

CENTRAL GROUND WATER AUTHORITY

OFFICE NOTE

Reference to directions of Hon'ble NGT, New Delhi under its order dated 15.05.2020 in OA No. 685/2019:

1. The Hon'ble NGT under its order dated 15.05.2020 has passed the following directions:

"In view of the above, we reiterate our directions for devising suitable effective mechanism for preventing extraction of ground water by way of unauthorized tube-wells and wherever such illegalities found, prompt coercive measures must be taken. Illegal extraction of ground water is a criminal offence under the EP Act. Compensation must be recovered on the formula already laid down. It will be appropriate that Chief Secretary, Delhi calls a meeting of all concerned within one month from today and oversees preparation of an appropriate SOP for fixing responsibility on the subject. Ministry of Jal Shakti may also take necessary steps in the matter.

A copy of the order be forwarded to the Chief Secretary, Delhi, Secretary, Ministry of Jal Shakti, Govt. of India, DJB, CPCB, DPCC, Commissioners of all Municipal Corporation of Delhi, all the District Magistrates in Delhi and Justice S.P. Garg, former Judge of Delhi High Court."

2. The action taken by CGWA/GNCTD in this connection is as given below:

- A. At the request of Hon'ble Lt. Governor, NCT of Delhi, the CGWA has issued order dated 25.05.2010 in exercise of powers under section 4 of the Environment (Protection) Act, 1986, appointing the Deputy Commissioners of Revenue District in NCT of Delhi with powers and functions under Environment (Protection) Act, 1986. A Copy of order dated 25.05.2010 is enclosed as **Annexure-1** for kind perusal.
 - B. The Government of NCT of Delhi (Department of Environment) has issued the Notification No. F8(348)/EA/Env/O9/2246.- Delhi, the 12th July, 2010, containing the directions of Hon'ble Lt. Governor, NCT of Delhi under section 5 of the Environment(Protection) Act, 1986, notifying the whole of NCT of Delhi with regulatory directions on ground water development and management. The Deputy Commissioners in NCT of Delhi are also the authorised officers under the directions of Hon'ble Lt. Governor, NCT of Delhi. A Copy of the Notification dated 12.7.2010 is enclosed as **Annexure-2** for kind perusal.
3. The CPCB has formulated the Environmental Compensation formula under its report dated 26.06.2019 as per the directions of Hon'ble NGT, New Delhi under its order dated 03.01.2019 and this report dated 26.06.2019 of CPCB has been agreed by Hon'ble NGT under its order dated 11.09.2019 as an interim measure. A copy of CPCB report containing mechanism for levy of environmental compensation (**Annexure-4**) with a copy of order dated 15.05.2020 (**Annexure-5**) and 03.01.2019(**Annexure-6**) are enclosed for kind perusal.
4. The Hon'ble NGT has directed the Chief Secretary to oversee the preparation of an appropriate SOP for fixing the responsibility for checking violations and taking coercive measures against illegalities under the Environment (Protection) Act, 1986.
5. If agreed and approved the information with the above Annexures may kindly be forwarded to Chief Secretary, GNCTD, for further needful action by GNCTD for convening the meeting and for formulation of SOP as per the orders of Hon'ble NGT, New Delhi.

Submitted for approval on above please.

CGWA
25.6.2020

RD PI.

Member (CGWA) PI.

Chairman (CGWA)

CENTRAL GROUND WATER AUTHORITY

[Constituted under section 3(3) of Environment (Protection) Act, 1986]
 A-2/W-3, K.G. Marg, New Delhi-110001 Ph - 23384420/23384973 Fax -
 23388310

No. 4/4/CGWA/2004 893

Dated the 25 May 2010

25 MAY 2010

Order

Whereas the Central Government constituted the Central Ground Water Authority (hereinafter referred to as Authority) vide notification of the Government of India in the Ministry of Environment and Forests number S.O. 38 (E) dated the 14th January, 1997, as amended from time to time, for the purpose of regulation and control of ground water development and management in the whole of India.


And whereas the Central Government have authorized the Authority vide notification number S.O. 1024(E) dated 6th November, 2000, to exercise powers under section 4 of the said Act, for appointment of officers and to entrust them with such of the powers and functions as it may deem fit.

And whereas the Authority has declared south and south-west districts of NCT of Delhi as "Notified areas" vide public notice No. 6/2000 dated 15.08.2000 and issued directions, in exercise of powers under section 5 of the aforesaid act, to regulate ground water development in the area/district and the Lt. Governor, NCT of Delhi subsequently imposed restrictions on withdrawal of ground water for Domestic, Commercial and/or Industrial uses, in the whole of National Capital Territory of Delhi.

And where as the Authority in order to ensure effective ground water recharge and to control over-exploitation of existing ground water resources in the NCT of Delhi proposed to appoint the concerned "Deputy Commissioner" as "authorized Officer" for the purpose of regulation of ground water development and management in the notified area/district and empower them to launch prosecution against all those who violates the directions of CGWA.

Now, therefore, the Authority in exercise of its powers under section 4 of the Environment (Protection) Act, 1986, hereby appoints the Deputy Commissioners of all nine districts (South, South-west, North, East, West, North-west, North-east, Central and New Delhi) of NCT of Delhi as "Authorized Officer" with effect from the date of issue of this order and entrusts them with the following powers and functions:-

1. The Deputy Commissioners of all the nine districts of NCT of Delhi, shall ensure that the directions issued by CGWA, for implementation of scheme of Ground Water Recharge and Roof Top Rain Water Harvesting as well as directions issued by CGWA regarding exploitation and/or sale of ground water in NCT of Delhi are implemented without fail.
2. Deputy Commissioners of all the nine districts of NCT of Delhi, shall upon receipt of complaints of violations under the provisions of Environment (Protection) Act, 1986, identify the investigating officers and assign them the task of investigation of violations and upon establishment of violation/offence launch prosecution against the offenders/violators in the court of local jurisdiction by way of filing a criminal complaint or authorize the local Station House Officer of area police station to register an FIR against the violations and the violators.
3. The concerned Deputy commissioner shall maintain proper record of such violations and violators and follow up the cases with the court of local jurisdiction.
4. The concerned Deputy Commissioner shall submit a report of violation of directions on Recharge to Ground Water/Roof Top Rain Water Harvesting, sealing of unauthorized/illegal bore-wells and penalties imposed on violators by the court of local jurisdiction, every quarter with effect from the last date of the month of issue of this order.

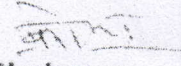

 Chairman

To

1. Deputy Commissioner (South) MB Road, Saket, New Delhi
2. Deputy Commissioner (South West), Old Terminal Tax Building, Kapashera, New Delhi.
3. Deputy Commissioner (North), Civil Lines, Near ISBT, Delhi.
4. Deputy Commissioner, (East) L.M. Bandh, I&F Office Complex, Geeta Colony, Delhi-110 031
5. Deputy Commissioner, (West) MCD School Building, Rampura, Delhi-110 035.
6. Deputy Commissioner, (North-West) Village Kanjhawala, Delhi.
7. Deputy Commissioner (North-East), Weaver Complex, Nand Nagri, Delhi.
8. Deputy Commissioner (Central), Daryaganj, Delhi
9. Deputy Commissioner (New Delhi), 12/1, JamNagar House, New Delhi.

Copy to:

1. Chief Secretary, Government of NCT of Delhi, Delhi Secretariat, Delhi.
2. Deputy Commissioner of Police, South/South west/North/East/West/North-East/North West/Central and New Delhi District, Delhi/New Delhi.
3. Chief Executive Officer, DJB, Varunalaya, Jhandewalan, Karol Bagh, New Delhi.
4. Officer-in-Charge, NDMC, New Delhi.
5. Director (GW), Ministry of Water Resources, Shram Shakthi Bhavan, New Delhi.
6. Officer-in-charge, CGWB, Jamnagar House, New Delhi.


Chairman

9/c

(No. 2 of 1899) read with the Government of India, Ministry of Home Affairs, Notification No. S. O. 148 (E) dated the 24th January, 2008, the Chief Controlling Revenue Authority, Delhi hereby directs that M/s. Supreme Build-Cap Limited, Flat No. 116, First Floor, Plot No. D-1, Ashirwad Complex, Green Park, New Delhi-110016, shall pay a consolidated stamp duty of Rs. 7,49,994 (Rs. Seven lac forty nine thousand nine hundred ninety four) only on the aggregate value of shares of Rs. 74,99,94,000 for Equity Share Certificates with distinctive Nos. 5100001 to 10000000 to be issued by the said company.

By Order,
Of Chief Controlling Revenue Authority,
Govt. of National Capital Territory of Delhi,
R. K. MISHRA,
Special Inspector General (Registration)

पर्यावरण वन एवं वन्य जीव विभाग

अधिसूचना

दिल्ली, 12 जुलाई, 2010

फा. सं. 8(348)/ईए/पर्या./09/2246.—दिनांक 10 सितम्बर, 1992 की अधिसूचना संख्या यू. 11030/जे/91-यूटीएल के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और दिनांक 30 मार्च, 2009 के आदेश संख्या फा. 8(348)/ईए/पर्या./09/14433-14451 तथा फा.सं. 8(348)/ईए/पर्या./09/14452-14470 के अनुसार जारी तथा दिनांक 30 अप्रैल, 2009 के आदेश संख्या फा. 8(348)/ईए/पर्या./09/555-582 तथा फा. 8(348)/ईए/पर्या./09/583-610 के अनुसार जारी निर्देशों का अधिक्रमण करते हुए, राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल ने दिल्ली में भूमिगत जल विनियम तथा प्रबंधन के लिये दिनांक 18 मई, 2010 को आदेश सं. फा. 8(348)/ईए/पर्या./09/1041-1061 के द्वारा संलग्न निर्देश जारी किए हैं।

जारी किए गए यथा संलग्न निर्देश इसके द्वारा जनसाधारण की जानकारी के लिये प्रकाशित किए जाते हैं।

राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल
के आदेश से तथा उनके नाम पर,
सुषमा जैरथ, उप-सचिव

पर्यावरण विभाग

आदेश

दिल्ली, 18 मई, 2010

विषय : पर्यावरण संरक्षण अधिनियम, 1986 की धारा 5 के अन्तर्गत निर्देश।

सं. फा. 8(348)/ईए/पर्या./09/1041-1061.—जबकि केन्द्रीय सरकार ने राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार के लिए पर्यावरण संरक्षण अधिनियम, 1986 की धारा 5 के अन्तर्गत शक्तियों

के प्रयोग करने के लिए तथा किसी कार्य या प्रक्रम के समापन, प्रतिबंध या विनियमन या विद्युत या जल या किसी अन्य सेवा की पूर्ति में रोक या विनियमन के लिए किसी व्यक्ति, अधिकारी या किसी प्राधिकरण को इसके अन्तर्गत निर्देश जारी करने के लिए दिनांक 10 सितम्बर, 1992 की अधिसूचना एसओ 667 (अ) के अनुसार राष्ट्रीय राजधानी क्षेत्र दिल्ली सरकार के उपराज्यपाल को प्राधिकृत किया है।

और, जबकि दिल्ली जल बोर्ड अधिनियम, 1998 (1998 का दिल्ली अधिनियम 4) के अन्तर्गत गठित दिल्ली जल बोर्ड, राष्ट्रीय राजधानी क्षेत्र दिल्ली में पेय, घरेलू औद्योगिक तथा वाणिज्यिक जल पूर्ति के नेटवर्क का संचलन कर रहा है;

और जबकि निरन्तर भूमिगत जल दोहन से भूमिगत जल संसाधनों के जल स्तर में भारी हास हुआ है;

और जबकि अप्रतिबंधित एवं अनयमित भूमिगत जल दोहन के गंभीर दीर्घकालिक पर्यावरणीय संकट होते हैं;

और जबकि भूमिगत जल के अत्यधिक दोहन के परिणामस्वरूप भूमिगत जल संसाधन सूख सकते हैं और जल की गुणवत्ता पर प्रतिकूल प्रभाव पड़ सकता है;

और जबकि केन्द्रीय भूमि जल प्राधिकरण ने वर्ष 2000 में दिल्ली के दक्षिण और दक्षिण-पश्चिम जिलों को "अधिसूचित क्षेत्रों" के रूप में अधिसूचित किया था और उक्त जिलों में अधिक गिरते जल स्तर को तथा जल की गुणवत्ता में गिरावट को रोकने के लिए भूमिगत जल संसाधनों का दोहन हेतु निर्माण और किसी संरचना के प्रतिस्थापन करने संबंधी, प्रतिबंध और अंकुश लगाया गया था;

और जबकि मार्च, 2006 की एक अन्य अधिसूचना से केन्द्रीय भूमि जल प्राधिकरण ने दिल्ली के पूर्वी, नई दिल्ली, उत्तर पूर्वी, उत्तर पश्चिमी एवं पश्चिमी जिलों को विनियमन की आवश्यकता वाले अधिक शोषित क्षेत्रों के रूप में अधिसूचित किया है और उन जिलों में भूमिगत जल दोहन की संरचनाओं का पंजीकरण अनिवार्य किया।

अतः, अब गृह मंत्रालय, भारत सरकार की दिनांक 10 सितम्बर, 1992 की अधिसूचना एसओ 667(अ) फा. सं. यू. 11030/1/91-यू.टी.एल. के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 5 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और दिनांक 30 मार्च, 2009 के आदेश सं. फा. 8(348)/ईए/पर्या./09/14433-14451 तथा सं. फा. 8(348)/ईए/पर्या./09/14452-14470 तथा दिनांक 30 अप्रैल, 2009 के आदेश सं. 8(348)/ईए/पर्या./09/555-582 तथा सं. 8(348)/ईए/पर्या./09/583-610 के अनुसार जारी निर्देशों का अधिक्रमण करते हुए, राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल एतद्द्वारा निम्नलिखित निर्देश जारी करते हैं :-

- (1) समूचे राष्ट्रीय राजधानी क्षेत्र दिल्ली में कोई भी व्यक्ति, समूह, प्राधिकरण, संघ या संस्थान, "सक्षम प्राधिकरण" अर्थात् दिल्ली जल बोर्ड या नई दिल्ली नगर परिषद्, जैसी भी स्थिति हो, की पूर्व अनुमति के बिना घरेलू, वाणिज्यिक कृषि तथा या औद्योगिक प्रयोगों के लिए बोरवैल या नलकूप (नए तथा विद्यमान दोनों तथा केन्द्रीय भूमि जल प्राधिकरण की बिना अनुमति वाले) से भूमि जल का दोहन नहीं करेगा/करेगी।

