

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI

MEMORANDUM OF APPEAL

(U/S 18(1) RW SEC.16 OF NATIONAL GREEN TRIBUNAL ACT, 2010)

APPEAL NO. 5 OF 2021

Mahalakshmi Aqua Farm rep. by

It's Propr. V.M. Sivakumar

...Appellant

VS

The Chairman,

Tamil Nadu Pollution Control Board and 2 Others

...Respondents

ADDITIONAL GROUNDS

COUNSEL FOR APPELLANT

K,RAVI ANANTHA PADMANABAN

(925 / 87)

RAJALAKSHMI.P

(4455/2019)

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INDEX TO ADDITIONAL GROUNDS

Sl.No	Date	Particulars of documents	Page.No
1.		ADDITIONAL GROUNDS	1
2.	23.07.2014	G.O.No.142 PWD permitting schemes in safe and semi-critical areas falling under B category blocks	7
3.	21.10.2014	Order passed by NGT in Application No.260 of 2014 permitting maintenance of machinery and membranes by restoring Electricity connection to water unit with a condition not to do any commercial activity.	13
4.	31.10.2014	Order passed by NGT in which the statement made by TNPCB Counsel that the board enters into picture only after the units get NOC from PWD and FSSAI.	15

5.	23.10.2019	G.O.No.161 PWD categorizing earlier Blocks into FIRKAS and refereeing to G.O.No.52 PWD dated 02.03.2012 showing that the water extraction is below 89% in safe and semi-critical areas and it is over 90% in the other 2 areas.	18
6.	11.11.2020	Order passed by Division Bench in W.P.No.16299 of 2018 mandating that only the bore well should be sealed if the units in prohibited areas run without NOC / License. The bench also directed to restore electricity connection besides permitting water units even in critical area to obtain NOC for transportation of water from safe or semi-critical areas.	22
7.		Photographs (4 Nos) Showing that in and around the appellant's unit there is no cluster of residences.	29

Dated at Chennai this the 7th Day of March, 2021.



COUNSEL FOR APPELLANT

BEFORE THE NATIONAL GREEN TRIBUNAL SOUTH ZONE AT CHENNAI
MEMORANDUM OF APPEAL

(U/S 18(1) RW SEC. 16 OF NATIONAL GREEN TRIBUNAL ACT, 2010)

APPEAL NO. 5 OF 2021

Mahalakshmi Aqua Farm rep. by

It's Propr. V.M. Sivakumar(aged 42 years),

S/o K. Veerasamy

No. 341/D, Moovendar Nagar Extn.,

Old Perungulathur, Chennai-600 063.

Ph: 94440 48135

Mail.Id: legalgeniusap@gmail.com

...Appellant

VS

1. The Chairman,

Tamil Nadu Pollution Control Board,

No.76, Anna Salai, Guindy

Chennai-600 032.

Ph: 044 22353134

Mail.Id: tnpcb-chn@gov.in

2. The District Environment Engineer,

Tamil Nadu Pollution Control Board,

Maraimalai Adigalar Street,

Next to Municipal Office,

Maraimalai Nagar,

Chengalpattu District – 603 209.

Ph: 044 27454422

3. The Superintending Engineer,

Tamilnadu Generation and Distribution Corporation [TANGEDCO]

CEDC/ SOUTH, KK Nagar SS Complex,

Anna Main Road, K.K. Nagar, Chennai-600 078.

Ph: 94458 50111

Mail.Id: sechns@tnebnet.org

...Respondents

Additional Grounds filed by the appellant

1. The appellant submits that the legal necessity to obtain consent from

TNPCB does not arise at all in the case of packaged drinking water units.

The reason being that every packaged drinking water unit follows Reverse

For MAHALAKSHMI AQUA FARM


Proprietor

Osmosis (RO) process to make it as a packaged drinking water. In the RO Process, water is drawn from earth containing mud, soil, carbon, salt particles, invisible enzymes, organic and inorganic matters and so on. **In the RO process, what is done is only purification of water thereby eliminates soil, carbon and so on.** After 3 stages of purification process without adding any chemicals, pollutants, additives the purified water is pumped into membrane which absorbs 50% of the pumped water. The balance 50% is discharged and sent towards the Rain Water Harvesting chamber. Even if such returned water is watered on plants etc., no harm is caused to any living or other beings, since it is only purified water.

2. Secondly, the word pollution as defined under Sec.2 (e) of the Water Act, 1974 **means such contamination of water if it is likely to render such water harmful or injurious to public health or safety.** Therefore, the very object of the Act is to prevent any water treatment becoming harmful to public health or safety. In the packaged drinking water system, this criteria is not attracted at all and hence it is submitted that TNPCB has no jurisdiction to exercise its power u/s 25, 26 and 33A of the Water Act, 1974 r/w Sec. 31 A of the Air Act, 1981.
3. **The consent, if at all required of TNUSRB, is merely procedural and it is not a pre-eligible criteria.**

Sec.25 (1) (a) says that no person shall, without the previous consent of the state board, establish or take any steps to establish any industry, operation or process, etc., which is likely to discharge sewage or trade effluent into a water or on land etc.

For MAHALAKSHMI AQUA FARM


Proprietor

Sec 25 (2) Says that an application for consent shall be made.

Sec 25 (3) Mandates TNUSRB to make such enquiry as it may deemed fit by follows prescribed procedure, in respect of application for consent.

