

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

Writ Petition (PIL) No. 71 of 2021

Writ Petition (PIL) No. 72 of 2021

Writ Petition (PIL) No. 77 of 2021

Writ Petition (PIL) No. 90 of 2021

16TH SEPTEMBER, 2021

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

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

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

Mr. Abhijay Negi, the learned counsel for the petitioner in WPIL Nos.97 of 2019, 67 of 2020, and 72 of 2021.

Ms. Snigdha Tiwari, the learned counsel for the petitioner in WPIL No.71 of 2021.

Mr. Sandeep Tiwari, the learned counsel for the petitioner in WPIL No.61 of 2021.

Mr. S.N. Babulkar, the learned Advocate General assisted by Mr. C.S. Rawat, the learned Chief Standing Counsel, Mr. Anil K. Bisht learned Additional Chief Standing Counsel and Mr. B.S. Parihar, learned 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)

In pursuance of the order dated 28.07.2021, Mr. H.C. Semwal, the learned Secretary, Department of Culture & Religious Affairs, and Mr. S.A. Murugesan, the learned Secretary, Disaster Management are present before this Court through video-conferencing.

2. Stay Vacation Application (IA No.3035 of 2021) has been filed by the State for vacating the interim order dated 28.06.2021.

3. By the said order, this Court had stayed the Cabinet decision dated 25.06.2021, whereby the Hon'ble Cabinet had decided to open the Char Dham Yatra, initially only for the residents of Districts Uttarkashi, Rudraprayag, and Chamoli for a period of four weeks, and thereafter, open up the Char Dham Yatra for the rest of the people of the State, and finally, for the people of the country.

4. Mr. S.N. Babulkar, the learned Advocate General appearing for the State, submits that since the State was aggrieved by the order dated 28.06.2021,

passed by this Court, it had filed a Special Leave to Appeal (C) Nos.8685-8691 of 2021 before the Hon'ble Supreme Court. However, according to the order dated 09.09.2021, the Special Leave to Appeal (C) Nos.8685-8691 of 2021, has been withdrawn before the Hon'ble Supreme Court; thereafter, the present interim application has been filed, for recalling the stay order dated 28.06.2021, before this Court.

Secondly, that the onslaught of COVID-19 pandemic is no longer as harsh as it was in June, 2021. In fact, the numbers of cases, both State-wise, and Nation-wise, are continuously declining. Therefore, the present scenario is quite different from the circumstances that existed in June, 2021.

Thirdly, presently, there is no indication that the third wave of COVID-19 is either emerging or is increasing in its ferocity. According to the learned Advocate General, even in the State, there are hardly any cases of COVID-19. Moreover, the vaccination in the State has been going on for the last many months. According to him, in the three districts of Chamoli, Rudraprayag, and Uttarkashi, the data of vaccination

for those in the age group of 44 years and above, is as follows:-

Sl. No.	District	Census	Dose 1	Dose 2	% 1 st Dose	% 2 nd Dose
1.	Chamoli	95236	109112	88421	114.6%	81.0%
2.	Rudraprayag	59363	67561	40497	113.8%	59.09%
3.	Uttarkashi	84946	86085	64440	101.3%	74.9%

Similarly, even for the age group of 18-44 years, the relevant data is as under:-

Sl. No.	District	Census	Dose 1	Dose 2	% 1 st Dose	% 2 nd Dose
1.	Chamoli	168113	142732	24154	84.9%	16.9%
2.	Rudraprayag	104789	93488	21123	89.2%	22.6%
3.	Uttarkashi	149947	131282	25316	87.6%	19.3%

Therefore, according to the learned Advocate General, both in the age group of 18-44 years and in the age group of 45 years and above, the majority of the population have already been given the first doze. Moreover, in the age group of 45 years and above, the majority of the population has already been given the second doze in Districts Chamoli, Rudraprayag, and Uttarkashi. Thus, the persons belonging to the age

group of 45 years and above in these three districts are already fortified against the corona virus.

Fourthly, the Char Dham Yatra is held approximately for a period of six months every year, from mid of May to November. It is scheduled to end at the end of November, 2021. Therefore, the earning period for the local population are those four months for which the Char Dham Yatra operates. Till now, since there is a stay on the Char Dham Yatra, the local population is suffering financially. From the flower seller to the priests of the temples, from the hoteliers to the tour operators, there is no business for the local population. In case, the Char Dham Yatra is not opened up immediately, the local population will face a bleak financial future. In fact, the Government may not even be in a position to rush to their rescue to ameliorate their financial conditions. Therefore, in the changed scenario, the learned Advocate General pleads that the order dated 28.06.2021 should be vacated by this Court.