- (2) बोरवैल/ट्यूबवैल की अनुमति प्रदान करने संबंधी कार्यवाही दिल्ली सरकार के प्रत्येक राजस्व क्षेत्र के उपायुक्त (राजस्व) के माध्यम से सक्षम प्राधिकारी द्वारा की जाएगी जिसकी नियुक्ति, उसके अन्तर्गत आने वाले संबंधित राजस्व क्षेत्र में भू-जल विकास एवं प्रबंधन के विनियमन के उद्देश्य से "अधिकृत अधिकारी" के रूप में की जाती है।
- (3) इसके अलावा, दिल्ली सरकार के प्रत्येक राजस्व क्षेत्र के उपायुक्त राजस्व; जो कि अधिकृत अधिकारी है, नियमों के उल्लंघन की जांच, अवैध बोरवैल/ट्यूबवैल को सील करना, अपराधियों के विरुद्ध मुकद्दमें दायर करने आदि जैसे अन्य मुद्दों पर भी कार्यवाही की शक्तियां प्रदान की जाती हैं, जिसमें सलाहकार समिति की सिफारिशों के आधार पर भू-जल संबंधी शिकायतों का निवारण भी शामिल है।
- (4) राष्ट्रीय राजधानी क्षेत्र दिल्ली के नौ राजस्व क्षेत्रों में, प्रत्येक राजस्व क्षेत्र के उपायुक्त की अध्यक्षता में अलग-अलग एक सलाहकार समिति का एतद्द्वारा गठन किया जाता है, जिसमें निम्नलिखित सदस्य होंगे :-
- | | |
|--|---------|
| 1. उपायुक्त (राजस्व), संबंधित क्षेत्र | अध्यक्ष |
| 2. निदेशक (पंचायत) | सदस्य |
| 3. मुख्य अभियन्ता दिल्ली जल बोर्ड द्वारा मनोनीत | सदस्य |
| 4. केन्द्रीय भूमि जल बोर्ड, नई दिल्ली का प्रतिनिधि | सदस्य |
| 5. क्षेत्र का अधिकार रखने वाले स्थानीय निकायों के प्रतिनिधि | सदस्य |
| 6. पर्यावरण विभाग, राष्ट्रीय राजधानी क्षेत्र दिल्ली/दिल्ली प्रदूषण नियंत्रण समिति के प्रतिनिधि | सदस्य |
| 7. संबंधित उपायुक्त द्वारा मनोनीत प्रसिद्ध भूमि जल प्रबंधन की गैर सरकारी संस्था (एनजीओ) के प्रतिनिधि | सदस्य |
- (5) सलाहकार समिति की प्रत्येक माह कम से कम एक बैठक होगी जिसमें समिति संबंधित राजस्व क्षेत्र के भूमि जल के विनियम एवं प्रबंधन संबंधित विभिन्न विषयों पर विचार करके अपनी सिफारिशों को विचारार्थ एवं प्रवर्तन हेतु उपायुक्त को भेजेगी। केवल संस्तुत भू-जल बोरिंग के मामले ही अनुमति प्रदान करने हेतु सक्षम प्राधिकारी को भेजे जाएंगे।
- (6) गैर कानूनी भूमि जल निकासी के तत्काल उल्लंघन जैसे मामलों में अधिकृत अधिकारी अपनी संतुष्टि के आधार पर, ड्रिलिंग रिग को जब्त करके, निर्मित ट्यूबवैल/बोरवैल अगर निर्मित है तो उसे सील करे, तथा बिजली युक्त ट्यूबवैल की बिजली आपूर्ति चाहे यह डीजल जेनरेटर सैट के माध्यम से हो, काटकर, बिना सलाहकार समिति की सिफारिश का इंतजार किए भूमिगत जल के अवैध दोहन के रोकने को सुनिश्चित करेगा। तथापि ऐसी कार्यवाही का विवरण अधिकृत अधिकारी द्वारा अगली सलाहकार समिति की बैठक में रखा जाएगा।
- (7) यदि कोई व्यक्ति, समूह प्राधिकरण, संघ या संस्थान बोरवैल या ट्यूबवैल (नए तथा विद्यमान दोनों तथा केन्द्रीय भूमि जल प्राधिकरण की अनुमति के बिना भूमि जल निकासी करने वाले) के माध्यम से जल निकासी करना चाहता है तो वह सक्षम अधिकारी की पूर्वानुमति लेगा। यह अनुमति सक्षम प्राधिकारी के क्षेत्रीय कार्यालयों में, विनिर्दिष्ट फार्म में आवेदन देकर प्राप्त की जाएगी।
- (8) सक्षम प्राधिकारी का कार्यकारी अभियन्ता, संबंधित क्षेत्र का प्रभारी, तथ्यों के आधार पर राजस्व क्षेत्र के संबंधित उपायुक्त (राजस्व) को मामले की सिफारिश करेगा, जो सक्षम प्राधिकरण के कार्यकारी अभियन्ता तथा सलाहकार समिति की सिफारिशों को देखते हुए आदेश जारी करेगा।
- (9) यदि भवन का प्लॉट का आकार 200 वर्ग मीटर से अधिक है तो बोरवैल या ट्यूबवैल (नए तथा विद्यमान दोनों तथा केन्द्रीय भूमि जल प्राधिकरण की अनुमति के बिना भूमि जल निकासी करने वाले से भूमि जल निकासी की अनुमति इस शर्त पर होगी कि उक्त प्लॉट या भवन का अधिकारी या स्वामी भवन में वर्षा जल संचयन प्रणाली स्थापित करेगा।
- (10) व्यावसायिक या औद्योगिकी उपयोग हेतु बोरवैल या ट्यूबवैल (नए तथा विद्यमान दोनों तथा केन्द्रीय भूमि जल प्राधिकरण की अनुमति के बिना भू-जल निकासी करने वाले) से भूमि जल निकासी की अनुमति इस शर्त पर होगी, कि संबंधित व्यक्ति या प्राधिकरण, वर्षा जल संचयन संरचना स्थापित करेगा, तथा यह सुनिश्चित करेगा कि अपशिष्ट जल का उचित प्रशोधन के बाद बागवानी, शीतलीकरण या शौचालय आदि में पुनः प्रयोग होगा या संबंधित सलाहकार समिति द्वारा दिए गए किसी अन्य सुझाव के अनुकूल होगा।
- (11) प्रत्येक सलाहकार समिति ऊपर लिखित सांविधिक दायित्वों के अतिरिक्त, नलकूप या बोरवैल से जल दोहन के कारण किसी प्रकार के हुए जल प्रदूषण संबंधी सूचना, दिल्ली प्रदूषण नियंत्रण समिति को देगा ताकि जल (प्रदूषण रोकथाम एवं नियंत्रण) अधिनियम, 1974 के उपबंध के अन्तर्गत आवश्यक कार्रवाई की जा सके।
- (12) कृषि प्रयोजनों के लिए बोरवैल लगाने की अनुमति खंड विकास अधिकारी तथा कृषि विभाग अथवा बाढ़ एवं सिंचाई नियंत्रण विभाग, दिल्ली सरकार की संस्तुति पर आधारित संबंधित उपायुक्त (राजस्व) के अन्तर्गत सलाहकार समिति द्वारा वास्तविक कृषकों को प्रदान की जा सकती है। कृषि कार्याकलाप खसरा वास्तविक प्रलेखों से सत्यापित की जा सकती है और यह गिरदाबरी मूल्यांकन पर भी आधारित की जा सकती है।

- (13) उक्त निर्देशों का किसी प्रकार का उल्लंघन पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 15 के अन्तर्गत दंडनीय होगा।

राष्ट्रीय राजधानी क्षेत्र दिल्ली के उपराज्यपाल
के आदेश से तथा उनके नाम पर,
धर्मेन्द्र, सचिव (पर्यावरण)

**DEPARTMENT OF ENVIRONMENT AND FORESTS
AND WILDLIFE
NOTIFICATION**

Delhi, the 12th July, 2010

No. F8(348)/EA/Env/09/2246.— In exercise of power conferred by Section 5 of the Environment (Protection) Act, 1986 (29 of 1986) read with the notification No. U-11030/J/91- UTL dated the 10th September, 1992 and in supersession of directions issued vide Order Nos F8(348)/EA/Env/09/14433-14451 and F8(348)/EA/Env/09/14452-14470 dated the 30th March 2009 as well as Order Nos. F8(348)/EA/Env/09/555-582 and F8(348)/EA/Env/09/583-610 dated the 30th April 2009, the Lt. Governor of the National Capital Territory of Delhi, has issued Annexed directions vide order No. F8(348)/EA/Env/09/1041-1061 dated the 18th May 2010 for groundwater regulation and management in Delhi.

The direction issued as Annexed are hereby published for information of the general public.

By Order and in the name of Lt. Governor
of the National Capital Territory of Delhi,
SUSHMA JERATH, Dy. Secy.

ANNEXURE

DEPARTMENT OF ENVIRONMENT

Order

Delhi, the 18th May, 2010

Sub : Direction under section 5 of the Environment (Protection) Act, 1986

F8. (348)/EA/Env/09.—Whereas, the Central Government has authorized the Lieutenant Governor of the National Capital Territory of Delhi vide notification S.O. 667 (E) dated the 10th September, 1992 to exercise powers under section 5 of the Environment (Protection) Act, 1986 for the National Capital Territory of Delhi and to issue directions thereunder, to any person, officer or any authority for the closure, prohibition or regulation of any operation or process or stoppage or regulation of the supply of electricity or water or any other services.

And whereas Delhi Jal Board constituted under the Delhi Water Board Act, 1998 (Delhi Act 4 of 1998) is dealing

with water supply network of drinking, domestic, industrial and commercial water in the National Capital Territory of Delhi;

And whereas continued abstraction of ground water has led to serve depletion of ground water resources;

And whereas non-restricted and non-regulated abstraction of ground water has serious long term environmental implications;

And whereas over abstraction of ground water can result in drying up of ground water resources and may also affect water quality;

And whereas Central Ground Water Authority had, in the year of 2000, notified the South and South-West districts of Delhi as "Notified Areas" and imposed prohibition and restriction in those districts on the construction and installation of any structure for abstraction of ground water resources to avoid further depletion and deterioration in water quality in the said districts;

And whereas through, another notification in March 2006, Central Ground Water Authority has notified East, New Delhi, North-East, North-West and West districts of Delhi as over exploited areas needing regulation, and registration of ground water abstraction structures in those districts was made compulsory.

Now, therefore, in exercise of power conferred by section 5 of the Environment (Protection) Act, 1986 (29 of 1986) read with the Ministry of Home Affairs, Government of India Notification S.O. 667 (E) bearing F.No. U-11030/J/91- UTL dated the 10th September, 1992 and in supersession of directions issued vide Order Nos. F8(348)/EA/Env/09/14433-14451 and F8(348)/EA/Env/09/14452-14470 dated the 30th March 2009 as well as Order Nos. F8(348)/EA/Env/09/555-582 and F8(348)/EA/Env/09/583-610 dated the 30th April 2009, the Lt. Governor of the National Capital Territory of Delhi, hereby issues the following directions, namely:—

- (1) In the whole of the National Capital Territory of Delhi, no person, group, authority, association or institution shall draw ground water through bore-well or tubewell (both new as well as existing and drawing ground water without permission of Central Ground Water Authority) for domestic, commercial, agricultural and or industrial uses without the prior permission of the "Competent Authority" that is to say, the Delhi Jal Board or the New Delhi Municipal Council as the case may be.
- (2) The issue of grant of permission for borewell/tubewell shall be dealt by Competent Authority through the Deputy Commissioner (Revenue) of each revenue area, GNCTD, who is hereby appointed as "Authorized Officer" for the purpose of regulation of ground water development and management in the respective revenue areas under the jurisdiction.

2704 DG/10-2

- (3) The Deputy Commissioner (Revenue) of each revenue area, GNCTD, who is the Authorized Officer, are further delegated with the power of dealing with other issues such as checking violation and sealing illegal wells, launching of prosecution against offenders etc. including grievance redressal related to ground water, based on the recommendations of the Advisory Committee.
- (4) An Advisory Committee in each nine revenue areas of the National Capital Territory of Delhi is hereby constituted under the Chairmanship of the Deputy Commissioner of each revenue area comprising of the following members:
1. Deputy Commissioner (Revenue), : Chairman;
of concerned revenue area
 2. Director (Panchayat) : Member;
 3. Chief Engineer nominated by : Member;
Delhi Jal Board
 4. Representative of Central Ground : Member;
Water Board, New Delhi
 5. Representatives of local bodies : Member;
having jurisdiction over the area
 6. Representative of Department : Member;
of Environment, GNCTD/DPCC
 7. Representative of reputed NGO : Member.
in the field of Groundwater
Management nominated by the
Deputy Commissioner concerned
- (5) The Advisory Committee shall meet atleast once in every month to take up various issues related to ground water regulation and management in the concerned revenue area and give recommendations to the Deputy Commissioner for further consideration and enforcement. Only the recommended groundwater boring cases shall be forwarded to Competent Authority for grant of permission.
- (6) In emergent violation cases such as illegal groundwater drawl, the Authorized Officer, subject to his satisfaction, shall ensure the discontinuation of the same by the seizure of drilling rig, sealing of tubewell/borewell if so constructed and also disconnection of electricity supply to the energized tubewell even if it is through DG sets, without waiting for recommendation of Advisory Committee. However the details of such action shall be placed by the Authorized Officer in the next Advisory Committee meeting.
- (7) If any person, group, authority, association or institution, intends to draw ground water through bore-well or tube-well(both new as well as existing and drawing ground water without permission of Central Ground Water Authority), he shall take prior permission from Competent Authority. Such permission shall be obtained through submission of an application to Zonal Offices of the Competent Authority, in the form specified by the Competent Authority.
- (8) The Executive Engineer of the Competent Authority, incharge of the concerned area shall recommend the case, based on the facts on the ground, to the concerned Deputy Commissioner (Revenue) of the revenue area who shall issue orders in the light of the recommendations of Executive Engineer of the Competent Authority and the Advisory Committee.
- (9) If the plot size of the building is more than 200 sq. meters, the permission to draw ground water through borewell or tubewell (both new as well as existing and drawing groundwater without permission of Central Ground Water Authority) shall be subject to the condition that the occupier or owner of the said plot or building shall install rain water harvesting system in such building.
- (10) The permission to draw ground water through borewell or tubewell (both new as well as existing and drawing ground water without permission of Central Ground Water Authority) for commercial and or industrial use shall be subject to the condition that the concerned person or authority shall install the rain water harvesting structure, and shall ensure reuse of the water in horticulture or cooling or toilet flushing, etc after proper treatment of waste water or any other suggestions given by the concerned Advisory Committee.
- (11) Each of the Advisory Committee in addition to their above mentioned statutory duties, will inform Delhi Pollution Control Committee about any water pollution occurring, due to extraction of water from tube-well or bore-well so that, necessary action may be initiated under the provision of the Water (Prevention and Control of Pollution) Act, 1974.
- (12) The permission of borewell installation for agricultural purpose may be granted to genuine agriculturists by the Advisory Committee under concerned Deputy Commissioner (Revenue) based on the recommendation of Block Development Officer and Agriculture Department/Irrigation and Flood Control Department, Govt. of N.C. of Delhi.

Agriculture activity may be verified from Khasra Girdawari documents and also based on actual evaluation.

- (13) Any violation of the above directions shall be punishable under section 15 of the Environment (Protection) Act, 1986 (29 of 1986).

By Order and in the Name of the Lieutenant Governor of the National Capital Territory of Delhi,
DHARMENDRA, Secretary (Environment)

कार्यालय पंजीयक सहकारी समितियाँ
अधिसूचना

दिल्ली, 7 जुलाई, 2010

फा. संख्या 6(14)/85/स्था./सह./पार्ट फाइल 2349.—
दिल्ली के उपराज्यपाल, दिल्ली सहकारी समितियाँ अधिनियम, 2003 (दिल्ली अधिनियम 2004 का 3) की धारा 3 की उप-धारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री हरि नारायण मीणा, सहायक पंजीयक सहकारी समितियाँ को उपरोक्त अधिनियम के

अधीन कार्य को निपटाने के लिए उपरोक्त पद पर कार्य ग्रहण करने की तिथि से पंजीयक की सहायतार्थ नियुक्त करते हैं।

राष्ट्रीय राजधानी क्षेत्र, दिल्ली के उपराज्यपाल के
आदेश एवं नाम से,

एस. के. झा, अतिरिक्त सचिव (सहकारिता)

**OFFICE OF THE REGISTRAR COOPERATIVE
SOCIETIES**

NOTIFICATION

Delhi, the 7th July, 2010

No. F. 6/14/85/Estt./Coop/Pt. file 2349.—In exercise of the powers conferred by sub-section (1) of section 3 of the Delhi Co-operative Societies Act, 2003 (Delhi Act 3 of 2004), the Lt. Governor of the National Capital Territory of Delhi is pleased to appoint Sh. Hari Narain Meena, Adhoc DANICS as Assistant Registrar Cooperative Societies, Delhi, to assist the Registrar in discharging his duties and functions under the aforesaid Act with effect from the date he assumed charge of the said office.

By Order and in the Name of the Lt. Governor of the National Capital Territory of Delhi,
S. K. JHA, Addl. Secretary (Coop.)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 176/2015

Shailesh Singh

Applicant(s)

Versus

Hotel Holiday Regency, Moradabad & Ors.

Respondent(s)

Date of hearing: 23.08.2019

Date of uploading of order: 11.09.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. Remedial action against falling groundwater levels in the country is the subject matter of consideration before this Tribunal. Taking cognizance of news item under the caption "*Falling Groundwater Level Threatens City*", appearing in the *Indian Express* of 18.03.1996, the Hon'ble Supreme Court issued notice to the Central Groundwater Body and DPCC, Municipal Corporation of Delhi and Delhi Waterworks and Sewerage Disposal Undertaking (now DJB).¹ Suggestions were sought from NEERI and thereafter from Ministry of Water Resource. The MoWR acknowledged the problem and stated

¹(1997) 11 SCC 312

that a Model Bill has been prepared to regulate and control the development of groundwater in their respective areas.

2. The Hon'ble Supreme Court thereafter observed that an authority needs to be constituted under Section 3(3) of the Environment (Protection) Act, 1986 (EP Act). It was also observed that in view of Entry 13 List I of Schedule VII read with Article 253 of the Constitution of India, the EP Act has overriding effect. As regards the plea that CGWB could not undertake additional burden, it was observed:

“5.....It is stated that the regulation and control of groundwater is the responsibility of the State Government, as water is a State subject. Keeping the present organisational status of the Board, it is stated that the Board will have to be expanded and strengthened adequately to enable it to discharge its added responsibilities. The exact infrastructure for this purpose will have to be worked out. The affidavit further states that the Central Groundwater Board will collaborate and coordinate with the State authorities in the regulation and control of groundwater development.

6. Management of water resources to achieve overall aspirational goal of sustainable development warrants legal interventions based on the principles of inter and intra-generational equity, the precautionary principle, conservation of natural resources and environmental protection. There is thus adequate reason to take recourse to the Sections 3, 4 and 5 of the Environment (Protection) Act, 1986 for implementing holistic approach to water resources management.