Sec 25 (4) Gives the Power to grant its consent subject to any conditions as it may impose.

Sec 24 (4) (b) Deals with refusal of such consent for reasons to be recorded.

Sec 25 (5) Deals with the situation where the unit has been established or steps are taken to establish any industry etc., it says that ***if the unit is established or septs are taken to establish without consent of the State Board it may serve on the person a notice imposing such conditions as it might have imposed on an application for its consent in respect of such establishment.***

Sec 25 (7) Deals with the deemed consent if on expiry period of 4 months neither consent is given nor refused.

Sec 27(2) Says that the Board may from time to time may review any conditions imposed under Sec.25 or Sec.26 and may serve on the person a notice making any reasonable variation which shall continue inforce until revoked.

From the above explanation, it is evident that the consent to operate obtainable from TNPCB is only procedural in aspect.

Secondly, even if a unit has already started its operation without such consent, The Water Act, 1974 only contemplates service of a notice on such establishment for compliance.

For MAHALAKSHMI AQUA FARM


Proprietor

4. In the instant case, the appellant sought the consent by his representations dated 02.12.2020 and 04.01.2021. Looking at from any angle, the legal necessity to obtain consent from TNPCB does not arise for any water unit as the question of causing pollution or using any pollutant or chemicals or additives does not arise at all. The water drawn from earth is purified in 3 stages and made as "Can Water", while the rejected water in a purified form goes back to the earth without causing injury or harm to public health or safety or to environment. Admittedly, the question of invoking provisions of Air Act, 1981 is next to nonexistence. But under the garb of exercising powers under both Water and Air Acts, packaged drinking water units are being harassed by TNPCB Officials.

5. The appellant respectfully submits that it has already obtained ISI, BIS, FSSAI certificates as well as NOC for drawal of water from competent authority. **The unit is in Safe Zone and hence there is no impediment to run the unit.** Public Works Department (PWD) is the guardian and competent authority to deal with extraction of water. In a metro area, it is the Metro Water Board Chairman and in the District of Chengalpattu and Kanchepuram, it is the Revenue Divisional Officer (RDO) who is the competent authority to grant NOC.

6. In light of these mandatory certificates, the appellant should be allowed to run the unit and, even assuming, the consent from the State Board is required for the Water Unit, TNPCB can impose conditions for complying such as creating Rain Water Harvesting, storing area. No probable

For MAHALAKSHMI AQUA FARM


Proprietor

conditions seem to be in contemplation as far as this water unit is concerned. The appellant has already complied with the rain water harvesting scheme of the government of Tamil Nadu. Therefore, looking at from any angle, the closure order passed by TNPCB without issuing any notice for compliance is per se illegal and without jurisdiction.

7. As regards the allegation that the unit is situated in a residential area, it is submitted that for such reason, TNPCB has no jurisdiction to close the unit. Even otherwise, it can restrict itself to excess decibel noise emanating from any industry or unit. In which event also, the unit cannot be straight away closed without serving a notice to reduce the noise level. The RTI reply would prove that one can run any industry or unit in a residential area with a usage upto 30 HP (Horse Power). The appellant has fairly stated that all units put together would not cross 25 HP. The motor for drawing water is not more than 5 HP in all water units in the State of Tamil Nadu. Therefore, on that ground also the impugned notice suffers from illegality. Besides, for non-production of building plan approval TNPCB is not the authority to close the unit. The appellant is only a tenant.

8. ***The development of residential colony is always a dynamic and evolving concept.*** In the instant case, a few houses would have come into existence near the water unit after setting up the unit with infrastructure. Therefore, it cannot be considered as a reason to close the unit. In fact, big hotels, malls and other big establishments are allowed in a residential area. But they are not closed. The only way, therefore, it is to regulate and not to close down the industry.

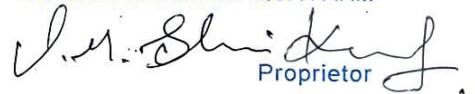
For MAHALAKSHMI AQUA FARM


Proprietor

9. It is important to note that the Division Bench Order as well as NOC for drawal of water are necessitated as per G.O.Ms.No.142 dated 23.07.2014. The relevant G.O.142 permits NOC if a water unit is situated in both Safe and Semi-Critical Zones.
10. As per G.O.Ms.No.52 dated 02.03.2012 PWD, the Water extraction is below 89% in Safe and Semi-Critical Zones for which NOC is required. Once the competent authority issues NOC, it cannot be forced to stop the unit simply because it is in residential area. The competent authorities always prescribe and limit the water drawal limit per day while granting NOC. The Division bench order dated 11/11/2020 also supports this hypothesis.

For the reasons state above it is prayed that this Hon'ble National Green Tribunal may be pleased to allow the Appeal and pass suitable Orders in the circumstances of the case and render justice.

For MAHALAKSHMI AQUA FARM


Proprietor

Dated at Chennai this the 7th day of March, 2021.



COUNSEL FOR APPELLANT

(d) Appropriate rain water harvesting and Artificial recharge schemes should be carried out in the categories viz, Over-exploited, Critical, Semi-Critical and Safe blocks of Tamil Nadu. While carrying out the above schemes, priority should be given to marginal quality and bad quality areas so as to avoid further deterioration.

(e) All the schemes and proposals based on the Ground Water will have to adhere to the Government Orders and conditions as detailed in the Annexure-II to the Government Order 1st read above.

