidavit, the State has placed on record a communication sent to the Central Government on 04.07.2023 on the subject "*Regarding Repeal of Doon Valley Notification 1989 as amended 2020*". Mr. Rawat submits that the State has formulated Tourism Development Master Plan/ Policy from

2001 onwards. These documents have been placed on record, along with the present supplementary compliance affidavit.

9. We find that these documents do not have any statutory force. They also do not specifically address the issues relating to environment protection and preservation vis-à-vis Tourism in the Doon Valley.

10. The respondent-State does not appear to have understood the purpose of issuance of the Doon Valley Notification by the Ministry of Environment & Forests, way back in the year 1989. The purpose was, clearly, to preserve the eco-sensitive Doon Valley, and to prevent its degradation, which had been set into motion even then. The Doon Valley Notification *ex facie* recognizes the fact that Tourism *per se*, and its development, has a direct impact on the environment in Doon Valley. The objective of the statutory direction to the State Government, to prepare a Tourism Development Plan for the Doon Valley and to get the same approved from the MoEFCC, was to ensure planned sustenance, development and growth of the Tourism on industry in Doon Valley, which takes into account, and addresses the Environmental concerns that

Tourism throws up. This aspect is completely missed in the non-statutory Tourism Policy framed by the State from time to time.

11. We may, for instance, notice the Uttarakhand Tourism Policy 2030, framed by the State, a copy whereof has been filed along with the supplementary compliance affidavit. Chapter 15 of this Policy talks about “Sustainable Tourism”. A perusal of the said Chapter shows that, apart from rendering lip service to the aspect of Sustainable Tourism, there is no concrete decision taken, or implemented to actually attain Sustainable Tourism in the State, much less in the Doon Valley. The policy contains lot of jargon, with no meaningful content. The said policy does not exhibit the application of mind by any person with expertise in the field of environment conservation. It does not appear to be worth the paper it is written upon.

12. Another interesting feature of the said policy is that it talks of things to be done in the future, but the said policy does not state, as to what decisions have already been taken, and what measures have already been put in place, to attain Sustainable Tourism. It is replete with

phrases, such as, “*shall be taken*” and “*can be done*”. The Chapter on Sustainable Tourism, contained in the Uttarakhand Tourism Policy 2030 is short, and to make good our aforesaid finding, we reproduce the same hereunder :-

“Sustainable Tourism

This policy recognizes and appreciates that sustainable tourism is a concept that needs to be applied to all segments and themes of tourism in Uttarakhand. The state envisages sustainability to be a major driving principle in all its activities and initiatives. Thus, initiatives are needed to coordinate with multiple stakeholders and synchronize efforts to create positive impact. Furthermore, it is necessary for sustainable practices to be incentivized.

Sustainability principles refer to the environmental, economic, and sociocultural aspects of tourism development, and a fine balance must be established between these three dimensions to guarantee long-term sustainability. Sustainable tourism development guidelines and management practices are applicable to all forms of tourism in all types of destinations, from mass tourism to various niche tourism segments.

Thus, sustainable tourism should:

- Make optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural heritage and biodiversity. This becomes extremely important in the case of Uttarakhand due to the environmental sensitivities of its hilly terrain and forest cover.*
- Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to inter-cultural understanding and tolerance.*
- Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.*

Reducing adverse tourism impact

Various steps shall be taken to reduce the impact of tourism on the environment:

- Guidelines for different stakeholders (especially tourists, local community, and civic authorities) shall be laid down to minimize the negative impact of tourism activities on environment and to ensure sustainability of tourist experience, especially in eco-sensitive areas.*
- Mass tourism hubs shall be decongested by creating satellite nodes.*
- Tourism projects shall receive financial support for implementing measures such as rainwater harvesting, renewable energy use, waste processing, etc.*

Creating Awareness among Tourism Stakeholders

Community

The state shall foster collaboration between local authorities and the community to increase awareness on environmental sustainability and to preserve local culture through campaigns. Frameworks shall be drafted to use local knowledge and techniques to standardize the approach across the state. Assisting the local community with mentoring support and funding shall be considered to increase the effectiveness of the campaign. An annual competition between various districts could aid in incentivizing preservation of environmental and cultural integrity.

Tourism Enterprises

Private sector players such as hotel owners, tour operators, and transport services can play a key role in protecting the environment and influencing tourists to make sustainable choices. Tourism enterprises shall be required to necessarily follow sustainable practices in their tourism activities. Training shall be provided for solid waste management, water and energy conservation techniques to all tourism enterprises. They shall be further encouraged to create awareness amongst tourists and local community about sensitivities related to sustainability.

Tourists

A multi-lingual and multi-media campaign will be organized on environmental sustainability and code of conduct to sensitize tourists. The state shall build a program that encourages tourists to engage in conservation activities along with other institutions to protect fragile tourist sites.