In order to address the complex issues in water resource management it is prudent that the Central Government considers constituting an authority under the Environment (Protection) Act, 1986 and confers on this authority all the powers necessary to deal with the situation created by the depletion of groundwater levels, dwindling surface water resources, deterioration of surface and groundwater quality and haphazard land use. The authority should be headed by a retired (sic) with expertise in the field of hydrology, hydrogeology, information technology.”

3. The Hon'ble Supreme Court quoted with approval the recommendations of NEERI as follows:

“7. Recommendations: A Central Water Resource Management Authority, with the composition as delineated in Section 6 above, with mandate for coordination and implementation of all activities of planning, development, allocation, implementation, research and monitoring of all water resources need to be established to promote intra and inter-generational equity, as also to operationalise the precautionary principle in sustainable water resource management. All the States need to constitute similar authorities with functions in the State as of the Central Authority. The mandate of the authority needs to include the following:

- * To deploy river basins as the basis for regional planning for sustainable water resource management (along with commensurate land use)
- * To prepare medium and long-term national land use plans inter alia including agricultural practices, human settlement patterns and industrial typology in consultation with Ministries/Departments concerned based on the regional water supportive capacity
- * To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National Agricultural Water Use Policy to encourage judicious use of water resources
- * To keep under review groundwater levels and quality, and surface water quantity and quality to devise and implement pragmatic strategies at plan and programme levels
- * To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers
- * To ensure techno-economic feasibility and to implement programmes on reuse of appropriately treated sewage for agriculture, reuse of industrial wastewaters as industrial process water, use of treated sewage in social forestry and public parks in municipal areas and reuse of treated wastewater in new housing complexes for non-consumptive usages
- * To protect, conserve and augment traditional water retaining structures
- * To protect, conserve and augment natural and manmade wetlands in the country
- * To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi-arid regions
- * To promote and implement modern and traditional water harvesting technologies to



ensure minimal expenditure in groundwater harnessing

- * To design and implement programmes to arrest alarming rates of decline in snowline in the country*
- * To ensure catchment area treatment, including construction of checkdams, contour bunding, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins*
- * To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988*
- * To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource*
- * To ensure community participation with a view to harnessing traditional knowledge at all stages in the holological approach to water resource management.”*

4. The Hon’ble Supreme Court directed:

“9. *The Central Government in the Ministry of Environment and Forest shall constitute the Central Groundwater Board as an Authority under Section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of groundwater management and development. The Central Government shall confer on the Authority the power to give directions under Section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section (2) of Section 3 of the Act.*

10. *We make it clear that the Board having been constituted an Authority under Section 3(3) of the Act, it can resort to the penal provisions contained in Sections 15 to 21 of the Act.*

12. *The main object for the constitution of the Board as an Authority is the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country. We have no doubt that the Authority so constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. This aspect may be taken up by the Authority on an urgent basis.”*

5. Even though 23 years have passed after the passing of the judgment of the Hon’ble Supreme Court, the situation of falling

groundwater level has not improved and has in fact further deteriorated. Unfortunately, in spite of clear directions of the Hon'ble Supreme Court, the CGWA is not willing to take the ownership of the subject and repeatedly takes the plea that it does not have the infrastructure or that the responsibility of dealing with the problem is of the States and not that of the said authority. It is high time that the working of the CGWA is reviewed and remedial measures are taken including assessment of suitability of the person to head it.

6. Petitions have been filed before this Tribunal from time to time with the grievance of illegal drawal of groundwater by hotels, industries and builders for commercial purposes. The grievance of the applicants in the present application is that there is fast depletion of ground water in NOIDA and Greater NOIDA, District Gautam Budh Nagar, U.P. There is large scale extraction of groundwater by various construction companies. Directions relating to the water harvesting are not complied with. No measures are properly adopted to stop the fast depleting ground water levels.

7. This Tribunal has ascertained facts and directed the regulatory authorities to take remedial action by way of closing such drawal, initiating prosecution and recovering compensation on 'Polluter Pays' principle.² A separate order is being passed in

² E.g. separate order passed today in Harinder Dhingra Vs. International Recreation & Amusement Ltd. & Ors O.A No. 458/2017.

several other matters on the same subject.³ There is need for constant action by the regulatory authorities and mechanism for higher level review of working of such authorities to avoid unnecessary litigation.

8. We may now refer to some of the proceedings before this Tribunal in the present matter. Significant proceedings are reflected in orders dated 23.04.2015, 26.07.2018, 28.08.2018, 12.11.2018, 03.01.2019 and 07.05.2019. It was noted in the order dated 23.04.2015 that ground water level has gone down in NOIDA by 15 mtrs. between 2007-2014. On 26.07.2018, it was noted that even apart from NOIDA, Greater NOIDA, Delhi and NCR, the situation in OCS region calls for stringent regulation for ground water extraction. In the order dated 28.08.2018, the Tribunal directed the Ministry of Water Resource (MoWR), Government of India, in consultation with the Ministry of Environment, Forest and Climate Change (MoEF&CC) and Ministry of Agriculture (MoA), to review the existing mechanism for effective conservation of ground water resources in OCS. It was directed that the policy framework must include monitoring mechanism by way of provision for coercive measures, consistent with the mandate in the judgement of the Hon'ble Supreme Court of India in M.C Mehta (supra). The guidelines of CGWA that permission to extract ground water in over exploited, critical and semi-critical (OCS)

³ Original Application No. 59/2012 (M.A. No. 34/2016 & M.A. No. 190/2016), Original Application No. 108/2013, Original Application No. 179/2013 , Appeal No. 67/2015 , M.A. No. 107/2019, Original Application No. 484/2015 Original Application No. 327/2018 , Original Application No. 115/2017, Original Application No. 411/2018, Original Application No. 613/2017, Original Application No. 614/2017

areas is to be given only for drinking and domestic purposes were noted. OCS areas were identified and notified by the CGWA having regard to the depletion of groundwater level. OCS areas were further classified as 'notified' and 'non-notified' without any basis and 'non-notified' were not being regulated. The Tribunal directed remedial measures to be taken.

9. On 12.11.2018, the matter was further considered. After making reference to the 2012 Guidelines issued by the CGWA and Draft Guidelines dated 16.11.2015, the Tribunal noted following points:

- i. CGWA was repeatedly disowning its responsibility on the plea that regulation of ground water was a State subject, contrary to the mandate in the judgement of the Hon'ble Supreme Court in M.C Mehta (Supra).
- ii. CGWA was failing to regulate drawal of ground water in OCS on the ground that it had not issued a notification except for some areas, and without such notification, there was no need for regulating extraction of ground water even in OCS.
- iii. Extraction of ground water for commercial purposes was being allowed in OCS just by a mechanical condition that the ground water will be recharged, without ensuring compliance of such condition.
- iv. Underground water was being allowed to be extracted for illegal constructions, bottling plants, swimming pools etc.

without any impact study or effective steps for rain water harvesting for recharge of the ground water.

v. CGWA was repeatedly taking the plea that charges were being collected for permitting drawal of underground water for commercial purposes in OCS against the Precautionary Principle, Sustainable Development as well as Intergenerational Equity Principles.

vi. Difficulties of agriculturists needed to be addressed in a phased manner by persuading the agriculturists to switch over to less water consuming crops and to consider use of treated sewage water instead of extraction of fresh underground water, wherever viable.

vii. Untreated effluents are not to be discharged in the water.

10. Notification dated 12.12.2018 was issued by Ministry of Water Resources (MoWR) which was considered by this Tribunal vide order dated 03.01.2019. The Tribunal noted from the affidavit filed by the CGWA found that utilizable water in India is 1137 BCM which comprises of 690 BCM of surface water and 447 BCM of replenishable ground water resources. In the year 2009, about 2700 BCM of ground water was available in deeper aquifers, below the zone of water level fluctuations. Thus, ground water over exploitation is recommended to be restricted to sustainability of ground water by annual replenishment in order to facilitate long term sustainability of ground water. It is further stated that per year extraction is 253 BCM which is 25% of the global ground water extraction. Out of total 6,584 assessment units, 1,034 fall in over-exploited category (where

extraction is more than 100% of recharge), 253 fall in critical category (where extraction is 90-100% of the recharge), 681 fall under semi-critical category (where extraction is 70-100% of the recharge) and 4,520 are under safe category (where extraction is 90% of the recharge). About 90% extraction is for agricultural purposes, 10% for drinking, domestic and industrial purposes. Industrial use is 5%. Model building bye-laws 2016 include the provision of rain water harvesting in all new buildings on plots of 100 sq. mtrs. and above. Entire storm water is to be captured for water harvesting through suitable structures in all public and open spaces of more than 500 sq. mtrs. Buildings having minimum discharge of 10,000 liters and above are required to have waste water recycling system for horticulture purposes. 'Mission Water Conservation' has been introduced by the Ministry of Agriculture, Government of India. Inter-Ministerial Committee has been constituted under the chairmanship of the Secretary, Ministry of Water Resources, Government of India. The Ministry is also carrying out training programme and Information, Education & Communication (IEC) activities for awareness. The Department of Land Resources is implementing water-shed development projects. Certain States have taken initiatives including Punjab Preservation of Subsoil Water Act, 2009 which ban early sowing of paddy nursery and transplantation of saplings. Maharashtra Groundwater (Development and Management) Act, 2009 prohibits drilling of deep wells within for agriculture or industrial usage, pumping of ground water for deep well of

depth of 60 mtrs. or more. The CGWA has issued advisories and it requires taking of NOC for ground water withdrawal but the agriculture section is not subjected to ground water regulation on account of socio-economic implications. The steps taken by the CGWA include directions for rooftop rain water harvesting systems, ground water recharge measures along the National highways, State national highways, railway tracks, etc., artificial recharge in over-exploited areas, large and medium industries using ground water to take up the ground water conservation measures. CGWA imposes condition while granting NOC for withdrawal of ground water in States/UTs which do not have functional ground water authorities. NOCs are granted online in a user-friendly manner. Industries in safe category are exempted from NOC but in OCS areas, condition for grant of NOC is rain water harvesting/ground water recharge measures and NOCs are denied in over-exploited areas. Non-water intensive industries drawing ground water up to 100 m³/day are exempted from NOC in critical areas, non-water intensive industries drawing up to 50 m³/day are exempted from NOC. (In over-exploited areas, non-water intensive industries are exempted which are drawing ground water up to 25 m³/day. Permitted water extraction is restricted to 60% of the proposed recharge. Ground water extraction should not be exceeded 1,500m³/day for each unit. In semi-critical areas, ground water extraction is restricted to 200% and 100% of proposed recharge for non-water intensive and water intensive industries respectively. In critical areas,

ground water extraction is permitted up to 100% and 50% of proposed recharge for non-water intensive and water intensive industries respectively. In over-exploited areas, ground water extraction is permitted up to 50% of the proposed recharge). Till 2015, existing industries were not required to seek any NOC. In compliance of order of the Tribunal dated 15.04.2015, existing industries were brought within the purview of NOC with effect from 16.11.2015.

11. The Tribunal held that the Notification worsened the situation by liberalizing the extraction of ground water even for commercial purposes in violation of spirit of order of the Hon'ble Supreme Court. The objections against the Notification upheld by the Tribunal were:

“i. Liberally permitting extraction of ground water and justifying the same on the plea that charges have been prescribed even in OCS areas for commercial/industrial purposes.

ii. Liberally permitting extraction of ground water on the ground that condition was imposed for rain water harvesting without any data of effective compliance of such conditions or even possibility of this being done.

iii. Having exempted categories in OCS areas for purposes other than drinking water, including swimming pools, commercial and industrial uses. Reference has been made to the statistics to show deteriorating status of conservation of water and crises of access to water being available to the common man, as well as its requirement for ensuring e-flow in the rivers.”

12. It was observed:

“21. The provisions of the impugned notification show that drawal of ground water has been, for all practical purposes, made unregulated in all areas, including the OCS areas.

22. The so-called regulation is illusory. The so-called conditions are incapable of meaningful monitoring, as shown by past experience also.

23. The water conservation fee virtually gives licence to harness ground water to any extent even in OCS areas.

24. There is no institutional mechanism to monitor removal and replenishment of ground water.

25. Delegation provision is virtual abdication of authority.

26. There is no check on injection of pollutants in the ground water in the impugned notification. There is no provision with regard to check on water quality and its remediation, if there is contamination.

29. The MoEF&CC is directed to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured for as well as to sustain the floodplains of rivers in terms of e-flows and other water bodies. The MoEF & CC and MoWR may finalize the issue of subject remain inter-se with regard to ground water reserve and its quality.

31. The Committee may also indicate the projection of its impact study in light of projected data for the next 50 years (in phased manner with action plan for each decade). Thereafter, fresh guidelines be issued by the concerned Ministry and the report furnished to the Tribunal on or before 30.04.2019.

32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.”

13. The Tribunal noted the relevant statistics on the subject as follows:

“2. As per publication of NITI Ayog, India is placed at 120th amongst 122 countries in water quality index. Most states have achieved less than 50% of the total score in augmentation of groundwater resources, highlighting a growing national crisis. 54% of India’s ground water wells are decreasing in levels and 21 major cities across the country are expected to run out of ground water by 2020. Almost none of the States have built the infrastructure required to recharge groundwater in over exploited and critical areas. Several States such as U.P., Bihar, Rajasthan etc. have not put in place any regulatory framework for managing the groundwater. These states produce 20-30% of

India's agricultural output and groundwater accounts for 63% of all irrigation water. Therefore, unsustainable extraction in these states also poses a significant food security risk for the country. 3. About 60% of the irrigation needs, 85% of rural drinking water needs and 50% of urban water needs are met through ground water. The CGWB has categorised the areas into the following on the basis of availability of ground water resources:

Safe	(<=90%, No decline in water levels)
Critical	(>70% and <=100%, decline in water levels)
Semi-critical	(<100%, decline in water levels)
Over-exploited	(>100%, decline in water levels)

4.As per another survey, India extracts most ground water. Globally, 25% of total annual global annual water is extracted in India. The extraction level is going up continuously

5. Depletion of ground water not only creates crisis for drinking water in absence of inadequate surface water being available in certain areas where there may be drought conditions, but also affects e-flow in rivers and can also increase salinity in soil.”

14. The Tribunal accordingly held:

“27. We are satisfied that the Notification dated 12.12.2018 tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles is unsustainable in law and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India.

28. Accordingly, the impugned Notification may not be given effect to in view of serious shortcomings as pointed above so that an appropriate mechanism can be introduced consistent with the needs of environment.”

15. The matter was thereafter considered on 07.05.2019 and since the report was not furnished by the MoEF&CC, such report was required to be filed. Report of the CPCB filed on 30.04.2019 was found to be unsatisfactory and a fresh report was required to be filed for the following reasons:-

“(i) The OCS areas which need regulation for conservation of ground water cannot be further treated separately as notified or non-notified. Conservation of ground water in the said areas is of equal necessity. Depletion of ground water in the said areas affects the sub-terranean flow and results in contamination of ground water and also poses a potential danger for drying up of important natural resource in violation of established principle of ‘Intergenerational Equity’.

(ii) The compensation to be recovered for illegal extraction has to be deterrent specially when it is for commercial or industrial purpose and linked to the quantum of ground water extracted and the period for which such extraction takes place.

(iii) Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms which has not been done in the present report.”

16. Accordingly, affidavit filed by the MoEF&CC on 18.07.2019 and report of the CPCB dated 26.06.2019 have been put up for consideration today. We take up the said reports for consideration.

17. The report dated 18.07.2019 gives statistics as follows:-

“As per the latest assessment in categories of OCS areas Delhi is ranked first as 82% of total number of assessed units followed by Rajasthan (81%), Punjab (81%), Haryana (75%), and Tamil Nadu (50%)

In order to regulate ground water abstraction in Over Exploited / Semi – critical areas, CGWA

notifies areas (blocks / talukas/ mandals/ firkas areas) under Environment (Protection) Act, 1986 for regulation of ground water development and management. In these notified areas, abstraction of ground water is not allowed for any purpose other than drinking and domestic use. For monitoring and supervision of notified area, CGWA has empowered district level authorities of State Government under Section 4 of the Environment (Protection) Act, 1986. CGWA has notified total 162 areas in the country till 2012 out of 1033 identified Over Exploited areas.”

18. Apart from giving the above statistics the report deals with the review of institutional framework, gaps in groundwater management strategy and makes recommendations providing for levy of water conservation fee, criteria for extraction of groundwater in OCS area, registration of bore-wells, utilization of treated sewage water, shifting of cropping pattern and irrigation practices, optimal use of fresh water and best conservation practices. It is suggested that guidelines be prepared applicable pan India with liberty to lay down more stringent norms by the States depending on local conditions, making water resource estimation every two years, periodic assessment of OCS areas, inviting projects from experts for water management and preparation of decadal action plans.
19. The report remains deficient as the issue of preventing depletion of ground water has not been duly addressed. The effective enforcement mechanism of conditions subject to which groundwater extraction may be allowed in OCS areas has not been provided. Mere condition of recharge without clear strategy of enforcement is no safeguard for permitting

extraction of groundwater. The report leaves many issues to be dealt with by further studies. The need for immediate concrete action to prevent further depletion is not met by the report nor the effective safeguards against abuse of permission for extraction in violation of conditions for extraction and effective remedies against rampant illegal extractions have been suggested. This shows that further remedial action needs to be taken.

