

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

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH  
CHAUHAN  
AND  
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

**Writ Petition (PIL) No. 58 of 2020**  
**Writ Petition (PIL) No. 97 of 2019**  
**Writ Petition (PIL) No. 50 of 2020**  
**Writ Petition (PIL) No. 51 of 2020**  
**Writ Petition (PIL) No. 67 of 2020**  
**Writ Petition (PIL) No. 70 of 2020**  
**Writ Petition (PIL) No. 61 of 2021**

**28<sup>TH</sup> JUNE, 2021**

Mr. Shiv Bhatt, the learned counsel for the petitioner in WPPIL No. 58 of 2020 and WPPIL No. 77 of 2021.

Mr. Piyush Garg, the learned counsel for the petitioner in WPPL No.51 of 2020.

Mr. Dushyant Mainali, the learned counsel for the petitioner in WPPIL No. 50 of 2020.

Mr. Abhijay Negi, the learned counsel for the petitioner in WPPIL No.97 of 2019.

Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel for the State of Uttarakhand.

Mr. Rakesh Thapliyal, the learned Assistant Solicitor General for the Union of India.

**COMMON ORDER:** (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

On 23.06.2021, this Court was informed that the Government had issued a Government Order dated

20.06.2021, wherein the Government thought it proper to re-open the Char Dham Yatra in a phased manner. According to the said G.O., in the first phase, the residents belonging to the Chamoli district would be permitted to visit the Badrinath temple; the residents of Rudraprayag district would be permitted to visit the Kedarnath temple; the residents of Uttarakashi district would be permitted to visit the temples of Gangotri and Yamunotri. It was also proposed that in the second phase, the residents of other ten districts of Uttarakhand would be permitted to visit the Char Dhams.

2. Considering the fact that the country was still reeling under the impact of COVID-19 pandemic, considering the pleas raised by the learned counsel for the petitioners, in different PILs' filed before this Court, this Court had requested the State to review its decision with regard to re-opening of the Char Dham Yatra even in a phased manner. This Court had also directed Mr. Om Prakash, the learned Chief Secretary, and Dr. Ashish Chauhan, the learned Additional Secretary, Culture and Religious Affairs Department, to

inform this Court with regard any decision taken by the Cabinet on the said subject on the next date.

3. Consequently, Mr. Om Prakash, the learned Chief Secretary, Mr. Dilip Jawalkar, the learned Secretary, Tourism, Dr. Ashish Chauhan, the learned Additional Secretary, Culture and Religious Affairs Department, are present in the virtual court through video conferencing.

4. Dr. Ashish Chauhan has submitted an affidavit with regard to the decision taken by the Cabinet on 25.06.2021, and with regard to the SOP issued by the Government on 26.06.2021, and with regard to other arrangements being made at the Char Dham. The said affidavit shall be taken on record.

5. The issue before this Court is whether under the present circumstances, and the circumstances which are likely to occur in the near future, the Char Dham Yatra should be re-opened or not? For, according to the decision of the Cabinet dated 25.06.2021, the Cabinet has decided to permit the opening of the Char Dham Yatra from 01.07.2021, to the limited extent that

residents of the districts of Chamoli, Rudraprayag, and Uttarakhand would be permitted to visit the temples within their respective districts.

6. In order to understand the controversy holistically, it is essential to consider the history of COVID-19 pandemic, to see its development, to consider the devastation it has caused, to examine the emergence of new variants of the virus, the nature and characteristics of these new variants, the scope and the extent of the new variants, the consequences of these variants on human health, and then to consider whether the State of Uttarakhand is prepared to tackle the possible emergence of the third wave of COVID-19 or not? For, the issue is not just limited to opening of pilgrimage sites, but the issue is more importantly about the human lives, about the people of the State, and about the people of the nation. In fact, since the world is a small planet, viruses tend to escape from one country and affect the other nations. Therefore, the issue before this Court is not a regional one, but a global one. Therefore, this issue cannot be decided in a

myopic manner. It has to be determined with a catholic vision.

