

**IN THE HIGH COURT OF UTTARAKHAND AT  
NAINITAL**

**THE CHIEF JUSTICE SHRI VIPIN SANGHI  
AND  
JUSTICE SHRI ALOK KUMAR VERMA**

**WPPIL No.67 OF 2021**

**12<sup>th</sup> January, 2023**

P.C. Tewari .....Petitioner

Vs.

State of Uttarakhand and others .....Respondents

Presence: -

Ms. Snigdha Tiwari and Mr. Abhijay Negi, learned counsels for the petitioner.

Mr. C.S. Rawat, learned Chief Standing Counsel for the State/respondent nos. 1, 6 and 11.

Mr. Arvind Vashishtha, learned Senior Counsel assisted by Dr. Kartikey Hari Gupta, the learned counsel for respondent nos. 2 and 3.

Mr. Rajendra Dobhal, learned Senior Counsel assisted by Mr. Shubhang Dobhal, the learned counsel for respondent no.4.

Mr. V.K. Kapruwan, learned Standing Counsel for the Union of India.

**ORDER: (Per Shri Vipin Sanghi, J.)**

**Interim Relief Application (I.A. No. 9 of 2023)**

Issue notice.

2. Learned counsels for the respondents as noted hereinabove, appear and accept notice.

3. The present application has been moved by the petitioner in the wake of the recent geological developments, which have taken place in Joshimath area.

The phenomena of land subsidence, and landslides, which have recently occurred in the townships of Joshimath and Raini, as well as Tapovan, have led the petitioner to file this application in the present petition, which has been pending since the year 2021. The original cause for filing this Writ Petition was the incident of 07.02.2021, when due to the bursting of a glacier, the Hyrdo Electric Power Projects on Rishi Ganga River, namely the Rishi Ganga Hydro Power Project and the N.T.P.C's Tapovan Vishnugad Hydropower Project on Dhauliganga River, suffered sudden flooding, leading to death of hundreds of people.

4. Apart from seeking relief in relation to the said incident, the petitioner also sought directions to restrain the respondents from undertaking operations in under-construction Hydro Power Project sites across Uttarakhand, till early warning systems are established, as recommended by the ISDR Study. The petitioner also sought a direction to respondent no. 9 for formation of an Expert Committee to review impact in all the Hydro Power Projects located on upper reaches of the rivers across the State of Uttarakhand in order to recommend sustainable solutions for its management or removal.

5. Along with the present application, the petitioner has placed on record the extract of a report

published in the year 1976 by a Committee, popularly known as the "*Mishra Committee Report*" under the Chairmanship of Shri Y.C. Mishra, the then Commissioner of the Garhwal Division.

6. As early as in the year 1976, the Mishra Committee Report, reported that Joshimath is sitting on rock and silt, accumulated as a result of landslides. It does not have a solid and a stable foundation. The report, *inter-alia*, states "*Joshimath is a deposit of sand and stone – it is not the main rock – hence it was not a suitable place for the coming up of a township. Vibrations produced by blasting and heavy traffic will also lead disequilibrium in natural factors*". The said Report warned against undertaking of construction projects. The remedial measures suggested in the said report, *inter alia*, were that restrictions should be laid on heavy construction work. Construction should be allowed after examining the load bearing capacity of the soil.

7. The further recommendation contained in the Report was as follows :-

*"For road repairs and other construction purposes it would be advisable not to remove boulders by digging or blasting the hill side. In the landslide areas stones and boulders should not be removed from, the bottom of the hill, as it will result in removing too support expediting landslide from stones may be procured from the boulders lying at hill tops or away from slip/slide zones. Cutting of trees for supplying the township with timber, firewood and charcoal*

*may be strictly regulated and no tree should be felled in the landslide area. It will be imperative to provide the local people with alternate areas of fuel supply such as electricity, soft coke, cooking gas, kerosene oil etc. Unless suitable alternatives to firewood fodder and charcoal are provided it will not be possible to have an effective check on falling and lopping of trees. This holds equally good for the effective protection of plantations which exist or will be raised in future. State civil supply authorities, Ministry of Defence and Ministry of Home may be approached for making adequate arrangements in respect of the above requirements. Fuel and timber arrangements for army, DGBR and Para military forces should be made by respective departments. State Civil Supply authorities will contribute a lot in saving trees in the area by establishing dealers in cooking gas, kerosene etc.*

*Agriculture on slopes must be avoided. Instead a massive campaign to plant trees and grass should be undertaken to conserve soil and water resources. An extensive programme of tree plantation in reserved forest areas, civil banna p land, cant area and on the period 1976-77 to 1980-81 in the area has been prepared by the department. This programme aims at planting trees in one hundred twenty hectares of reserved forest at the rate of 1200 trees per hectare, 180 hectares of civil banna p land at the rate of 1200 trees per hectare and in addition cantonment and habited areas have also be included where trees will be planted at the rate of 5000 per annum. This programme will cost Rs.9,24,000/- extending over five years. The programme for plantation of trees is both a short term as well as a long term measure. A seed which is planted today will take years to grow up and must be sown immediately without losing time. For its proper growth it must be brought up like a child otherwise it will be a waste. Trees which grow fast should be planted immediately in the most vulnerable packets. Plantation of trees on all slopes steeper than 30 will be a great stabilising factor. The area where tree plantation should be undertaken immediately are bare peaks and slopes, military camping ground, Marwari, Belt along Alaknanda, Vishnuprayag and Dhauri Ganga, and Area Khon."*