20. The report of CPCB dated 26.06.2019 deals with methodology for assessing environmental compensation (EC), Formula for Environmental Compensation for illegal extraction of ground water, Environmental Compensation Rate (ECRGw) which has been further dealt with in different categories, i.e. ECRGw for Drinking & Domestic use for household purposes and those for institutional activity, commercial complexes, townships etc., ECRGw for Packaged Drinking Water Units, ECRGw for Mining, Infrastructure and Dewatering Projects, ECRGw for Industrial Units, Deterrent factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes) and Deterrent Factor . Formula for Environmental Compensation for illegal extraction of ground water is as follows:

“5. Formula for Environmental Compensation for illegal extraction of ground water

The committee recommended that the formula considering water consumption, no of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:-

$$EC_{GW} = \text{Water consumption per day} \times \text{Environmental Compensation rate for illegal extraction of ground water (ECR}_{GW}) \times \text{No. of Days} \times \text{Deterrent Factor}$$

Where, water consumption is in m³/day and ECR_{GW} in Rs/m³”

All other details can be seen from the report which is available on the website of CPCB. The report also gives recommendations as follows:

21. The committee has given following recommendations:

1. In case of fixation of liability, it always lies with current owner of the premises where illegal extraction of groundwater is taking place.
2. Violation duration may be assumed as at least one year in case where no evidence for period of installation of borewell could be established.
3. For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.
4. Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in overexploited area.
5. Water in over-exploited area should be permitted only for drinking purposes and industries established in this area without prior consent or NOC from CGWA or another concerned department must be closed down with immediate effect. No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.
6. Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.
7. In case of all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.

8. The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period. The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.

9. In addition, all repeated violations will attract EC at 1.25 times the previous EC.

10. Authorities assigned for levy EC and taking penal action are listed below:

S. No.	Actions	Authority
1.	To seal illegal bore-well/tube-well to stop extraction of water and further closure of project	District Magistrate
2.	To levy EC _{GW} as per prescribed method	District Magistrate/ CGWA
3.	To levy EC on industries involved in illegal abstraction of Groundwater , as per the method prescribed in report of CPCB- "EC for industrial units"	CPCB/SPCB/PCC
4.	Prosecution of Violator	CGWA under Environment (Protection) Act,1986 (or)
		SPCB/PCC under Water (Prevention and Control of Pollution), Act, 1974

22. CGWA shall maintain a separate account for collection and utilization of environmental compensation levied for illegal extraction of ground water on the violators. For easy understanding w.r.t levying of EC on violators as per the recommendation of CPCB, case studies given at **Annexure II** may please be referred.

23. The report may need further consideration by Committee that we propose to constitute, particularly permitting water intensive industries except in safe areas. This recommendation being against the order dated 03.01.2019 of this Tribunal may not be acted upon till further orders. The compensation aspect may be acted upon by the regulatory authorities as an interim measure on same pattern as in *O.A. No. 593/2017, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.*⁴ and compensation recovered from the violators, for the period of violation, which may be assessed on case to case basis. Once violation is found, the burden of proving that there was no violation earlier, will be on the violator.

24. We conclude this order with the following directions:

(i) We constitute a Committee to go into the following questions:

- (a) Steps required to be taken for preventing depletion of ground water.
- (b) Robust monitoring mechanism to ensure that no ground water is unauthorizedly extracted, including review of manning and functioning of CGWA.
- (c) Robust mechanism to monitor conditions laid down for grant of permission for extraction of ground water.
- (d) Recommendations in the report of the CPCB dated 26.06.2019 referred to above.

(ii) The composition of the Committee will be as follows:-

- (i) Joint Secretary, MoEF&CC
- (ii) Concerned Joint Secretary, MoWR, dealing with the subject
- (iii) CGWB
- (iv) National Institute of Hydrology, Roorkee
- (v) National Remote Sensing Center, Hyderabad
- (vi) CPCB

⁴ Order dated 28.08.2019

The nodal agency will be the Joint Secretary, MoWR for coordination and compliance. The Committee may look into the reports already submitted. The report may be furnished within two months by e-mail at judicial-ngt@gov.in.

- (iii) The report of CPCB with regard to compensation is accepted by way of an interim arrangement and the same may be acted upon by the regulatory authorities and compensation recovered from the violators, for the period of violation, which may be assessed on case to case basis. The report of CPCB that water intensive industries can be allowed even in semi-critical and critical area without any further safeguards may not be acted upon till further orders.

List for further consideration on 28.11.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

September 11, 2019
Original Application No. 176/2015

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 327 OF 2018

IN THE MATTER OF:

SHAILESH SINGH

...APPLICANT

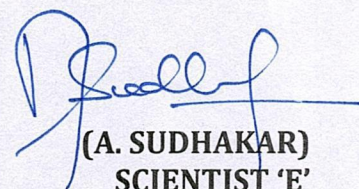
VERSUS

CENTRAL GROUND WATER BOARD & ORS.

...RESPONDENTS

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(A. SUDHAKAR)
SCIENTIST 'E'

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PLACE: DELHI

DATED :- 28.06.2019

REPORT ON

“ASSESSMENT OF ENVIRONMENTAL COMPENSATION IN CASE OF ILLEGAL EXTRACTION OF GROUND WATER”

(SUBMITTED IN COMPLIANCE TO HON'BLE NGT ORDER DATED 7/5/2019 IN
ORIGINAL APPLICATION NO. 327/2018 IN THE MATTER OF SHAILESH SINGH Vs
CENTRAL GROUND WATER BOARD & ORS)



CENTRAL POLLUTION CONTROL BOARD
(Ministry of Environment, Forest & Climate Change)
Parivesh Bhawan East Arjun Nagar,
Delhi-110032

26 June, 2019

“ASSESSMENT OF ENVIRONMENTAL COMPENSATION IN CASE OF ILLEGAL EXTRACTION OF GROUND WATER”

1. Background

The Hon'ble National Green Tribunal (NGT), Principal Bench, New Delhi passed order on 3/1/2019 in Original Application No. 327/2018 in the matter of Shailesh Singh v/s Central Ground Water Board & Ors directed Central Pollution Control Board (CPCB) in para 32 that:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

In compliance to the Hon'ble NGT order dated 3/1/2019, CPCB submitted report on Environmental Compensation (EC) for illegal extraction of ground water to the Hon'ble NGT on 30/4/2019. Hon'ble National Green Tribunal reviewed the report and directed CPCB vide order dated 7/5/2019 in para 10 & 11 which are reproduced as follows:

Para 10: CPCB has, vide e-mail dated 30.04.2019, forwarded a report which deals with assessment of environmental compensation for illegal extraction of ground water. We do not find the report of the CPCB to be complete for the following reasons:

- (i) The OCS areas which need regulation for conservation of ground water cannot be further treated separately as notified or non-notified. Conservation of ground water in the said areas is of equal necessity. Depletion of ground water in the said area affects the sub-terranean flow and results in contamination of ground water and also poses a potential danger for drying up of important natural resource in violation of established principle of “Intergenerational Equity”.*

- (ii) *The compensation to be recovered for illegal extraction has to be deterrent specially when it is for commercial or industrial purpose and linked to the quantum of ground water extracted and the period for which such extraction takes place.*
- (iii) *Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms which have not been done in the present report.*

Para 11: Let the CPCB furnish a fresh report on or before 30.06.2019 by email at ngt.filing@gmail.com.

A copy of Hon'ble NGT order dated 7/5/2019 is enclosed as **Annexure I**.

2. Follow up action by CPCB

In compliance to Hon'ble NGT order dated 3/1/2019, CPCB constituted a committee under the Chairmanship of Shri A. Sudhakar, DH, WQM-I Division with Shri P. K. Gupta, DH, IPC-VI Division, Shri Vishal Gandhi, Sc D, UPC-I Division and Smt. Suniti Parashar, Scientist B, WQM-I Division as members.

The Committee has deliberated on the issues and submitted its report to the Hon'ble NGT on 30/4/2019. Further, in compliance of NGT order dated 7/5/2019, same committee reviewed the report as directed by Hon'ble NGT. The compliance status of Hon'ble NGT direction and suggestions, highlights of the revised report are summarized below:

S.No.	Directions/Suggestions of Hon'ble NGT	Compliance Status/Highlights
1	Intergenerational Equity	<ul style="list-style-type: none"> ▪ It is considered that incidence of illegal extraction of ground water, regardless of the category of area (notified or non-notified) will attract the environment compensation. ▪ EC is purely based on illegal extraction of ground water in OCS (Over-exploited, Critical and Semi-critical) and safe areas. ▪ The rate of environment compensation will

		increase as the criticality of ground water availability in the area increases or amount of ground water extraction increases.
2	Deterrent in terms of commercial/industrial purpose	<ul style="list-style-type: none"> ▪ Considering the water as a basic need of human, environmental compensation charges in case of domestic/household uses are kept low and higher rates of environmental compensation are prescribed for institutional, commercial, infrastructural and industrial purposes by the extraction of ground water. ▪ Environmental Compensation Rates (ECR_{GW}) for illegal extraction of ground water also increase with increase in water consumption as well as water scarcity in the area. ▪ For drinking/domestic purposes, minimum EC suggested as Rs 10,000/- (for households) and Rs 50,000 (institutional activity, commercial complexes, townships etc). ▪ For industrial activity minimum EC is suggested as Rs 1,00,000/- ▪ Estimation made for illegal extraction in industrial cases shows deterrent EC for OCS areas in scenario analysis
3	Scenario Analysis	Case Studies in terms of scenario analysis for different classes have been done and incorporated in the report (<i>Annexure-II</i>).

3. Methodology for Assessing Environmental Compensation (EC)

The committee discussed the issue on 13/5/2019 and 7/6/2019. The committee deliberated in detail on the issue of Environmental Compensation to be recovered

from individuals/industries such as domestic, packaging units, mining & infrastructure projects and industrial units in case of illegal extraction of ground water. The Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 were also discussed and based on this mechanism to levy Environmental Compensation has been evolved.

4. Ideology of Environmental Compensation w.r.t illegal extraction of ground water

Ground water is becoming an increasingly scarce resource because of its unabated and indiscriminate over-exploitation. Growth in ground water exploitation, however, has led to a steep fall in water table in several parts of the country. The falling water table is a matter of special concern since it tends to reduce the accessibility of the resource to small and marginal farmers due to increase in costs of extraction.

5. Formula for Environmental Compensation for illegal extraction of ground water

The committee recommended that the formula considering water consumption, no of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:-

$$EC_{GW} = \text{Water consumption per day} \times \text{Environmental Compensation rate for illegal extraction of ground water (ECR}_{GW}) \times \text{No. of Days} \times \text{Deterrent Factor}$$

Where, water consumption is in m^3/day and ECR_{GW} in Rs/m^3

6. Environmental Compensation Rate (ECR_{GW})

- (i) The committee decided that the Environmental Compensation Rate (ECR_{GW}) for illegal extraction of ground water should increase with increase in water consumption as well as water scarcity in the area. Further, ECR_{GW} are kept relaxed for drinking and domestic use as compared to other uses, considering the basic need of human being.

(ii) Categorisation of the area shall be (safe, semi-critical, critical and over-exploited) based on the ground water resources estimation in the year 2009, 2011 and 2013 or the latest estimation carried out by CGWB.

(iii) Environmental Compensation Rate (EC_{GW}) for illegal use of ground water for various purposes such as drinking/domestic use, industrial activities such as water packaging units, mining and industrial sectors as finalized by the committee are given in tables below:

6.1 EC_{GW} for Drinking & Domestic use (*For household purposes*)

The rate of Environmental Compensation for domestic and drinking purpose for individual household shall be charged at the rate Rs 100/- per day for OCS categories (Over-exploited, Critical and Semi-Critical Category). Similarly, for safe category, the EC rate shall be charged as Rs 50/- per day. Minimum environmental compensation for household shall be Rs 10,000/-

6.2 EC_{GW} for Drinking & Domestic use (*For institutional activity, commercial complexes, townships etc*)

S.No.	Area Category	Water Consumption (m^3/day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate (EC_{GW}) in Rs./ m^3			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40

Note: -Minimum EC_{GW} shall not be less than Rs. 50,000/- (for institutional activity, commercial complexes, townships etc)

6.2 ECR_{GW} for Packaged Drinking Water Units

S.No.	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./m ³			
1	Safe	12	18	24	30
2	Semi critical	24	36	48	60
3	Critical	36	48	66	90
4	Over-exploited	48	72	96	120

Note :-Minimum ECR_{GW} shall not be less than Rs 1,00,000/-

6.3 ECR_{GW} for Mining, Infrastructure and Dewatering Projects

S.No.	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./m ³			
1	Safe	15	21	30	40
2	Semi critical	30	45	60	75
3	Critical	45	60	85	115
4	Over-exploited	60	90	120	150

Note :-Minimum ECR_{GW} shall not be less than Rs 1,00,000/-

6.4 ECR_{GW} for Industrial Units

S.No.	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR _{GW}) in Rs./m ³			
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over-exploited	80	120	160	200

Minimum ECR_{GW}=Rs 1,00,000/-

6.5 Deterrent factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes)

The activities such as packaging drinking water, mining, industrial and others draw ground water to add commercial value to the products manufactured. Hence, these activities attract stricter provisions of deterrence and intergenerational equity. It is proposed to levy following deterrent factors to compensate the losses and environmental damages as detailed in the following table:-

6.5 :- Deterrent Factor

S.No.	Water Consumption	Deterrent Factor		
		< 2 years	2-5 years	>5 years
1	<1000 KLD	1.00	1.00	1.25
2	1000-5000 KLD	1.00	1.00	1.50
3	>5000 KLD	1.00	1.25	2.00

Note: The industrial operations may be reviewed and only permitted, if it is safe to continue withdrawal of ground water at the rate permitted.

7. Relaxation

Central Ground Water Authority (CGWA) reserves the right to relax or interpret these mechanisms in case of any exigency or situation of National strategic importance, as per Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015.

8. Recommendations

The committee has given following recommendations:

1. In case of fixation of liability, it always lies with current owner of the premises where illegal extraction of groundwater is taking place.
2. Violation duration may be assumed as at least one year in case where no evidence for period of installation of borewell could be established.
3. For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.

4. Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in over-exploited area.
5. Water in over-exploited area should be permitted only for drinking purposes and industries established in this area without prior consent or NOC from CGWA or another concerned department must be closed down with immediate effect . No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.
6. Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.
7. In case of all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.
8. The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period. The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.
9. In addition, all repeated violations will attract EC at 1.25 times the previous EC.
10. Authorities assigned for levy EC and taking penal action are listed below:

S. No.	Actions	Authority
1.	To seal illegal bore-well/tube-well to stop extraction of water and further closure of project	District Magistrate
2.	To levy EC _{GW} as per prescribed method	District Magistrate/ CGWA
3.	To levy EC on industries involved in illegal abstraction of Groundwater , as per the method prescribed in	CPCB/SPCB/PCC

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	report of CPCB- "EC for industrial units"	
4.	Prosecution of Violator	CGWA under Environment (Protection) Act,1986 (or) SPCB/PCC under Water (Prevention and Control of Pollution), Act, 1974

11. CGWA shall maintain a separate account for collection and utilization of environmental compensation levied for illegal extraction of ground water on the violators.
12. For easy understanding w.r.t levying of EC on violators as per the recommendation of CPCB, case studies given at **Annexure II** may please be referred.

References

1. CGWA. 2015. *Guidelines/Criteria for evaluation of proposals/requests for ground water abstraction*. New Delhi-Central Ground Water Authority, Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India.
2. CGWB. 2017. *Categorisation of Assessment Units [Online]*. [Accessed 20 February 2019]. Available from: <http://cgwa-noc.gov.in/LandingPage/NotifiedAreas/>

Item Nos. 01 to 11

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 59/2012
(M.A. No. 34/2016 & M.A. No. 190/2016)
WITH
Original Application No. 108/2013
WITH
Original Application No. 179/2013
WITH
Appeal No. 67/2015
WITH
Original Application No. 176/2015
(M.A. No. 107/2019)
WITH
Original Application No. 484/2015
WITH
Original Application No. 327/2018
WITH
Original Application No. 115/2017
WITH
Original Application No. 411/2018
WITH
Original Application No. 613/2017
WITH
Original Application No. 614/2017

Vikrant Kumar Tongad

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

WITH

Legal Aid, National Green
Tribunal Bar Association

Applicant(s)

Versus

NCT of Delhi & Ors

Respondent(s)

WITH

Raj Hans Bansal

Applicant(s)

Versus
Ministry of Water Resources & Ors. Respondent(s)

WITH

Apex Chambers of Commerce and
Industries of N.C.T. of Delhi & Ors
Applicant(s)

Versus
Government of NCT Delhi & Ors. Respondent(s)

WITH

Shailesh Singh Applicant(s)

Versus
Hotel Holiday Regency, Moradabad & Ors. Respondent(s)

WITH

Shailesh Singh Applicant(s)

Versus
Hotel The Oberoi Amarvilas & Ors. Respondent(s)

WITH

Shailesh Singh Applicant(s)

Versus
Panchsheel Buildtech Pvt. Ltd. & Ors. Respondent(s)

WITH

Shailesh Singh Applicant(s)

Versus
Central Ground Water Board & Ors Respondent(s)

WITH

M/s. A-One Mineral Water Industry Applicant(s)

Versus
Central Ground Water Authority & Ors. Respondent(s)

WITH

Mohd. Javed Asghar Applicant(s)

Versus

M/s Upper Ganges Sugar and
Industries Ltd. (Distillery Unit) & Ors.