2. In the letters 2nd read above, the Chief Engineer, Water Resources Department, State Ground and Surface Water Resources Data Centre, has reported that in order to safeguard the groundwater aquifers and sustain the ground water potential, the State Ground and Surface Water Resources Data Centre, Water Resources Department, issues No Objection Certificate / Licence / Permit for extraction of groundwater by different users and Circulars issued by him from time to time should also be followed. He has also reported that for the effective management of ground water and environment on water sector and to maintain the sustainability on ecology, the Chief Engineer, Water Resources Department, State Ground and Surface Water Resources Data Centre, has sought for approval of the draft Regulations for Management of Groundwater and Issue of No Objection Certificate / Licence for extraction of Groundwater in State of Tamil Nadu suggested by him.

3. The Government after careful consideration of the proposal of the Chief Engineer, State Ground and Surface Water Resources Data Centre, Chennai, have decided to accept it. Accordingly, in furtherance of the orders and instructions issued in the Government Order first read above, the Government approve the following Regulations for the Management of Ground Water and issuance of No Objection Certificate for extraction of Ground Water in Tamil Nadu. These Orders and Regulations should be scrupulously followed by the authorities concerned.

**REGULATIONS FOR MANAGEMENT OF GROUND WATER
AND ISSUE OF NO OBJECTION CERTIFICATE / LICENCE FOR EXTRACTION
OF GROUND WATER IN TAMIL NADU STATE**

In G.O.(Ms.) No. 52, Public Works Department, dated 2.3.2012, the Government of Tamil Nadu have approved the categorisation of the Blocks in Tamil Nadu as Over-Exploited, Critical, Semi-Critical and Safe for ground water development and notified the same. The categorisation will be done periodically by the Government of Tamil Nadu and will be notified. In continuation of the orders issued in the said Government Order, the Government issue the following Regulations for issue of NO OBJECTION CERTIFICATE for extraction and transportation of ground water. These Regulations will come into force immediately.

These Regulations extend to the whole of the State of Tamil Nadu except the areas to which the Chennai Metropolitan Area Ground Water (Regulation) Act, 1987 extends.

(i) **The following Categories are exempted from applying for NO OBJECTION CERTIFICATE for drawal and transportation of ground water:**

For MAHALAKSHMI AQUA FARM


Proprietor

- (a) **Drawal and transportation of ground water for domestic and drinking purposes** for individual houses and housing infrastructure projects limited up to the Projects with six dwelling units in any area.
- (b) Drawal and transportation of ground water for drinking purposes to educational institutions. While issuing No Objection Certificate, the Competent Authority may ensure that water from surface source is not available from Chennai Metropolitan Water Supply and Sewerage Board, Tamil Nadu Water Supply and Drainage Board, Local Body or New Tiruppur Area Development Corporation Limited.
- (c) Drawal and transportation of ground water for agricultural and horticultural purposes in the State of Tamil Nadu. However, the existing spacing norms of 50 metres from unlined canal and 200 metres from river bed and water bodies will continue.
- (d) Drawal and transportation of ground water by Local Bodies, Government Institutions, Government Undertakings for drinking water purposes, subject to the clearance by the Water Utilisation Committee as per rules in force.
- (II) **NO OBJECTION CERTIFICATE is required for drawal and transportation of Ground water for the following Categories:**
- (1) For drawal and transportation of ground water for Housing Infrastructure Projects with more than six dwelling units.
- (2) For drawal and transportation of ground water for all other Infrastructure Projects / buildings.
- (3) Drawal and transportation of ground water for Industries (However, this will not apply to the existing Industries)
- (4) Water based Industries (i.e., those industries which use water as raw material like water bottling units, etc.) are eligible for No Objection Certificate in Safe and Semi-Critical Blocks only and not in any other category of Blocks.
- (5) In case of industries, which have already been established and functioning in Critical and Over-exploited Blocks, keeping in view the investment already made in plant and machinery, renewal of No Objection Certificate will be done after the concerned District Collector / Chief Engineer, State Ground and Surface Water Resources Data Centre, satisfies himself about the provisions of the Artificial Recharge Scheme Structures to recharge the ground water. While issuing No Objection Certificate, the Competent Authority may ensure that water from surface source is not available from Chennai Metropolitan Water Supply and Sewerage Board, Tamil Nadu Water Supply and Drainage Board, Local Body or New Tiruppur Area Development Corporation Limited.

For MAHALAKSHMI AQUA FARM


Proprietor

(III) Non Permissible Categories:

- (1) Drawal and transportation of ground water for Water based industries (ie., those industries which use water as raw material) is not permitted from Critical and Over-exploited Blocks. Hence, water based Industries are not eligible to get No Objection Certificate in Over-exploited and Critical Blocks.
- (2) Highly Polluting Industries (14 types – as categorised by the Tamil Nadu Pollution Control Board) are not eligible to extract ground water within 5 km radius from Cauvery, Pennaiyar, Palar, Vaigai, Thamiraparani and all the major rivers and tributaries as specified vide G.O.(Ms) No. 213, Environment & Forest (EC-I) Department, dated: 30.3.89.
- (3) In coastal areas, proposal for extraction of ground water within 10 km from the coast (However the distance criteria may be relaxed based on the geological formation which ensures that the geological formation is not susceptible for sea water intrusion due to extraction of ground water in that area)
- (4) The areas falling under the Palar Basin Rules, where the spacing prescribed is not available vide G.O.(Ms.) No.1766, Public Works Department, dated: 31.10.88.
- (5) The extraction point falling within 50 meters from the canal are not eligible for extraction of ground water.

