

DR. AJAY SINGH RAWAT
v.
UNION OF INDIA AND OTHERS

MARCH 9, 1995

[A.M. AHMADI C.J., B.L. HANSARIA AND S.C. SEN, JJ.]

Environment Pollution—Nainital—Suffocation and pollution due to water, air, noise etc.—Saving of—Direction issued.

The petitioner, a member of "Nainital Bachao Samiti", filed a writ petition seeking directions to prevent suffocating of Nainital due to pollution i.e. water, air, noise etc.

It was submitted that the Department of Tourism and Environment of the U.P. Government has organised 'Save Nainital Workshop' in September, 1989. Papers were presented on different aspects highlighting sudden rise in pollution and that the sources of pollution were mentioned in the booklet "One hundred and fifty years of Nainital".

By an order dated 14.7.1994 of this Court, a Commissioner for local inspection was required to be appointed by the District Judge, Nainital to give report on the sources of pollution.

The Commissioner made certain recommendations which were considered by this Court.

Disposing of the writ petition, this court gave following directions.

1. Sewage water has to be prevented from entering the lake.
2. Building materials are not to be allowed to be heaped on the drains to prevent siltation of the lake.
3. To examine whether trotting of horses around the lake is required to be prevented.
4. Multy-storeyed group housing and commercial complexes have to be banned in town area. Building of small residential houses or flats could be permitted.

5. The offence of illegal felling of trees is required to be made cognizable.

6. Vehicular traffic on the mall has to be reduced. Heavy Vehicles may not be permitted.

7. The fragile nature of Ballia Ravine has to be taken care of. The cracks in the revetments of Ballia Nala have to be repaired urgently.

[636-H, 637-A-D]

8. A monitoring committee may be constituted for this purpose and it shall hold its meeting, once a month initially and later once in two months. [637-E]

CIVIL ORIGINAL JURISDICTION : Writ Petition No. 694 of 1993

(Under Article 32 of the Constitution of India.)

J.S. Attri, Pradeep Misra, Randhir Jain, Ashok K. Srivastava, C.V.S. Rao and R. Narasimhan for the appearing parties.

The Judgment of the Court was delivered by

HANSARIA, J. Nainital, a beautiful butterfly, is said to be turning into an ugly caterpillar. According to the petitioner, this is due to: (1) water pollution; (2) air pollution; (3) noise pollution; and (4) "VIP pollution". This has naturally caused concern to all natural lovers and environmentalists, apart from the enlightened resident of Nainital. The concern has been felt to such an extent that a 'Save Nainital Workshop' was organised by none else than the Department of Tourism and Environment of the U.P. Government in September, 1989. In this workshop many papers were presented on different aspects highlighting sudden rise in vehicle traffic, illegal construction, encroachment and squatting, clustering, noise pollution, vanishing greenery resulting in land slides on Cheena Peak, maintenance of drains and pollution in the lake which has virtually become a dumping ground for rubble and public sewage. Despite organising of such a workshop, nothing much seems to have been done to preserve the pristine beauty of Nainital. Hence, by this petition Dr. Rawat, who is a member of social action group called 'Nainital Bachao Samiti', has approached this Court seeking its assistance to pass such orders and give such directions as would prevent further pollution of already suffocating Nainital.

2. The environmental degradation has taken place, inter alia, because of increase in pollution, over-grazing, lopping and hacking of oak forests, forests fires, land slides, quarrying etc. The pollution in the lake is because of both inorganic and organic causes. The nearby minerals, namely, manganese, lead salts, copper cobalt and zinc make the lake life toxic. The discharge of waste water in the lake is another polluting factor. But the most potent source of pollution is, as mentioned in the booklet "One Hundred and Fifty Years of Nainital", whose co- author is none else than the petitioner (the other author being one Deepak Singhal, who at the relevant time was District Magistrate, Nainital) "human faeces from leaking sewers". (Page 51). The throwing of plastic bags and dumping of other material have added to the throes of the lake. The growing traffic, with the growth of the town and big turn out of tourists, has contributed much to the environmental pollution. The increased traffic has in its wake brought noise pollution. The petitioner has said something about "VIP pollution" also.

3. By an order dated 14.7.1994, this Court had felt it fit, after having gone through the petition, to appoint a Commissioner for local inspection and to give report on the following points :

- "(i) Whether construction of buildings in catchment area of Nainital lake is still going on.
- (ii) Whether ballia Ravine through which the outflow of the nainital lake water passes during the rains is in a dilapidated condition and on a fragile base.
- (iii) Whether hill cutting and destruction of forest is going on in catchment area of lake and in Naini Hill especially due to construction of buildings.
- (iv) Whether water of lake is being polluted by human waste, horse dung and other wastes.
- (v) Whether heavy vehicles ply on the Mall Road, bridle paths on the hill sides and other vehicles ply on Bara Bazar and Talli Tal Bazar."