Respondent(s)

WITH

Mohd. Javed Asghar

Applicant(s)

Versus

State of U.P. & Ors

Respondent(s)

Date of hearing: 07.05.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Raj Panjwani, Senior Advocate with Mr.
Sany Antony, Advocate

For Respondent(s): Mr. Krishna Kumar Singh, Advocate for
MoEF&CC
Mr. Rajkumar, Advocate for CPCB
Mr. Ardhendumauli Kr. Prasad, Advocate for
CGWA & MoWR
Mr. Daleep Dhyani, Advocate for UPPCB
Mr. Narender Pal Singh, Advocate for DPCC
Dr. Sandeep Singh, Advocate for State of UP (in
item no. 7)
Mr. Rohit Pratap Singh, Advocate for State of
UP (in item no. 1&2)

ORDER

1. Enforcement of mandate of judgment of the Hon'ble Supreme Court in *M.C. Mehta Vs. Union of India & Ors. (1997) 11 SCC 312* for conservation of groundwater is the subject matter of consideration before this Tribunal. The issue acquired significance on account of fast depletion of ground water as per acknowledged studies

including the studies referred to in the publication of the Niti Ayog referred to in the order of this Tribunal dated 03.01.2019.

2. Central Ground Water Authority (CGWA), constituted by the Central Government under the Environment (Protection) Act, 1986, in compliance of judgment of the Hon'ble Supreme Court, conducted a survey and declared certain areas to be over exploited, critical and semi-critical areas (OCS) where the ground water level was on the decline. To maintain ground water balance, it was necessary that there is no further decline and the water level is brought up to the safe level. The mandate of the CGWA is to frame and operate regulatory measures to achieve the goal of conserving ground water at safe level.

3. The Tribunal was faced with the grievance that CGWA failed to check the depletion in OCS areas and such depletion was continuing. Regulatory framework of CGWA was inadequate and ineffective, contrary to the purpose for which CGWA was set up. There was no check on extraction of ground water even for commercial purposes, including packaging water, use of ground water by builders and hotels for swimming pools or other activities. Though conditions for recharge were incorporated while granting permission, such conditions were not complied with and no adverse measures were taken against violators. Orders were passed by this Tribunal, including order dated 28.08.2018 noting the guidelines of CGWA that permission to extract ground water in OCS areas is to be

given only for drinking and domestic purposes. OCS areas were further classified as 'notified' and 'non-notified' without any basis and 'non-notified' were not being regulated. The Tribunal directed remedial measures to be taken.

4. In purported compliance of the directions of this Tribunal, the Ministry of Water Resources (MoWR) issued Notification dated 12.12.2018. The said Notification, instead of remedying the situation, worsened the same by liberalizing extraction of ground water even for commercial purposes in violation of mandate of judgment of the Hon'ble Supreme Court in *M.C. Mehta (supra)* as well as the mandate of 'Sustainable Development' and 'Precautionary' principle and the object for which CGWA was set up.

5. The Tribunal considered the matter on 03.01.2019 and noted as follows:

"In the revised guidelines the situation has been made worst by liberalizing the regime of control against extraction of ground water in OCS areas even for commercial/industrial purposes. There is no study undertaken of the likely impact for such liberalization on the ground water resources and there is no projected estimation as to how the revised policy will result in better conservation of ground water which is necessary for compliance of the Precautionary Principle, Sustainable Development Principle as well as Inter-generational Equity Principles. It seems that the revised policy is a sort of knee jerk reaction in response to observations of this Tribunal. It appears that MoWR has not undertaken any strength, weakness, opportunities and threats (SWOT) analysis to ascertain the weaknesses of old policy and the threat scenarios it offers. It is silent on robust institutional mechanism on surveillance and monitoring of its ground implementation. It rather abdicates its authority in form of delegation to field units without any checks and balances to regulate ground water extraction, on scientific lines and environmentally sustainable manner. Despite

stating that the guidelines shall be applicable Pan-India, the notification does not cover the States of Kerala, Karnataka, Andhra Pradesh, Telangana, West Bengal, Arunachal Pradesh, Himachal Pradesh, Jammu & Kashmir and the UT of Delhi. The serious flaws pointed out are:

- i. Liberally permitting extraction of ground water and justifying the same on the plea that charges have been prescribed even in OCS areas for commercial/industrial purposes.
- ii. Liberally permitting extraction of ground water on the ground that condition was imposed for rain water harvesting without any data of effective compliance of such conditions or even possibility of this being done.
- iii. Having exempted categories in OCS areas for purposes other than drinking water, including swimming pools, commercial and industrial uses. Reference has been made to the statistics to show deteriorating status of conservation of water and crises of access to water being available to the common man, as well as its requirement for ensuring e-flow in the rivers.”

6. Accordingly, the Tribunal held:

“27. We are satisfied that the Notification dated 12.12.2018 tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles is unsustainable in law and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India.

28. Accordingly, the impugned Notification may not be given effect to in view of serious shortcomings as pointed above so that an appropriate mechanism can be introduced consistent with the needs of environment.”

7. Thereafter, the Tribunal directed the Ministry of Environment, Forests and Climate Change (MoEF&CC) to constitute an Expert Committee and to issue an appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance

and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured as well as to sustain the floodplains of rivers in terms of e-flow, augmentation of subterranean flows and preservation of other water bodies. The Committee was to be constituted within two weeks and was to give report by 30.04.2019 after undertaking study of impact of projected data for the next 50 years. The Central Pollution Control Board (CPCB) was directed to evolve a mechanism to deal with cases of violations, including prosecution and coercive measures to check illegal extraction, including scale of deterrent compensation.

8. Unfortunately, MoEF&CC has failed to perform its duty for which no explanation has been furnished. No affidavit has been filed. On being asked, learned Counsel for the MoEF&CC has informed the Tribunal that the Committee was constituted only on 29.03.2019 and not within two weeks from 03.01.2019, as directed. The Committee has not yet given its report. We do not appreciate such attitude of Government departments when under a statutory enactment, violation of orders of this Tribunal is a criminal offence. The Committee has not acted promptly and no significant progress has been brought to our notice. Lack of sensitivity of serious issues of environment such as fast depleting ground water is a matter of concern.

9. Let the report be now furnished positively by the Committee by 30.06.2019 and further steps taken promptly. If report is not so furnished, the Joint Secretary concerned of MoEF&CC may remain present in person before the Tribunal on the next date with the report and explanation why action be not taken for violation of orders of this Tribunal.

10. CPCB has, vide e-mail dated 30.04.2019, forwarded a report which deals with assessment of environmental compensation for illegal extraction of ground water. We do not find the report of the CPCB to be complete for the following reasons:

- i. The OCS areas which need regulation for conservation of ground water cannot be further treated separately as notified or non-notified. Conservation of ground water in the said areas is of equal necessity. Depletion of ground water in the said areas affects the sub-terranean flow and results in contamination of ground water and also poses a potential danger for drying up of important natural resource in violation of established principle of 'Intergenerational Equity'.
- ii. The compensation to be recovered for illegal extraction has to be deterrent specially when it is for commercial or industrial purpose and linked to the quantum of ground water extracted and the period for which such extraction takes place.

iii. Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms which has not been done in the present report.

11. Let the CPCB furnish a fresh report on or before 30.06.2019 by e-mail at ngt.filing@gmail.com.

12. As regards the Miscellaneous Application (M.A. No. 107/2019) filed on behalf of the CGWA seeking ground water development on the basis of its guidelines dated 16.11.2015 for existing industries, infrastructure in the sand mining projects, we do not find any safeguards suggested to address the concern earlier expressed against depleting ground water. The mandate of CGWA is not exploitation of ground water in depleted areas but to conserve it. Any policy which results in further depletion obviously cannot be permitted in OCS areas CGWA is free to lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished. Any policy has to be in that direction and not in reverse direction as is unfortunately being attempted by CGWA, as noticed in earlier orders.

13. MoEF&CC has to come out with an appropriate policy consistent with the above mandate. The MoEF&CC has taken the plea that CGWA has not cooperated which is a cause for delay. This is denied by CGWA. The fact remains that failure is on the part of both. Being entrusted with the responsibility of protecting ground water, the

CGWA and all other authorities must cooperate and collaborate in the exercise of coming out with a policy which results in checking further depletion of ground water and enhancing replenishment. If necessary, the concerned Secretaries should monitor compliance of these directions having regard to the importance of the issue.

List for further consideration on 04.07.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

May 07, 2019
Original Application No. 59/2012
(M.A. No. 34/2016 & M.A. No. 190/2016)
and other connected matters
DV

CASE STUDIES**Case Study I:**

1	Industrial Sector	:	Pulp and Paper Industry
2	Area Category, as per CGWB	:	Semi-Critical
3	Production Capacity	:	200 MT/day
4	Water Consumption	:	50 m ³ /T
5	Violation Period (illegal extraction of ground water)	:	1 year

*(Source: CPPRI, Saharanpur)***Assessment of environmental compensation:**

Environmental Compensation (EC) = Water Consumption x Rate x No of Days x Deterrent Factor

Per day water consumption= 50 x 200 = 10,000 m³/day

Fine as per semi-critical zone= Rs 100 /m³/day (Table given at Sl No 6.4)

Deterrent factor: (Table given at Sl No 6.5)

EC for 1-year violation = 10,000 x 100 x 365 x 1= Rs 36,50,00,000 (Rs 36.50 Crore)

Case Study II:

1	Industrial Sector	:	Pulp and Paper Industry
2	Area Category, as per CGWB	:	Safe
3	Production Capacity	:	120 MT/day
4	Water Consumption	:	50 m ³ /T
5	Violation Period (illegal extraction of ground water)	:	3 years

*(Source: CPPRI, Saharanpur)***Assessment of environmental compensation:**

Environmental Compensation (EC) = Water Consumption x Rate x No of Days x Deterrent Factor

Per day water consumption= 50 x 120 = 6000 m³/day

Fine as per semi-critical zone= Rs 50 / m³/day (Table given at Sl No 6.4)

Deterrent factor: (Table given at Sl No 6.5)

EC for 3 year violation = 6000 x 50 x (365 x 3) x 1.25 = Rs 41,06,25,000 (Rs 41.06 Crore)

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Case Study III:

1	Industrial Sector	:	Distillery Plant
2	Area Category, as per CGWB	:	Critical
3	Production Capacity	:	135 KL/day
4	Water Consumption	:	20 m ³ /KL
5	Violation Period (illegal extraction of ground water)	:	2 years

(Source: CPCB, Delhi)

Assessment of environmental compensation:

Environmental Compensation (EC)= Water Consumption x Rate x No of Days x Deterrent Factor

Per day water consumption= 135 x 20 = 2700 m³/day

Fine as per semi-critical zone= Rs 110 / m³/day (Table given at Sl No 6.4)

Deterrent factor: (Table given at Sl No 6.5)

EC for 2 year violation = 2700 x 110 x (365 x 2) x 1= Rs 21,68,10,000 (Rs 21.68 Crore)

Case Study IV:

1	Industrial Sector	:	Mineral Water Packaging Unit (small)
2	Area Category, as per CGWB	:	Over-Exploited
3	Production Capacity, as per CTO	:	6 KLD
4	Water Consumption	:	10 KLD
5	Violation Period (illegal extraction of ground water)	:	6 years

(Source: CPCB, Delhi)

Assessment of environmental compensation:

Environmental Compensation (EC) = Water Consumption x Rate x No of Days x Deterrent Factor

Per day water consumption= 10 m³/day

Fine as per Over-Exploited = Rs 48/m³/day (Table given at Sl NoNo 6.2)

Deterrent factor: (Table given at Sl No 6.5)

EC for 6 year violation = 10 x 48 x (365 x 6) x 1.25 = Rs 13,14,000 (Rs 13.14 lakh)



**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 685/2019

(With Reports dated 6.12.2019 and 03.04.2020)

Rakesh Kumar

Applicant(s)

Versus

Govt. of NCT of Delhi

Respondent(s)

Date of hearing: 15.05.2020

CORAM:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

ORDER

1. A report was sought from the Delhi Jal Board and the North Delhi Municipal Corporation with reference to the allegation that water filling plants were being operated without license and supplying contaminated water to the residents at 1091, Gali Goshiyan, Kashmere Gate, 1/8, Third floor, near Axis Bank, Kashmere Gate, 1402-1403, Tilak Bazar, Tilak Chowk, Novelty, 4616, Dipti Ganj, Sadar Bazar, 9058, Ram Bagh Road, Azad Market, Delhi, 2144, Gali Chudi walan, Paan Mandi, Sadar Bazar, 4460, Pahadi Dheeraj, Madras Cloth House, Delhi, 602, Katra Neel, Gali Ghateshwar, Chandini Chowk, Delhi, 3936, Imli Wali Basi, Gali Barna, Sadar Bazar, Delhi, 4686, Umraojaan Gali, Pahadi Dheeraj, Sadar Bazar, Delhi and Ritij Hall, Kashmere Gate, Delhi.

2. Accordingly, reports dated 6.12.2019 and 03.04.2020 have been filed by the DJB. Report dated 3.4.2020 with locations and remarks is as follows:-

S. No.	Locations	Remarks/Status
1.	1091, Gali Goshiyan, Kashmere Gate, Delhi	An unauthorized bore well exist. Informed to area SDM vide letter dt 23.12.19
2.	1/8, 3 rd Floor, Nicolsan Road, Near Axis Bank, Kashmere Gate, Delhi	An unauthorized bore well exist. Informed to area SDM vide letter dt 23.12.19
3.	1402-1403, Tilak Bazar, Tilak Chowk, Novelty, Delhi.	Bore well already sealed by area SDM on dt 20.11.19
4.	4616, Dipti Ganj, Sadar Bazar, Delhi	No bore well exist.
5.	9058, Ram Bagh Road, Azad Market, Delhi	No bore well exist.
6.	2144, Gali Pan Mandi, Sadar Bazar, Delhi	An unauthorized bore well exist. Informed to area SDM vide letter dt 23.12.19
7.	4460, Pahari Dheeraj, Madras Cloth House, Delhi	No bore well exist.
8.	602, Katra Neel, Gali Ghateshwar, Chandani Chowk, Delhi	An unauthorized bore well exist. Informed to area SDM vide letter dt 23.12.19
9.	3936, Imali Wali Basti, Gali Barn, Sadar Bazar, Delhi	No bore well exist.
10.	4686, Umrao Jaan, Gali Pahadi Dheeraj, Sadar Bazar, Delhi	An unauthorized bore well exist. Informed to area SDM vide letter dt 23.12.19
11.	Ritz Hall, Kashmere Gate, Delhi	Bore well already sealed by area SDM on dt 28.11.19

”

3. Report dated 16.12.2019 with locations and remarks is as follows:-

S. N.	Property /Address	Field inspection report
1.	1091, Gali Goshiyan, Kashmere Gate, Delhi	Bore well exists, premises locked for some time.
2.	1/8, III rd Floor, Nicolsan Road, Near Axis Bank, Kashmere Gate, Delhi	Bore well exists, water selling work going on. No license provided by the owner.
3.	1402-1403, Tilak Bazar, Tilak Chowk, Novelty, Delhi.	Cooling plant well exists in property no. 1403. No license provided by the owner.
4.	4616, Deputy Ganj, Sadar Bazar, Delhi	2 Bore well exists. No license provided by the owner. Selling Bisleri Water.
5.	2703, Kishan Ganj Rasta, Teliwara, Sadar Bazar, Delhi	One Borewell exists. Cooling plant exist, but No license provided by the owner.
6.	9058, Ram Bagh Road, Azad Market, Delhi	Premises locked. No information regarding existence of Bore well due to premises locked.
7.	2144, Gali Choorhiwalan, Pan Mandi, Sadar Bazar, Delhi	One Bore well exists, license provided but was valid up to 08.04.2019. Cooling Plant exist.
8.	4460, Pahari Dheeraj, Madras Cloth House, Delhi	No Borewell exists.
9.	602, Katra Neel, Gali Ghateshwar, Chandani Chowk, Delhi	Borewell exist No Cooling Plant. Water used for drinking only from a well.
10.	3936, Imli wali Basti Gali Barna, Sadar Bazar, Delhi	No Borewell exist.
11.	4686, UmraoJan Gali, Pahari Dheeraj, Sadar Bazar, Delhi	One Borewell exist cooling plant exist.
12.	Ritz Hall, Kashmere Gate, Delhi	Borewell exists, No license with owner, applied for license in MCD.