(IV) Submission of application for availing No Objection Certificate:

Four sets of application have to be submitted to the Chief Engineer, State Ground and Surface Water Resources Data Centre, Chennai, in the prescribed format only with the following Annexures:

- (1) Attested copy of registered land ownership document in the name of the applicant (or) lease agreement in the name of the applicant.
- (2) The latest Encumbrance Certificate showing the name of the applicant for ascertaining the ownership or lease of the area.
- (3) Field Measurement Book Sketch.
- (4) Not to scale topo sketch showing the location of wells and the industry.
- (5) Chitta and Adangal copy.
- (6) Copy of Electricity Board Card.
- (7) The distance between the well proposed for groundwater extraction and nearest wells and the depth of the wells to be certified by the Revenue Inspector concerned.

For MAHALAKSHMI AQUA FARM


Proprietor

- (8) The distance between the well proposed for ground water extraction and nearest surface water body such as tank, canal, stream, river, etc., to be certified by the Revenue Inspector concerned.
- (9) The distance between the well proposed for ground water extraction and the bank of Palar River (Palar Basin Rules) to be certified by the Revenue Inspector concerned.
- (10) "No Objection Certificate" from the Village Panchayat concerned for the proposed quantity of ground water extraction and transportation of groundwater, if any, (The application form and annexures are notified in the website of the Department and Government) along with the Service Charges as prescribed by the Government then and there.

(V) Conditions for Processing of Application Forms:

The land in which the drawal wells have been proposed by an industry / organization for issue of No Objection Certificate for drawal of Ground Water should either be own property of the owner / proprietor of the industry / organization registered in his name or a leased property taken on lease by the owner / proprietor of the industry / organization in his name and duly and properly registered. No other mode of accessibility or permissibility of Land and Well will be entailed to claim for issue of No Objection Certificate to industry / organization. The request of the applicant will be processed by the Chief Engineer, State Ground and Surface Water Resources Data Centre and final orders on No Objection Certificate / Licence will be issued after adhering to the Consolidated Guidelines, 2011, dated 28.01.2011. The Chief Engineer, State Ground and Surface Water Resources Data Centre, is empowered to issue No Objection Certificate / Licence observing the Regulations and conditions laid down in the Government Order and guidelines. The Chief Engineer, State Ground and Surface Water Resources Data Centre, is the authority to issue No Objection Certificate / Licence by imposing conditions and also empowered to reject or decline any of the request on technical grounds after scrutiny.

(VI) GENERAL CONDITIONS:

- (1) Since Ground Water is a State subject, the Tamil Nadu Pollution Control Board and ISI should issue the permission only after obtaining the licence from the State Ground and Surface Water Resources Data Centre.
- (2) The Chief Engineer, State Ground and Surface Water Resources Data Centre, will examine the proposals, case by case, in accordance with the guidelines issued by the Government and the Chief Engineer, State Ground and Surface Water Resources Data Centre, is empowered to issue technical circulars then and there as warranted.
- (3) The Chief Engineer, State Ground and Surface Water Resources Data Centre, should ensure that due to drawal of ground water based on the issue of No Objection Certificate / Licence for drawal of ground water, the categorisation in the Block / Revenue Firka should not alter its position downwards. Necessary conditions should be imposed to construct adequate Artificial Recharge Structures to recharge stipulated quantity of water with respect to drawal of ground water.

For MAHALAKSHMI AQUA FARM

V. M. Shrinivas
Proprietor

12

6

- (4) The No Objection Certificate / Licence for drawal of ground water should be compulsorily renewed every year for the water based Industries and to be renewed once in three years for the non-water based industries.
- (5) All the existing Guidelines imposed by the Chief Engineer, State Ground and Surface Water Resources Data Centre and guidelines issued then and there by the Government are to be followed by the existing and also proposed users.

(BY ORDER OF THE GOVERNOR)

M. SAI KUMAR
PRINCIPAL SECRETARY TO GOVERNMENT.

To

- The Engineer-in-Chief, Water Resources Department & Chief Engineer (General),
Public Works Department, Chennai-5.
The Chief Engineer, State Ground and Surface Water Resources Data Centre,
Taramani, Chennai-113.
All Regional Chief Engineers.
All District Collectors.
The Director of Rural Development, Chennai-15.
The General Manager, National Bank for Agriculture and Rural Development, Chennai-34.
The Registrar of Co-operative Societies, Chennai.
The Chief Engineer (Agricultural Engineering), Chennai-35.
The Director of Agriculture, Chennai - 5.
The Director of Horticulture, Chennai-5.
The Commissioner / Managing Director, Sugar Corporation, Chennai-35.
The Managing Director, Tamil Nadu Water Supply and Drainage Board, Chennai-5.
The Engineering Director, Tamil Nadu Water Supply and Drainage Board, Chennai-5.
The Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, Chennai-2.
The Chairman, Tamil Nadu Electricity Board, Chennai-2.
The Managing Director, New Tiruppur Area Development Corporation Limited, Chennai-32.

