

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Reserved on: April 11, 2018
Pronounced on: July 10, 2018

Writ Petition (PIL) No.40 of 2017

Indira Nagar Jan Vikas Samiti **Petitioner**

Versus

State of Uttarakhand & others ... **Respondents**

Mr. Alok Dalakoti, Advocate, for the petitioner.

Mr. Anil Bisht, Brief Holder, for the State of Uttarakhand.

Mr. Ashish Joshi, Advocate, for the respondent no.5.

Mr. Shiv Pande, Advocate vice Mr. Aman Rab, Adv. for respondent no.6.

**Coram: Hon'ble Rajiv Sharma , J.
Hon'ble Sharad Kumar Sharma, J.**

Per: Hon'ble Rajiv Sharma , J.

The present petition has been filed by 'Indira Nagar Jan Vikas Samiti' which is registered under the provisions of the Societies Registration Act, 1860.

2. A question of grave public importance has been raised in this petition. According to the averments made in the petition, the respondents are permitting dumping of solid waste (garbage) including bio-medical waste near Gola River. The place where the solid waste is being dumped is barely 200 meters away from Indira Nagar, Ward No.21. 25,000 people are residing in Indira Nagar. Gola River is the lifeline of Haldwani city. The Members of petitioner Society have made various representations to the respondents to dispose of all the garbage in a scientific manner. The entire Kathgodam and Haldwani towns are dependent on Gola's river's water.

3. The Deputy Secretary, Forest & Environment, Govt. of Uttarakhand, Dehradun has filed the counter affidavit on behalf of the Respondent no.2. According to the averments made in the counter affidavit, various cases have been registered against the functionaries of the respondent no.5 from time to time under the Forest Conservation Act. Nagar Nigam, Haldwani has applied for transfer of 4.00 hectares of reserve forest land for making solid waste management plant/project. The Ministry of Environment, Forests & Climate Change, Govt. of India, vide order dated 21.8.2015, has granted in-principle approval for transfer of 4.00 hectares of reserve forest land. Recently, the Ministry of Environment, Forests & Climate Change, vide letter dated 20th February, 2018, has granted the final approval for transfer of 4.00 hectares of reserve forest land in favour of Nagar Nigam, Haldwani. This final approval came to the office of D.F.O. Tarai East on 27th March, 2018. Now, the user agency i.e. Nagar Nigam Haldwani has to comply with Point No.9 of the letter of final approval, according to which, the respondent no.5 has to plant 1000 trees in lieu of 1.00 hectare CA area falling in Moderately Dense Forest (MDF) as per Ministry guidelines dated 8.11.2017.

4. Respondent no.6-Uttarakhand Environment & Pollution Control Board has also filed its counter affidavit. According to the averments made in the counter affidavit, the directions were issued to respondent no.5-Nagar Nigam, Haldwani from time to time not to dump the garbage in breach of the relevant rules. Respondent no.6 has also filed complaints against the respondent no.5 -Nagar Nigam under the provisions

of the Environment Protection Act, 1986 for non-compliance of Municipal Solid Wastes (Management and Handling) Rules, 2000, now known as Solid Waste Management Rules, 2016. The matters are pending trial. Respondent no.5 has identified the land for solid waste processing and disposal at Indira Nagar railway crossing near Village Gaujajali, Sitarganj, Bypass Road, Haldwani.

5. This Court, vide judgment dated 16.3.2017 passed in WPPIL No.80 of 2017 (*Sai Nath Seva Mandal v. State of Uttarakhand & others*), has issued the mandatory directions to the respondents for the enforcement of the Rules framed under the Environment Protection Act, 1986.

6. Vide order dated 13.6.2018 passed in WPPIL No.22 of 2015 (*D.K. Joshi v. State & others*), the Principal Secretary, Urban Development was directed to appear before the Court to file an affidavit explaining why the directions, issued in WPPIL No.80 of 2012 on 16.3.2017, were not complied with. In sequel to the aforesaid order, the compliance report has been filed by the Urban Development Department, Uttarakhand in a tabular form.

7. By judgment dated 16.3.2017 passed in WPPIL No.80 of 2017, this Court observed as under: -

“23. Now, as far as Nagar Nigam, Haldwani-Kathgodam is concerned, the DPR based on Cluster wise proposal has been sent to the Director, Urban Development Department, Dehradun. A sum of Rs.34.88 crores was sanctioned by the Government for Solid Waste Management out of which Rs.8.72 crores have been released. The Nagar Nigam, for the disposal of garbage with scientific method, got sanctioned 04 hectares of land from Forest Department vide letter dated 21.08.2015.”

