

Item No. 01

Court No. 1

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

(By Video Conferencing)

Execution Application No. 30/2021

IN

Original Application No. 32/2020

Varun

Applicant

Versus

Central Pollution Control Board & Ors.

Respondent(s)

Date of completion of hearing and reserving of order: 01.08.2022

Date of uploading of order on the website: 18.08.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

ORDER

1. Grievance in this application is that despite order of this Tribunal dated 05.03.2021 in OA No. 32/2021, *Varun v. CPCB & Ors.*, finding that the industrial units in question functioning at Barhi Industrial area in District Sonapat, Haryana were violating the environmental norms by illegally extracting ground water, remedial action has not been taken. Compensation was assessed but instead of being recovered and spent for restoration, the same has been waived arbitrarily for extraneous reasons. The list of the alleged violators and the amount of compensation already assessed for the violations by the State PCB has been mentioned in the application as follows:-

a.	M/s. Shivam Enterprises	:	₹74,88,000/-
b.	Addingo Knit Creations	:	₹8,67,24,000/-
c.	Vihan Industries	:	₹81,39,600/-
d.	Spectrum Washing	:	₹05,22,72,000/-
e.	Anand Knit	:	₹76,91,200/-
f.	Shadex Creations	:	₹15,17,30,400/-
g.	Color Zone	:	₹65,60,640/-
h.	M.S. Creations	:	₹2,86,07,040/-
i.	Tabi Creations	:	₹5,44,32,000/-
j.	M.K. Dyeing	:	₹1,22,40,000/-
k.	Flora Dyeing House	:	₹8,68,32,000/-
l.	Shri Sidhi Vinayak Tex Color	:	₹8,70,48,000/-
m.	Fine Dyeing	:	₹2,23,20,000/-
n.	Denim Art	:	₹60,48,640/-
o.	M/s. Denimo Design	:	₹05,70,240/-
p.	Denim Craze	:	₹04,05,41,520/-
q.	New Garment	:	₹03,18,05,400/-
r.	Modern Dyeing	:	₹17,89,17,120/-
s.	M/s. Jyoti Dhaga Udhog	:	₹38,88,000/-
t.	Nutex Knit Fab	:	₹73,44,000/-
u.	Sonu Enterprises	:	₹6,50,16,000/-
v.	Generous Textile	:	₹71,01,120/-
w.	Sidhi Vinayak Apparel	:	₹43,16,000/-
x.	Supreme Fashion	:	₹25,07,920/-”

2. Vide order dated 21.10.2021, the Tribunal considered the grievance and directed as follows:-

“Issue notice by email to the State PCB. Response be filed within one month. The State PCB may also put the affected parties to notice of these proceedings for their response if any within one month. The applicant may serve papers on the affected parties and file affidavit of service within one week.”

3. Accordingly, the State PCB has filed its reply on 30.07.2022. It is stated that initially compensation was assessed by the State PCB on account of the violations of the units in question in the matter of extraction of ground water. Against such assessment, representation dated 25.02.2021 was filed by Industrial Association, HSIIDC BARHI named as Barhi CETP Association before the Deputy Commissioner, Sonapat to the effect that they have already applied for NOC before 31.03.2020. The Deputy Commissioner sought response of the PCB and the Deputy Commissioner formed a Committee of Hydrologist, Rohtak &

Regional Officer, HSPCB, Sonapat under the supervision of Additional Deputy Commissioner. The Committee held that units withdrawing ground water without valid NOC were liable to pay compensation but if they had applied for NOC before 31.03.2020, the compensation was not liable to be paid. "Haryana Water Resource Authority" (HWRA) was constituted for granting such permissions and time for filing applications was extended upto 22.12.2021. 21 units applied for permission before 31.03.2020 while five applied after 31.03.2020. Two units have been closed. The Committee held that those who applied for permission before 31.03.2020 may not be charged any compensation and those who have applied after 31.03.2020 may be charged fixed compensation of Rs. 1 lakh, besides sealing the borewells of the units who applied after the last date. Out of 28 units, 25 have been granted NOC, the remaining three are lying closed. Monitoring of CETP has been done. As per joint inspection conducted on 04.01.2022, sample from discharging point of CETP was found to be non-compliant. Similar, non-compliance was seen on 24.03.2022 near plot no. 460, HSIIDC Barhi, Sonapat and final discharging point of CETP, HSIIDC Barhi into drain no. 6. Compensation has been levied for such violations.

