

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

ORIGINAL APPLICATION NO. 685/2019

IN THE MATTER OF:

Rakesh Kumar

Verses

Applicant(s)

Govt. of NCT of Delhi

Respondent(s)

Counsel for Respondent(s):

Mr. A.K. Prasad, Advocate for CGWA
Mr. Balendu Shekhar, Advocate for DPCC
Ms. Puja Kalra, Advocate for NDMC
Mr. Raj Kumar, Advocate for CPCB

PRESENT:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Reserved on: 19th January, 2022

Pronounced and uploaded on: 25th February, 2022

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. After receiving a letter petition complaining that certain persons are running water plants by illegally extracting the same in different places namely Kashmere Gate, Tilak Bazar, Sadar Bazar, Azad market, Chandni chowk etc., suo-moto action was initiated and letter petition was registered as OA 685/2019. On 16.09.2019, Tribunal constituted a joint Committee comprising Delhi Jal Board (hereinafter referred to as '**DJB**') and North Delhi Municipal Corporation (hereinafter to as '**NDMC**') and required them to submit an action taken report.

2. Pursuant thereto, DJB submitted action taken report stating as under:

S. No.	Property/Address	Field Inspection Report
1	1091, Gali Gashiyan, Kashmere Gate, Delhi	Bore well exist, premises locked for some time
2	1/8, IIIrd Floor, Nicholson 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 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 bore well exists. Cooling plant exist, but no license provided by 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 borewell exist, license provided but was valid upto 08.04.2019. Cooling plant exist
8	4460, Pahari Dheeraj, Madras Cloth House, Delhi	No borewell exists
9	602, Katra Neel, Gali Ghanteshwar, Chandni Chowk, Delhi	Borewell exist No cooling plant, water used for drinking only from a well
10	3936, Imlı wali Bastı 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 Gare, Delhi	Borewell exists, No license with owner, applied for license in MCD

3. Out of 12 addresses given in the said report, 9 were found extracting ground water illegally, one premises was found locked, and in 3 premises no bore well was found.

4. Another report dated 03.04.2020 was submitted by DJB about 11 locations out of which at 4 places no bore well was found and in 7 locations, bore wells were either sealed or running illegally.

5. Both these reports were considered on 15.05.2020 and noticing that bore wells were illegally existing and operating and no remedial action was

taken by Statutory Regulators. Tribunal deprecated this inaction on the part of Statutory Regulators and passed a detailed order referring to directions issued in earlier matters dealing with similar violations, and operative part of the order in para 8 reads as under:

“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.”

6. Status report dated 11.07.2020 has been submitted pursuant to Tribunal's order dated 15.05.2020 by Delhi Pollution Control Committee (hereinafter referred to as '**DPCC**') stating that Environment Department has prepared a draft SOP titled as “Regulation of extraction of ground water, closure, prohibition of illegal activities relating to use of borewells/tubewells” for laying out an effective mechanism for prevention of illegal extraction of ground water and the same was circulated to all the concerned authorities, DJB and District Magistrates of Delhi for their comments/suggestions; in compliance of order of Tribunal, a meeting was taken by the Chief Secretary, Delhi on 12.06.2020 through video conferencing; the meeting was attended by Municipal authorities, DJB, DPCC and District Magistrates of Delhi; SOP has since been finalized and has been brought into effect; in SOP clear responsibilities have been assigned to various agencies as DJB/local bodies and block development officers for identification of illegal borewells depending on the nature of

use; Deputy Commissioners (Revenue) of the districts have been assigned role of supervision of checking the violation and closure of illegal borewells and inter departmental advisory committee was constituted for each district to assist Deputy Commissioners. It has been observed that often drilling machines/rigs are used to dig illegal borewells, the mechanism for their regulation including registration and prior permission for movement and deployment has also been incorporated in the SOP and during meeting, it was informed that DJB has already identified 19661 illegal borewells whereagainst action was being taken and 7248 units were already closed by the district authorities. Report said that remaining units would be closed down on priority as they were already identified and process would be completed within a period of three months.