Copy to:

- The Secretary to the Hon'ble Chief Minister, Chennai-9.
The Senior Personal Assistant to Hon'ble Minister for Finance & Public Works, Chennai-9.
The Energy Department, Chennai-9.
The Agriculture Department, Chennai-9.
The Revenue Department, Chennai-9.
The Environment and Forest Department, Chennai-9.
The Municipal Administration and Water Supply Department, Chennai-9.
The Rural Development and Panchayat Raj Department, Chennai-9.
The Co-operation, Food and Consumer Protection Department, Chennai-9.
The Industries Department, Chennai-9.
The Home (GI) Department, Chennai-9.
The Bureau of Indian Standards, Southern Regional Office, CIT Campus Road, Taramani,
Chennai -113.
SF/SC.

// FORWARDED / BY ORDER //


SECTION OFFICER
23/7/14

For MAHALAKSHMI AQUA FARM


Proprietor

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No.260 of 2014 (SZ)

Applicant(s)
M/s. JSM Aqua Products Pvt. Ltd.
Punnai Village
Thiruvannamalai.

Respondent(s)
Vs. The Chief Engineer, PWD, State Ground
and Surface Water Data Research Centre,
Taramani, Chennai and anothers.

Legal Practitioners for Appellant(s)
Shri K. Ravi Anandapadmanaban

Legal Practitioners for Respondent(s)
M//s. Abdul Saleem, S. Saravanan and
Vidyalakshmi for R-1
Mr. P. Gnanasekaran for R-2

Note of the Registry	Orders of the Tribunal
Order No.	<p>Date : 21st October, 2014</p> <p>Heard the counsel for the applicant. The averments are looked into along with the materials available. The Tribunal is satisfied that there exists a substantial question of environment and ecology to be decided by the Tribunal. Hence, the application is admitted.</p> <p>Mrs. Vidyalakshmi, the counsel undertakes to file memo of appearance for 1st respondent. Mr. P. Gnanasekaran, the counsel undertakes to file memo of appearance for the 2nd respondent. . For filing reply and memo of appearance of the respondents 1 and 2, the matter is posted to 31.10.2014.</p> <p>The counsel for the applicant is pressing for the interim relief for carrying on the operation of the Unit which in the opinion of the Tribunal cannot be ordered now. However, there shall be an interim order in terms of the order passed by this Tribunal in M.A.No.224 of 2014 in Appeal No.59 of 2014. In view of the fact that all</p>

For MAHALAKSHMI AQUA FARM

V. M. Shreejith
Proprietor.

COMMON ORDER

Note of the Registry	Orders of the Tribunal
Order No.	<p data-bbox="548 639 899 680">Date: 31st October, 2014</p> <p data-bbox="548 720 1386 1532">The Application No.40 of 2013 was taken cognizance <i>Suo motu</i> by the Tribunal. The counsel for the parties are present. Considering the facts and circumstances, the interim orders were granted and also pending the interim orders in force for quite some time allowing the applicants to carry on their operations on imposing conditions. Pending the same, a number of applications were filed seeking for modifications of the order and interim orders thereon were also issued. In appraisalment of the facts and circumstances in some of the cases, interim orders were given for restoring electric service connection for the limited purpose of maintaining the membranes and machinery.</p> <p data-bbox="548 1626 1386 2163">Out of the Items posted today, Item Nos. 61 to 163 are the cases where the interim orders were given for carrying on the operation of the Units on compliance of certain conditions stipulated thereon. In so far as Item Nos. 45 to 60 are concerned, the interim orders were issued for the limited purpose of maintaining the membranes and machinery and further it was made clear that they should not carry on any commercial activities. In so far as Item Nos. 10 to 44 are</p>

For MAHALAKSHMI AQUA FARM



Proprietor

concerned, no interim orders were granted for any purpose. While the matter stood so, all the applications as above are posted this day.

It is brought to the notice of the Tribunal by the counsel for the Tamil Nadu Pollution Control Board that there are 1461 Water Packaging Units in the entire Tamil Nadu, out of which 322 Units have applied for the consent to establish while 743 Units have not applied and in respect of others though the applications were made, they were rejected but not yet re-presented. The counsel for the Board would further add that the role of the Board would arise only after the Units get NOC from both the PWD and the Food Safety Department. The statement by the counsel for the Board is recorded.

The counsel for the PWD would submit that totally 910 Units of Water Packaging have applied for NOC both for drawal and / or transportation of water. Out of these, 291 Units have been granted NOC for drawal and / or transportation as the case may be. He further added that in respect of 561 Units, applications were rejected and totally applications of 58 Units are under consideration. There is no impediment for the PWD to consider the applications which

For MAHALAKSHMI AQUA FARM

V. N. Shankar
Proprietor

are pending in their hands and pass suitable orders in accordance with law there on.

The main contention put forth by the counsel for the PWD is that in so far as the above Units are concerned, the area of extraction of water falls under three categories namely (i) Safe (ii) Semi - critical (iii) Critical or over exploited. Pointing to G.O.Ms.No.142, Public Works (R2) Department, dated 23.7.2014, the learned counsel for the PWD would submit that all the Units which fall under the category of over exploitation which are 318 in number as referred to above would be under the clutches of the G.O. and they should be restrained from carrying on their operation. At this juncture, the learned Senior Counsel Mr. M. Venkatachalapathy, for the respondents would submit that the above said G.O.Ms.No.142, Public Works (R2) Department, dated 23.7.2014 has been challenged before the High Court of Madras and in view of the same, the matter has got to be adjourned granting reasonable time to the parties. In so far as the matters in Item Nos.45 to 60 wherein the interim orders have already been granted for the purpose of maintaining membranes and machinery of the respective Units, the Tribunal feels it fit to issue a direction to the Superintending Engineer concerned, Tamil Nadu