4. Reply has also been filed by respondents (5, 6, 7, 8, 9, 10, 12, 13, 15, 18, 19, 20, 21, 22, 23, 25, 28, 29, 30, 31, 32) to the effect that the units in question applied for NOC within the timeline and NOCs had been granted. Thus, no compensation is liable to be paid.

5. We have heard learned Counsel for the parties. Contention of the applicant is that liability to pay compensation cannot be waived only on the ground that application for permissions are filed by any specified date and such permissions are later granted. Accountability has to be fixed for

the past illegal extraction impacting environment when the area is ranked as 'over exploited' by the CGWA. Reference has been made to Annexure-R/4 to the report of the State PCB filed on 04.03.2021, which is a certificate of exemption for ground water withdrawal issued by the CGWA showing that the area in question is over exploited. The same is quoted below for ready reference:-

Government of India
Ministry of Jal Shakti
Department of Water Resources,
River Development & Ganga Rejuvenation
Central Ground Water Authority

Certificate of Exemption for Ground Water Withdrawal

<i>Project Name</i>	<i>Oasis Texfab India</i>		
<i>Project Address</i>	Plot No. 500 Hsiidc Phase II Barhi Sonipat		
<i>Town:</i>	Bari (4)	Block:	Ganaur
<i>District:</i>	Sonipat	State:	Haryana
<i>Pin Code:</i>			
<i>Communication Address:</i>	<i>Plot NO. 500 Hsiidc Phase-ii Barhi Sonipat, Ganaur, Sonipat, Haryana - 131101</i>		
<i>Address of CGWB Regional Office :</i>	<i>Central Ground Water Board North Western Region, Bhujal Bhawan, Plot No. 3b Sector – 27-a, Chandigarh, Chandigarh- 160019</i>		

- | | | | |
|---|---|--------------------------|------------------------|
| 1. Application No.: 21-4/3254/HR/IND/2020 | 2. Category: Over Exploited
(GWRE 2017) | | |
| 3. Project Status: Existing Project | 4. Valid From | 31/12/2020 | |
| 5. Ground Water Abstraction Permitted: | | | |
| <i>Fresh Water</i> | <i>Saline Water</i> | <i>Dewatering</i> | <i>Total</i> |
| <i>m3/day m3/year</i> | <i>m3/day m3/year</i> | <i>m3/day m3/year</i> | <i>m3/day m3/ye</i> |
| 9.00 | | | |

This is to certify that as per information furnished by the applicant, M/s OASIS TEXFAB INDIA comes under Micro and Small Enterprises category and has ground water withdrawal of less than 10 cum/day. As per S.O. 3289(E) dated 24/09/2020 by Department Of Water Resources, River Development And Ganga Rejuvenation, Guidelines to regulate and control ground water extraction in India, 2020 Micro and small Enterprises drawing ground water less than 10 cum/day are exempted.

The firm is exempted from seeking NOC

This certificate is generated based on information provided by the applicant, CGWA has not verified the claim made by applicant. Any false information furnished by the applicant, shall invite legal action against him/her as per S.O. 3289(E) dated 24/09/2020."

6. The units in their reply have annexed Public Notices dated 17.06.2021 issued by the Ministry of Jal Shakti dated 15.10.2019, 26.10.2020 and 17.06.2021. As per Notice dated 15.10.2019, if NOC is not applied for, compensation is liable to be paid. As per Notice dated 26.10.2020, it is stated that in terms of Guidelines for regulation of ground water dated 24.09.2020, Micro and Small Enterprises (MSEs) drawing less than 10 KLD of ground water are exempted from NOC. Others have to pay ground water extraction charges except those exempted. Those who have obtained NOC will be eligible for rebate of 50% of the extraction charges. Digital water flow meters are to be installed. As per Notice dated 17.06.2021, there is provision that no compensation is liable to be paid in certain situations. The said provision is :

“No Environmental Compensation shall be imposed on such users if the said report is submitted in the prescribed time. The Environmental Compensation already paid by the project proponents shall be adjusted in the Abstraction/restoration Charges of the unit for subsequent years.”