5. Mr. S.N. Babulkar, the learned Advocate General further submits that the Government is well-

aware of its responsibilities towards its own people, and towards the people of the country. It has already drafted a SOP, a copy of which has been submitted along with the present application. According to the SOP, the number of pilgrims allowed inside the temple on a daily basis has been limited. For Badrinath temple, only 1,200 pilgrims, in Kedarnath temple, 800 pilgrims, in Gangotri temple, 600 pilgrims, and in Yamnotri temple, 400 pilgrims would be allowed inside the temple on a daily basis. Therefore, the number of people visiting the Char Dham for this year would be drastically reduced from the number of people who were permitted to visit the Char Dham temple in the year 2020. According to him, in the year 2020, 3,21,906 pilgrims had visited the Char Dham. However, the number would be dramatically reduced as there is an upper limit on the number of pilgrims permitted to visit the Char Dham temples.

Furthermore, according to the SOP, each pilgrim coming in to visit the Char Dham Yatra would be required to register himself/herself online. Each

pilgrim would be required to carry a RT-PCR test report, and the vaccination certificate.

Furthermore, in order to ensure that such essential documents are, indeed, carried by the pilgrim at the route to each Char Dham, numbers of check-points have been created. At each check-point, the pilgrim would be stopped, checked and to see whether he/she carrying the essential documents or not. For example, on the route to Kedarnath temple, there are three check-points (at Sirobagad, Chirbatiya & Sonprayag). On the route to Badrinath temple, there are five check-points (at Gauchar, Panduvakhal, Gwaldam, Pandekeshwar, and Mohankhal). At each check-point, the pilgrims would be checked, and in order to ensure that they are, indeed, carrying the essential documents mentioned hereinabove.

Further, even the medical facilities have been strengthened in order to look after the medical needs of the pilgrims coming in the Char Dham towns. According to him, sufficient number of Ambulances are available which will ferry, if necessary, any pilgrim who may require medical attention.

Further, detailed SOPs' were issued by the Government for the hoteliers, tour operators, for the restaurants, and for the local businessmen which need to be followed by them in order to ensure that the SOPs are, indeed, adhered to by the pilgrims.

Lastly, sufficient number of police personnel would be employed to ensure that neither the SOPs, nor the provisions of any law, are violated by the pilgrims while they visit the holy shrines.

6. On the other hand, Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) Nos.58 of 2020 and 77 of 2021, submits that the petitioner does not have any objection if the stay order dated 28.06.2021 were to be vacated by this Court. However, there are certain steps that are still required to be taken by the State Government. Therefore, he prays that this Court should issue the necessary directions to the State in order to ensure that the gaping holes left in the SOPs are completely filled up. Drawing the attention of this Court to the low number of second dose vaccination in the Districts Chamoli,

Rudraprayag, and Uttarkashi, the learned counsel submits that the Government should be directed to increase the vaccination for the local population.

Secondly, since there are large numbers of Care Health Centres (for short "CHC"), which are not equipped with ventilators, he prays that the Government should be directed to enhance the medial facilities in these three districts. The Government should ensure that sufficient number of beds, beds with oxygen, and beds with ventilators, are, indeed, provided for the benefit of the pilgrims. Likewise, in case there is a need of enhancing the medical staff, i.e. number of Doctors, nurses etc., the same should be taken care of by the State.

Thirdly, the Government must insist on vaccination certification for both the dozes, and not just a single doze. For, according to the learned counsel, it is imperative that those who are entering Uttarakhand should not bring any virus with them. Moreover, he has placed emphasis that those who are coming from the State of Kerala, which continues to struggle with the COVID-19 pandemic, and from other parts of the

country where there has been some spike in the COVID-19 pandemic, special attention should be bestowed on such pilgrims. According to him, since the pilgrims are required to register online, the information would be readily available with the Civil Administration with regard to the number of pilgrims coming from these specific areas of the country. Therefore, they need to be investigated and inquired by the local administration.

Fourthly, despite the fact that the numbers of medical vans, i.e. general ambulances, ambulances with oxygen, have been increased, there is no indication that helicopters would be available for any emergent medical need. According to him, one helicopter should be kept at each of the Char Dhams in case there is a dire urgency that may emerge suddenly. Moreover, the pilgrims coming to these Char Dhams should be informed about the helpline number to which they may call, the name of the person whom they may contact, in case they need to avail helicopter facility to ferry a critically ill person to the nearest hospital. Therefore, according to the learned counsel, such

information should be provided not only on the registration link, but should also be provided at the Char Dham itself by the use of electronic and print media.