For MAHALAKSHMI AQUA FARM


Proprietor

	<p>Electricity Board to place the records pertaining to the consumption of electric energy of the respective Units before the disconnection of the operations and also during the pendency of the interim orders, in the next hearing.</p> <p>The matter is posted to 23.12.2014.</p> <p>Prof. Dr. R. Nagendran (Expert Member)</p> <p>Justice M. Chockalingam (Judicial Member)</p>
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For MAHALAKSHMI AQUA FARM

C. S. Shinde
Proprietor



ABSTRACT

GROUND WATER – Dynamic Ground Water Resources Assessment for Tamil Nadu as on March, 2017 – Categorization of Firkas as Over Exploited, Critical, Semi-Critical, Safe and Saline / Poor / Quality based on the Assessment in Tamil Nadu – Approved – Orders – Issued.

Public Works(R2) Department

G.O. (Ms) No.161

Dated 23.10.2019

விகாரி, புரட்டாசி 6

திருவள்ளூர் ஆண்டு 2050

Read :

1. G.O.(Ms).No.326, Public Works Department, Dated 23.11.1993.
2. G.O.(Ms).No.51, Public Works Department, Dated 11.02.2004.
3. G.O.(Ms).No.52, Public Works Department, Dated 02.03.2012
4. G.O.(Ms).No.142, Public Works Department, Dated 23.07.2014
5. G.O.(Ms).No.113, Public Works Department, Dated 09.06.2016
6. G.O.(Ms).No.257, Public Works Department, Dated 01.10.2018
7. From the Chief Engineer, State Ground and Surface Water Resources Data Centre, Letter No. DD(G)/8474/ Assessment/ 2017, Dated 22.8.2019.

•/•/•

ORDER:

Based on the development of the ground water resources, the Panchayat Union Blocks in Tamil Nadu were categorized as Dark and Grey areas as on January 1992 and January 1997 (Projected development at year 5) in the Government Order 1st read above. The Blocks with ground water development between 85% to 100% were categorized as "Dark Blocks" and the Blocks with ground water development between 65% to 85% were categorized as "Grey Blocks". The Government directed that no Scheme should be formulated in the Dark Blocks and that in the Grey Blocks, Schemes should be formulated in consultation with the Ground Water Wing of the Public Works Department only. The above categorisation was done in accordance with the then prevailing Ground Water Estimation Committee – 1984 (GEC-1984) Norms. Thereafter, the Committee constituted by the Ministry of Water Resources, Government of India, has

For MAHALAKSHMI AQUA FARM

V. M. Srinivasan
Proprietor

recommended to adopt the GEC-1997 Norms for estimation of the ground water resources in all the States.

2. In the Government Order second read above, the Government approved the categorization of the Panchayat Union Blocks in Tamil Nadu as Over-Exploited, Critical, Semi-Critical and Safe Blocks for ground water development as on January, 2003. The Government directed that no Schemes should be formulated in the Over Exploited and Critical Blocks and in the Semi-Critical and Safe Blocks, all the Schemes should be formulated in consultation with the State Ground and Surface Water Resources Data Centre of the Water Resources Organisation in the Public Works Department. It was also ordered therein that the term "Scheme" excludes energisation of agricultural pump sets by the Tamil Nadu Electricity Board. The Government further directed that appropriate rain water harvesting and artificial recharge schemes be carried out in all the categories of Blocks and while carrying out the above Schemes, priority should be given to the Over Exploited and Critical Blocks so as to avoid further deterioration.

3. In the Government Order third read above, the Government approved the categorization of the Panchayat Union Blocks as Over-Exploited, Critical, Semi-Critical and Safe Blocks based on the assessment of the State Ground Water Resources as on March 2009. All the Over Exploited and Critical Blocks were notified as A Category Blocks (where the stage of ground water extraction is 90% and above) and all the Semi Critical and Safe Blocks were notified as B Category Blocks (where the stage of ground water extraction is below 89%). The Government directed that no Schemes should be formulated in Over Exploited and Critical blocks "Notified as A Category Blocks" In Semi-Critical and Safe Blocks "Notified as B Category Blocks", all the Schemes should be formulated through the State Ground and Surface Water Resources Data Centre of the Water Resources Department and the Chief Engineer, State Ground and Surface Water Resources Data Centre, would issue "No Objection Certificate" for ground water clearance. The Government further directed to exclude the ground water drawal for domestic purpose by individual household; domestic Infrastructure Project (Housing); Government's Drinking Water Supply Schemes and Non Water based Industries (i.e., the industries which do not require and use water, either as raw material or for other processing). The Chief Engineer, State Ground and Surface Water Resources Data Centre, would permit domestic use of water by these Non Water based Industries by issuing "No Objection Certificate" based on the hydro-geological conditions. The Government further directed that appropriate Rain Water Harvesting and Artificial Recharge Schemes should be carried out in the categories viz, Over exploited, Critical, Semi Critical and Safe Blocks of Tamil Nadu and while carrying out the above Schemes, priority should be given to marginal quality and bad quality areas so as to avoid further deterioration. The Government further directed that all the Schemes and Proposals based on ground water would have to adhere to the Government Orders and Conditions detailed in

For MAHALAKSHMI AQUA FARM

C. S. Sundar
Proprietor

the Annexure-II to the above mentioned Government Order. This Government Order had been upheld by the Hon'ble Bench of Madras High Court, in its Common Judgement dated 18.09.2013, in WA Nos. 923 to 926 of 2009, WP Nos 23116 of 2006, 23896 to 23900 of 2016, 4711 of 2004 and 12375 of 2008. The Hon'ble High Court had made It clear that even with the repealing of the Tamil Nadu Ground Water (Development and Management) Act, 2003, this G.O. would govern the interest of the parties and the State in the matter of regulating the business of the Writ Appellants.