7. It remains undisputed that the units did extract ground water without any permission for which compensation was assessed. Question is whether waiver of thereof is permissible on the ground of subsequent filing of application and grant of permission. We are prima facie of the opinion that once there was illegal extraction of ground water, damage to environment is required to be restored. It is not within the purview of CGWA to exempt liability to pay such compensation.

8. Present proceedings are for execution of order 05.03.2021 in Original Application No. 32/2021 whereby matter was disposed of in view of action taken by the State PCB, which has been later revised. Case of the execution- applicant is that there is no basis of revision while stand of the respondents is that basis is CGWA notices. However, there was no

adjudication of validity of such notices of the CGWA in absence of which going into this question in execution proceedings may be inappropriate and proper course may be to restore the OA on that ground and then to go into the issue.

9. At the time of concluding the hearing on 01.08.2022, we gave liberty to the parties to file written submissions. It is not necessary to express any final opinion on the said submissions as procedurally we consider adjudication of the issue may be after notice to necessary parties, who are not presently before us. The same may be gone into in the OA instead of in Execution Application. We propose to restore OA to original position for this purpose.

10. As already noted, the issue which has emerged in EA is validity of exemption from compensation and permission for extraction of groundwater in over exploited area. The said issue could not be finally gone into in view of the stand of the State PCB that remedial action had been taken which was later withdrawn.

11. The matter is primarily governed by judgment of the Hon'ble Supreme Court in *M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312*, wherein approach to be adopted to tackle the falling groundwater level was laid down. The Hon'ble Supreme Court observed that management of water resources has to be to achieve sustainable development goal which requires legal intervention based on the principle of inter and intra-generational equity. This further required constitution of a regulatory authority with the mandate of planning for sustainable water resource management, land use plans, including agricultural practices, human settlement patterns and industrial typology based on water supportive capacity, encouraging judicious use of water resources, reviewing

groundwater level and adopting appropriate strategy, ensuring minimum e-flow in the rivers, appropriate reuse of treated sewage for agriculture or industrial processes, augmenting traditional water retaining structures, conserving wetlands, promoting rain water harvesting, arresting decline of snowline, protecting catchment areas, implementation of afforestation programmes and other measures.

12. The Tribunal considered the issue in the light of the said approach inter-alia vide order dated 20.07.2020 in OA No. 176/2015, *Shailesh Singh vs. Hotel Holiday Regency, Moradabad & Ors.* The Tribunal referred to the constitution of CGWA and its working. It was noted that CGWA had failed to regulate drawl of groundwater even after mapping the water scarce areas as 'over exploited', 'critical' and 'semi-critical'. The extraction of groundwater for commercial/industrial purposes was being allowed even in over exploited area where recharge was not taking place, defeating the 'sustainable development' principle. There was no effective regulatory framework to assess the extent of replenishment which was a condition for permitting extraction of groundwater. It was such failure that was resulting in further depletion of groundwater tables. Though there were provisions for rain water harvesting and other measures, the compliance of such policies remained a challenge. Mechanical imposition of conditions which were never monitored was another failure due to which depletion of groundwater could not be checked. Liberalized extraction of ground water for commercial purposes in 'over exploited' areas without ensuring replenishment was not conducive to sustainable development and defeated the directions of the Hon'ble Supreme Court. No adequate compensation was recovered for illegal extraction of groundwater. Liberalized policies encouraged violations. Result was further scarcity of drinking water. The Tribunal constituted a Committee

