

Judgment Reserved on: 06.03.2020

Judgment Delivered on: 27.07.2020

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (PIL) No. 74 of 2019

Rakshit Joshi

....Petitioner

Versus

State of Uttarakhand and others

...Respondents

Present : Mr. M.C. Pant, Advocate for the petitioner with Mr. Rakshit Joshi, petitioner in person.

Mr. N.S. Pundir, Deputy Advocate General with Mr. S.R. Joshi, Standing Counsel for the State/respondent nos. 1, 2, 3, 4, 6, 7 and 10.

Mr. Atul Bahuguna, Central Government Standing Counsel for the Union of India/respondent nos. 5 & 8.

Mr. Aditya Pratap Singh, Advocate for respondent no. 9.

Mr. R.P. Nautiyal, Sr. Advocate assisted by Mr. B.S. Koranga, Advocate for respondent no. 11.

Mr. T.S. Bindra, Advocate for respondent nos. 12 and 13.

Mr. Arvind Vashistha, Sr. Advocate assisted by Mr. Kaushal Pandey, Advocate for respondent no. 14.

Ms. Monika Pant, Advocate for respondent no. 16.

Mr. Rajesh Sharma, Advocate for respondent no. 19.

**Coram: Hon'ble Sudhanshu Dhulia, J.
Hon'ble Ramesh Chandra Khulbe, J.**

This petition is a public interest petition filed by a practicing lawyer before this Court. He has raised concern about violations of environmental laws, at the hands of the private respondents, as well as violations of the orders of this Court as well as of Allahabad High Court, which were for the protection of “bugyals” in Uttarakhand. These orders, inter alia restricted human activities on a “bugyal” in Uttarakhand. We will shortly discuss as to what is a “bugyal”.

2. The cause of action for filing the PIL according to the petitioner, came because the Government of

Uttarakhand had given permission to respondent nos. 12 and 13 to hold wedding ceremonies of their sons at “Auli”, in District Chamoli, Uttarakhand. The case of the petitioner is that where the wedding ceremonies, reception and a whole lot of other activities are to take place, is a “Bugyal” and activities of this nature, at such a large scale, cannot be permitted on a Bugyal, which is an eco sensitive place. “Bugyal” is the name given in Uttarakhand for Alpine meadows. A “bugyal” is a soft grass cover on land, high up in the mountains, beyond the tree lines, and is an ecosystem in itself.

3. It is true that what was to take place at “Auli”, or rather what eventually took place there was not a simple wedding or a ceremony. It was a mega wedding of members of a billionaire non-resident Indian family, and as per the newspaper reports it was in all a Rs. 200 crore lavish wedding event, or series of events, spread over a period of an entire week. It was to be attended by a large numbers of guests, including Movie celebrities.

4. Respondent nos. 12 and 13 are members of a super rich Indian family (“Gupta family”, for short), which has business interests in South Africa. It seems that the Gupta family was looking for an exotic destination for the wedding of their children and finally settled for “Auli”, which is a remote mountain resort, known for skiing in winters. In their counter affidavit they have justified organising this Mega event at “Auli”, inter alia, on ground that this “wedding event”, at “Auli” in Uttarakhand, will give a much needed boost to tourism in Uttarakhand and will bring Uttarakhand on the world tourist map! The State Government seems to be only supporting this view.

5. There is no specific prayer before this Court for stopping the ceremony or the weddings. Following were the prayers made by the petitioner:

“a. Issue appropriate writ, rule, order or direction appropriate in nature commanding the State respondents to take all effective steps for preserving the Environment and Eco balance and atmosphere at Auli and its vicinity in terms of environmental law and Pollution Control Act and the directions given time to time by this Hon’ble Court which is highlighted in the body of the petition and further to take all steps to prevent any type of pollution at Auli and its vicinity by proposed marriage ceremony organized by the private respondents and also to declare any type of permission contrary to the law and direction of the Court is void, arbitrary and illegal and further to remove any type of construction of activities which is running contrary to the law, so the fragile ecosystem of Auli Bugyal (meadow) and its vicinity not to be affected keeping in view the fact highlighted in the body of the petition or to mould the relief appropriately in view of the facts and circumstances of the case.

b. Issue appropriate writ, rule, order or direction in nature to constitute an inquiry by appointing a judicial officer to inquire the matter including the decision making process for grant of such approval and permission to find out the person responsible and to fix the liability on the erring persons by imposing appropriate damages and compensation as the Hon’ble Court may deem fit and proper, so the same can be utilized for the betterment of environment in Auli Bugyal.

c. Issue appropriate writ, rule, order or direction appropriate in nature to direct

the private respondents to deposit at least 200 crores or such amount for the protection of environment and for the adverse effect due the propose ceremony and the same be used in the protection of the environment and to maintain the eco balance and the same be deposited by creating a corpus fund as per the terms and norms prescribed by the Hon'ble Court."

6. Whether "Auli" forms a "Bugyal" or an "Alpine Meadow", we will shortly consider, but "Auli" is in any case in high mountains, nearly 3000 mts. above sea level, and the first question which comes to our mind is as to why would anyone want to hold a wedding at such a huge scale, on a remote mountain top. More importantly why at all was this permission granted, for holding this grand wedding! This had never been done in the past. "Auli" is after all a sports and adventure destination. It has snow covered gentle slopes suitable for skiing, and the limited activity here is skiing during winters. It is also a difficult terrain, and although there is a single 14 Km motorable road to "Auli", from the nearest town called "Joshimath", which is open during summers, but for most parts "Auli" is not an easily accessible place. It barely has a couple of hotels and for anyone to plan a wedding here at such a grand scale, meant that he had to overcome heavy logistical and practical challenges. In the petition it has been stated that a large number of state of the art all weather tents, toilets, and huge 'shamianas' have been constructed. Apart from this, more than one helipads are also under construction at "Auli" to ferry the wedding guests at "Auli".