8. It is evident from the affidavit filed by the respondent no.2 in the present petition that the Ministry of Environment, Forests & Climate Change has granted its final approval for transfer of 4.00 hectares of reserve forest land in favour of Nagar Nigam, Haldwani on 20.02.2018. Nagar Nigam, Haldwani is only required to comply with the Condition No.9 i.e. planting 1000 trees as per the norms laid down by the Ministry.

9. In the compliance report/status report filed by the Secretary, Urban Development Department, it has come that for Haldwani cluster, DPR was approved under JnNURM but due to non-availability of civil land, the project could not be executed for treatment and disposal site (covering 216.49 MTPD, 14.78% of total). A sum of Rs.34.88 crores was sanctioned by the Government for Solid Waste Management Plant out of which Rs.8.72 crores have been released. The land has been transferred in the name of Nagar Nigam, Haldwani. Now, the Nagar Nigam, Haldwani is required to set up the Solid Waste Management Plant and Dumping Ground.

10. Presently, the entire solid waste including bio-medical waste is dumped near Gola River. Respondent no.5 cannot be permitted to dump the garbage near Gola River. The garbage dumped near the river flows directly into the river. The river gets polluted. The twin towns of Haldwani and Kathgodam are dependent on the water supply of Gola River. A stern action was required to be taken by the respondent no.6 against the functionaries of respondent no.5 for flouting the rules framed under the Environment Protection Act, 1986.

11. The Central Government has framed the Rules called 'The Construction and Demolition Waste Management Rules, 2016' (*hereinafter to be referred as 'the Rules'*). These Rules apply to every waste resulting from construction, re-modeling, repair and demolition of any civil structure of individual or organisation or authority who generates construction and demolition waste such as building materials, debris, rubble. It is required to be stored and disposed of separately. It is the duty cast upon the local authority under Rule 6 to issue detailed directions with regard to proper management of construction and demolition waste within its jurisdiction and also to chalk out stages, methodology and equipment, material involved in the overall activity and final clean up after completion of the construction and demolition. The concerned Department in the State Government is responsible for providing suitable sites for setting up of the storage, processing and recycling facilities for construction and demolition and hand over the sites to the concerned local authority for development, operation and maintenance as per Schedule I framed under Rule 7(1) of the Rules.

12. The Central Government, in order to effectively improve the collection, segregation, processing, treatment and disposal of these bio-medical wastes in an environmentally sound management, has notified the Rules called the Bio-Medical Waste Management Rules, 2016 on 28th March, 2016. Rule 3(f) defines 'bio-medical waste'.

13. Rule 3(m) defines 'occupier'. The duties of the 'occupier' are provided for under Rule 4. It is the duty of every occupier to take all necessary steps to

ensure that bio-medical waste is handled without any adverse effect to human health and the environment and in accordance with the Rules. The 'Occupier' is required to make a provision within the premises for a safe, ventilated and secured location for storage of segregated biomedical waste in colored bags or containers in the manner as specified in Schedule I. The 'Occupier' is also required to pre-treat the laboratory waste, microbiological waste, blood samples and blood bags through disinfection or sterilisation on-site in the manner as prescribed by the World Health Organisation (WHO) or National AIDs Control Organisation (NACO) guidelines and send the same to common bio-medical waste treatment facility for final disposal. The 'Occupier' is required not to give treated bio-medical waste with municipal solid waste. The 'occupier' is also required to establish a Bar-Code System for bags or containers containing bio-medical waste to be sent out of the premises or place for any purpose within one year from the date of the notification of the Rules. The liquid chemical waste is also to be disposed of by ensuring pre-treatment or neutralisation prior to mixing with other effluent generated from health care facilities etc.

14. Rule 3(n) defines 'Operator'. The duties of 'Operator' are provided under Rule 5.

15. Rule 8 prescribes that no untreated bio-medical waste shall be mixed with other wastes. The bio-medical waste shall be segregated into containers or bags at the point of generation in accordance with Schedule I prior to its storage, transportation, treatment and disposal. The containers or bags are required to be labelled.

17. According to Rule 11, every State Government or Union territory Administration shall constitute an Advisory Committee for the respective State or Union territory under the chairmanship of the respective health secretary to oversee the implementation of the rules in the respective state and to advise any improvements etc. This Committee is required to include representatives from the Departments of Health, Environment, Urban Development, Animal Husbandry and Veterinary Sciences of that State Government or Union territory Administration.