Low Impact Tourism

The state shall encourage tourist activities that cause low impact to the environment. Local community and district authorities shall be sensitized to use renewable

resources and energy efficient design in the development and operations of tourist destination. Tourism projects abiding Green Rating for Integrated Habitat Assessment (GRIHA) or Indian Green Building Council (IGBC) guidelines shall also be recognized.

Green Certification

A framework shall be established for evaluating tourism enterprises / projects quantitatively and qualitatively on various parameters of sustainable tourism such as:

- Energy efficiency*
- Climate sound*
- Water consumption*
- Waste management*
- Biodiversity conservation*
- Preservation of cultural heritage*
- Cultural understanding and tolerance*
- Green building design*
- Community collaboration*

Recognition shall be given for outstanding sustainability practices through certifications given by the state. Also, sustainable, and green projects shall be awarded at tourism awards.

Monitoring Mechanism

A state-wide program shall be implemented in a concerted effort to clean up and dispose of waste in public places adjoining the tourist sites. Penalties shall be imposed on stakeholders in case of violation of guidelines / regulations. The Uttarakhand Tourism Development Board shall ensure mechanisms to continuously review and upgrade Tourism management guidelines and implement recommended action in timely manner. Ensuring CCTV surveillance and tourism security personnel at Anchor Tourism Sites shall increase onsite monitoring and enforcing regulation and guidelines.”

13. Our experience has shown, and we are pained and dismayed to notice, that the policy of the State, in practice, appears to be only to commercialise the hills, and to generate more and more revenues, by permitting commercial activities. There is very little emphasis on actual preservation and protection of the environment.

The State appears to be completely insensitized and blind to the enormous environmental degradation that the entire State – and not just the Doon Valley is suffering. No wonder, the State is urging the MoEFCC to repeal the Doon Valley Notification in toto.

14. Over the years, despite the intervention of the Ministry of Environment & Forests, as early as on 1989, the situation has only gone from bad to worse.

15. The Doon Valley Notification, as amended, is the law, and the State is bound to implement the law. The State cannot be heard to state that they shall not implement the law, merely because they have addressed a communication to the Central Government to repeal the Doon Valley Notification, 1989, as amended in 2020.

16. We, therefore, direct the State to positively formulate the Tourism Development Plan, and to seek approval of the Union Ministry of Environment, Forest and Climate Change within the next four weeks. The State shall also comply with all the other obligations cast upon it, in the Doon Valley Notification, as amended on 06.01.2020.

17. Under the Doon Valley Notification, as amended, the approval of the Union Ministry of Environment, Forest and Climate Change is must before starting any mining activity in the Doon Valley.

18. The State should state on affidavit, whether it has made a corresponding statutory rule in the State, which requires that any license, for carrying out any mining activity within the Doon Valley, would be issued only after the approval of the Union Ministry of Environment, Forest and Climate Change.

19. The State should also prepare a plan for grazing, and get the same approved from the Union Ministry of Environment, Forest and Climate Change.

20. With regard to the obligation of the State to prepare the Master Plan of Development, and Land Use Plan for the entire Doon Valley area, and to get the same approved from the Union Ministry of Environment, Forest and Climate Change, learned counsel appearing for the MDDA has presented a short list of dates and events before us, and read out the same. If the same is considered to be accurate, it appears that on repeated occasions, the Draft Master Plan prepared by the State has

been forwarded to the Union Ministry of Environment, Forest and Climate Change for its approval. It further appears that the Union Ministry of Environment, Forest and Climate Change insisted on preparation of an Integrated Master Plan for the entire Doon Valley, as notified on 20.05.2019.

21. Mr. Vinay Garg, learned counsel for the MDDA submits that, eventually in April, 2023, the Integrated Master Plan for development of the Doon Valley has been prepared, and submitted for approval of the Central Government, vide notification dated 21.04.2023. He submits, on instructions, that there has been no response from the Central Government till date on the said communication.

22. We direct the Union of India to file an affidavit, specifically disclosing its position with regard to the implementation of the Doon Valley Notification, as amended on 06.01.2020, and the fate of the request made by the State Government for repeal of the Doon Valley Notification, as amended in 2020. The Union of India should also disclose the status with regard to consideration of the Integrated Master Plan submitted by the State on

21.04.2023 vide letter No.
171/मदेविप्रा०/नि०अनु०/महायो०पत्रा(ESZ)/2023. The affidavit be
filed within four weeks.

23. List on 10.10.2023.

24. In case our order passed today is not complied
with, the Chief Secretary, Government of Uttarakhand
shall remain present before us personally on the next
date.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 06th SEPTEMBER, 2023
Rahul