7. In short the entire event, or set of events, planned at "Auli" is apparently at odds with the calm and quiet, environment of high mountains.

8. This writ petition was filed in the Registry of the High Court on 14.06.2019, and first came before the Court on 17.07.2019. The wedding ceremonies were to start the next day itself. There were a number of events organised along with the wedding, which included lavish lunches and dinners, entertainment programmes and 'shows'. The entire programme was spread over a period of one week, from June 17 to June 23, 2019. Whereas the wedding of Suryakant son of Ajay Gupta (respondent no.12), was to take place from June 18 to 20, marriage of Shashank S/o Atul Gupta (Respondent No.13) was to be held between June 20 to 22. By the time the writ petition was taken up by the court invitation cards had already been sent and major formalities had been completed by the parents of the bridegrooms and their event organisers i.e. respondent nos. 12, 13 and 14, respectively.

9. The first order of the Division Bench of this Court, is of 17.06.2020, where the private respondents denied that the wedding is taking place over a "Bugyal". "Auli" is not a "Bugyal" they said. Nevertheless the Court's observations were as follows:

"6. Even if, as is contended by Sri Arvind Vashisth, learned Senior Counsel, the subject lands are meadow-lands, and are not covered by the aforesaid judgment of the Division Bench, the State Government and its instrumentalities must ensure that these mindless pursuits of holding large scale marriage celebrations at exotic locations in such a large scale, and at places where such mega-events have never been conducted earlier, do not result in irreparable environmental degradation of the said area."

10. The Court gave its reasons for not passing an interim order to restrict the events at that belated stage and said as under:

“7. While it is debatable whether the authorities were justified in granting such permissions, interdiction by this Court, at this belated stage when the events are scheduled to commence today i.e. 17.06.2019, may result in the marriage being called off, causing irreparable injury to the families concerned. While that, by itself, may not justify the private respondents being permitted to damage the sensitive ecology of the upper Himalayas, where Auli is situated, the least that must be done is to minimize any adverse effect which this large-scale event may have on the fragile ecosystem at Auli.”

11. The Court did not stay the ceremonies or the events, but the concern raised by the petitioner as well as the counsel for the Environmental Pollution Control Board, which were also a party before this Court, are reflected in the Court's order dated 17.06.2019 and 18.06.2019. The Court had directed respondent nos. 12 and 13 to deposit an amount of Rs. 3,00,00,000/- (Rupees Three Crores only), out of which Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh only) was to be deposited by 19.06.2020 and the remaining Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh only) by 21.06.2019 with the District Magistrate, Chamoli, Uttarakhand. The amount as directed by this Court was deposited by respondent nos. 12 & 13, and the orders of this Court, complied.

12. Meanwhile the respondents were restrained from opening or operating new helipads, in or around “Auli”, as the organisers had earlier planned, though the guests were permitted to use the existing nearest helipad, after

obtaining the requisite permissions from the concerned authorities. There were some other restrictions as well imposed by the court. The respondent State Pollution Control Board was directed to apprise this Court as to what pollution has resulted in “Auli”, due to the event in areas such as –(a) solid/plastic waste generation; (b) sewage generation; (c) air/noise pollution due to DG set and fire crackers; and (d) noise pollution due to band/orchestra.

13. On 17.07.2019, the Member Secretary of Uttarakhand State Pollution Control Board was present before this Court and he submitted the details regarding total waste generation of the event. This was as follows:

“The total waste generated, during the subject event, was around 32.6 tons, of which 15.41 tons related to non-bio-degradable waste, consisting mostly of plastic waste; the remaining quantity of 17.23 tons of bio-degradable waste was shifted to the dumping yard of the Joshimath Nagar Palika; pits were dug for dumping sewage; these pits were covered with plastic liners and the sewage waste was deposited there; subsequently sewage was collected from these pits and transported to the sewerage treatment plants; while, in the plains, bio-degradable waste is composted within a span of 2 to 3 months, in Auli, which is at a higher altitude, it would take much longer for completion of this process; efforts are being made to segregate non-bio-degradable waste into plastic and non-plastic non-bio-degradable waste; necessary steps would be taken to have the plastic waste recycled through registered recycling units in the State; the plastic waste generated at the event is lying with the Joshimath Nagar Palika, and would be transported through vehicles to Haridwar, where these plastic recycling units are located.”

14. Subsequently a report was submitted before this Court by the District Magistrate, Chamoli, the reference of which is found in the order dated 04.12.2019, which states that the administration has incurred an expense of Rs. 46,94,823/- (Rupees Forty Six Lakh Ninety Four Thousand Eight Hundred Twenty Three only), which includes a payment of Rs. 27,00,000/- (Rupees Twenty Seven Lakh only) to the Uttarakhand State Pollution Control Board. This Court vide its order dated 04.12.2019 thereafter directed that an amount of Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh only) be returned to respondent nos. 12 and 13 by way of an account payee cheque and the remaining amount of Rs. 3,05,177/- (Rs. Three Lakh Five Thousand One Hundred Seventy Seven only) be retained with the District Magistrate, Chamoli pending further orders of this Court.

15. At this stage, the matter came up before this Court on 10.02.2020. By this time the wedding ceremonies were over. Pollution as is evident, was caused due to the week long wedding ceremonies and events, as is clear from the report of the Secretary, State Pollution Control Board, given before this Court on 17.07.2019. Pleadings have been exchanged in this case and the matter was hence heard finally.

