

BEFORE THE PRINCIPAL BENCH OF THE NATIONAL GREEN TRIBUNAL

Application NO. 138 OF 2023

IN THE MATTER OF:

Sanjaya Kumar Mishra ...Applicant

VERSUS

Central Ground Water Authority & Ors. ...Respondents



Applicant

Sanjaya Kumar Mishra
115, Sagar Enclave, Sector 104
Near Daulatabad Road MGF Toyota
Gurugram 122001
Mobile No. 9818326647
Email: sanjayakmishra@gmail.com

Date: 05-09-2023

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REPLY IN THE ORIGINAL APPLICATION:**MOST RESPECTFULLY SHOWETH:**

I, Sanjaya Kumar Mishra, S/o Sh. Nilamani Mishra Mishra, currently residing at House No. 115, Sagar Enclave, Sector 104, Near Daulatabad Road MGF Toyota, Gurugram 122001, do hereby solemnly affirm and declare that I am the Applicant in the captioned matter. I am also an Editor of India's First Environmental Weekly Newspaper, namely "Enviro Annotations" to spread awareness of environmental laws, significant issues pertaining to pollution, waste management, and point out gaps for corrective actions to ensure green growth. Since 1994, I have been engaged

in various activities of environmental impact assessment, environmental audits, environmental monitoring and environmental protection.

That I have read and understood the Report filed by the Joint Committee and the reply to the same is as under.

1. The **Observation (b)** in the Joint Committee Report states that “During inspection, unit concurred that the premise had two nos. of tube-wells, of which one was sealed in 2009 itself after notice issued from HSIIDC to take water supply from HSIIDC and dismantle the unauthorized tube well. Copy of HSIIDC letter dated 23.01.2009 is attached at Annexure II.”

The document annexed is a Show Cause Notice issued by the Haryana State Industrial and Infrastructure Development Corporation Ltd. (HSIIDC), which was already submitted in the Application (as Annexure-A/3). And, **there is no evidence submitted in the Report in support of the claim that M/s Mitsui Kinzoku Component India Pvt. Ltd., Plot No. 242 243, Sec.-3,**

Bawal, HSIIDC, Rewari (referred as “COMPANY” hereafter) has complied with the HSIIDC Notice.

On the contrary, it is evident from HSIIDC letter dated 03.07.2023 issued to Haryana State Pollution Control Board (HSPCB) at Page No. 52 Point No. 1 makes it clear that the Company has not complied with the HSIIDC Notice Dated 23.01.2009.

2. The **Observation (c)** in the Joint Committee Report states that the Company has applied for abstraction of Ground Water and NOC was issued by CGWA on Date 23.08.2011 was also closed by the Company itself, citing a reference of the letter dated 13.03.2023 submitted by the Company to HSIIDC. However, there is no such information provided in the said letter. However, again, HSIIDC letter dated 03.07.2023 at Page No. 52 Point No. 2 states “The borewell has been sealed by the HSIIDC.

3. The **Observation (d)** in the Joint Committee Report shows that the Company has dismantled the flow-meter fitted with the tube-well in March 2023. Further, under the paragraph with heading **FLOW METER** it is stated that **“As flow meter installed at the water withdrawal point was dismantled by the unit in March, 2023, and hence real-time data on water withdrawal volumes could not be ascertained.”**

This is tampering of flow-meter and destroy evidence. As per Hon'ble NGT Order dated 17th October 2022 in OA No. 438/2018 (that quotes a judgement of Hon'ble Madras High Court) at 37 (4) reads as **“The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.”** and (7) reads as **“The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under**

Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.”

Extracts from the Order annexed as Annexure-A/1.

The authorities have failed to protect the flow-meter and also have not reported if they have initiated any criminal proceedings.

4. Environmental Compensation:

(4.1) The environmental compensation is based on log book records only. According they have assumed that the Company has not abstracted ground water from year 2015 to 2017. However, as per Directions of Hon'ble NGT in the Order dated 6th March 2023 State PCB was made the nodal agency for coordination and compliance. Water Consumption and water sourcing data are not verified from HSPCB records pertaining to the Company; such as Consent Application,

Consent to Operate (CTO) and Environmental Statements for the years under violation.

(4.2) The environmental compensation has been calculated for the period from 01.01.2018 to 31.03.2023, considering that the Company did not applied afresh after 31st December 2017 as per above Public Notice therefore withdrawal of ground water without NOC after 31.12.2017 will be treated as illegal withdrawal.

However, taking into account the point No. 8 and 9 of the NOC was issued by CGWA on Date 23.08.2011, and CGWB RTI reply letter dated 06.10.2010, it is evident that the Company was illegally withdrawing groundwater from 23.08.2012. Further, taking into account the HSIIDC letter dated 03.07.2023, the company was illegally withdrawing groundwater from 2005 till 22.08.2011.