7. In 1918, the Spanish Flu came to India in three waves. After the Spanish Flu subsided and disappeared from the world, mankind thought that it was delivered and was saved from an apocalypse. From 1918 till December, 2019, we thought all of us were safe and sound; we could lead our lives in a normal manner. However, from December, 2019, the International media informed the world that COVID-19 has struck Wuhan province in China. According to the experts, the said virus was going to spread throughout the world. Therefore, alarm bells were rung across the five continents.

8. Even before we were ready to face the pandemic, in March, 2020, considering the emergence of COVID-19 pandemic, in the interest of the people at large, the Central Government announced a national lockdown. This was the first wave of COVID-19 pandemic to strike the country. The first wave was caused by the Coronavirus, or by the Alpha variant. The first wave peaked between August and September,

2020; it began its decline at the end of September, 2020. By December, 2020, we were assured that we had beaten the COVID-19 pandemic. Slowly but surely, the country started re-opening itself, State by State, city by city.

9. However, the COVID-19 second wave caught all of us unaware. For, new mutant namely, "the *Delta variant*", had emerged. While the first wave was caused by variant, called '*Alpha variant*', by February and March, 2021, the *Delta* variant had crept in. The second wave had begun.

10. Needless to say, the second wave struck the country like a *tsunami*. It not only killed about three lakhs people in the country, but in its wake it has also left devastated families, and orphaned children. It reached its zenith in April and May, 2021. During that period, neither the lifesaving medicines were available, nor the oxygen tanks were available, nor sufficient numbers of bed were available, nor sufficient numbers of ambulances were available. The health care system began to crumble. Consequently, people had to run from pillar to post for seeking and begging only to be

saved from the second wave. It is common knowledge that as people began to die, there were insufficient spaces in our crematorium and burial grounds. People could not perform a decent cremation, or decent burial to our lost brethren. The satellite images of May, 2020, and the International Media continued to show the endless number of pyres which were burning, and the pitiable condition of our people.

11. According to the experts, one of the great contributory factors for the steep rise in the second wave was the ill-decision to hold Kumbh Mela at Haridwar between 01.04.2021 to 30.04.2021. According to the media reports, about 57% of deaths in Uttarakhand itself, which occurred in May, 2021, were due to holding of the Kumbh Mela in April, 2021. The pictures of Kumbh Mela not only embarrassed the entire country, but also shocked the world community.

12. Suddenly our country was painted as a renegade, and as an irresponsible member of international community. Suddenly, flights coming from India were stopped by other countries. Even today, we are not free from the devastation caused by the second

wave, although fortunately the second wave is on the decline.

13. The Scientists tell us that there is no way in determining, or in forecasting as to how many waves would continue to strike our shores. Already since April, 2021, Netherlands and France are facing the third wave of COVID-19 pandemic. The United Kingdom has already entered the third wave. Concerned with the emergence of the third wave, on 25.06.2021, Australia has declared a lockdown. Bangladesh has imposed a lockdown today itself. Therefore, every country is trying to protect itself from the possible assault of the third wave.

14. According to Dr. Randeep Guleria, the Director of the All India Institute of Medical Science, New Delhi, the third wave of COVID-19 infection is "inevitable". According to him, due to the crowd in public places, there shall be no escape from the third wave. According to Professor K. Srinath Reddy, the Director, Public Health Foundation of India (PHFI), India will *"definitely face the third wave of infection"*. According to Dr. S.K. Sarin, the Director of Institute of



Liver and Biliary Sciences, New Delhi, "*variants can breach the antibodies generated by the vaccine and the vaccine currently being administered may not offer sufficient protection against new mutant strains*". Therefore, the scientific community, the experts, are continuously warning our country to be aware of the emergence of the third wave of COVID-19, which may come knocking at any time. Although, the experts claim that the third wave is likely to hit the country in the second or third week of August, 2021, but there is no such guarantee that it would not inflict the country prior thereto.