16. As far as wedding is concerned, it has taken place and nothing further needs to be done on that score. The pollution has been caused by the event, for which a cost has been paid, to some extent at least, by the respondents (Nos.12 and 13) which is also evident from the order dated 04.12.2019 passed by this Court.

17. Nevertheless, a much larger question still remains before this Court which is whether the nature of event, with which we are presently concerned, and which has taken place at “Auli”, should ever be allowed in future, and what needs to be done.

What is a Bugyal

18. Beyond a certain height in the mountains trees do not grow. The land beyond the treeline is called the “Alpine zone” and the soft green grass or forb cover on the land is called meadows or Alpine meadows. “Bugyal” is the local name given to Alpine meadows in Uttarakhand. The word “Bugyal” is derived from the word “bug” or “bugi” which are the local name of the kind of grass which grows in the high mountains¹. It is a “Pahari” name given to these treeless herbaceous meadows, of the mountains. It is similar to what is called in Kashmir as “marg” (Gulmarg for example), or “Kanda” in Himachal Pradesh. Although the word “bugyal” is a close approximation for the word “Alpine meadow”, but the two may not exactly be the same.

19. The present available study on Alpine meadows in Uttarakhand is the work of Professor G.S. Rawat called “Alpine meadows of Uttaranchal”. According to Professor Rawat out of the total geographical area of Uttarakhand, which is 53,485 KM², 24.11% consists of “Alpine Zone”. But the entire Alpine Zone is not “Bugyal”. This is so because many parts of Alpine Zone are permanently under snow cover, and some are rocky, broken and unstable slopes, which do not qualify as quality meadows. According to Professor Rawat’s estimate, “only about 50% of the total

1. “Alpine meadows of Uttaranchal”

[Ecology, Landuse and Status of Medicinal and Aromatic Plants]

By G.S. Rawat

Wildlife Institute of India; Bishen Singh Mahendra Pal Singh, 2005

alpine vegetation in Uttarakhand may be under the category of Bugyal". The botanical name of "Bugyal" is *Herbaceous meadows*. Professor G.S. Rawat describes "Bugyal" as "the herbaceous plants in the meadows usually bear attractive flowers and exhibit a peculiar perennial annual growth habit. The meadows comprise a large number of herbaceous communities"².

20. "Bugyal", according to Prof. Rawat is a collective term in Uttarakhand for several dwarf forbs and grass which grow in great profusion in the meadows. "Some of the typical Bug species are (i) *Euphorbia stracheyi* (Dudh Bug), a nutritious herb yielding milky latex, (ii) *Trachydium roylei* and *Chamaesciadium garhwalicum* (Dhanja Bug), dwarf herbs with coriander like leaves, (iii) *Saussurea graminifolia* (Bus Bug), dwarf herb with grass like leaves and waxy coat, and (iv) *Kabresia* species (Mamla bug), a dwarf sedge forming pure stands on higher slopes. Depending upon the prominence of these species and other associated plant communities various Bugyal types can be recognized in the alpine region."³

21. Professor Rawat then goes on to mention the intimate relationship between the local inhabitants of the area with "Bugyals". Stating the intimate relationship of local people with "Bugyal", Prof. Rawat also raises concerns about the dangers to "Bugyal". He says as under:-

"Several religious sites are located in and around Bugyals where the local people visit for worshipping and deities. The Bugyals are also used as summer grazing

2. "Alpine meadows of Uttarakhand" (supra)

3. "Alpine meadows of Uttarakhand" (supra)

grounds by a large number of migratory and local pastoral communities. Since the lower altitude grazing lands are limited in extent, summer migration to higher altitudes and alpine meadows has become a practice as a means to sustain the large livestock populations. However, increase in number of livestock and overuse of certain pastures has led to degradation of high altitude grasslands. A large number of rare and endangered with fauna e.g. snow leopard (*Uncia uncia*), blue sheep (*Pseudois nayaur*), Himalayan rahr (*Hemitragus jemlahicus*) among others inhabit the Bugyals during one season or the other. Besides, Bugyals are also regarded as repositories of a large number of medicinal and aromatic plants (MAPs) which are used in local medicine as well as for sale to the herbal industries.”⁴

22. Not only is a “Bugyal” an eco sensitive system but it is also a rich source of our “biodiversity resources”, particularly Medicinal and Aromatic Plants or MAPs as they are called.

23. In case “Auli” is a “Bugyal”, then undoubtedly organising such an event and the grant of the permission for such an event would be in clear violation of at least two orders of the High Courts. The first order which we may refer to is of this High Court and the other is an earlier order of Allahabad High Court i.e. of the year, 1997, when the present Uttarakhand was a part of the erstwhile State of Uttar Pradesh. Heavy tourist congregation was prohibited by a Division Bench of this Court by order dated 21.08.2018 passed in WPPIL No.123 of 2014, **Aali-Bedini Bagzi Bugyal Sanrakshan Samiti vs. State of Uttarakhand**. The Division Bench of High Court of Judicature at Allahabad

4. “Alpine meadows of Uttaranchal” (supra)

vide its order dated 28.10.1996 in the case of **Om Prakash Bhatt and others vs. State of U.P. and others**⁵, (AIR 1997 Allahabad 259), had, inter alia, protected Bugyals, as they were an ecosystem in themselves. We will now briefly refer to these two decisions, which have been relied upon by the counsel for the petitioner.