18. According to sub-rule (4) of Rule 12, every State Government or Union territory Administration shall constitute District Level Monitoring Committee in the districts under the chairmanship of District Collector or District Magistrate or Deputy Commissioner or Additional District Magistrate to monitor the compliance of the provisions of these rules in the health care facilities generating bio-medical waste and in the common bio-medical waste treatment and disposal facilities. The District Level Committee under sub-rule (4) is required to submit the report once in six months to the State Advisory Committee. The District Level Monitoring Committee is required to comprise of District Medical Officer or District Health Officer, representatives from State Pollution Control Board or Pollution Control Committee, Public Health Engineering Department, local bodies or Municipal Corporation, Indian Medical Association, common bio-medical waste treatment facility and registered nongovernmental organisations, working in the field of bio-medical waste management.

19. According to Rule 17, the Department in the business allocation of land assignment shall be responsible for providing suitable site for setting up of common biomedical waste treatment and disposal facility in the State Government.

20. Every 'occupier' or 'operator' of common biomedical waste treatment facility is liable for all the damages caused to the environment or the public due to improper handling of bio-medical wastes. The 'occupier' or 'operator' is also liable for action under Sections 5 and 15 of the Environment (Protection) Act, 1986.

21. The Human Anatomical Waste i.e. Human tissues, organs, body parts and fetus below the viability period are to be contained in Yellow coloured non-chlorinated plastic bags. It is to be treated and disposed of by Incineration or Plasma Pyrolysis or deep burial as per Schedule I. The items contaminated with blood, body fluids like dressings, plaster casts, cotton swabs and bags containing residual or discarded blood and blood components are required to be treated and disposed of by Incineration or Plasma Pyrolysis or deep burial. The expired or discarded medicines are to be kept in Yellow coloured non-chlorinated plastic bags or containers. The expired cytotoxic drugs and items contaminated with cytotoxic drugs are to be returned to the manufacturer or supplier for incineration at temperature $>1200^{\circ}$ C. The chemical waste is to be kept in yellow coloured containers or nonchlorinated plastic bags and it is to be disposed of by incineration or Plasma Pyrolysis. The Chemical Liquid Waste is required to be separately collected and sent to effluent treatment system. However, before sending, it is required to be pre-treated

before mixing with other wastewater. The Discarded linen, mattresses, beddings contaminated with blood or body fluid are to be kept in Non-chlorinated yellow plastic bags or suitable packing material. The Microbiology, Biotechnology and other clinical laboratory waste is to be kept in Autoclave safe plastic bags or containers. The Contaminated Waste (Recyclable) is to be kept in Red coloured nonchlorinated plastic bags or containers.

22. The standards for Treatment and Disposal Of Bio-Medical Wastes are provided under SCHEDULE II [See rule 4(t), 7(1) and 7(6)].

23. It has come in the petition that the bio-medical waste is also dumped near Gola River. It is a serious breach of the Bio-Medical Waste Management Rules, 2016. No bio-medical waste can be mixed up with the general solid waste. It is required to be disposed of as per the Bio-Medical Waste Management Rules, 2016.

24. Accordingly, the present petition is disposed of by issuing the following mandatory directions: -

A. The respondent no.5- Nagar Nigam, Haldwani is directed to set up Solid Waste Management Plant/ Dumping ground, landfill within six months from today on the land approved by the Ministry of Environment, Forests & Climate Change on 20.2.2018.

B. Till the Solid Waste Management Plant is set up, the respondent no.5 is restrained from dumping the solid waste including bio-medical waste at the present place of dumping to avoid pollution of River Gola forthwith.

C. The State Government is directed to provide suitable sites for setting up of the storage, processing

and recycling facilities for construction and demolition waste and hand over the sites to the concerned local authority for development, operation and maintenance, which shall ultimately be given to the operators by Competent Authority within a period of six months from today. The State Government is directed to ensure that: -

- a) The construction and demolition waste shall be utilized in sanitary landfill for municipal solid waste of the city or region.
- b) The site shall be away from habitation clusters, forest areas, water bodies, monuments, National Parks, Wetlands and places of important cultural, historical or religious interest.
- c) The buffer zone is also directed to be provided.
- d) The processing or recycling site shall be fenced or hedged.
- e) The approach and or internal roads shall be concreted or paved so as to avoid generation of dust particles.

D. All the 'Occupiers' are directed to make provisions within the premises for a safe, ventilated and secured location for storage of segregated biomedical waste in colored bags, as discussed hereinabove.