15. In the recent months, a new variant of the COVID-19 has been discovered, called the "*Delta plus variant*". About a week back, on 23.06.2021, this Court had noticed that the Central Government had announced that the *Delta plus variant* has been detected in Madhya Pradesh, Maharashtra and Kerala. Therefore, the Central Government had directed the State of Maharashtra to ensure containment zones in two of its districts. Just in one week's time, the *delta plus variant* has been discovered in eleven states of the

country. Therefore, just in one week, the *delta plus variant* has accelerated speedily from three states to eleven states. This is a phenomenal increase of the Delta Plus variant.

16. According to the experts, the *delta plus variant* has four characteristics: firstly, it is immune to the vaccine which have been administered to the people at large. Therefore, even the vaccinated person will not be protected from the *delta plus variant*. Secondly, it directly and adversely affects the lungs. In fact, according to many, the lungs tend to dissolve within a period of three days. Thus, it not only leads to respiratory problems, but also brings about a swift death of the patient. The chances are that within three days, the patient will be dead. Thirdly, in order to treat the *delta plus variant* patient, and to stop the death of the patient, a longer period of hospitalization is necessary, than was necessary in the second wave caused by the "*delta variant*". Fourthly, the "*delta plus variant*" has a faster speed of transmission from one person to another. Therefore, its spread is going to be faster than the spread of "*delta variant*", which took

about nine months to spread its wings. Hence, the tentacles of "*delta plus variant*" will not only spread faster, but would also spell the death of the patient at a faster rate.

17. Keeping in mind the grim emergence of the third wave, keeping in mind its rapid transmissible speed, keeping in mind the strained health care system available in the country, the Central Government is repeatedly directing all the states to avoid the gathering of crowds, and certain States have been directed to re-establish containment zones. A few states, in fact, have extended the lockdown period in order to prevent the emergence of the third wave.

18. According to the newspaper report dated 27.06.2021, a woman, who had already undergone complete vaccination in district Bikaner, in Rajasthan, was discovered to be carrying the *delta plus variant*. She was discovered to be asymptomatic. But as she was discovered to be a carrier of *delta plus variant*, she has been placed immediately under medical treatment by the Government. This is a burning example that a

*delta plus variant* may breach the firewall of inoculation, and adversely affect the human body.

19. The inoculation rate of Uttarakhand State is certainly not a happy one. Out of population of 1.32 crores, by the end of May, 2021 only 35,36,840 persons have been inoculated. Out of these, while 21,72,760 have received the first doze, merely 6,82,040 have received both the dozes. Thus, obviously, a majority of persons who have received the vaccination are those who have received just the first doze, and not the second one.

20. According to the experts, it will still take eighteen months to vaccinate 70% of the population in Uttarakhand. Thus, even if 100% population of Uttarakhand were to be inoculated, even then there is no guarantee that the people of Uttarakhand will be protected from the invasion of *delta plus variant*.

21. Considering the data available from Uttarkashi, Rudraprayag, and Chamoli districts, the Uttarkashi district has a population of 3,76,298, out of whom, so far, only 1,57,697 persons have been

inoculated. Out of this number, 1,17,529 have received the first doze; merely 40,168 persons have received both the dozes.

22. Similarly, in Rudraprayag district, having a population of 2,76,205, only 1,18,975 have been vaccinated. Out of these, while 1,01,081 persons have received their first doze; merely 17,894 persons have received both the dozes.

23. Likewise, district Chamoli has a population of about 4,46,430 persons. Out of this population, only 1,65,141 persons have been inoculated. Out of this figure, 1,33,256 persons have received the first doze; merely 31,885 persons have received both the dozes. Thus, obviously, even in these three specific districts, where people will be permitted to visit the respective shrines in their respective districts, not even 50% of the population has been inoculated. In fact, the majority of the population has been given only the first doze. Thus, the majority of the people are still waiting for the second doze to be administered. Hence, their immunity system is not strong enough to fight with the third wave of COVID-19 pandemic.