24. In the year 1995, a PIL was filed before the High Court of Judicature at Allahabad i.e. **Writ Petition No. 23534 of 1995, Om Prakash Bhatt v. State of U.P. and others**⁶ bringing to the notice of the court the construction of pre fabricated tourist lodging houses, on a “Bugyal” in Chamoli district. This construction was being done by none other than a Government tourist Company called Garhwal Mandal Vikas Nigam. The court ordered the structures to be removed, holding such constructions to be in violation of environment as a “Bugyal” is an ecosystem in itself. This is what the court said about a “Bugyal” in its order dated 28.10.1996:

“The bugiyal belongs to the people. It is an ecosystem in itself. Nature has tailored it. It is not for man to erode the sanctity of this area. It must be returned to nature to provide for whom it was meant; the sheep, the shepherd, the wild flowers, the micro-orgams and the plant and insect life below the turf and in the shrubs at that altitude. Clearly, putting a tourist lodging house on a bugiyal was a mistake.”

25. In the above petition, certain directions were made by the Division Bench of Allahabad High Court to the Commissioner of Garhwal and Kumaon Division (which presently consist the entire Uttarakhand, barring District Haridwar). The directions were as under:

5. AIR 1997 Allahabad 259

6. AIR 1997 Allahabad 259

“14. But there is another dangerous phenomenon to be tackled. It is the scattering of plastics deep in the higher reaches of the mountains. There, retrieving it for recycling may be a difficult exercise. In this context steps need to be taken as a matter of urgency. This strewing of plastic on the higher reaches of the mountains and the valleys, either by tourists or by residents of hamlets and villages as a result of mass consumption is gradually and slowly creating an ecological imbalance. Layers of plastic get sandwiched between falling leaves and forest biodegradable materials. Plastic prevents nature from returning to earth nutrients which enrich it. It prevents rain water from percolating into the ground and preventing the trees from receiving it and natural streams and springs from being born. This delicate mountain ecological balance is being lost by an alien phenomenon of consumerism.”

26. For the remedial measures to be taken for the “Bugyal”, it was directed as follows:

“(vii) The occupation on the meadows and pasture lands by the hotels of Mandal Vikas Nigams with lodging houses is one of the causes of conflict which brought this writ petition into Court. It appears some where down the line the views of the hill people were not understood or were misunderstood when they complained that the bugiyal (meadow) as a concept has to be accepted and respected as part of the ecological balance of nature. Eroding a Himalayan bugiyal is a matter which has been made an issue in this petition. The meadows and the pasture lands, essentially that is what a bugiyal is at the higher reaches of the mountains of Garhwal and Kumaon are only for

the sheep and shepherd. This area should not be encroached upon. Rather to pass a direction today, the Court considers it appropriate to leave it to the Commissioner and the Chairman of the Mandal Vikas Nigam to present a plan to the Court without causing inconvenience to the tourists of this season, so that these meadows and pasture lands remain in their natural state for the purpose for which nature carved it out. These suggestions will be presented to the Court by the two Commissioners and the Chairman, Kumaon and Garhwal Mandal Vikas Nigam, on the next date when the Court convenes next.”

27. The second order is of the Division Bench of this Court. The Division Bench of this Court in Writ Petition (PIL) No. 123 of 2014, **Aali-Bedini-Bagzi Bugyal Sanrakshan Samiti v. State of Uttarakhand & others** (supra), was dealing primarily with the encroachment and commercialization of two “Bugyals” i.e. “Aali Bugyal” and “Bedini Bugyal”, a matter which had come up before this Court through a society.

28. This Court while expressing concern over depletion of “Bugyals” and commercialization of “Bugyal lands” by negligence of both the Forest and Revenue Authorities in the State, had given, inter alia, the following directions for saving “Bugyals”:-

“A. The State Government is directed to remove all the permanent structures from the alpine meadows/sub-alpine meadows/Bugyals in the State of Uttarakhand including Aali-Bedini-Bagzi Bugyals within a period of three months.

B. The State Government is directed to constitute the Eco-Development Committees within six weeks in eco-sensitive zones throughout the State of Uttarakhand to protect

and preserve the nature, environment and ecology.

C. The State Government is directed to restrict the number of tourists (not more than 200) visiting the alpine meadows/sub-alpine meadows/Bugyals.

D. No person including the State Public Undertakings/Private Entrepreneurs shall construct any permanent structure on the alpine meadows/sub-alpine meadows/ Bugyals throughout the State of Uttarakhand.

E. The overnight stay in the Alpine meadows/Sub-alpine meadows/Bugyals is banned.

F. The commercial grazing of cattle is banned on alpine meadows/sub-alpine meadows/Bugyals forthwith. The local shepherds alone will be permitted to graze their cattle on the alpine meadows/sub-alpine meadows/Bugyals by imposing reasonable restriction on the number of cattle.”

29. Evidently these directions have not been followed, or otherwise the permission should not have been granted to respondent nos. 12 and 13 to hold the mega wedding at “Auli”. As even if “Auli” is not a “Bugyal” it is a part of the sub-alpine meadow.

30. “Auli” is sometimes confused with “Aali bugyal”, which is one of the major “bugyals” in Uttarakhand and which lies in the same district as “Auli”, i.e. district Chamoli. All the same, it is not uncommon in Uttarakhand even to refer to “Auli” as a “Bugyal”. People very often add “Bugyal” when they are referring to “Auli”. “Auli” is sometimes also referred as “Auli Bugyal”. However, in

Professor Rawat's study of Alpine Meadows in Uttarakhand, "Auli", does not figure as a "bugyal" amongst the 82 major "bugyals" listed in his book⁷.