8. The said Report, it appears, fell on deaf ears, and was not put into action. The petitioner has also placed on record another Article dated 25.05.2010, prepared by Shri M.P. Bisht and Shri Piyush Rautela of H.N.B. Garhwal University, Srinagar (Garhwal) of the Disaster Mitigation

and Management Centre. This Article refers to the earlier report prepared by the Mishra Committee and, *inter-alia*, states as follows: -

*“Despite being fully aware of the geological/environmental vulnerability of the area, a number of hydroelectric schemes have been sanctioned around Joshimath and Tapovan. The Vishnugad HE Project is one such scheme. The head race tunnel of the project traverses all through the geologically fragile area below Joshi math. It is interesting to note that a private company was preferred by National Thermal Power Corporation (NTPC) over the Geological Survey of India, for undertaking geological investigations related with the project. These investigations failed to take cognizance of the earlier geological investigations carried out in the area and did nothing to establish the depth of overburden all through the tunnel alignment.*

*A tunnel boring machine (TBM) was employed for excavating the head race tunnel. On 24 December 2009, it punctured a water-bearing strata some 3 km inward the left bank of Alaknanda near Shelong village. The site was more than a kilometer below the surface, somewhere below Auli, according to the project authorities. The water discharge was reportedly between 700 and 800 litres per second. The aquifer discharge was about 60-70 million litres daily, enough to sustain 2-3 million people. Even after a month, the aquifer had not dried out. What a waste of the scare resource!*

*Sudden outpouring of water from a aquifier will have multifarious impacts but it would be a little early to dwell upon full implications of the same. The water draining out through the tunnel would result in drying up of springs around. Habitations around Joshimath would face shortage of drinking water during the summer season. It is important to note that depletion in spring discharge and untimely drying up of a few springs have already been reported. This sudden and large scale dewatering of the strata has the potential of initiating ground subsidence in the region, thereby augmenting the problems of the masses living in the area. Reduced ground moisture regime would result in depleted biomass availability and crop produce that would adversely affect the life support strategy of the masses. It would also impact floral and faunal diversity.”*

9. Even this Report, it appears was consigned to the record, without any serious note being taken thereof. The result of such indifference, to the Reports prepared

by experts, is therefor all to see. From media reports, it appears that the Central Government and the State Government are now trying to salvage the situation, insofar as, it relates to people, who are residents of Joshimath, and the neighbouring areas which are affected by the land subsidence.

10. While such steps are called for and should be taken in full swing, it is essential that concerned experts in the field should make a study of the situation existing in the Joshimath area to make an assessment of how the situation can be salvaged, and further damage can be saved.

11. Mr. Rawat states that the Wadia Institute of Himalayan Geology has already been roped in to make a study, and given their report on the on-going geological activity in the Joshimath area.

12. We are of the view that, in case experts have not been roped in, from the fields of Hydrology, Geology, Glaciology, Disaster Management, Geomorphology and landslide experts, independent experts from the aforementioned fields should also be associated with any such study, which may be undertaken by the State.

13. Counsel for the petitioner states that Mr. Y.C. Mishra, erstwhile Commissioner of the Garhwal Division,

is presently available. However, considering that he is very old, we are not inclined to trouble him presently. However, we direct that Shri M.P. Bisht and Shri Piyush Rautela, who made the Article dated 25.05.2010, from which, we have extracted hereinabove, should also be made parties to the Committee, which is looking into the present situation at Joshimath, so that their contribution and views are also availed of while making the report. The report should be placed before the Court in a sealed cover for its perusal before the next date.

14. Learned counsel for the petitioner submits that the N.T.P.C. is carrying on construction activity in a tunnel made by it, even despite the ban by the State Government.

15. Mr. Vashistha, who appears for the N.T.P.C., states that no construction activity, or blasting activity, is being undertaken by it ever since the disaster of 2021 took place. He further submits that the N.T.P.C. is following the order dated 05.01.2023 issued under the name of the Additional District Magistrate, Joshimath, banning all construction activity by the N.T.P.C.

16. The statement made by Mr. Vashistha is taken on record. We direct the State to strictly enforce the ban on construction in Joshimath area imposed on

05.01.2023.

17. List this case on 24.05.2023.

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**VIPIN SANGHI, C.J.**

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**ALOK KUMAR VERMA, J.**

Dated: 12<sup>TH</sup> January, 2023

SK/SB