24. A bare perusal of the affidavit filed by Dr. Ashish Chauhan, clearly reveals that by its decision dated 25.06.2021, the Cabinet has decided to permit the people living in Uttarkashi, Rudraprayag, and Chamoli districts to visit their respective shrines from 01.07.2021. Secondly, it has decided to review its decision with regard to the second phase as mentioned earlier, whereby the people of the entire State would be permitted to visit the Char Dham from 11.07.2021. Thirdly, considering the dangers which emanate from the COVID-19 pandemic, the Cabinet has decided to prohibit the "*Kawad Yatra*" this year. The *Kawad Yatra* is a pilgrimage undertaken by people who carry water on their shoulders in order to pour the holy water on the deity once they reach the temple. The *Kawad Yatra* is a popular yatra in Uttarakhand which inspires thousands of pilgrims to undertake their journey, on foot, to reach the temples. But considering the crises which can be brought about by the *Kawad Yatra*, the Cabinet has decided to prohibit the same for this year.

25. Along with the affidavit, Dr. Ashish Chauhan has also submitted the SOP dated 26.06.2021.

Although the SOP is a detailed one, but as admitted by Mr. Om Prakash, the learned Chief Secretary, the SOP is very similar to the SOPs that were issued by the Government during the holding of the Kumbh Mela. Therefore, even the SOP issued during the Kumbh Mela was equally elaborate, equally detailed, and equally reassuring that the precautions for containing COVID-19 pandemic would be strictly followed by the pilgrims. Repeatedly, before this Court assurances were given by the learned Chief Secretary, by the learned Secretary, Medical Health and Family Welfare, and by the learned Mela Adhikari, that the SOPs shall be implemented in “the strictest manner”. Yet, despite the best intentions of the State Government, the Civil Administration of Haridwar and Rishikesh had singularly failed to implement the said SOPs. There are a large number of images, readily available on the internet, which clearly prove that a sizeable number of pilgrims neither wore masks, nor maintained the social distance of six feet, nor used the sanitizers, nor used the soaps to wash their hands. In fact lakhs of people were permitted to gather on the banks of the holy Ganges, and to take their bath day in and day out, while the Kumbh Mela

lasted for a month. On the days of *Shahi Snaan*, the crowd surged; the SOPs were observed more in breach, than in adherence.

26. Even recently, on 20.06.2021, on the occasion of *Ganga Dusshera*, a crowd of more than one lakh was permitted to congregate at *Har ki Pauri* in Haridwar, and to take the bath in the holy Ganges. Even on the occasion of *Ganga Dusshera*, the crowd failed to adhere to the SOP; the Civil Administration of Haridwar equally failed to ensure that the SOP is "strictly implemented".

27. Recently, in Nainital district, the Government has opened the gates of *Neem Karoli Baba Temple* (Kainchi Dham). According to the local newspapers, "thousands and lakhs of people" poured into the small temple. Again the SOP was totally violated by the pilgrims. Again the Civil Administration failed to carry out its duties, and to ensure that the SOP would be followed. In fact, no punitive action has been taken against the violators. Therefore, we have three glaring examples where the State Government has permitted the people to congregate in a large number, and has



permitted them to flout the SOP, despite the repeated assurances of the Government before this Court that the SOP shall be followed and implemented "strictly".

28. This is the fourth occasion that the State Government is promising that the SOP dated 26.06.2021 would be implemented "strictly". The SOP clearly states in Hindi "कड़ाई से अनुपालन सुनिश्चित कराया जायेगा". Although the SOP lays down a large number of dos and don'ts to be observed by the pilgrims, by the travel tour operators, by the restaurants, and by the hotels, but there is no indication as to who would ensure that each and every condition prescribed by the SOP would be followed *in toto*. For example, according to the SOP, there shall be a ban on "gutka", "pan" and "tobacco". However, there is no indication as to how, in a crowd of 300 to 600 persons, people would be prevented from chewing "pan", "gutka" or "tobacco"? Although, it is claimed that the pilgrims will be asked to use the sanitizers repeatedly, or to use the soaps repeatedly, it is absolutely unclear as to who would ensure that the pilgrims have, indeed, sanitized their hands?