31. The petitioner before this Court though has based his case on grounds that "Auli", which is a "Bugyal" is being polluted and ecologically threatened by holding of events such as the marriage ceremony, like the one which was held at "Auli" in June, 2019 and argues that this should never have been allowed by the Government. It was asserted that the marriage and the numerous ceremonies and the lavish parties, etc. which are part of the two weddings, are being held on a land which is a "Bugyal". The private respondents, particularly 12, 13 and 14 though have denied this claim and have asserted that "Auli" is not a "bugyal".

32. In order to ascertain the correct status of "Auli", this Court had requested some of the institutes based in Uttarakhand, which had expertise to give an opinion on the subject. They were asked to submit their report before the Court, stating whether "Auli" is a "Bugyal". The reference is made here of the order dated 17.07.2019 by which this Court directed the Wadia Institute of Himalayan Geology, Dehradun, Forest Research Institute, Dehradun and G.B. Pant National Institute of Himalayan Environment & Sustainable Development, Almora and Nehru Institute of Mountaineering, Uttarkashi to submit their report on this aspect.

33. Only two of these institutes have filed their report before this Court i.e. by Wadia Institute of Himalayan Geology, Dehradun and G.B. Pant National Institute of Himalayan Environment & Sustainable Development, Almora.

7. "Alpine meadows of Uttaranchal" (supra)

34. The report submitted by Wadia Institute of Himalayan Geology reads as under:

“Consequent upon the order dated 27.08.2019 of Hon’ble High Court of Uttarakhand in the case of the Writ Petition (PIL) No.74 of 2019 filed in the Hon’ble High Court of Uttarakhand at Nainital, the Director, Wadia Institute of Himalayan Geology (WIHG), Dehradun nominated Dr. D.P. Dobhal (Scientist “F”) and Dr Vikram Gupta (Scientist “F”) to examine whether the subject area in Auli, where the marriage event took place, forms a part of Bugyal or not. In this connection, we the undersigned visited the area on 05th September 2019 and carried out a reconnaissance survey and also interacted with local inhabitants.

It is learnt that the event took place in the Cliff Top Hotel and its adjacent areas, which are located on the north facing slope of “Auli Laga Salud Dungra”. Generally, Bugyals are alpine pasture lands, or meadows, located above the “tree line” and are generally flat or very gentle sloping. The surface of the bugyals is covered with natural green grass and seasonal flowers.

It has been observed that the place where the event took place is a normal grazing land and is located below the level of the forest (tree line). These features does not categorize the land to be classified as “Bugyals”.

35. The report submitted by G.B. Pant National Institute of Himalayan Environment & Sustainable Development reads as under:

“As a follow up of the order of Hon’ble High Court of Uttarakhand, dated 11.09.2019, G.B. Pant National Institute of Himalayan of Environment and Sustainable Development (GBPNIHESD), Kosi-Katarmal, Almora, constituted a multi-disciplinary team of scientists and senior researchers to carry out a detailed study on ecological impacts in Auli due to the marriage ceremony (18-22 June 2019). The GBPNIHESD team looked into physical/biological aspects involving standard methodology and observations were taken and data/information were collected.

1. General Description of target area

The target area, in Auli (alt.2840-2990 m asl, latitude 30° 31 34 N and 30° 31 57 N and longitude 79° 33 37 E to 79° 33 59 E) is located about 12 km from Joshimath town of Distt. Chamoli. It is a famous destination for skiing and paragliding managed by the Tourisms Deptt., Govt. of Uttarakhand through Garhwal Mandal Vikas Nigam (GMVN), Joshimath (Plate 1). The area falls under Dhauli Ganga catchment and Nandadevi Forest Division.

Auli is a “Forest Blank” as per our filed observation (and supporting published literature) and ecologically does not fall in “bugyal” or “Alpine Meadow” category.

The report then concludes:

“Auli area does not fall under “Bugyal” as it lies much below the natural Treeline in the Western Himalaya. This area can be categorized under forest blank where traditionally cattle camping and currently tourism and other recreational activities have been promoted. The slope does not have typical “bugi” species as found in “Buggyals”. Instead, it has seedlings and saplings of woody species/trees which, if protected, will lead to forest formation in due course. According to one of the important scientific document on “Alpine meadows of Uttaranchal” by Rawat) 2005, pp. 11-13, 82 major “bugyals” have been listed in whole of the Uttarakhand. However, Auli is nowhere listed as “Buggyals” in it, thus indicating that Auli camp area is not a bugyal.”

36. We have gone through the two reports. As far as the report of Wadia Institute of Himalayan Geology is concerned, it is a very generalised kind of report, which does not give any detail explanation as to why “Auli” is not a “Bugyal”. The only reason assigned is that above “Auli” is below a tree line there and hence “Auli” is not a “Bugyal”.

37. The report of G.B. Pant National Institute of Himalayan Environment & Sustainable Development, is again substantially based on the study of Professor G.S. Rawat, which we have already referred to in the preceding paragraphs of this order. The reports mention that Prof. Rawat has listed 82 existing “Buggyals” in Uttarakhand, but “Auli” is not one of them. Therefore “Auli” is not a “bugyal”.

Professor Rawat's study, we must remember, is a study of "Alpine meadows" in Uttarakhand, Although alpine meadows in Uttarakhand are locally referred to as "bugyals", and though they may very much be so, yet "Bugyal" is the local name given by the local communities to the nature of the land, because of the grass or the forb it is covered with. "*Bug*" is a kind of grass or a forb, which grows in alpine as well as sub-alpine meadows. It is not uncommon for "bug" or "bugi" grass to grow in sub-alpine meadows as well. "Bugyal" or "bug" grows in both sub-alpine pasture as well as alpine pasture. Prof. G.S. Rawat has not mentioned "Auli" as a "Bugyal" in his study simply because "Auli" is not an Alpine meadow and the study of Professor G.S. Rawat was confined to Alpine meadows and did not cover sub-Alpine meadows. As Professor Rawat has defined in his book, "*Bug*" or "*Bugi*" is a collective term in Uttarakhand for several dwarf forbs or grass. It is not uncommon for a "*Bug*" or "*Bugi*" to be found in sub Alpine meadows as well.