4. It is clear from the above that unauthorised borewells exist at many locations while at some locations the borewells are said to have been sealed. The report furnished does not show the remedial action by way of closing of the borewells and recovery of compensation for the illegal drawal of ground water, adversely affecting the environment as per earlier directions of this Tribunal, which may be referred to in the later part of the order. There is also nothing to show the analysis of quality of water with a view to take remedial action against the supply of contaminated water, if any. The reports do not show the seriousness required in dealing with the situation. The senior officers seem to have avoided their responsibility and left the matter to lower level officers.

5. Needless to say that protection of ground water is of great significance, particularly in view of falling of ground water levels in Delhi. In *O.A. No. 176 of 2015, Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors.*, the matter has been dealt with by this Tribunal in the last about 5 years which was last reviewed on 11.9.2019. Reference was made to the judgment of the Hon'ble Supreme Court in *M.C Mehta v. Union of India and Ors (1997) 11 SCC 312* whereby the Hon'ble Supreme Court directed constitution of Central Regulatory Body in the light of the recommendation of an Expert Committee, under Section 5 of the Environment (Protection) Act, 1986 (EP Act). The Central Ground Water Authority (CGWA) has been constituted. The Tribunal found that effective functioning was far from satisfactory in achieving the object of protecting the ground water levels. With the result, illegal drawal of ground water by the hotels, industries and builders for commercial purposes in over exploited, critical and semi critical (OCS) areas was continuing at

large scale. The Tribunal elaborately considered the problem and need for constant action by the regulatory authorities. After noticing the available data, the Tribunal noted the failure of the authorities in performing their duties on the subject on account of which situation continues to deteriorate. The Tribunal also considered and noted the report of the CPCB dated 26.06.2019 dealing with the methodology for assessment of environmental compensation for illegal extraction of ground water. It was observed:-

“1. Remedial action against falling groundwater levels in the country is the subject matter of consideration before this Tribunal. Taking cognizance of news item under the caption “Falling Groundwater Level Threatens City”, appearing in the Indian Express of 18.03.1996, the Hon’ble Supreme Court issued notice to the Central Groundwater Body and DPCC, Municipal Corporation of Delhi and Delhi Waterworks and Sewerage Disposal Undertaking (now DJB).¹ Suggestions were sought from NEERI and thereafter from Ministry of Water Resource. The MoWR acknowledged the problem and stated that a Model Bill has been prepared to regulate and control the development of groundwater in their respective areas.

4. The Hon’ble Supreme Court directed:

“9. The Central Government in the Ministry of Environment and Forest shall constitute the Central Groundwater Board as an Authority under Section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of groundwater management and development. The Central Government shall confer on the Authority the power to give directions under Section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section (2) of Section 3 of the Act.

10. We make it clear that the Board having been constituted an Authority under Section 3(3) of the Act, it can resort to the penal provisions contained in Sections 15 to 21 of the Act.

12. The main object for the constitution of the Board as an Authority is the urgent need for regulating the indiscriminate boring and

¹(1997) 11 SCC 312

withdrawal of underground water in the country. We have no doubt that the Authority so constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. This aspect may be taken up by the Authority on an urgent basis.”

5. Even though 23 years have passed after the passing of the judgment of the Hon'ble Supreme Court, the situation of falling groundwater level has not improved and has in fact further deteriorated. Unfortunately, in spite of clear directions of the Hon'ble Supreme Court, the CGWA is not willing to take the ownership of the subject and repeatedly takes the plea that it does not have the infrastructure or that the responsibility of dealing with the problem is of the States and not that of the said authority. It is high time that the working of the CGWA is reviewed and remedial measures are taken including assessment of suitability of the person to head it.

6. Petitions have been filed before this Tribunal from time to time with the grievance of illegal drawal of groundwater by hotels, industries and builders for commercial purposes. The grievance of the applicants in the present application is that **there is fast depletion of ground water in NOIDA and Greater NOIDA, District Gautam Budh Nagar, U.P. There is large scale extraction of groundwater by various construction companies. Directions relating to the water harvesting are not complied with. No measures are properly adopted to stop the fast depleting ground water levels.**

7. This Tribunal has ascertained facts and directed the regulatory authorities to take remedial action by way of closing such drawal, initiating prosecution and recovering compensation on 'Polluter Pays' principle.² A separate order is being passed in several other matters on the same subject.³ **There is need for constant action by the regulatory authorities and mechanism for higher level review of working of such authorities to avoid unnecessary litigation.**

8. We may now refer to some of the proceedings before this Tribunal in the present matter. Significant proceedings are reflected in orders dated 23.04.2015, 26.07.2018, 28.08.2018, 12.11.2018, 03.01.2019 and 07.05.2019. It was noted in the order dated 23.04.2015 that ground water level has gone down in NOIDA by 15 mtrs. between 2007-2014. **On 26.07.2018, it was noted that even apart from NOIDA, Greater NOIDA,**

² E.g. separate order passed today in Harinder Dhingra Vs. International Recreation & Amusement Ltd. & Ors O.A No. 458/2017.

³ Original Application No. 59/2012 (M.A. No. 34/2016 & M.A. No. 190/2016), Original Application No. 108/2013, Original Application No. 179/2013 , Appeal No. 67/2015 , M.A. No. 107/2019, Original Application No. 484/2015 Original Application No. 327/2018 , Original Application No. 115/2017, Original Application No. 411/2018, Original Application No. 613/2017, Original Application No. 614/2017

Delhi and NCR, the situation in OCS region calls for stringent regulation for ground water extraction. In the order dated 28.08.2018, the Tribunal directed the Ministry of Water Resource (MoWR), Government of India, in consultation with the Ministry of Environment, Forest and Climate Change (MoEF&CC) and Ministry of Agriculture (MoA), to review the existing mechanism for effective conservation of ground water resources in OCS. It was directed that the policy framework must include monitoring mechanism by way of provision for coercive measures, consistent with the mandate in the judgement of the Hon'ble Supreme Court of India in M.C Mehta (supra). The guidelines of CGWA that permission to extract ground water in over exploited, critical and semi-critical (OCS) areas is to be given only for drinking and domestic purposes were noted. OCS areas were identified and notified by the CGWA having regard to the depletion of groundwater level. OCS areas were further classified as 'notified' and 'non-notified' without any basis and 'non-notified' were not being regulated. The Tribunal directed remedial measures to be taken.

9. On 12.11.2018, the matter was further considered. After making reference to the 2012 Guidelines issued by the CGWA and Draft Guidelines dated 16.11.2015, the Tribunal noted following points:

- i. CGWA was repeatedly disowning its responsibility on the plea that regulation of ground water was a State subject, contrary to the mandate in the judgement of the Hon'ble Supreme Court in M.C Mehta (Supra).**
- ii. CGWA was failing to regulate drawal of ground water in OCS on the ground that it had not issued a notification except for some areas, and without such notification, there was no need for regulating extraction of ground water even in OCS.**
- iii. Extraction of ground water for commercial purposes was being allowed in OCS just by a mechanical condition that the ground water will be recharged, without ensuring compliance of such condition.**
- iv. Underground water was being allowed to be extracted for illegal constructions, bottling plants, swimming pools etc. without any impact study or effective steps for rain water harvesting for recharge of the ground water.**
- v. CGWA was repeatedly taking the plea that charges were being collected for permitting drawal of underground water for commercial purposes in OCS against the Precautionary Principle, Sustainable**

Development as well as Intergenerational Equity Principles.

- vi. Difficulties of agriculturists needed to be addressed in a phased manner by persuading the agriculturists to switch over to less water consuming crops and to consider use of treated sewage water instead of extraction of fresh underground water, wherever viable.*
- vii. Untreated effluents are not to be discharged in the water.*

10. Notification dated 12.12.2018 was issued by Ministry of Water Resources (MoWR) which was considered by this Tribunal vide order dated 03.01.2019. **The Tribunal noted from the affidavit filed by the CGWA found that utilizable water in India is 1137 BCM which comprises of 690 BCM of surface water and 447 BCM of replenishable ground water resources. In the year 2009, about 2700 BCM of ground water was available in deeper aquifers, below the zone of water level fluctuations. Thus, ground water over exploitation is recommended to be restricted to sustainability of ground water by annual replenishment in order to facilitate long term sustainability of ground water. It is further stated that per year extraction is 253 BCM which is 25% of the global ground water extraction. Out of total 6,584 assessment units, 1,034 fall in over-exploited category (where extraction is more than 100% of recharge), 253 fall in critical category (where extraction is 90-100% of the recharge), 681 fall under semi-critical category (where extraction is 70-100% of the recharge) and 4,520 are under safe category (where extraction is 90% of the recharge).** About 90% extraction is for agricultural purposes, 10% for drinking, domestic and industrial purposes. Industrial use is 5%. Model building bye-laws 2016 include the provision of rain water harvesting in all new buildings on plots of 100 sq. mtrs. and above. Entire storm water is to be captured for water harvesting through suitable structures in all public and open spaces of more than 500 sq. mtrs. Buildings having minimum discharge of 10,000 liters and above are required to have waste water recycling system for horticulture purposes. 'Mission Water Conservation' has been introduced by the Ministry of Agriculture, Government of India. Inter-Ministerial Committee has been constituted under the chairmanship of the Secretary, Ministry of Water Resources, Government of India. The Ministry is also carrying out training programme and Information, Education & Communication (IEC) activities for awareness. The Department of Land Resources is implementing water-shed development projects. Certain States have taken initiatives including Punjab Preservation of Subsoil Water Act, 2009 which ban early sowing of paddy nursery and transplantation of saplings. Maharashtra Groundwater (Development and Management) Act, 2009 prohibits drilling of deep wells within for agriculture or industrial usage, pumping

of ground water for deep well of depth of 60 mtrs. or more. The CGWA has issued advisories and it requires taking of NOC for ground water withdrawal but the agriculture section is not subjected to ground water regulation on account of socio-economic implications. The steps taken by the CGWA include directions for rooftop rain water harvesting systems, ground water recharge measures along the National highways, State national highways, railway tracks, etc., artificial recharge in over-exploited areas, large and medium industries using ground water to take up the ground water conservation measures. CGWA imposes condition while granting NOC for withdrawal of ground water in States/UTs which do not have functional ground water authorities. NOCs are granted online in a user-friendly manner. Industries in safe category are exempted from NOC but in OCS areas, condition for grant of NOC is rain water harvesting/ground water recharge measures and NOCs are denied in over-exploited areas. Non-water intensive industries drawing ground water up to 100 m³/day are exempted from NOC in critical areas, non-water intensive industries drawing up to 50 m³/day are exempted from NOC. (In over-exploited areas, non-water intensive industries are exempted which are drawing ground water up to 25 m³/day. Permitted water extraction is restricted to 60% of the proposed recharge. Ground water extraction should not be exceeded 1,500m³/day for each unit. In semi-critical areas, ground water extraction is restricted to 200% and 100% of proposed recharge for non-water intensive and water intensive industries respectively. In critical areas, ground water extraction is permitted up to 100% and 50% of proposed recharge for non-water intensive and water intensive industries respectively. In over-exploited areas, ground water extraction is permitted up to 50% of the proposed recharge). Till 2015, existing industries were not required to seek any NOC. In compliance of order of the Tribunal dated 15.04.2015, existing industries were brought within the purview of NOC with effect from 16.11.2015.

13. The Tribunal noted the relevant statistics on the subject as follows:

“2. As per publication of NITI Ayog, India is placed at 120th amongst 122 countries in water quality index. Most states have achieved less than 50% of the total score in augmentation of groundwater resources, highlighting a growing national crisis. 54% of India’s ground water wells are decreasing in levels and 21 major cities across the country are expected to run out of ground water by 2020. Almost none of the States have built the infrastructure required to recharge groundwater in over exploited and critical areas. Several States such as U.P., Bihar, Rajasthan etc. have not put in place any regulatory framework for managing the groundwater. These states produce 20-30% of India’s agricultural output and groundwater accounts for 63% of all irrigation water. Therefore, unsustainable extraction in these states also poses a significant food security risk for the

country. 3. About 60% of the irrigation needs, 85% of rural drinking water needs and 50% of urban water needs are met through ground water. The CGWB has categorised the areas into the following on the basis of availability of ground water resources:

Safe	(<=90%, No decline in water levels)
Critical	(>70% and <=100%, decline in water levels)
Semi-critical	(<100%, decline in water levels)
Over-exploited	(>100%, decline in water levels)

4. As per another survey, India extracts most ground water. Globally, 25% of total annual global annual water is extracted in India. The extraction level is going up continuously

5. Depletion of ground water not only creates crisis for drinking water in absence of inadequate surface water being available in certain areas where there may be drought conditions, but also affects e-flow in rivers and can also increase salinity in soil.”

14. The Tribunal accordingly held:

“27. We are satisfied that the Notification dated 12.12.2018 tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles is unsustainable in law and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India.

28. Accordingly, the impugned Notification may not be given effect to in view of serious shortcomings as pointed above so that an appropriate mechanism can be introduced consistent with the needs of environment.”

16. Accordingly, affidavit filed by the MoEF&CC on 18.07.2019 and report of the CPCB dated 26.06.2019 have been put up for consideration today. We take up the said reports for consideration.

17. The report dated 18.07.2019 gives statistics as follows:-

“As per the latest assessment in categories of OCS areas Delhi is ranked first as 82% of total number of assessed units followed by Rajasthan (81%), Punjab (81%), Haryana (75%), and Tamil Nadu (50%)

In order to regulate ground water abstraction in Over Exploited / Semi – critical areas, CGWA notifies areas (blocks / talukas/ mandals/ firkas areas) under Environment (Protection) Act, 1986 for regulation of ground water development and management. In these notified areas, abstraction of ground water is not allowed for any purpose other than drinking and domestic use. For monitoring and supervision of notified area, CGWA has empowered district level authorities of State Government under Section 4 of the Environment (Protection) Act, 1986. CGWA has notified total 162 areas in the country till 2012 out of 1033 identified Over Exploited areas.”

*18. Apart from giving the above statistics the report deals with the review of institutional framework, gaps in groundwater management strategy and makes recommendations providing for levy of water conservation fee, criteria for extraction of groundwater in OCS area, registration of bore-wells, utilization of treated sewage water, shifting of cropping pattern and irrigation practices, optimal use of fresh water and best conservation practices. **It is suggested that guidelines be prepared applicable pan India with liberty to lay down more stringent norms by the States depending on local conditions, making water resource estimation every two years, periodic assessment of OCS areas, inviting projects from experts for water management and preparation of decadal action plans.***

*19. **The report remains deficient as the issue of preventing depletion of ground water has not been duly addressed. The effective enforcement mechanism of conditions subject to which groundwater extraction may be allowed in OCS areas has not been provided. Mere condition of recharge without clear strategy of enforcement is no safeguard for permitting extraction of groundwater. The report leaves many issues to be dealt with by further studies. The need for immediate concrete action to prevent further depletion is not met by the report nor the effective safeguards against abuse of permission for extraction in violation of conditions for extraction and effective remedies against rampant illegal extractions have been suggested. This shows that further remedial action needs to be taken.***

20. The report of CPCB dated 26.06.2019 deals with methodology for assessing environmental compensation (EC), Formula for Environmental Compensation for illegal extraction of ground water, Environmental Compensation Rate (ECRGw) which has been further dealt with in different categories, i.e.

ECRGw for Drinking & Domestic use for household purposes and those for institutional activity, commercial complexes, townships etc., ECRGw for Packaged Drinking Water Units, ECRGw for Mining, Infrastructure and Dewatering Projects, ECRGw for Industrial Units, Deterrent factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes) and Deterrent Factor . Formula for Environmental Compensation for illegal extraction of ground water is as follows:

“5. Formula for Environmental Compensation for illegal extraction of ground water

The committee recommended that the formula considering water consumption, no of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:-

$$EC_{GW} = \text{Water consumption per day} \times \text{Environmental Compensation rate for illegal extraction of ground water (ECR}_{GW}) \times \text{No. of Days} \times \text{Deterrent Factor}$$

Where, water consumption is in m³/day and ECRGw in Rs/m³”

All other details can be seen from the report which is available on the website of CPCB. The report also gives recommendations as follows:

21. The committee has given following recommendations:

- 1. In case of fixation of liability, it always lies with current owner of the premises where illegal extraction of groundwater is taking place.**
- 2. Violation duration may be assumed as at least one year in case where no evidence for period of installation of borewell could be established.**
- 3. For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.**
- 4. Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in overexploited area.**

5. **Water in over-exploited area should be permitted only for drinking purposes and industries established in this area without prior consent or NOC from CGWA or another concerned department must be closed down with immediate effect. No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.**
6. **Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.**
7. **In case of all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.**
8. **The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period. The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.**
9. **In addition, all repeated violations will attract EC at 1.25 times the previous EC.**
10. **Authorities assigned for levy EC and taking penal action are listed below:**

S. No.	Actions	Authority
1.	To seal illegal bore-well/tube-well to stop extraction of water and further closure of project	District Magistrate
2.	To levy EC_{GW} as per prescribed method	District Magistrate/ CGWA
3.	To levy EC on industries involved in illegal abstraction of Groundwater , as per the method prescribed in report of CPCB- "EC for industrial units"	CPCB/SPCB/PCC
4.	Prosecution of Violator	CGWA under Environment (Protection) Act, 1986 (or)

22. CGWA shall maintain a separate account for collection and utilization of environmental compensation levied for illegal extraction of ground water on the violators. For easy understanding w.r.t levying of EC on violators as per the recommendation of CPCB, case studies given at Annexure II may please be referred.