29. The SOP further claims that there shall be testing labs established at the Char Dham. But how many such testing labs will be established? Or who would carry out these tests, especially considering the fact that there is a dearth of technical staff in the State? And how soon the results of the tests would be available? These issues are absolutely unclear. Although the SOP claims that “those, who are working at the accommodation provided to the pilgrims, would be vaccinated”, it is unclear whether they would be vaccinated with both the doses, or just with a single dose? As mentioned hereinabove, more than 50% of the residents of the three districts of Uttarkashi, Chamoli and Rudraprayag are yet to be vaccinated by the Government.

30. The SOP further claims that those affected by COVID-19 will be kept in isolation wards. However, it is unclear as to how many isolation wards have been created in each of the specific Char Dhams? Interestingly, according to the report submitted by the District Magistrate of Gangotri and Yamunotri, although it is claimed that a forty bedded additional COVID

Dedicated Unit would be established at CHC, Chinyalisaur, it would not be established till 30.07.2021. Ironically, on the one hand, there is lack of medical facilities throughout the State, as the health care system in Uttarakhand is in deplorable condition, ironically even sufficient facilities will not be created till 30.07.2021, yet the Cabinet has taken a decision to permit the pilgrims to visit the shrines from 01.07.2021.

31. While dealing with the sufficiency of medical infrastructure available in the State, on previous occasion Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, had frankly admitted, and in the view of this Court rightly so, that although there are eight ventilators available at Rudraprayag, the district where the temple of Kedarnath exists, six of the ventilators are dysfunctional. Although the District Hospital at Rudraprayag does have six Oxygen Concentrators, four are dysfunctional. Moreover, the list of ambulances given in the affidavit filed by Dr. Ashish Chauhan, clearly reveals that no ambulance is being provided on the treks, which would be used by

the pilgrims. Even the Government Hospital at Tilwara has a single ambulance; the Government Hospital at Guptkashi has a single ambulance; one Hospital at Phata has a single ambulance; the medical facility available at Sonprayag also has a single ambulance; similarly, at Gauri Kund, there is a single ambulance. Further, at Tilwara Government Allopathic Hospital, there are only two Oxygen Tanks, and two Oxygen Concentrators. Again, at Phata there are only two Oxygen Tanks, and two Oxygen Concentrators. Similarly, at Sonprayag, there are two Oxygen Tanks and two Oxygen Concentrators. Whether these Oxygen Concentrators are functional, or not, is unclear? Although, it is claimed that at Kedarnath there are nineteen ambulances, it is unclear as to how many of them are Advanced Life Saving Ambulances, and how many are Basic Life Saving Ambulances? Thus, it is clear that even the medical facilities that are being provided to pilgrims are too little, and therefore may be too late.

32. The affidavit is absolutely silent on two essential issues. Firstly, whether the pilgrims would be

permitted to take bath in the holy Kunds (pools), which are existing at Badrinath and Kedarnath, or not? Secondly, considering the fact that the monsoon has already struck, and the monsoon has already spread throughout Uttarakhand, considering the fact that on 16.06.2013, Kedarnath had witnessed a disastrous tragedy, where 5,748 persons lost their lives, the affidavit is absolutely silent on the point as to what arrangements are being made, have been made, or will be made in case any natural calamity strikes any of the four Char Dham shrines?

33. It is common knowledge that during the monsoon period, the State witnesses unprecedented landslides, and unpredictable cloudbursts. Already, according to the media reports, roads leading to the Char Dhams are in terrible shape. Therefore, it would be equally difficult, if not impossible, to evacuate the pilgrims, who may gather at the Char Dhams.