4. In furtherance of the Orders and Instructions issued in the Government Order third read above, the Regulations for management of ground water and issue of No Objection Certificate / License for extraction of groundwater in the State were approved in the Government Order fourth read above.

5. Subsequently, in the Government Order fifth read above, the Dynamic Groundwater resources in the State were estimated taking a Revenue Firka as an unit of assessment by the State Level Technical Co-ordination Committee as on March 2011 and accordingly the Government had approved categorization of the Over-Exploited, Critical, Semi-Critical, Safe and Saline Firkas based on the above assessment. Thereafter, the Government, in the G.O sixth read above, have approved the categorisation of the Firkas in the State as Over-Exploited, Critical, Semi-Critical, Safe and Saline / Poor Quality Firkas based on the Ground Water Resources Assessment as on March 2013.

6. In the letter seventh read above, the Chief Engineer (State Ground and Surface Water Resources Data Centre) has sent a proposal to the Government for approval of Estimation of the Dynamic Groundwater Resources in Tamil Nadu as on March 2017 and Categorisation of Firkas and requested for approval of the Ground Water Assessment 2017 and notification of the Categorization of the Firkas of Tamil Nadu based on the above assessment.

7. The Government have decided to approve the categorization of the Revenue Firkas in the State based on the Estimation of the Dynamic Ground Water Resources as on March, 2017. Accordingly, the Government approve the categorisation of the Revenue Firkas in the State as Over-Exploited, Critical, Semi-Critical, Safe and Saline/Poor Quality as detailed in the Annexure of this Order, based on the Dynamic Ground Water Resources Assessment as on March, 2017 which shall be notified in the Tamil Nadu Government Gazette.

8. The Chief Engineer(State Ground and Surface Water Resources Data Centre),Water Resources Department is further directed that appropriate rain water harvesting and Artificial recharge schemes shall be carried out in the categories viz, Over exploited, Critical, Semi Critical, Safe and saline/Poor quality Firkas of Tamil Nadu. While carrying out the above

For MAHALAKSHMI AQUA FARM

A. M. Shrinani
Proprietor

21

4

Schemes, priority shall be given to marginal quality and bad quality areas so as to avoid further deterioration

(BY ORDER OF THE GOVERNOR)

K. MANIVASAN
PRINCIPAL SECRETARY TO GOVERNMENT

To

- The Works Manager, Government Central Press, Chennai-79.
- The Chief Engineer, State Ground and Surface Water Resources Data Centre, Water Resources Department, Taramani, Chennai-113.
- The Engineer-in-Chief, Water Resources Department and Chief Engineer (General), Public Works Department, Chennai-5.
- All the Regional and Functional Chief Engineers, Water Resources Department.
- The Additional Chief Secretary and Commissioner of Land Administration, Chennai-5.
- All District Collectors.
- The Director of Rural Development, Chennai-15.
- The General Manager, National Bank for Agriculture and Rural Development, Chennai-34.
- The Registrar of Co-operative Societies, Chennai.
- The Chief Engineer (Agricultural Engineering), Chennai-35.
- The Director of Agriculture, Chennai - 5.
- The Director of Horticulture, Chennai-5.
- The Commissioner / Managing Director, Sugar Corporation, Chennai-35.
- The Managing Director, Tamil Nadu Water Supply and Drainage Board, Chennai-5.
- The Engineering Director, Tamil Nadu Water Supply and Drainage Board, Chennai-5.
- The Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, Chennai-2.
- The Chairman, Tamil Nadu Electricity Board, Chennai-2.
- The Regional Director, Central Ground Water Board, Rajaji Bhavan, Chennai-90.

Copy to

- The Agriculture Department, Chennai-9
- The Revenue & Disaster Management Department, Chennai-9.
- The Environment and Forest Department, Chennai-9.
- The Municipal Administration and Water Supply Department, Chennai-9.
- The Rural Development and Panchayat Raj Department, Chennai-9.
- The Energy Department, Chennai-9.
- The Industries Department, Chennai-9.
- Stock File / Spare Copy.

// Forwarded by Order //

K. Manivasan
29/10/2019
Section Officer
29/10/2019

For MAHALAKSHMI AQUA FARM

V. M. Shankar
Proprietor

22

W.P.No.16299 of 2018
and W.M.P.Nos.17117/2020, 19411/2018, 5865/2020,
8431/2020, 4889/2020, 5740/2020 and 5821/2020

DR.VINEET KOTHARI, J.

and

M.S.RAMESH, J.

Heard Mr.K.Ravi Anantha Padmanabhan, learned counsel for the Applicants and Mr.Pothiraj, learned Special Government Pleader.

2. The complaint of the applicants represented by Mr.Ravi Anantha Padmanabhan from the District of Erode is that instead of closing down only the Borewell for withdrawal of underground water from the critical or unsafe zone of Erode, the concerned administrative authorities have disconnected the entire power supply, thus preventing the production of purification and supply of water, which has entirely crippled the entire business of the applicants.