24. We conclude this order with the following directions:

(i) We constitute a Committee to go into the following questions:

(a) Steps required to be taken for preventing depletion of ground water.

(b) Robust monitoring mechanism to ensure that no ground water is unauthorisedly extracted, including review of manning and functioning of CGWA.

(c) Robust mechanism to monitor conditions laid down for grant of permission for extraction of ground water.

(d) Recommendations in the report of the CPCB dated 26.06.2019 referred to above.

(ii) The composition of the Committee will be as follows:-

(i) Joint Secretary, MoEF&CC

(ii) Concerned Joint Secretary, MoWR, dealing with the subject

(iii) CGWB

(iv) National Institute of Hydrology, Roorkee

(v) National Remote Sensing Center, Hyderabad

(vi) CPCB

The nodal agency will be the Joint Secretary, MoWR for coordination and compliance. The Committee may look into the reports already submitted. The report may be furnished within two months by e-mail at judicial-ngt@gov.in.

(emphasis supplied)

6. In the context of Delhi, there are repeated allegations of tankers *Mafias* engaged in extraction of ground water without any remedial action by the authorities. In a recent order dated 06.05.2020 in O.A. No. 970/2019, *Nand Kumar v. Govt. of NCT of Delhi*, the Tribunal noted that out of 141 identified illegal borewells in Mayapuri area,

DJB sealed only 4 and 137 illegal borewells were still continuing. This is merely one instance while the problem appears to be widespread.

7. In *O.A. No. 496/2016, Tribunal on its own motion v. Govt. of NCT of Delhi*, the Tribunal is considering the issues relating to water management in Delhi, including the control of illegal extraction of ground water. The matter was initially taken up in the light of the news item dated 19.06.2015 in the Hindustan Times highlighting the problem of contamination of ground water in Delhi. The same is being dealt with for the last five years. Since steps taken by the authorities were not found to be satisfactory, vide order dated 30.08.2018, this Tribunal constituted an independent Monitoring Committee, headed by Justice S.P. Garg, former Judge of Delhi High Court. The Committee has undertaken extensive work. The Committee has found that 14231 borewells were illegally operating in Delhi. 15% of the ground water had reached below 40 meters. Depleting of ground water was also affecting the flow the river Yamuna. The Committee in its later report found that Subsidy in the form of free water was being misused and to avoid payment of water charges for more than 20,000 litres free water, ground water was being freely extracted without any remedial action by the authorities. The Committee made its recommendations, including sealing of illegal borewells. The Tribunal, vide order dated 03.02.2020 in the said matter, directed the DJB to recover compensation from the persons illegally extracting ground water as per formula suggested by the CPCB. Some of the observations in the order are:-

“1. Issue taken up for consideration in the present matter is the water management in Delhi including rain water harvesting, revival of water bodies and use of treated water and control of illegal extraction of ground water.

The problem of contamination of ground water in Delhi was highlighted in a news item dated 19.06.2015 in the Hindustan Times which led to initiation of proceeding by this Tribunal. On 10.12.2015, the Tribunal constituted a Committee headed by Special Secretary (Environment), Delhi to take remedial action. The Committee gave its status report on 09.09.2016 recommending comprehensive ground water management plan covering Rain Water Harvesting (RWH) systems, use of treated water for ground water recharge and regulation of extraction of ground water, apart from revival and rejuvenation of water bodies.

2. The Tribunal by the order dated 30.08.2018, constituted an independent Monitoring Committee headed by Justice S.P. Garg, former Judge of Delhi High Court to oversee issues relating to water management in Delhi. The Committee has already furnished its reports dated 18.02.2019 and 31.07.2019 which were dealt with respectively by orders dated 19.02.2019 and 11.09.2019.

3. The first report mentioned identification of 50 water bodies in different parts of Delhi out of available list of 201 water bodies. On the subject of RWH systems, it was found that 6761 systems were in place. **With regard to ground water recharge, it was mentioned that 14,231 borewells were illegally operating. 15% of ground water had already reached below 40 meters which requires serious efforts for recharge. Depleting level of ground water was also affecting the flow of river Yamuna.**

4. **Second report mentioned that the ground water resources were over-exploited. Out of 34 units, 22 were over-exploited (dark blocks), 2 were critical, 7 were semi critical and 3 were in safe category. Over use of ground water for drinking, irrigation and domestic purposes was resulting in rapid depletion of ground water. Water table dropped to more than 300 feet in many areas.** Kitchen water can be made potable by spending 10% money compared to converting other waste water into drinking water. 90% fresh water was being used for non-drinking purposes which could be substituted by reused water. 280 MCM rain water is lost which needs to be conserved. ULBs were to ensure that all Government buildings have RWH structures and if they were not functional, they have to be made functional. Treated water can be used for AC cooling towers, buses/trains washing, thermal power plants, other non-potable industrial uses and flushing in domestic uses. 300 installations of DJB have RWH. All Government buildings have to make a provision for RWH. PWD was to implement the RWH system where buildings are maintained by PWD. Decision of the Delhi Cabinet dated 02.07.2019 makes such a provision. List of 559 such buildings had already been prepared. **On the subject of**

illegal borewells, the Committee mentioned that number of illegal borewells as on 30.06.2019 was assessed to be 17,062. Parks and gardens were also having tubewells which were required to be stopped to promote use of treated water for gardening. The DJB had improved its network for distribution of treated water. 400 borewells were operating in Patparganj Industrial area which matter needs to be resolved by the Chief Secretary. Environmental compensation suggested by CPCB ranging from Rs. 10,000/- to Rs. 1,00,000/- as an interim measure was required to be recovered for illegal extraction of ground water.

5. On the subject of subsidy under Free Water Scheme, the Committee observed:

“8. The Committee then considered the status of illegal borewells and found it necessary to seal the same. Action of sealing was too slow. Number of illegal borewells as on 30.06.2019 was assessed to be 17,062. Parks and gardens were also having tubewells which were required to be stopped to promote use of treated water for gardening. The DJB has improved its network for distribution of treated water. 400 borewells are operating in Patparganj Industrial area which matter needs to be resolved by the Chief Secretary. Environmental compensation suggested by CPCB ranging from Rs. 10,000/- to Rs. 1,00,000/- as an interim measure was required to be recovered for illegal extraction of ground water. Theft of water in any form should be dealt with as per law promptly.

9. The Monitoring Committee has been informed that subsidy being provided under 20,000 liter free water scheme is misused by several Group Housing Societies. After availing the required quantity of 20,000 liters free of cost, these societies start extracting groundwater by using tube-wells/borewells to avoid payment of water tariffs. DJB should take effective steps to prevent this practice.”

11. With regard to preventing uncalled for extraction of ground water for horticulture purposes, it is mentioned that tube-wells/bore-wells will be closed and only treated water will be used for horticulture purposes. A time bound action plan has been indicated.

13. The report also mentions the steps taken for sealing of illegal bore-wells, including 400 tube-wells in Patparganj industrial area.

16. Before parting with this order, we are of the view that having regard to significance of issues dealt with that is revival of water bodies in view of their potential for recharge of ground

water, which in turn impacts water availability in river Yamuna, preventing illegal extraction of ground water to preserve the ground water table, rain water harvesting systems having impact on ground water table and use of treated water (from STPs) for secondary purposes, to increase availability of potable water, it may be necessary to consider compensation regime with a view to ensure sustainable development and inter-generational equity. Accordingly, we lay down such regime as an interim measure as follows:-

(i)	Failure in revival of water bodies by the land owning agencies till 31.03.2021.	@Rs. 50,000/- per month payable to and to be recovered by DJB who may notify such agencies within one month about this direction.
(ii)	For failure to install rain water harvesting systems by the institutions responsible for such failure.	As per earlier order dated 16.11.2017 in O.A. No. 217 of 2016 Mahesh Chandra Saxena Vs. The Ministry of Urban Development & Ors. @Rs. 5 Lakh per institution required to be paid by educational institutions in terms of the said order will apply to all such institutions as may be specified by the Committed and the amount will be payable to and to be recovered by DJB who may notify such institutions within one month about this direction.
(iii)	Illegal extraction of ground water by the person doing so.	As per earlier order dated 11.09.2019 in O.A. No. 176/2015, Shailesh Singh v. Hotel Holiday Regency as per formula suggested by CPCB payable to and to be recovered by DJB who may notify all concerned by a general order on its website or otherwise within one month about this direction.
(iv)	For failure to use treated water for secondary purposes after 31.03.2021 and use of fresh in lieu thereof by the DJB.	@ Rs. 1 Lakh per month per STP payable to and to be recovered by CPCB who may notify all concerned by a general order on its website or otherwise within one month about this direction. ”

(emphasis supplied)

8. In view of the above, we reiterate our directions for devising suitable effective mechanism for preventing extraction of ground water by way of unauthorized tubewells and wherever such illegalities found, prompt coercive measures must be taken. Illegal extraction of ground water is a criminal offence under the EP Act. Compensation must be recovered on the formula already laid down. It will be appropriate that Chief Secretary, Delhi calls a meeting of all concerned within one month from today and oversees preparation of an appropriate SOP for fixing responsibility on the subject. Ministry of Jal Shakti may also take necessary steps in the matter.

A copy of the order be forwarded to the Chief Secretary, Delhi, Secretary, Ministry of Jal Shakti, Govt. of India, DJB, CPCB, DPCC, Commissioners of all Municipal Corporation of Delhi, all the District Magistrates in Delhi and Justice S.P. Garg, former Judge of Delhi High Court.

List for further consideration on 17.08.2020 along with O.A. Nos. 970/2019, 176/2015 and 496/2016. The dates already fixed in O.A. No. 176/2015 and 496/2016 will stand re-scheduled accordingly.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

May 15, 2020
O.A. No. 685/2019
A

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 176/2015
(M.A. No. 1332/2015)

&

Original Application No. 59/2012
(M.A. No. 34/2016 & M.A. No. 190/2016)

&

Original Application No. 108/2013
(M.A. No. 489/2015)

&

Original Application No. 179/2013
(M.A. No. 866/2014 & M.A. NO. 644/2015)

&

Appeal No. 67/2015
(M.A. No. 652/2015)

And

Original Application No. 484/2015
(M.A. No. 155/2017, M.A. No. 567/2017
& M.A. No. 927/2017)

And

Original Application No. 327/2018
(M. A. No. 1282/2018)

And

Original Application No. 115/2017
(M.A. No. 442/2017)

And

Original Application No. 411 of 2018

And

Original Application No. 613/2017

And

Original Application No. 614/2017

Shailesh Singh

Respondent(s)

Versus

Hotel Holiday Regency, Moradabad & Ors.
With

Applicant(s)

Legal Aid, National Green Tribunal Bar Association

Applicant(s)

Versus

NCT of Delhi & Ors.

Respondent(s)

With

Raj Hans Bansal

Applicant(s)

Versus

Ministry of Water Resources & Ors.

Respondent(s)

With

Apex Chambers of Commerce and
Industries of N.C.T. of Delhi & Ors.

Applicant(s)

Versus

Govt. of NCT Delhi & Ors.

Respondent(s)

With

Vikrant Tongad

Applicant(s)

Versus

Union of India & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Hotel The Oberoi Amarvilas & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Panchsheel Buildtech Pvt. Ltd. & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Central Ground Water Board & Ors. Respondent(s)

With
M/s A-One Mineral Water Industry Applicant(s)

Versus

Central Ground Water Authority & Ors. Respondent(s)

With
Mohd. Javed Asghar Applicant(s)

Versus

M/s Upper Ganges Sugar and Industries Ltd.
(Distillery Unit) & Ors. Respondent(s)

With
Mohd. Javed Asghar Applicant(s)

Versus

State of U.P. & Ors. Respondent(s)

Hearing concluded on: 18.12.2018

Order uploaded on: 03.01.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

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Mr. Anil Kaur, Ms. Kapil Kaur, Ms. Diksha,
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Mr. L.K. Bhushan, Ms. Adity, Advocates
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ORDER

1. Ground water conservation which is the issue for consideration in this case, has attained significance on account of fast depletion of ground water in recent years. Fast depletion of ground water is acknowledged in studies.¹ Ground water depletion is serious cause of concern for human well being.
2. As per publication of NITI Ayog, India is placed at 120th amongst 122 countries in water quality index. Most states have achieved less than 50% of the total score in augmentation of groundwater resources, highlighting a growing national crisis. 54% of India's ground water wells are decreasing in levels and 21 major cities across the country are expected to run out of ground water by 2020. Almost none of the States have built the infrastructure required to recharge groundwater in over exploited and critical areas. Several States such as U.P., Bihar, Rajasthan etc. have not put in place any regulatory framework for managing the groundwater. These states produce 20-30% of India's agricultural output and groundwater accounts for 63% of all irrigation water. Therefore, unsustainable extraction in these states also poses a significant food security risk for the country.²
3. About 60% of the irrigation needs, 85% of rural drinking water needs and 50% of urban water needs are met through ground water. The CGWB has categorised the areas into the following on the basis of availability of ground water resources:

Safe	(<=90%, No decline in water levels)
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¹https://www.researchgate.net/publication/26736936_Satellite_Based_Estimates_of_Groundwater_Depletion_in_India

² Composite Water Management Index: A Tool for Water Management, June 2018, Niti Aayog in association with Ministry of Water Resources, Ministry of Drinking Water and Sanitation and Ministry of Rural Development

Critical	(>70% and <=100%, decline in water levels)
Semi-critical	(<100%, decline in water levels)
Over-exploited	(>100%, decline in water levels)

4. As per another survey, India extracts most ground water. Globally, 25% of total annual global annual water is extracted in India. The extraction level is going up continuously³.

5. Depletion of ground water not only creates crisis for drinking water in absence of inadequate surface water being available in certain areas where there may be drought conditions, but also affects e-flow in rivers and can also increase salinity in soil.

6. The grievance of the applicants in the present applications is that there is fast depletion of ground water in NOIDA and Greater NOIDA, District Gautam Budh Nagar, U.P. There is large scale extraction of groundwater by various construction companies. Directions relating to the water harvesting are not complied with. No measures are properly adopted to stop the fast depleting ground water levels.

7. The Hon'ble Supreme Court considered the issue of ground water conservation and regulation vide the judgement in *M.C Mehta v. Union of India and Ors (1997) 11 SCC 312*. Direction was issued for constitution of Central Ground Water Authority (CGWA) to regulate the subject of conservation of underground water. The said regulatory body was to exercise powers under Section 5 of the Environment (Protection) Act, 1986 to regulate, control and manage drawal of ground water in the country. The main object for the constitution of the Board as an authority was to regulate the indiscriminate boring and withdrawal of

³<https://www.thehindu.com/news/cities/mumbai/the-alarming-levels-of-indias-groundwater/article19253949.ece>

underground water in the country which was needed urgently. The mandate of the authority was to issue necessary regulatory directions with a view to preserve and protect the underground water resources.

8. Based on survey by CGWA, certain areas have been declared as over exploited, critical and semi-critical areas (OCS). According to the applicants, the Central Ground Water Authority constituted in pursuance of the order of the Hon'ble Supreme Court failed to check the unregulated extraction of ground water for commercial purposes including packaging water, use of ground water by builders and hotels for swimming pool etc.

9. The fact that recharge is not taking place is acknowledged by categorization of OCS areas. In OCS areas, unregulated extraction of ground water further adds to the problem. There is nothing to show improvement in water tables in OCS areas on account of efforts or policies of the CGWA calling for review to achieve the goal of ground water conservation. There is a dire need for strict regulatory regime in OCS areas and not to permit use of ground water except for drinking water purposes where supply of drinking water is not otherwise available. Mere making of provision for recharge, without recharge actually happening will not justify grant of any permission for extraction of ground water on such impractical conditions.

10. This Tribunal considered the matter in the last six years on various occasions. It was noted in the order dated 23.04.2015 that ground water level has gone down in NOIDA by 15 mtrs. between 2007-2014. On 26.07.2018, it was noted that even apart from NOIDA, Greater NOIDA, Delhi and NCR, the

situation in OCS region calls for stringent regulation for ground water extraction.