Fifthly, drawing the attention of this Court to the number of toilets available at Char Dhams, the learned counsel submits that while, *prima facie*, sufficient numbers of toilets have been created, the data reveals that there are no urinals available at the Char Dham. Therefore, there is a dire need for enhancing the public facilities available for the pilgrims coming to Char Dham.

Sixthly, in order to see that the Civil Administration is, indeed, carrying out its responsibility with due diligence and due care, the learned counsel prays that the District Monitoring Committee, of which the District Magistrate himself is a part thereof, should be asked to submit a weekly report to this Court.

Lastly, the learned counsel submits that the testing facilities should be increased at the Char Dham. For, it is imperative that persons who are coming in

should be tested to see if they are carriers of the virus, or if they are COVID-19 positive or not.

7. Mr. Abhijay Negi, the learned counsel for the petitioners in Writ Petition (PIL) Nos.97 of 2019, 67 of 2020, and 72 of 2021, submits that despite the fact that there is Anti-Littering and Anti-Spitting Act, 2016 prevalent in the State, the said Act is not being implemented as rigorously as required. According to the learned counsel, Section 9 of the said Act contains a penal provision. But even the said penal provision is not being implemented by the police administration. According to the learned counsel, while the pilgrims are welcome to visit the Char Dham shrines, they should not be permitted to litter, or to pollute, both the holy towns, and the sacred areas. Therefore, the said Act needs to be implemented with full force by the police.

Secondly, according to the order passed by this Court on 28.04.2021 in Writ Petition (PIL) No.97 of 2019, the District Magistrates were directed to seek the help from the Local Self-Help Groups, or the NGOs'. However, this is not being done by the District

Magistrate. Therefore, direction should be issued to the concerned District Magistrates to do the needful.

Lastly, according to the learned counsel, a large number of directions have been issued by this Court, both in its order dated 28.07.2021, and by its previous orders. Therefore, he prays that even these directions issued by this Court should form part of the SOP issued by the State Government.

8. Mr. Dushyant Mainali, the learned counsel for the petitioner in Writ Petition (PIL) No.50 of 2020, submits that the helpline numbers should be made readily available on the registration link, so that those who are registering online would be well-aware of the helpline numbers and of the concerned person or authority.

9. Mr. S.N. Babulkar, the learned Advocate General has objected the request of Mr. Shiv Bhatt, the learned counsel for the petitioner in Writ Petition (PIL) Nos.58 of 2020 and 77 of 2021, with regard to the involvement of the District Monitoring Committee. For, according to him, there is no need to seek a report

from the District Monitoring Committee. In fact, it would be better if the reports are sought from the Secretary, District Legal Services Authority.

Secondly, according to him, there are certain fictitious and frivolous NGOs. These NGOs are using the orders passed by this Court, on earlier occasions, in order to entitle themselves for certain prevalent works from the Civil Administration. Therefore, he prays that it should be left open to the District Magistrate to decide as to which NGO he/she would like to work with. According to the learned Advocate General, not all the NGOs are on equal footing. While some of them may be genuine, and may be working for the benefit of the people, but there are always chances that a few NGO are merely fronts being used by the people to exploit the common man and the Government.

10. Heard the learned counsel for the parties.

11. Undoubtedly, there has been a constant decline in the COVID-19 cases, both within the State, and in the nation. Although, COVID-19 continues to play havoc in the Southern parts of the country, such as

Kerala, but overall, throughout the country, it has been declining. Despite the fact that some Scientists do claim that India may face the third wave of COVID-19, but luckily, so far, there is no indication that the third wave is about to spread right through the country. But for Kerala, certain districts of Maharashtra, and certain districts of Andhra Pradesh, COVID-19 overall seems to be under control. Moreover, each State is ensuring that the vaccination programme increases as much as possible. Even the State of Uttarakhand is dedicated to vaccinating its people. As the data, mentioned hereinabove, clearly indicates that 114.6% of the population of age group of 45 years and above of District Chamoli 113.8% population in District Rudraprayag, and 101.3% population in District Uttarkashi have already been inoculated with the first doze. Similarly, in the age group of 18-44 years, in District Chamoli 84.9% of the population, in District Rudraprayag 89.2% of the population, and in District Uttarkashi 87.6% of the population has been inoculated with the first doze. Therefore, the majority of population from 18 years onwards has been given the first doze. As far as the second doze is concerned, in

the age group of 45 years and above, in District Chamoli 81.0%, in District Rudraprayag 59.09%, and in District Uttarkashi 74.9% population has been inoculated.