38. The Alpine meadows studied and documented by Professor Rawat and his team, are the ones which were on their survey route, which was above 3300 meters above sea level. This is also generally the altitude of Alpine meadows 3200 meters and even better 3300 meters a.s.l. "Auli" on the other hand lies between 2800 mts to 2900 mts a.s.l. So definitely "Auli" is not an Alpine meadow. But then "Auli" may still be a "bugyal" or partially a "bugyal", if it has the growth of grass and forb locally called "Bug" or "Bugi". It would not be a bugyal if it is rocky and grassless. But it is true, we do not have any such study before us. To the contrary the reports before us show that "Auli" is not a "Bugyal".

39. We may have to say that "Auli" does not qualify as a "bugyal". Yet the larger question from the point of view

of environment and pollution would still remain, irrespective of the status of “Auli” as a “Bugyal”.

40. We say this for the reasons that “Auli” lies in extreme close proximity to one of the most well known and environmentally sensitive “Buggyals” called “Gaurson Bugyal”. There is only a brown Oak forest stretching 4-5 kilometers between “Gaurson Bugyal” and “Auli”. More importantly, “Auli’ falls in the “Dhaulti Ganga Catchment Area” of “Nanda Devi Forest Division”. Dhaulti Ganga is one of the six main tributaries of river Ganges. This river has a confluence with Alaknanda river at a place called “Vishnuprayag” near “Joshimath”. The entire catchment area of Dhaulti Ganga is a rich source of medicinal and aromatic plants and herbs, i.e. MAPs, and is thus a rich biodiversity site of the State and the nation⁸.

41. “Auli” also lies in the periphery of the famous “Nanda Devi National Park” or “Nanda Devi Biosphere Reserve”, which was notified as a national park way back in the year 1982. Nanda Devi Biosphere Reserve has also been declared as a world heritage site by UNESCO.

42. “Auli” is not an “Alpine meadow” and may not be a “bugyal”, but it is still a sub-Alpine meadow. Moreover, being a part of Dhaulti Ganga Catchment area, and in the periphery of “Nanda Devi Biosphere Reserve”, it is a rich reserve of our biological resources, particularly of Medicinal and Aromatic Plants or

8. Cultivation, Commercialization and Conservation of Medicinal and Aromatic Plants in the Upper Dhaulti Ganga Catchment of Nanda Devi Biosphere Reserve, Uttarakhand – by L.S. Kandari, R.K. Kaikhuri, K.S. Rao, Kusum Chauhan, C.P. Kala, Abhishek Chandra.

MAPs., and for this reason alone it needs to be protected, from excessive tourist inflow, over exploitation of its biodiversity, culture and fragile environment. We may also state here that the directions given by the Division Bench of this Court in Writ Petition (PIL) No. 123 of 2014 were not confined to Alpine meadows alone but to sub-Alpine meadows as well.

43. We require to conserve and protect our biological resources. India is one of the 12 Mega diversity rich countries in the world. Himalaya mountains is one of the main repository of the Biodiversity wealth of the country, and “Auli” lies in a sub-alpine region of Himalayas, in the catchment area of Dhauri Ganga basin. The importance of “Auli” and its surrounding areas has to be seen primarily from this aspect. “Auli” can never be viewed as an exotic tourist destination or a wedding destination.

44. India, we must also remember, is a signatory to the United Nations’ convention on biological diversity (commonly known as Rio de Janeiro convention of 1992-93). The convention emphasised firstly the conservation of biological diversity and secondly, sustainable use of its component and thirdly fair and equitable sharing of the benefits arriving out of the use of biological resources, knowledge and the matters connected therewith. India is a signatory to Rio de Janeiro convention. Article 6 which is regarding “General measures for conservation and sustainable use” reads as follows:

**“ARTICLE 6. GENERAL MEASURES
FOR CONSERVATION AND SUSTAINABLE
USE**

Each Contracting Party shall, in accordance with its particular conditions and capabilities:

- (a) Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity or adapt for this purpose existing strategies, plans or programmes which shall reflect, *inter alia*, the measures set out in this Convention relevant to the Contracting Party concerned; and
- (b) Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.”

45. After being a signatory to Rio de Janeiro Convention, and after a period of few years the Parliament finally enacted, what is known as “the Biological Diversity Act, 2002”. The Biological Diversity Act, 2002 (from hereinafter referred to as the Act) is an important Parliamentary legislation enacted to conserve our biological resources. There were three primary underlying reason for this new Act, are the same as emphasised in the Rio Convention, and which have been stated in the preceding paragraph.

46. “Biological Resources” have been defined in the Biological Diversity Act, 2002 in Section 2(c) as under:

“(c) “biological resources” means plants, animals and micro-organisms

or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value but does not include human genetic material.”

47. Section 36 of the Biodiversity Act reads as under:

“36. Central Government to develop National strategies, plans, etc., for conservation, etc., of biological diversity.—

(1) The Central Government shall develop national strategies, plans, programmes for the conservation and promotion and sustainable use of biological diversity including measures for identification and monitoring of areas rich in biological resources, promotion of in situ and ex situ conservation of biological resources, incentives for research, training and public education to increase awareness with respect to biodiversity.