11. Reference was made to order dated 28.08.2018 in O.A No. 176/2015, *Shailesh Singh v. Hotel Holiday, Regency Moradabad & Ors.*, directing the Ministry of Water Resource (MoWR), Government of India, in consultation with the Ministry of Environment, Forest and Climate Change (MoEF&CC) and Ministry of Agriculture (MoA), to review the existing mechanism for effective conservation of ground water resources in OCS. It was directed that the policy framework must include monitoring mechanism by way of provision for coercive measures, consistent with the mandate in the judgement of the Hon'ble Supreme Court of India in *M.C Mehta (supra)*.

12. In the said order the Tribunal noted that:

"11. Availability of groundwater resources as on 31.03.2009 is on CGWA website. 802 over-exploited units, 169 critical units, 523 semi-critical units have been notified for regulation. Authorized officers have been nominated. The guidelines provide that permission to extract groundwater is not given in such areas for any purpose other than the drinking water. The permission is given only if Water Supply Department is not able to supply such water. The NOC is granted subject to conditions laid down in the guidelines. In non-notified areas, NOC is granted for new industries or for expansion, subject to the conditions relating to recycle/re-use.

12. It is further pointed out that as per order of this Tribunal dated 15.04.2015 in the case of 'Krishan Kant Singh Vs. Union of India', this Tribunal issued directions for fresh guidelines and draft of such guidelines is issued w.e.f. 16.11.2015. As per para 8 of the guidelines, all existing industries who have not obtained NOC would apply to CGWA. In the said guidelines, it is mentioned that 162 areas have been notified for regulation but more areas can be

notified periodically. There are 1071 over-exploited units, 217 critical units and 697 semi-critical units. NOC is to be granted for drinking and domestic purposes only in the notified area. In non-notified areas, it is granted for industries, for infrastructure and mining.”

13. It was noted that the Environment (Protection) Act, 1986 had an overriding effect as held in *M.C Mehta (supra)* and no State Legislation could override the Environment (Protection) Act, 1986. Thus, the mandate of CGWA was to override any State regulatory framework. Doing so was the right of CGWA coupled with the duty for achieving the object of the Environment (Protection) Act, 1986.

14. On 12.11.2018, the matter was further considered. After making reference to the 2012 Guidelines issued by the CGWA and draft guidelines dated 16.11.2015, the Tribunal noted following points:

- i. CGWA was repeatedly disowning its responsibility on the plea that regulation of ground water was a State subject, contrary to the mandate in the judgement of the Hon'ble Supreme Court in *M.C Mehta (Supra)*.
- ii. CGWA was failing to regulate drawal of ground water in OCS on the ground that it had not issued a notification except for some areas, and without such notification, there was no need for regulating extraction of ground water even in OCS.
- iii. Extraction of ground water for commercial purposes was being allowed in OCS just by a mechanical condition that the ground water will be recharged, without ensuring compliance of such condition.
- iv. Underground water was being allowed to be extracted for illegal constructions, bottling plants, swimming pools etc. without any

impact study or effective steps for rain water harvesting for recharge of the ground water.

- v. CGWA was repeatedly taking the plea that charges were being collected for permitting drawal of underground water for commercial purposes in OCS against the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles.
- vi. Difficulties of agriculturists needed to be addressed in a phased manner by persuading the agriculturists to switch over to less water consuming crops and to consider use of treated sewage water instead of extraction of fresh underground water, wherever viable.
- vii. Untreated effluents are not to be discharged in the water.

15. Affidavit of Member CGWA, Ministry of Water Resources, has been filed before this Tribunal on 14.12.2018 in compliance of the earlier orders. The affidavit refers to orders dated 22.10.2018, 29.08.2018, 12.11.2018 in O.A.No. 59 of 2012 in *Vikrant Kumar Tongad vs. Union of India & Ors.*, order dated 28.8.2018 and 28.08.2018 in O.A No. 176/2015, *Shailesh Singh v. Hotel Holiday, Regency Moradabad & Ors.* It further states that utilizable water in India is 1137 BCM which comprises of 690 BCM of surface water and 447 BCM of replenishable ground water resources. In the year 2009, about 2700 BCM of ground water was available in deeper aquifers, below the zone of water level fluctuations. Thus, ground water over exploitation is recommended to be restricted to sustainability of ground water by annual replenishment in order to facilitate long term sustainability of ground water. It is further stated that per year extraction is 253 BCM which is 25% of the global ground water extraction. Out of total 6,584

assessment units, 1,034 fall in over-exploited category (where extraction is more than 100% of recharge), 253 fall in critical category (where extraction is 90-100% of the recharge), 681 fall under semi-critical category (where extraction is 70-100% of the recharge) and 4,520 are under safe category (where extraction is 90% of the recharge). About 90% extraction is for agricultural purposes, 10% for drinking, domestic and industrial purposes. Industrial use is 5%. Model building bye-laws 2016 include the provision of rain water harvesting in all new buildings on plots of 100 sq. mtrs. and above. Entire storm water is to be captured for water harvesting through suitable structures in all public and open spaces of more than 500 sq. mtrs. Buildings having minimum discharge of 10,000 liters and above are required to have waste water recycling system for horticulture purposes. 'Mission Water Conservation' has been introduced by the Ministry of Agriculture, Government of India. Inter-Ministerial Committee has been constituted under the chairmanship of the Secretary, Ministry of Water Resources, Government of India. The Ministry is also carrying out training programme and Information, Education & Communication (IEC) activities for awareness. The Department of Land Resources is implementing water-shed development projects. Certain States have taken initiatives including Punjab Preservation of Subsoil Water Act, 2009 which ban early sowing of paddy nursery and transplantation of saplings. Maharashtra Groundwater (Development and Management) Act, 2009 prohibits drilling of deep wells within for agriculture or industrial usage, pumping of ground water for deep well of depth of 60 mtrs. or more. The CGWA has issued advisories and it requires taking of NOC for ground water withdrawal but the agriculture section is not subjected to ground water regulation on account of socio-

economic implications. The steps taken by the CGWA include directions for rooftop rain water harvesting systems, ground water recharge measures along the National highways, State national highways, railway tracks, etc., artificial recharge in over-exploited areas, large and medium industries using ground water to take up the ground water conservation measures. CGWA imposes condition while granting NOC for withdrawal of ground water in States/UTs which do not have functional ground water authorities. NOCs are granted online in a user-friendly manner. Industries in safe category are exempted from NOC but in OCS areas, condition for grant of NOC is rain water harvesting/ground water recharge measures and NOCs are denied in over-exploited areas. Non-water intensive industries drawing ground water up to 100 m³/day are exempted from NOC in critical areas, non-water intensive industries drawing up to 50 m³/day are exempted from NOC. (In over-exploited areas, non-water intensive industries are exempted which are drawing ground water up to 25 m³/day. Permitted water extraction is restricted to 60% of the proposed recharge. Ground water extraction should not exceed 1,500m³/day for each unit. In semi-critical areas, ground water extraction is restricted to 200% and 100% of proposed recharge for non-water intensive and water intensive industries respectively. In critical areas, ground water extraction is permitted up to 100% and 50% of proposed recharge for non-water intensive and water intensive industries respectively. In over-exploited areas, ground water extraction is permitted up to 50% of the proposed recharge). Till 2015, existing industries were not required to seek any NOC. In compliance of order of the Tribunal dated 15.04.2015, existing industries were brought within the purview of NOC with effect from 16.11.2015.

16. We may now refer to the Notification dated 12.12.2018, issued by the Ministry of Water Resources, River Development and Ganga Rejuvenation under Section 3(3) of the Environment (Protection) Act, 1986. Some of the striking salient features of the notification are as follows:

- i. Exemption of individual households to draw ground water from single dug well/bore well/tube well through delivery pipe of upto 1" diameter and certain other categories, even if there is an existing supply of drinking water.
- i. Beyond the said exemption, ground water withdrawal can be permitted on the basis of NOC where water supply is not adequate subject to certain conditions.
- ii. Infrastructural projects including water supply agencies can be allowed to get NOC and the said industries are in Annexure-VI i.e.:

Indicative List of Infrastructure projects

<i>Residential apartment</i>
<i>Residential township</i>
<i>Office building</i>
<i>School</i>
<i>College</i>
<i>University</i>
<i>Industrial Area (Drinking use)</i>
<i>SEZ (Drinking use)</i>
<i>Metro Station</i>
<i>Railway Station</i>
<i>Bus Depot</i>
<i>Airport</i>
<i>Seaport</i>
<i>Highway infrastructure</i>
<i>Fire station</i>
<i>Warehouse</i>
<i>Business Plaza</i>
<i>Malls & Multiplex</i>
<i>Hospitals</i>
<i>Nursing Homes</i>
<i>Water Park/ Theme Park/ Amusement Park</i>
<i>Resort</i>
<i>Hotel/ Restaurant/ Food Plaza</i>
<i>Holiday home/ Guest house</i>
<i>Banquet Hall/ Marriage Gardens</i>
<i>IT Complex</i>
<i>Logistics & Cargo</i>
<i>Clubs</i>
<i>Trade Centre</i>

- iii. Other industries can be granted NOC through energized means including industrial mining/infrastructure projects, industries mining projects and infrastructure projects requiring dewatering or use of ground water for construction.

17. Relevant provisions in the impugned notification are quoted for ready reference:-

“2.1 Exemption

1. *The following categories of users shall be exempted from obtaining NOC for ground water abstraction:*

- (i) *All users drawing/proposing to draw ground water through non-energized means (bucket & rope, hand pump, mhote etc.)*
- (ii) *Individual households drawing/proposing to draw ground water from a single dug well/ bore well/ tube well through delivery pipe of upto 1” diameter.*

xx.....xx.....xx

2.2.1 Individual households:

Individual houses drawing/proposing to draw ground water through more than one functional bore well/ tube well / dug well or drawing ground water through delivery pipe of more than 1” diameter from a single ground water abstraction structure shall be required to seek NOC for ground water withdrawal under this category.

xx.....xx.....xx

2.2.2 Infrastructure projects /industries/ mining projects / public water supply agencies / others requiring water only for drinking & domestic use

An indicative list of infrastructure projects to be considered under this category is given in Annexure VI. NOC for ground water withdrawal for drinking and domestic purpose only for infrastructure projects/ industry/ mining projects/ water supply agencies / others.

xx.....xx.....xx

2.3 Industrial /Mining/ Infrastructure projects

All industries / mining / infrastructure projects, whether existing / new/ under expansion and drawing/ proposing to draw ground water through energized means shall need to obtain NOC for ground water withdrawal from Central Ground Water Authority.

xx.....xx.....xx

2.3.1 Industries

NOC to industries shall be granted only for such cases where government agencies are not able to supply the desired quantity of water.
XX.....XX.....XX

2.3.2 Mining Projects

All existing as well as new mining projects need to obtain NOC for mine dewatering and / or ground water withdrawal through wells, if any, from Central Ground Water Authority.
XX.....XX.....XX

2.3.3 Infrastructure projects requiring dewatering or use of ground water for construction

New infrastructure projects/ residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek NOC from CGWA before commencement of work.
XX.....XX.....XX

2.4 Agricultural Sector

Agriculture sector is the backbone of the Indian economy. Since livelihood of farmers is dependent on agriculture, they shall be exempted from obtaining NOC for ground water withdrawal from the CGWA. Concerned State Departments (Agriculture / Irrigation / Water Resources) shall be required to undertake suitable demand and supply side measures to ensure sustainability of ground water sources.
XX.....XX.....XX

2.5 Abstraction of Saline/ contaminated ground water

Abstraction of saline/ contaminated ground water for use by industries dewatering by infrastructure / mining projects including those located in over-exploited areas would be encouraged.
XX.....XX.....XX

2.6 Water Conservation Fee (WCF)

.....all ground users would have to pay WCF based on quantum of ground water extraction as per details given below.
XX.....XX.....XX

- I. Drinking & Domestic use
 - II. Packaged drinking water units drawing more than 50 m³ per day/ soft drinks/ breweries/ distilleries
 - III. Packaged Drinking Water units (drawing less than 50 m³ per day) and other industries
 - IV. Mining / infrastructure dewatering projects
- XX.....XX.....XX

5. Delegation of powers to monitor compliance of NOC Conditions

Central Ground Water Authority has appointed the District Magistrate/ District Collector / Sub Divisional Magistrates of each Revenue District and Regional Directors of CGWB through Public Notice as Authorized officers, who have been delegated the power to monitor compliance, check violations and seal illegal wells, launch prosecution against offenders etc. including grievance redressal related to ground water. In cases of violation such as illegal ground water withdrawal, the District Magistrate/ District Collector/ Sub Divisional Magistrate, subject to his/her satisfaction, shall ensure discontinuation of the same by the seizure of drilling rig, sealing of tube well/ bore well if so constructed and also disconnection of electricity supply to the energised well.”

18. We have heard the learned Counsel for the parties.

19. Mr. Panjwani, learned Senior Counsel, appearing for some of the applicants, submitted that the MoWR has clearly acted contrary to the mandate of the judgement of the Hon'ble Supreme Court in *M.C Mehta (Supra)* as well as orders of this Tribunal requiring regulation of ground water, particularly for the OCS areas. The CGWA cannot surrender its responsibility on the ground that the States which had their own regulation need not be regulated by CGWA. In, the revised guidelines, the situation has been made worst by liberalizing the regime of control against extraction of ground water in OCS areas even for commercial/industrial purposes. There is no study undertaken of the likely impact for such liberalization on the ground water resources and there is no projected estimation as to how the revised policy will result in better conservation of ground water which is necessary for compliance of the Precautionary Principle, Sustainable Development Principle as well as Inter-generational Equity Principles. It seems that the revised policy is a sort of knee jerk reaction in response to observations of this Tribunal. It appears that MoWR has not undertaken any strength, weakness, opportunities and threats (SWOT) analysis to ascertain the weaknesses of old policy and

the threat scenarios it offers. It is silent on robust institutional mechanism on surveillance and monitoring of its ground implementation. It rather abdicates its authority in form of delegation to field units without any checks and balances to regulate ground water extraction, on scientific lines and environmentally sustainable manner. Despite stating that the guidelines shall be applicable Pan-India, the notification does not cover the States of Kerala, Karnataka, Andhra Pradesh, Telangana, West Bengal, Arunachal Pradesh, Himachal Pradesh, Jammu & Kashmir and the UT of Delhi. The serious flaws pointed out are:

- i. Liberally permitting extraction of ground water and justifying the same on the plea that charges have been prescribed even in OCS areas for commercial/industrial purposes.
- ii. Liberally permitting extraction of ground water on the ground that condition was imposed for rain water harvesting without any data of effective compliance of such conditions or even possibility of this being done.
- iii. Having exempted categories in OCS areas for purposes other than drinking water, including swimming pools, commercial and industrial uses. Reference has been made to the statistics to show deteriorating status of conservation of water and crises of access to water being available to the common man, as well as its requirement for ensuring e-flow in the rivers.

20. It is clear from the above that, rather than laying down stricter norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring, extraction of ground water has been liberalized adding to the crisis unmindful of the ground situation and likely impact it will have on environment. No data

has been furnished to justify the policy reversal by way of uncontrolled liberalized drawal of groundwater in OCS areas.

21. The provisions of the impugned notification show that drawal of ground water has been, for all practical purposes, made unregulated in all areas, including the OCS areas.

22. The so called regulation is illusory. The so called conditions are incapable of meaningful monitoring, as shown by past experience also.

23. The water conservation fee virtually gives licence to harness ground water to any extent even in OCS areas.

24. There is no institutional mechanism to monitor removal and replenishment of ground water.

25. Delegation provision is virtual abdication of authority.

26. There is no check on injection of pollutants in the ground water in the impugned notification. There is no provision with regard to check on water quality and its remediation, if there is contamination.

27. We are satisfied that the Notification dated 12.12.2018 tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles is unsustainable in law and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India.

28. Accordingly, the impugned Notification may not be given effect to in view of serious shortcomings as pointed above so that an

appropriate mechanism can be introduced consistent with the needs of environment.

29. The MoEF&CC is directed to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured for as well as to sustain the floodplains of rivers in terms of e-flows and other water bodies. The MoEF & CC and MoWR may finalize the issue of subject remain *inter-se* with regard to ground water reserve and its quality.

30. The Committee may be constituted in two weeks and report of the Committee may be furnished to the MoEF &CC and this Tribunal in two months by e-mail at ngt.filing@gmail.com.

31. The Committee may also indicate the projection of its impact study in light of projected data for the next 50 years (in phased manner with action plan for each decade). Thereafter, fresh guidelines be issued by the concerned Ministry and the report furnished to the Tribunal on or before 30.04.2019.

32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per

law. All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.

33. The Expert Committee report, the new policy and challenge to orders of authorities, if any, will be considered on the next date.

The matter be put up for above consideration in the first week of May, 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 03, 2019
Original Application No. 176/2015
(M.A. No. 1332/2015) and other connected matters
AK