E. All the 'Occupiers' are directed to pre-treat the laboratory waste, microbiological waste, blood samples and blood bags through disinfection or sterilisation on-site in the manner as prescribed by the World Health Organisation (WHO).

F. All the plastic bags, gloves and blood bags shall be substituted with plastic bags as per BIS standards.

G. All the 'Occupiers' are directed not to mix-up bio-medical waste with municipal solid waste.

H. All the 'Operators' are directed to take all necessary steps to ensure that the bio-medical waste collected from the occupier is transported, handled, stored, treated and disposed of, without any adverse effect to the human health and the environment, in accordance with the Bio-Medical Waste Management Rules, 2016.

I. The 'Operators' are directed to ensure timely collection of bio-medical waste from the Occupiers as prescribed under the Bio-Medical Waste Management Rules, 2016.

J. All the 'Operators' are directed to train all its health workers involved in handling of bio-medical waste at the time of induction and after every six months thereafter.

K. All the 'Operators' are directed to maintain a log book for each of its treatment equipment according to weight of batch; categories of waste treated; time, date and duration of treatment cycle and total hours of operation.

L. The bio-medical waste shall be treated and disposed of as per Rule 7.

M. All the 'Occupiers' are directed to ensure that the bio-medical waste is segregated, collected, treated, processed and disposed of as per Schedule I of Rules of 2016.

N. The State Government is directed to ensure that the license of occupiers/hospitals/laboratories/clinics/medical clinics etc. is cancelled in case of non-compliance of provisions of Bio-Medical Waste Management Rules, 2016.

O. No 'Occupier/Hospital/Laboratory' shall dump the bio-medical waste near the rivers.

P. The State Government is directed to constitute the State Level Advisory Committee as per Rule 11 and the District Level Monitoring Committee as per Rule 12 within three months from today.

Q. The State authorities are directed to take action under Sections 5 and 15 of the Environment (Protection) Act, 1986 against the 'occupiers' and 'operators' for not complying with the Bio-Medical Waste Management Rules, 2016.

R. The penal and punitive action be taken against the persons, including government establishments for non-compliance of the Solid Waste Management Rules, 2016, under Sections 5 and 15 of the Environment (Protection) Act, 1986 including imprisonment and imposing exemplary damages for restoration of environment and ecology.

S. Every 'occupier' is directed to maintain and update, on day to day basis, the bio-medical waste management register and display the monthly record on its website according to the bio-medical waste generated in terms of category and colour coding as specified in Schedule I.

T. Every "waste generator" i.e. every person or group of persons, every residential premises and non residential

establishments including Indian Railways, defense establishments, which generate solid waste but do not dispose the same as per the Rules, action be taken against them under Sections 5 and 15 of the Environment (Protection) Act, 1986 read with the relevant provisions of the U.P. Municipalities Act, 1916.

U. The Secretary, Urban Development/Panchayati Raj are directed to initiate the disciplinary proceedings against the Officers/Officials of the Municipal Bodies /Panchayati Raj Institutions in case the provisions of the Solid Waste Management Rules, 2016, Bio-Medical Waste Management Rules, 2016 and Construction and Demolition Waste Management, Rules, 2016 are not complied with, and if necessary, by putting them under suspension.

V. The Uttarakhand Environment Protection and Pollution Control Board is directed to register criminal cases against the Officers/Officials/Occupiers/Operators in case of breach of Solid Waste Management Rules, 2016, Bio-Medical Waste Management Rules, 2016 and Construction and Demolition Waste Management, Rules, 2016 immediately.

W. The Municipal Authorities throughout the State of Uttarakhand are directed to ensure cleaning of garbage from dustbins, dumpers before 6 AM in summers and 7 AM in the winters. The municipal authorities are directed to ensure that there is no overflowing of garbage from dustbins/dumpers.

X. The State Government is also directed to provide Utilities such as drinking water and sanitary facilities (preferably washing/bathing facilities for workers) and

lighting arrangements for easy landfill operations during night hours.

Y. The Secretary-in-Charge, Department of Urban Development shall be personally responsible for the enforcement of the directions, issued hereinabove and due compliance of the Solid Waste Management Rules, 2016, the Bio-Medical Waste Management Rules, 2016 and the Construction and Demolition Waste Management, Rules, 2016.

25. All pending applications stand disposed of accordingly.

(Sharad Kr. Sharma, J.)

(Rajiv Sharma, J.)