

Item No. 09

Court No. 1

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

Original Application No. 639/2022

Pritipal Sharma

Applicant

Versus

Govt. of NCT of Delhi & Ors.

Respondent(s)

Date of hearing: 24.07.2023

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, CHAIRPERSON  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Pritipal Sharma, Applicant in Person

Respondent: Ms. Jyoti Mendiratta, Adv. with Mr. Shashi Pal, SDM, Mehraulli & Mr.  
Radhey Sham, SDM, Saket  
Ms. Sakshi Popli, Adv. for DJB & DPCC

**ORDER**

1. For negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief.

2. The main object for the constitution of the Central Ground Water Board/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.

3. The problem of extraction of groundwater was considered a serious problem and repeated complaints have been filed before the authorities concerned which had not taken care by the authorities concerned and OA

No. 685/2019, *Rakesh Kumar vs. Govt. of NCT of Delhi* was filed before this Tribunal and repeated directions were issued to the authorities concerned authorizing the District Magistrate to take immediate necessary action and to seal illegal borewells/tube-wells to stop extraction of groundwater and further close the units but no remedial action has been taken by the authorities concerned.

4. Aggrieved by inaction by the authorities in Delhi, the applicant filed a petition with the fact that Respondent No. 5, owner of the plot adjoining House No. GI-2035, Aya Nagar, New Delhi-110047 and the plot on the opposite side of the street in front of House No. GI-2038, Aya Nagar, New Delhi-110047 has installed borewells in the above-said plots without permission from the Delhi Jal Board and extracting groundwater for commercial purposes without obtaining No Objection Certificate from the authorities concerned.

5. The matter was taken up by this Tribunal on 15.09.2022 and a joint Committee was constituted with direction to submit factual and action taken report.

6. In compliance thereof, the joint Committee visited the site and filed a report that the plot as mentioned above was found locked during inspection. Discharge of water in the drains was found covered with the slabs on both sides of street. Further, it was observed that stairs/ramps are being constructed on the slabs of storm water drains partially.

7. DPCC has further submitted a report/response with the facts that there is an illegal bore-well and installation of RO Plant which was used for commercial purposes.

8. During the course of hearing, the Sub Divisional Magistrates, Mehrauli and Saket attended the proceedings and submitted that they have visited the site and actions are being taken. The applicant with the lady attended the hearing and submitted that during the visit the lady and her son was seriously beaten by the authority concerned or on the direction of the authority in their presence with a view to withdraw the complaint or to not prosecute further proceedings.

9. The applicant has further submitted that there are tanker mafias which are extracting groundwater and through RO Plants, they are doing commercial activities and the authorities concerned are not taking any action against these tanker mafias. The facts as narrated by the applicant and the lady with the applicant reveals and clears that unauthorized borewells exists at many locations while at some locations the borewells are said to have been sealed. The facts as narrated by the learned SDMs answered that proper remedial actions by way of closing the borewells and recovery of compensation for the illegal drawal of groundwater has not been taken by the authorities concerned and activities are adversely affecting the environment. There is also nothing to show that analysis of quality of water with a view to take further remedial actions against the supply of contaminated water, if any, or the quality of water which is being used by the RO Plant owners and are used for commercial purposes.

10. The matter was taken up by this Tribunal in OA No. 685/2019, *Rakesh Kumar vs. Govt. of NCT of Delhi* and vide order dated 15.05.2020, it was observed:

“xxx .....xxx.....xxx  
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).<sup>1</sup> 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.

xxx .....xxx.....xxx

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

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<sup>1</sup> (1997) 11 SCC 312

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.<sup>2</sup> A separate order is being passed in several other matters on the same subject.<sup>3</sup> 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*

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

<sup>3</sup> 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

*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) 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 m<sup>3</sup>/day are exempted from NOC in critical areas, non-water intensive industries drawing up to 50 m<sup>3</sup>/day are exempted from NOC. (In over-exploited areas, non-water intensive industries are exempted which are drawing ground water up to 25 m<sup>3</sup>/day. Permitted water extraction is restricted to 60% of the proposed recharge. Ground water extraction should not be exceeded 1,500m<sup>3</sup>/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)
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<i>Critical</i>	<i>(&gt;70% and &lt;=100%, decline in water levels)</i>
<i>Semi-critical</i>	<i>(&lt;100%, decline in water levels)</i>
<i>Over-exploited</i>	<i>(&gt;100%, decline in water levels)</i>

*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 m<sup>3</sup>/day and ECR<sub>GW</sub> in Rs/m<sup>3</sup>”

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:

<b>S. No.</b>	<b>Actions</b>	<b>Authority</b>
1.	To seal illegal bore-well/tube-well to stop extraction of water and further closure of project	District Magistrate
2.	To levy EC <sub>GW</sub> 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.

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 unauthorizably 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](mailto: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.”*

*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/bore-wells 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)	<i>Failure in revival of water bodies by the land owning agencies till 31.03.2021.</i>	<i>@ Rs. 50,000/- per month payable to and to be recovered by DJB who may notify such agencies within one month about this direction.</i>
(ii)	<i>For failure to install rain water harvesting systems by the institutions responsible for such failure.</i>	<i>As per earlier order dated 16.11.2017 in O.A. No. 217 of 2016 Mahesh Chandra Saxena Vs. The Ministry of Urban Development &amp; 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.</i>
(iii)	<i>Illegal extraction of ground water by the person doing so.</i>	<i>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.</i>
(iv)	<i>For failure to use treated water for secondary purposes after 31.03.2021 and use of fresh in lieu thereof by the DJB.</i>	<i>@ 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.</i> ”

*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.”*



11. Learned SDM has further submitted that they have visited the site and the report is under preparation or under submission, though they are repeatedly submitting that action has been taken. The conduct of the concerned SDM shows that there is reckless exercise of the powers and non-compliances of the orders and non-compliance of the rules, which further show that the officer is negligent in performing his duties sincerely though he is paid from State exchequer.

12. Learned Counsel appearing and representing the respondent has sought short time to file action taken report by the authorities concerned.

13. Respondents/SDMs present during the hearing are directed to take necessary action and develop effective mechanism for preventing extraction of groundwater by unauthorized operators and tanker mafias and prompt coercive measures must be taken. The illegal borewells must be stopped immediately and sealed according to the rules. The past violations and extraction of groundwater shall be calculated according to rules and according to parameters laid down by the CPCB and the environmental compensation must be imposed according to law. SDM is further directed to take assistance from electricity department and to ensure disconnection of electricity supply for illegal borewells which are being used for illegal extraction of groundwater/borewells. Further action taken report be filed within three weeks by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

14. The authorities are expected not to coerce or influence the litigant or the complainant.

15. List the matter on 15.09.2023.

Sheo Kumar Singh, CP

Arun Kumar Tyagi, JM

Dr. A. Senthil Vel, EM

July 24, 2023  
Original Application No. 639/2022  
DV