to study measures to prevent depletion of groundwater and to check unauthorized extraction and mechanism to deal with the violators sternly. It was, however, noted with disappointment that there was no satisfactory plan to control depletion of groundwater or to discourage the violations of laid down norms. There was practically no monitoring of compliance. The core issues the Tribunal considered included absence of institutional monitoring mechanism, study of impact in the light of projected data for next few decades and effective plan for preventing depletion and unauthorized extraction of groundwater. It was observed that permitting extraction of groundwater required appraisal of availability, justification and extent of groundwater which could be allowed to be extracted and conditions subject to which such extraction could be allowed. It was held that in view of principles laid down in *Vellore Citizen's Welfare Forum v. Union of India & Ors.* (1996) 5 SCC 647,¹ Public Trust Doctrine laid down in *M.C. Mehta v. Kamal Nath & Ors.*² (1997) 1 SCC 388, sustainable development principle laid down in *A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) & Ors.*³, (2001) 2 SCC 62, no exemption could be granted from accountability being fixed for illegally extraction of groundwater. The Tribunal also noted that deep underground water belongs to the State as laid down in (2004) 10 SCC 201, *State of W.B. v. Kesoram Industries Ltd. & Ors.* and illegal extraction of water was amounted to theft under Section 379/425 IPC as held by Madras High Court in judgment dated 03.10.2018 in *M/S. Sarooja Agro Foods v. The Chief Engineer.* The Tribunal accordingly issued following directions:

“xxxxxx.....xxx
 39. In the light of the above discussion, we direct as follows:

¹ ¶ 11 to 15

² ¶ 25 & 34

³ ¶ 44

- a. MoJS may ensure requisite manning and effective functioning of CGWA so as to ensure **sustainable ground water management** in terms of the Hon'ble Supreme Court mandate by which CGWA was created.
- b. Let CGWA and MoJS comply with the directions of this Tribunal in orders dated 3.1.2019, 7.5.2019 and 11.9.2019, to have a meaningful regulatory regime and institutional mechanisms for ensuring prevention of depletion and unauthorized extraction of ground water and sustainable management of groundwater in OCS areas. **Regard must be had to water availability and safe levels to which its drawal can be allowed, especially for commercial purposes, based on available and assessed data in each "Assessment unit"**. Procedures for assessment of individual applications and institutional mechanism may be clearly laid down.
- c. As per orders dated 3.1.2019, undertaking an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise).
- d. There must be **no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual Assessment units in cumulative terms covering carrying capacity aspects by an expert committee**. Such permission should as per Water Management Plans to be prepared in terms of this order based on mapping of individual assessment units. Any permission should be for specified times and for specified quantity of water and not in perpetuity, and be necessarily subject to digital flow meters which cannot be accessed by proponents, with mandatory annual calibration by authorized agency at proponents' cost. **An annual review by independent and expert evaluation must audit and record ground water levels as well as compliance with the conditions of the permission**. Such audits must be published online for transparency and to track compliance and year-on-year change in ground water levels, and swift action taken against those who fail audit, including withdrawal of permission, blacklisting, initiation of prosecution and recovery of deterrent compensation as per CPCB regime. Records must be maintained online and for a sufficient and reasonable time.
- e. As observed in para **Error! Reference source not found.(a)** and **Error! Reference source not found.(a)** above, **all OCS assessment units must undergo water mapping. Water Management Plans need to be prepared for all OCS assessment units in the country based on the mapping data, starting with**

Over-exploited blocks. The Water Management Plans, data on water availability or scarcity and policy of CGWA must be uploaded on its website for transparency and public involvement. Such exercise may be done expeditiously, preferably within next three months.”

13. It is a matter of regret that inspite of the said judgment which attained finality, the situation remained unchecked and a fresh notification dated 24.09.2020 was issued purporting to regulate and control groundwater abstraction but in substance further liberalizing the same, encouraging illegal extraction of groundwater. The Tribunal vide judgment dated 25.02.2020, in OA No. 69/2020, *Sushil Bhatt vs. Moon Beverages Ltd. & Ors.* dealt with the issue in continuation of the earlier proceedings and directions. It was observed:

“xxxxxx.....xxx

269. Unfortunately, **Guidelines 2020**, though have sought to meet some of the infirmities, pointed out by Tribunal, but the crucial infirmities, irregularities and the areas uncovered in the earlier Guidelines, pointed out by Tribunal in various orders, still have not been taken care. Guidelines 2020 suffers the same shortcomings, causing constant depletion of ground water level across the country, including State of UP, and in particular, district Gautam Buddha Nagar and Ghaziabad where units of PP-1 to 3 are located.