12. It is, indeed, disconcerting that the people in the age group of 18-44 years, the majority of them have yet to be inoculated with the second doze. For, according to the data available, in District Chamoli the percentage of population is as low as 16.9%, in District Rudraprayag it is 22.6%, and in District Uttarkashi it is 19.3%. Therefore, the second dozes have to be increased in these three districts in order to ensure that the local population is completely fortified against the Corona virus. Considering the fact that if pilgrims from outside the State are permitted to mingle with the local population, obviously, it is the local population that would have to face the danger of contracting the disease. Thus, it is imperative that the vaccination for the second doze be increased phenomenally in these three districts by the State.

13. Although, the State Government has claimed that it has enhanced its medical facilities to a great

extent, the data clearly indicates that there are hardly any beds available with ventilators. Therefore, this Court directs the State Government to enhance the medical facilities, if necessary, and to ensure that at least, beds with ventilators are available.

14. According to the "COVID-19 Mitigation measures for Char Dham Yatra", issued by the Government of Uttarakhand, the Government has already committed itself to the availability of helicopters. However, this Court leaves it to the discretion of the District Magistrate to ensure that the helicopter is available at the Char Dham. But it is imperative that a system should be placed where the pilgrim would know there is, indeed, availability of helicopter, if the necessity so arises. Therefore, this Court directs the State to ensure that in the registration online portal, the helpline number for availability of such helicopter is indicated, the person who needs to be contacted for availing such facilities is readily available. Moreover, at the Char Dham locations, sufficient information should be given to the pilgrims coming in about the availability of the medical facilities,

the numbers of beds available, and the fact that the helicopter would be available if the urgency so arises. The essential information should be displayed publicly, and should be conveyed to the pilgrims through electronic and print media. This information should also be available at the control room(s) established by the State at each of the Char Dham locations.

15. Although, the State claims that it has created 106 toilets at the Char Dham, but the fact remains that public facilities need to be enhanced not only at Char Dhams, but even on route to Char Dham. Admittedly, the route of Char Dham begins from Haridwar, and the route continues till Badrinath, Kedarnath, Gangotri, and Yamnotri. Therefore, it is essential that public facilities be provided, on route, to the pilgrims who may travel from Haridwar to any of these four destinations. Therefore, this Court directs the concerned District Magistrates of the concerned Districts to ensure that essential and necessary public facilities are, indeed, provided to the pilgrims, both on route and at Badrinath, Kedarnath, Gangotri, and Yamnotri.

16. Likewise, this Court directs the State to ensure that testing facilities are available for testing those who may reveal any symptom of COVID-19. Such testing facilities should not only be created at the Char Dham locations, but also should be provided on route.

17. This Court directs the District Magistrates to consider those Local Self-Help Groups and the NGOs with whom they would like to work. It shall be the discretion of the concerned District Magistrate to decide as to which group or NGO, the Civil Administration would like to work with. For this purpose, the District Magistrate should consider the years of experience that Local Self-Help Group/NGO has, the type of work they had carried out during their existence, the number of people working with them, and the area of specific work, or any other relevant fact for taking the substantive decision. It is only after looking at these essential factors that the District Magistrate should take a decision on whether he would like to work with the Group/NGO, or not.

18. According to the State Government, it will permit 1,200 pilgrims to visit the Badrinath temple, 800

pilgrim to visit the Kedarnath temple, 600 pilgrims to visit the Gangotri temple, and 400 pilgrims to visit the Yamnotri temple on a daily basis. Although, the Government does give the assurance before this Court that three pilgrims would be permitted to enter inside the temples at one time, but it is essential to reduce the number of pilgrims visiting the Badrinath temple from 1,200 to 1,000 per day. The other numbers given for the other temples shall continue.

19. The police department is directed to ensure that strict penal action is taken against those persons who violate either the SOP, or the provisions of the Disaster Management Act, or the provisions of the Uttarakhand Anti-Littering and Anti-Spitting Act, 2016.

20. The Secretary, District Legal Services Authority of these three districts Chamoli, Rudraprayag, and Uttarkashi are directed to monitor the facilities available to the pilgrims, and the supervision being carried out by the Civil Administration of the districts, and to submit their reports on weekly basis before this Court.

21. The State is directed to keep-in-mind, and if possible, to incorporate the directions which have been issued by this Court by its numerous orders, in numerous occasions, and also keep-in-mind the directions issued on 28.07.2021.

22. With these directions, the stay order dated 28.06.2021, passed by this Court, is vacated.

23. The presence of Dr. S.S. Sandhu, the learned Chief Secretary, Mr. Amit Negi, the learned Secretary, Medical Health and Family Welfare, Mr. H.C. Semwal, the learned Secretary, Department of Culture & Religious Affairs, and Mr. S.A. Murugesan, the learned Secretary, Disaster Management, is dispensed with till further orders.

24. The Stay Vacation Application (IA No.3035 of 2021) is disposed of.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 16th September, 2021
NISHANT