(2) Where the Central Government has reason to believe that any area rich in biological diversity, biological resources and their habitats is being threatened by overuse, abuse or neglect it shall issue directives to the concerned State Government to take immediate ameliorative measures, offering such State Government any technical and other assistance that is possible to be provided or needed.

(3) The Central Government shall, as far as practicable wherever it deems appropriate, integrate the conservation, promotion and sustainable use of biological diversity

into relevant sectoral or cross-sectoral plans, programmes and policies.

(4) The Central Government shall undertake measures,—

(i) wherever necessary, for assessment of environmental impact of that project which is likely to have adverse effect on biological diversity, with a view to avoid or minimise such effects and where appropriate provide for public participation in such assessment;

(ii) to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of biological diversity and human health.

(5) The Central Government shall endeavour to respect and protect the knowledge of local people relating to biological diversity, as recommended by the National Biodiversity Authority through such measures, which may include registration of such knowledge at the local, State or national levels, and other measures for protection, including sui generis system. Explanation.—For the purposes of this section,—

(a) “ex situ conservation” means the conservation of components of biological diversity outside their natural habitats;

(b) “in situ conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings

where they have developed their distinctive properties.”

48. The Biodiversity Act hence mandates that the Central Government shall develop national strategies, plans and programmes for the conservation and for sustainable use of biological diversity and shall take measures for identification and monitoring of areas which are rich in biological resources and shall promote the conservation of biological resources and shall give incentives for research, training and public education to increase awareness with respect to biodiversity.

49. Section 37 of the Biodiversity Act, 2002 reads as under:-

“37. Biodiversity heritage sites.(1)

Without prejudice to any other law for the time being in force, the State Government may, from time to time in consultation with the local bodies, notify in the Official Gazette, areas of biodiversity importance as biodiversity heritage sites under this Act.

(2) The State Government, in consultation with the Central Government, may frame rules for the management and conservation of all the heritage sites.

(3) The State Government shall frame schemes for compensating or rehabilitating any person or section of people economically affected by such notification.”

50. The State Government must explore and locate its biodiversity heritage sites in Uttarakhand. Section 37 of the Act enables the Government to do that. It is possible that had this exercise been undertaken in time, Government would never have granted permission to hold this mega wedding ceremony at “Auli”, since it is in close proximity to Nanda Devi Biosphere Reserve which has been declared as ‘World Heritage Site’ by UNESCO.

51. This Court has, however, been informed that no site has yet been declared as a Biodiversity heritage site under Section 37 of the Biodiversity Act by the State Government.

52. The protection and improvement of environment and safeguard of forests is one of the Directive Principles enshrined in Part IV of the Constitution of India⁹ and in Part IV A of the Constitution of India, it is a fundamental duty of every citizen to “protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”¹⁰.

9. Article 48A : Protection and improvement of environment and safeguarding of forests and wild life. – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

10. Article 51A. Fundamental duties. – It shall be the duty of every citizen of India –

(a)

(b)...

(c)...

(d)...

(e)...

(f)...

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

53. This petition was filed before this Court by a public spirited lawyer. An important aspect relating to the environment pollution has been brought before this Constitutional Court in form of a Public Interest Litigation. The Hon'ble Apex Court in **Indian Council for Environmental Action v. Union of India** in (AIR 1996 SC 1446), had emphasised that Courts are in a better position to ascertain facts in cases relating to anti-pollution laws:

“The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti-pollution laws where the allegations relate to the spreading of pollution or non-compliance of other legal provisions leading to the infringement of the anti-pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be effected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology.”

54. Having heard the learned counsels of all the parties, we have absolutely no doubt in our mind that the State Government should have never given its permission for holding this large event at “Auli”. This petition is not against the wedding, but against the week long large congregation and gathering in the high mountains which happens to be an eco-sensitive place. The argument is against large gatherings in an eco sensitive place; not against the wedding. The State Government has defended its stand of granting permission for the “event” on grounds that it will boost tourism in Uttarakhand. Tourism certainly needs to be encouraged and in a State like Uttarakhand tourism industry can also be an important source of revenue for the State and an area which has huge potential for generating employment. But a balance has to be made. Worldwide tourism is now being seen as “sustainable tourism”, which is another name for “responsible tourism”. Tourism has to be handled very carefully. In a Handy Booklet¹¹ (which is a user’s manual on CBD Guidelines), foreword has been written by Jochen Flashbarth, who is an environmentalist which is worth mentioning here. He writes:

“Tourism is like fire: you can cook your food with it, but if you are not careful, it could also burn your house down! Or to put it another way: tourism offers opportunities for economic, social and ecological development, but only if the risks involved are not overlooked.”

11. www.cbd.int/tourism-manual-en.pdf

55. There is a no law against holding a wedding ceremony at “Auli”. But there is definitely a law against environment pollution. There is also a law, presently enforce in the State of Uttarakhand, which mandates the State to conserve and protect its biodiversity and make it more sustainable. Any event, activity, plan or scheme which violates these provisions comes in conflict with the law.

56. While developing tourism sector, the environmental aspect and the social and aesthetic needs of the people, where these tourism centres are to be developed, has to be taken into account. For alpine and sub alpine meadows, which are rich in biological diversity such as “Auli”, which is in close proximity and periphery of “Nanda Devi Biosphere Reserve”, the Government should have been more circumspect before giving its approval for this mega wedding.

57. What is the “carrying capacity” of “Auli”, has still not been determined. It ought to have been done by now, considering that the State seeks to develop “Auli”, which is in an eco sensitive zone, as a place for adventure and sport tourism. In fact the State Government must immediately undertake a study and fix the “carrying capacity” of “Auli”, and all other such places which are set to be tourist destinations in the State of Uttarakhand.