270. CGWB, MOWR,RD&RR, has published '**GROUND WATER YEAR BOOK UTTAR PRADESH (2019-2020)**' in April 2021. It is said therein that declining trend is observed in 72.30% of the monitoring wells (556) covering ten years period. Decline of 0-20cm/yr. is commonly observed in 43.30% wells followed by 20-40cm/yr. in 16.64% >40cm/yr. in 12.35%. The low decline is spread all over the State but dominant in eastern and central parts and along Terai belt of the state. Higher decline occurs in most of the districts of western and southern regions. This is pre-monsoon DWL Trend. Post- monsoon DWL Trend is also not very encouraging. There is declining trend in 66.78% of the monitoring wells over 10 years period. Decline of 0-20cm/yr. is mostly observed in 34.39% wells followed by 20-40cm/yr. in 17.13% wells and more than 40cm/yr. is found in 15.24% wells. Higher decline is mostly in western, north western and southern parts and along Yamuna River.

271. In view of the above facts, we have no manner of doubt that CGWA though possesses powers to regulate ground water by taking all appropriate steps, but unfortunately, it has failed. Deprecation by Tribunal, repeatedly, has also not caused any impact or impression

*upon CGWA and it has continued in its attitude of defiance, for the reasons best known to it. We hold that neither CGWA has functioned as desired by order of Supreme Court in **M.C.Mehta vs UoI (supra)** nor the directions and guidelines issued by it were/are consistent with EP Act 1986. Instead of protection and preservation of ground water table, CGWA is more interested in allowing charitably abstraction of ground water even in stressed areas without study of water audit, without having IAR, without examining carrying capacity and other relevant factors.”*

14. We note that the judgment of this Tribunal dated 25.02.2022 has been stayed by the Hon'ble Supreme Court vide order dated 19.05.2022 in Civil Appeal No(s). 2901/2022, *Moon Beverages Limited & Anr. vs. Sushil Bhatt & Ors.*

15. The fact remains that the issue of validity of exemption from liability for illegal extraction of groundwater remains to be addressed in the present matter.

16. Even if CGWA notices are alleged to be illegal, independent adjudication thereof may be the appropriate course instead of execution of order which does not specifically adjudicate on the issue. CGWA is also required to be impleaded.

17. Accordingly, Original Application No. 32/2020 which was disposed of in view of levy of compensation which has been later revised, will stand restored for adjudicating the validity of course of action adopted in reducing the compensation after disposal of the matter by this Tribunal and grant of permission for extraction of groundwater in over exploited area. Order dated 05.03.2021 disposing of the OA is recalled. The applicant is also given liberty to amend the petition and file amended and updated petition within two weeks. The applicant may serve the added parties. Response to amended petition may be filed within four weeks thereafter.

18. CGWA is impleaded as party and may be put to notice for its response, if any, for justification of waiving compensation for illegal extraction of groundwater merely on the ground that application for such permission has been later filed and also for permission to extract groundwater in over-exploited area without requisite safeguards. Haryana Water Resource Authority is also impleaded as party and notice may also be issued to it to consider the issue whether permission can be granted for extraction of groundwater in over-exploited area.

19. We note that on the one hand, potable water is being allowed to be used for industrial purposes, on the other hand, the sewage water which can be used for such purposes is being mixed with potable water in storm water drains and rivers resulting in contamination of potable water. Comprehensive water management strategy may require preventing pollution and use of potable water for industrial purposes. For this purpose, we find it necessary to implead as party and to issue notice to the Ministry of Jal Shakti (MoJS) for its response.

List the amended OA No. 32/2020 for further consideration on 14.11.2022. Execution Application No. 30/2021 will stand disposed of.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

August 18, 2022
Execution Application No. 30/2021
IN Original Application No. 32/2020