4. The District Judge, Nainital, was directed to appoint an advocate of that court as a Commissioner. He appointed Shri P.C. Pande, who

submitted his report on 2.9.94. A perusal of that report shows that on local inspection it was found that the lake has turned dark green with an oily surface and is now full of dirt, human faeces, horse dung, paper-polythene bags and all sorts of other waste. Most of the sewer lines which leak, ultimately discharge the faecal matter into the lake through the drains which open into it. The Commissioner also found that wherever the drains open at the shores of the lake, big heaps of rubble used in construction of the buildings are collected and these materials ultimately settle down on the shores of the lake thereby reducing the length, depth and width of the lake, besides polluting the water to a great extent. It has been mentioned in the report that ecologists feel that if nothing was done to prevent this siltation then the lake will dry up.

5. On the five questions required to be examined by the Commissioner, which have been noted above, his findings are as below:-

(i) Construction of buildings is going on unauthorisedly and in a big way. The Commissioner has mentioned about illegal construction of office even by Kumaon Mandal Vikas Nigam of the State Government and Lake Development Authority, which constructed several triple-storeyed flats which have been declared as dangerous.

(ii) The Ballia Ravine was found to be in a very dilapidated condition. The importance of the Ravine from ecological point of view is that the over flow of the water from the lake passes through it. But the revetment walls of the Nala have either given way or cracked at several places because of which the water seeps in the rocky wall endangering its existence. The point where Ballia Nala enters Ballia Ravine was found to be in shambles, as large cracks had developed owing to land slides and continuous soil erosion. In the year 1989 there was a big land slide causing death of 28 persons. The main cause of the land slides has been attributed to the blasting and felling of trees which was done to construct a motor road. Plying of heavy vehicles is said to be endangering the fragile hill slopes.

(iii) Hill cutting and destruction of forests have been confirmed. The collusion of Forest Department officers has been mentioned as one of the causes of the illegal felling of trees. It has been stated that the forest offence is compoundable and the maximum compounding penalty is Rs. 5000, whereas the approximate value of the illegally cut trees varies be-

tween Rs. 10,000 and Rs. 25,000 depending upon the quality of the tree. As a person becomes owner of the tree after payment of the penalty, this has increased tree felling.

(iv) The lake water was found full of human waste and horse dung and other wastes, as already noted. The horse stand having been allowed to be erected near the lake and trotting around the lake being permissible, the report states that horse dung in abundance enters and reaches the lake. The tourists who enjoy boating in the lake throw left over edibles and polythene-bags in the lake.

(v) The report states about plying of heavy vehicles like buses on the Mall Road and the bridle paths. They also enter Malli Tall and Talli Tal Bazars.

6. The Commissioner has made certain recommendations, of which the following deserve to be noted :-

(i) Group housing and commercial complexes should be banned absolutely with immediate effect. Only small houses in flat areas, where there is no hill cutting or felling of trees, should be allowed for residential purposes.

(ii) Heavy vehicles must be banned on the Mall Road and bridle paths.

(iii) Immediate steps must be taken on a war footing to stabilize the Ballia Ravine and Ballia Nala.

(iv) Lake must be cleaned and prevented from further pollution, for which purposes drains entering the lake must be maintained and the horses must not be permitted to go around the lake.

(v) Felling of trees should be made cognizable offence.

7. We have duly considered the findings of the Commissioner and his recommendations. According to us, there cannot be two opinions about some preventive and remedial measures to be taken on war footing, as any delay would cause further degradation and complicate the matters. In our considered view, the following steps deserve to be taken urgently :-

(i) Sewage water has to be prevented at any cost from entering the

lake.

(ii) So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent siltation of the lake.

(iii) Care has been taken to see that horse dung does not reach the lake. If for this purpose the horse stand has to be shifted somewhere, the same would be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.

(iv) Multi-storeyed group housing and commercial complexes have to be banned in the town area of Nainital. Building of small residential houses on flat areas could, however, be permitted.

(v) The offence of illegal felling of trees is required to be made cognizable.

(vi) Vehicular traffic on the Mall has to be reduced. Heavy vehicles may not be permitted to ply on Mall.

(vii) The fragile nature of Ballia Ravine has to be taken care of. The cracks in the revetment of Ballia Nala have to be repaired urgently.

8. We do hope that all concerned would take concerted steps. For this purpose, a monitoring committee, with one highly placed official of each of the concerned authorities/department, may be constituted. 2 or 3 leading men of the public having interest in the matter, like the petitioner, may be co-opted in the Committee. The Committee may hold its meeting, to start with every month, and then every two months.

9. The petition is disposed of with the aforesaid directions and observations.

10. We part with the hope that the butterfly would regain its beauty and would attract tourists not only in praesenti but in future as well, which would happen if the beauty would remain unsoiled. Given the will, it is not a difficult task to be achieved; the way would lay itself out. Let all concerned try and try hard. Today is the time to act; tomorrow may be late.

R.S.

Petition disposed of.