3. These applicants have clearly undertaken before the Respondent authorities that they may be permitted only to transport water from the other safe zones, withdrawn in such safe zones only, and then bring them to their water purifying units situated in Erode, and after purification, may be allowed to sell such water, so that the business activity is not stopped altogether. He

23

has drawn our attention to the court order dated 23.03.2020 in this regard.

4. In response, Mr.Pothiraj, learned Special Government Pleader has produced the Compliance Report filed by Mr.Prabhakaran, Chief Engineer, State Ground and Surface Water Resources Data Centre, Taramani, Chennai dated 10.11.2020. Paragraph 3 of the Report is quoted below :-

3. I respectfully submit that as per court order dated. 07.10.2020, State authorities concerned are taking action against all packaged drinking water units who are illegally extracting ground water without license in terms of GO(MS)No. 142 Public Works (R2) department dated 23.07.2014.

In this regard, following actions have been taken by District Collector, Erode.

(i) The District Collector, Erode discussed this issue in the District Monitoring Committee in which Executive Engineer, Ground Water Division, Salem is a member. It was decided to completely close the units and also to disconnect the electricity connection. This decision was taken in the District Monitoring Committee because in critical & over exploited firkas, if only the outlet point of Borewell is sealed, then there is every likely hood of the firm bringing water from the nearby areas

through transport and illegally continue their operation. It is also submitted that the nearby areas are also in the category of Over Exploited and Critical which will further deplete the ground water level. Moreover 62% of area in Erode District falls in Danger zone and 18 % falls in near Danger zone. This will further add to more complications like water contamination, deterioration of water Quality and sea water intrusion in coastal areas.

(ii) Hence In order to close the above units completely, the electric connection and Generator also were disconnected.

5. In the said Compliance Report, the Chief Engineer, Mr.Prabhakaran has stated that it was decided to completely close the units and also to disconnect the electricity connection to avoid any likelihood of the illegal transport of water to the units in question and continue their operations.

6. The learned Special Government Pleader Mr.Pothiraj submitted that no specific case of any such illegal withdrawal of water from the critical areas or transport of water withdrawn from underground from such critical areas has been made out against any of the applicants represented by Mr.Ravi Anantha Padmanabhan though he submitted that in the Report it is mentioned that 62% of the area falls in Danger Zone and 18% of the area falls in near Danger Zone,

25

and therefore it would unsafe for such units to carryout their business operations because under the garb of Court order, they may resort to illegal withdrawal of water from the critical areas itself.

7. After hearing the learned counsels, to balance the equities between the parties in this regard, we are inclined to direct that the petitioners/applicants, representing the water purifying units of Erode, will not be permitted to withdraw the underground water from any of the areas of unsafe and critical nature in Erode District, and even transport of such water withdrawn from underground units of such areas, in whose favour "No Objection Certificates" have been issued to the water purifying units and carry on their operations.

8. However, instead of closing down the entire unit of the applicants, only their Borewells concerned may be completely sealed in such a manner that water withdrawal from such Borewells is not permitted.

9. It will also be ensured that the water withdrawn from any of such units in the critical areas is not allowed to be brought to the water purifying units of the Erode District to carry on their purification operations. The necessary documents viz., vouchers, invoices etc. accompanying the

transportation vehicles for bringing such water should be produced for inspection of concerned authorities in support of the proof that water is being withdrawn from the safe areas only by the Units having due NOCs in their favour in terms of G.O.(Ms) No.142 Public Works Department, dated 23.07.2014.

10. It is made clear that if any specific case against any unit of illegal withdrawal of water or illegal transport of water withdrawn from a unit situated in critical area, without proper NOC under G.O.(Ms) No.142 Public Works Department, dated 23.07.2014, is made out against a unit, the entire unit shall be immediately closed and their power supplies shall be disconnected forthwith and they will not be allowed to operate without specific leave of this court.

11. Subject to the aforesaid Undertaking of these Applicants and directions of the Court, the power connection of these applicant units may be restored and they may be permitted to carryon their business operations in an absolutely legal manner as aforesaid.

12. The learned Special Government Pleader has further pointed out

For MAHALAKSHMI AQUA FARM


Proprietor

27

Dt: 11.11.2020 in W.P.No.16299 of 2018
M.V.Sivamuthu vs. Secretary to Government

6/7

about the action being taken against the illegally operating units in Chennai.
The next date given by the Court is 19.11.2020, on which date, the Report of
the action taken by the concerned authorities against such illegal units shall be
produced before this Court.

13. In such view of the matter, list the case again on 19.11.2020.

(V.K., J.) (M.S.R., J.)

11.11.2020

tar

For MAHALAKSHMI AQUA FARM


Proprietor

Dt: 11.11.2020 in W.P.No.16299 of 2018
M.V.Sivamuthu vs. Secretary to Government

7/7

DR.VINEET KOTHARI, J.

and

M.S.RAMESH, J.

(tar)

W.P.No.16299 of 2018

11.11.2020

For MAHALAKSHMI AQUA FARM


Proprietor



Certified that this photos were taken on 22.02.2021.

For MAHALAKSHMI AQUA FARM

J. N. Shrinani
Proprietor



For MAHALAKSHMI AQUA FARM

V. M. Shankar
Proprietor

Certified that this photos are taken on 07.03.2021.