34. According to the SOP prepared by the State Government, 600 persons per day would be permitted to gather at the Badrinath shrine, 400 persons per day would be permitted to gather at the Kedarnath shrine,

300 persons per day would be permitted to gather at the Gangotri Dham, and 200 persons per day would be permitted to gather at the Yamunotri Dham. These are persons, who would be permitted to have "*the Darshan*" inside the respective temples. There is no indication as to how many people would be permitted to gather in the respective towns of Badrinath, Kedarnath, Gangotri and Yamunotri. Therefore, a distinct possibility does exist that more people will enter the towns than the limited number of persons permitted to enter the shrines. Thus, a great possibility does exist that a large number of people may be stranded, or may even die, if a natural calamity like a cloudburst, heavy rains, or landslides were to strike. Despite the past experience of the Kedarnath tragedy, which took place in the State on 16.06.2013, the SOP is absolutely silent about the natural calamity, which may strike without any prior indication, or notice.

35. A similar question, as the present one, was also raised with regard to permitting the Rath Yatra at Puri during the Rath Yatra Festival, which is annually observed in Odhisha. Considering the fact that at the

relevant time, India was tackling the first wave of COVID-19 pandemic, in the case of ***Odisha Vikash Parishad v. Union of India & Ors., [(2020) 7 SCC 264]***, the Hon'ble Supreme Court had directed the State of Odhisha *"to ensure that all entry points into the city of Puri, i.e., airports, railway stations, bus stands, etc., shall be closed during the period of Rath Yatra festival in order to prevent people from joining the Rath Yatra"*. The Hon'ble Supreme Court had further directed the State Government *"to impose a curfew in the city of Puri on all the days, and during all the time when Rath Yatra chariots are taken in procession."* Moreover, the Hon'ble Supreme Court directed that *"the State Government may also impose curfew in the city of Puri on such other days, and during such time as deemed necessary."* The Hon'ble Supreme Court clearly directed that, *"during the period of curfew no one would be allowed to come out of their houses or their places of residence, such as, hotels, lodging houses, etc."* Therefore, considering the health issues involved, considering the impact of the COVID-19 first wave, the Hon'ble Supreme Court ensured that the local people would not join the Rath Yatra.

Interestingly, the people of the Puri city were prevented from joining the Rath Yatra.

36. Moreover, Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) No. 58 of 2020, submits that the Hon'ble Supreme Court, in its order passed in ***Suo Motu Writ Petition (Civil) No.3 of 2021*** dated 30.04.2021, has urged the Central and the State Governments "*to consider imposing a ban on mass gatherings and super spreader events*". Yet, the decision of the Hon'ble Cabinet dated 25.06.2021 would not only permit the people of Badrinath, Kedarnath, Yamunotri and Gangotri to congregate at the shrines, but would also permit the people of the respective districts to gather at their respective temples. Thus, the Cabinet decision contravenes the directions issued by the Hon'ble Supreme Court.

37. Furthermore, the decision taken by the Hon'ble Cabinet on 25.06.2021 is patently against the warnings, which are being given by the experts throughout the country, the warnings, which have been quoted hereinabove. Moreover, the decision is also against the directions of the Central Government which



has been directing the States to control and prevent the spread of the third wave. Further, the decision is also against the practice of extending the lockdown as observed by the other States.

38. Undoubtedly, the State is the *parens patriae*. Both according to Article 25 of The Universal Declaration of Human Rights, and Article 12 of The International Covenant on Economic, Social and Cultural Rights, right to health is a fundamental right of the people. Moreover, according to Article 21 of the Constitution of India, it is the duty of the State to protect the lives of the people. Moreover, Article 39(e) of the Constitution of India imposes a duty upon the State that the health of the people is not abused. Article 39(f) of the Constitution of India further directs the State to ensure that children develop in a healthy manner. Article 47 of the Constitution of India directs the State to raise the level of nutrition and standard of living and to improve the public healthcare system. Thus, an onerous duty has been cast upon the State to protect the lives of the people through whatever means available to the State.