58. There has been no previous planning, scheme or even a standard procedure with the Government to hold an event of this nature in an eco-sensitive area. To give just one example, and as has already been referred above, there is no provision yet to restrict the number of tourists at “Auli” since the “Carrying Capacity” of “Auli” has not been fixed as yet. A Division Bench of this Court (In **Aali-Bedini Bagzi Bugyal Sanrakshan Samiti vs. State of Uttarakhand**) had directed to set a limit of 200 tourists for

all meadows/sub alpine meadows/Bugyals, in Uttarakhand. This has clearly not been done.

59. This event left a long trail of waste and garbage, which is 32.6 Tons. Out of this 15.41 is non-biodegradable waste. This is the result of just one single event at “Auli”. In case such events are permitted by the State in future, what level of garbages and waste will that result is not difficult to imagine. We say this as we are also aware that there are no scientific mechanisms available at “Auli” or nearly in Chamoli district, which has the capacity to recycle this large quantity of waste. There is also no mechanism in place to prevent water and air pollution which result as a consequence of the kind of activity, we are presently dealing with.

60. This Court has been informed that out of Rs. Three Crore deposited by respondent nos. 12 and 13, Rs. 46,94,823/- (Rupees Forty Six Lakh Ninety Four Thousand Eight Hundred Twenty Three only) have been the expenses. Rs. 2,50,00,000/- (Rupees Two Crore Fifty Lakh only) has been returned to respondent nos. 12 and 13 vide order dated 04.12.2019 of the Division Bench of this Court. The remaining amount left with the District Magistrate is Rs. 3,05,177/- (Rupees Three Lakh Five Thousand One Hundred Seventy Seven only). This amount shall not be given to respondent nos. 12 and 13 or any of the private respondents, immediately, but this Court leaves it to the Government to hear all the concerned parties in case of any further damage and expenses are involved, this amount be adjusted accordingly, and the remaining, even any, is recovered. If there are no other deductions to be made, then this amount be returned to respondent nos.12 and 13.

61. It is clear that the Government was in grave error in granting its approval to this mega event without having any kind of assessment of waste and garbage which would be generated due to the event. It failed to have any checks for the collateral damage caused by the event to the environment. But for the intervention of this Court which had set up a condition of depositing Rs. Three Crore there was hardly any mechanism in place either with the State Government or its authorities which could have recovered this amount from the private respondent nos. 12 and 13. This Court has no intention to discourage tourism in Uttarakhand but as cautioned above by Jochen Flashbarth the State Government must remember that “tourism is like fire: you can cook your food with it, but if you are not careful it can also burn your house down”. Tourism should not be seen merely as a development activity or as a revenue earning sector. Tourism means “sustainable tourism”. We can afford to ignore this principle only at the cost of our environment. We should keep high mountain terrains in their pristine glory and beauty. “Bogyals” belong to the people, as was so eloquently stated by the Division Bench of Allahabad High Court (**Om Prakash Bhatt v. State of U.P. and others, AIR 1997 Allahabad 259**). “Nature has tailored it. It is not for man to erode the sanctity of this area. It must be returned to nature to provide for whom it was meant; the sheep, the shepherd, the wild flowers, the micro-orgams and the plant and insect life below the turf and in the shrubs at that altitude.” What has been said by the Allahabad High Court was for the “Bogyals”, but it applies equally to “Auli” since “Auli” too is an eco sensitive place. Lastly we may remind ourselves of the gentle warning and wisdom of an African proverb, which sums up everything. It says: “The earth is not ours, it’s a treasure we hold in trust for future generations”.

62. We therefore propose to dispose of the petition, with the following directions:-

1. The State Government shall constitute an expert Committee within four weeks of this order. This Committee will undertake the exercise and examine whether there is a need to identify biodiversity heritage sites in Uttarakhand and if it comes to a conclusion that it needs to be done then the exercise of identifying these sites be taken under Section 37 of the Biodiversity Act. The expert Committee shall consist of Secretary Tourism, Secretary Forest and Secretary Environment. The Committee shall co-opt at least two experts with them.

2. The Ministry of Tourism, Government of Uttarakhand shall get the carrying capacity of "Auli" determined by the same expert Committee, within four weeks of this order. The expert body shall examine all the relevant aspects and fix a carrying capacity of "Auli" within 3 months thereafter. The Government may also undertake the same exercise for all such "tourist destinations" which lie in a biodiversity sensitive zone, such as "Auli".

3. Rs. 3,05,177/- (Rs. Three Lakh Five Thousand One Hundred Seventy Seven only) which has been left out of Rupees Three Crore deposited by respondent nos.12 and 13 shall be deposited with the State Government Treasury. The State Government shall thereafter determine as to what amount is still needed for repair of the damages caused, and the unutilised amount be returned to respondent nos.12 and 13.

4. "Auli" is the only skiing destination in Uttarakhand, for sports and adventure lovers. It is also the place which holds winter games. It is

necessary therefore that the Government limits its activities in “Auli” only in the field of sports and adventure tourism, and not to venture in any other activities which are not compatible with the principles of “Sustainable tourism”. The Government must remain focused in these areas. “Auli” should never be a destination for large events, the kind we have just witnessed.

63. With the above observations and directions, the petition stands disposed of. Let a copy of this order be sent to the Secretary, Tourism and the Secretary, Forest, Government of Uttarakhand for onward compliance. Registrar General of this Court is directed to do the needful.

(Ramesh Chandra Khulbe, J)

(Sudhanshu Dhulia, J.)

27.07.2020

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