(4.3) The Environmental Compensation rate (ECRGW) has been taken as Rs. 40 per cubic meter of groundwater withdrawal, **while it is Rs. 80 per cubic meter in Over- exploited area as per CGWA notification dated 24th September, 2020**

S.O. 3289(E). Proof of over-exploited status already submitted
in the Original Application.

Verification: I, Sanjaya Kumar Mishra (DOB 4th March 1969), S/o Shri Nilamani Mishra, the applicant, having contact address 115, Sagar Enclave, Sector 104, Near Daulatabad Road MGF Toyota, Gurugram 122001, Haryana; do hereby declare that what is stated in the application is true to the best of my information and belief.


(Sanjaya Kumar Mishra)

Applicant

Date: 05-09-2023

Annexure-A1

Extracts Page No. 14 and 15 of Hon'ble NGT Order in Original Application No. 438/2018 pertaining to
Arti versus Central Ground Water Authority & Ors. Dated: 17.10.2022

water quality, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.”

37. In a recent judgement, Madras High Court⁹ considered the issue of regulation of the groundwater¹⁰. It was also observed that drawal of groundwater without authority will be criminal offence of theft and mischief under Section 379 and 425 IPC. Such extraction must be scientifically monitored District wise with punitive consequences against violations. Following order was passed:

- “(1) The impugned order of regulation issued by the 1st respondent in G.O.Ms.No.142, dated 23.07.2014 is confirmed.
- (2) The respondents are directed not to grant licence, No Objection Certificate (NOC) or permission for the commercial establishments / person to extract ground water for commercial usage in the absence of fixation of water Flow Meter on the Board outlet, which is to be inspected.
- (3) The respondents are directed to inspect the functional quality and other established standards of the Flow Meters fixed by the persons, who all are applying for permissions / No Objection Certificate (NOC) and at the time of granting permission / No objection Certificate (NOC), the Flow Meter should be sealed properly by the respondents / Public Works Department (PWD) officials.
- (4) The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.
- (5) The respondents are directed to measure the quantum of water extracted by the establishments / persons by taking meter reading every Month and accordingly, the same is to be regulated.
- (6) The respondents are directed to follow all other terms and conditions fixed for grant of licence / permission for Extraction of Ground Water for commercial usage as per the guidelines issued in G.O.Ms.No.142, Public Works Department dated 23.07.2014.
- (7) **The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.**
- (8) **The respondents are directed to suspend the licenses by issuing show cause notices and by**

⁹ Dated 03.10.2018, M/S. Sarooja Agro Foods v. The Chief Engineer

¹⁰ ¶ 69 to 82

providing an opportunity to the persons, who have involved in the offence of theft or violation of all other conditions stipulated in the Government Regulations, or if a criminal case is registered. If any person is convicted, then he shall be permanently debarred from getting licence for Extraction of Ground Water.

- (9) **The District Collectors of all the Districts in the State of Tamil Nadu are directed to issue suitable directions / orders to the Revenue Divisional Officer, Tahsildars and all other officials concerned to inspect and monitor the Extraction of Ground Water by the persons for commercial usage.**
- (10) *The District Collectors of all the Districts are directed to constitute monitoring committees to monitor the Extraction of Ground Water by the individuals for commercial purposes.*
- (11) *Each Monitoring Committee appointed by the District Collector concerned, shall consists minimum of five persons and the Committee is empowered to monitor the Extraction of Ground Water for commercial purposes by the individual persons and commercial establishments.*
- (12) **The Monitoring Committee shall consist of the following persons:**
- (i) **The District Environmental Engineer from Pollution Control Board of the State of Tamil Nadu.**
 - (ii) **One qualified Public Works Department (PWD) Engineer from Water Resources Department.**
 - (iii) **The Assistant Director of Zoology and Mining of the State Government.**
 - (iv) **The Revenue Divisional Officer of the concerned locality.**
 - (v) **One nominee from the office of the Chief Engineer, Central Ground Water Board of the Government of India.**
- (13) *The Monitoring Committee is entitled to collect proofs and documents in respect of the Extraction of Ground Water illegally and excessively by any person and submit a complaint / report to the District Collector concerned, who in turn, after verifying the same, shall register a complaint with the Jurisdictional Police for registering a criminal case under the provisions of Indian Penal Code (IPC).*
- (14) *It is needless to State that, only in the event of compliance of the regulations and conditions imposed in this order, the persons / establishments shall be allowed to extract the Ground water for commercial usage or for commercial purposes.*
- (15) *The 1st respondent / Secretary, Public Works Department is directed to issue consolidated instructions in this regard based on the order passed in the present*