39. However, the decision of the Cabinet will unnecessarily expose the people to the dangers of the third wave. Thus, the decision is against Article 21 of the Constitution of India, against Articles 39(e) & 39(f) and against Article 47 of the Constitution of India. It also ignores India's commitment to the International Conventions.

40. In the Note submitted to the Cabinet, the reasons given by this Court, for requesting the Cabinet to reconsider its decision for opening the Char Dham Yatra, were equally stated. However, the Cabinet has not only ignored those reasons, but has also ignored the warnings given by the scientific community, ignored the directions issued by the Central Government, and ignored the directions issued by the Hon'ble Supreme Court, where the Hon'ble Supreme Court has been directing the States to ensure that there is no gathering of crowds. In the present circumstances, the decision of the Cabinet is prima facie arbitrary and unreasonable. Hence, it is prima facie violative of Article 14 of the Constitution of India.

41. Considering the failure of the civil administration in implementing the SOPs repeatedly issued both by the Central Government and the State Government, during the Kumbh Mela, during the Ganga Dusshera and during the opening of the Neeb Karoli Dham (Kainchi Dham), the Cabinet should have realised that the SOPs are flouted by the people, and the civil administration does not have the wherewithal for implementing them in sensu stricto. Therefore, while deciding the issue, the Cabinet seems to have ignored a vital factor. Therefore, prima facie, the Cabinet decision dated 25.06.2021 is arbitrary.

42. There is, thus, a strong *prima facie* case in favour of the people, for not permitting the Char Dham Yatra, even in a limited manner. For, the lives of the people may be exposed to the danger of the Delta Plus variant, and to the third wave of COVID-19. If the Char Dhar Yatra were permitted, we would again be inviting a catastrophe.

43. In case we were to consider the balance of convenience, whether the balance of convenience tilts

in favour of the Char Dham Devasthanam Board, which is consistently demanding that the Char Dham Yatra should be opened, or it tilts in favour of the public at large, whose lives may be jeopardised, and whose families may be shattered forever, obviously the balance of convenience is in favour of the people at large. For, in case gathering of 600 or 400 persons per day were to spread the Delta Plus variant, there are no means and ways to stop the spread of this terrible virus.

44. The Delta Plus variant may again claim the lives of lakhs of people across this country. The loss of a family member, and as pointed out by the Scientific Community that the victims of the third wave would be children, the loss of a child is painful not only to the parents, but also to the nation at large. In case the Delta Plus variant is permitted to play havoc with the lives of our children, the nation is bound to lose a part of its next generation. Such an apocalypse would adversely affect the growth, and the progress of the entire country. Hence, the Char Dhar Yatra will

invariably cause irreparable losses to the people and to the country.

45. Therefore, all the three elements, namely the existence of a strong *prima facie* case, the balance of convenience, and the irreparable loss suffered by the people at large, are in favour of the public. Hence, it would be in the public interest and in the interest of justice to stay the operation of the decision of the Hon'ble Cabinet dated 25.06.2021, vis-à-vis the opening of the Char Dham Yatra for the residents of District Uttarkashi, Rudraprayag and Chamoli, for a period of four weeks, and to direct the State Government not to permit the pilgrims to reach the Char Dham Temples during the period of four weeks. Hence, ordered accordingly.

46. Technically, it may be argued that the decision dated 25.06.2021 is not under challenge before this Court. Thus, it cannot be stayed by this Court. However, technicalities of law cannot come in the way of protection of the people. The writ petitions deal with the ways and means of containing the spread of COVID-19 pandemic. The plea raised by the

petitioners is that the State is unprepared to tackle the said pandemic. Therefore, over a period of time, this Court has been monitoring the steps taken by the State Government for containing the spread of COVID-19 pandemic. Hence, there has been supervision through a continuous mandamus over the acts and omissions of the State Government.

47. During the pendency of the present petitions, initially, the Cabinet had taken a decision on 20.06.2021 to open up the Char Dham Yatra in a phased manner. At the request of this Court, the Cabinet has reviewed its decision. While it has not taken any concrete decision with regard to the second phase, it has reiterated its decision with regard to the first phase. Thus, the decision dated 25.06.2021 is a further step taken by the State Government. Therefore, it is imperative that this Court must consider whether the said act would aggravate or lessen the impact of COVID-19 or not? Having concluded that the decision of re-opening the Char Dham Yatra would lead to inviting a calamity, it is in these circumstances that this Court is compelled to stay the part of the Cabinet decision

dated 25.06.2021. The said stay is strictly in the interest of public, and in the interest of justice.

48. This Court is well aware of the high religiosity of the people. Keeping in mind the devotion of the people, even on an earlier occasion, on 23.06.2021, this Court had suggested that live streaming of all the ceremonies carried out at the Char Dham Shrines should be done.

49. Mr. Om Prakash, the learned Chief Secretary, submits that the Government is in discussion with the Priests of the Char Dham whether live streaming will be permitted, or not? He further submits that a few priests may oppose the live streaming from the temples.

50. Mr. S.N. Babulkar, the learned Advocate General for the State of Uttarakhand, submits that live streaming may be prohibited by the *Shastras*. Therefore, it will not be possible to have live streaming of the ceremonies performed inside the Sanctum-Sanctorum.

51. Since our ancestors were unaware of the development of a technology that would permit live streaming, the possibility of our *Shastras* prohibiting live streaming of a religious ceremony is absolutely impossible.

52. Moreover, the "darshans" of deity are to be taken to as large an audience as possible. Therefore, live streaming would permit the devout people to have "darshan" of the deity in the comfort and safety of their homes. Moreover, live streaming is already being done by other temples across the country. The ceremonies being performed in different temples in different parts of the country are broadcast by various T.V. channels. Therefore the argument that live streaming may be prohibited by our *shashtras* is clearly unacceptable.

53. Secondly, needless to say, it is for the State Government to decide whether the live streaming should be carried out or not? The decision cannot be left to the Char Dham Devasthanam Board, or to the priests of an individual temple. For, it is the constitutional duty of the State to protect its people from a pandemic. Therefore, the decision cannot be left



either to the Board or to the Priests. Even if, there is an objection from a minority of priests, the said objection can easily be overruled by the State.

54. In catena of judgments, the Hon'ble Supreme Court has clearly observed that the argument taken by the State Government that it cannot control either a large crowd, or the unruly mob, does not lie in the mouth of the State Government. For, to argue the same, the State Government admits its inability to enforce the rule of law.

55. Therefore, the State Government cannot plead that merely because a few priests may object to the live streaming, it will succumb to their pressure. What is of paramount importance is to save the lives of the people. It is, indeed, trite to state that when there is a conflict between the right of an individual, and the right of a community, the latter will always take precedent over the former.

56. Hence, in the interest of the people, this Court directs the Government to ensure that the ceremonies, the *pujas* and *archanas*, carried out within the sanctum sanctorum of the Char Dham temples, are

live streamed for the benefit of the people at large. The Government should make sure that the live streaming is done throughout the country, so that the devotees may not only witness the deity, but may also pray to the same. The live streaming should be carried out as expeditiously as possible, and preferable within seven days of the receipt of the certified copy of this order.

57. Mr. Om Prakash, the learned Chief Secretary, Mr. Dilip Jawalkar, the learned Secretary, Tourism, and Dr. Ashish Chauhan, the learned Additional Secretary, Culture and Religion Affairs Department, are directed to inform this Court on the next date whether the live streaming of the Char Dham has commenced or not?

58. Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, is also directed to be present before this Court on 07.07.2021.

59. List this case on 07.07.2021.

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**RAGHVENDRA SINGH CHAUHAN, C.J.**

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**ALOK KUMAR VERMA, J.**

Dt: 28<sup>th</sup> June, 2021  
NISHANT