7. This report was considered on 13.07.2020. Tribunal recorded the contents of SOP and found that action however, was not taken as per the provisions of SOP. Consequently, order for further action and submission of compliance status was passed. Relevant extract of the order dated 13.07.2020 reads as under:

“4. In the SOP clear responsibilities have been assigned to various agencies as DJB/local bodies and block development officers for identification of illegal borewells depending on nature of use and Deputy Commissioners (Revenue) of the districts have been assigned the role of supervision of checking the violation and closure of illegal borewells. An inter departmental advisory committee has been constituted for each district to assist the Deputy Commissioners. It has been observed that often the drilling machines/rigs are used to dig illegal borewells the mechanism for their regulation including registration and prior permission for movement and deployment has also been incorporated in the SOP. The mechanism for levying of environmental compensation has also been incorporated in the SOP. It is mentioned that Delhi Jal Board has already identified 19661 illegal borewells on which action is being taken and 7248 units have already been closed down by the district authorities. The remaining units are to be closed down on priority as these have been already identified and the process is to be completed within a period of three months.

5. The SOP is as follows:-

“Standard Operating Procedure (SOP):

1. *Drawing ground water through borewell or tubewell for domestic, commercial, agricultural or industrial uses without the prior permission of the "Competent Authority" will be considered illegal and without authority of law. The Competent Authority is Delhi Jal Board in the entire NCT of Delhi except areas under the New Delhi Municipal Council (NDMC) and Delhi Cantonment Board (DCB). For borewells/tubewells for agricultural uses, the information on illegal extraction of ground water will be provided by the BDO to the Advisory Committee.*
2. *The Deputy Commissioner (Revenue) of each district, who is the Authorised Officer under the direction dated 18.05.2010 is required to supervise checking violation i.e. detection of illegal wells and closure thereof through the SDMs.*
3. *An Advisory Committee in each of the revenue districts with representatives from DJB, CGWB, 'ULBs, DPCC, reputed NGO has been constituted to assist the DC in detecting illegal borewells for taking action. Accordingly, the advisory committee will prepare a list of such illegal borewells every month by taking information from all available sources including Revenue Officers, representatives of Delhi Jal Board, ULBs, DPCC, NGOs and other relevant sources. Proactive action needs to be taken by the above representatives in detection of illegal extraction of ground water and furnishing the same to the Advisory Committee promptly. Superintending Engineer (SE), DJB is the Member Secretary of Advisory Committee, and he is required to ensure timely conduct of the meeting and also to record the proceedings.*
4. *The Delhi Jal Board has already identified 19661 such illegal borewells on which action is being taken and 7248 units have already been closed down by the district authorities. The remaining units to be closed down on priority as these have been already identified and the process to be completed within a period of three months. A weekly progress report district wise will be submitted to the Divisional Commissioner for monitoring. The illegal borewells/tubewells other than the list provided by DJB will be taken up for closure thereafter. Further, in the first phase, action against borewells/tubewells engaged in commercial exploitation of ground water will be taken.*
5. *In case the illegal borewell/tubewell is already constructed/ operating, the same will be closed and the electricity supply to the energized tubewell will be disconnected even if it is through DG sets. In case of the illegal borewell/tubewell is under construction, then the drilling rig will also be sealed.*
6. *For the purpose of closure of illegal borewells/tubewells, joint action teams under the supervision of the concerned SDM will be formed for ensuring effective coordination. The joint team will comprise field functionaries from DJB, DISCOMs and Local Police.*
7. *The Deputy Commissioner who is the chairperson of the Advisory Committee will forward the details of illegal borewells to the DPCC*

for levying Environmental Compensation (EC) for illegal extraction of ground water.

8. *The DPCC will assess EC as per the methodology devised by CPCB in its report dated 26.06.2019. After assessment of the EC, demand will be raised and in cases of non-recovery, SDM to recover EC as arrears of land revenue.*
 9. *All the drilling machines/rigs utilized for boring purposes in Delhi are required to obtain registration from the offices of Deputy Commissioners of the concerned districts. The movement of drilling machines/rigs will be allowed for authorised drilling to the identified location and for specified duration by the concerned Deputy Commissioner.*
 10. *The Delhi Police and Transport Department of Govt. of NCT of Delhi will allow movement of the drilling machines/rigs having the prior permission for such movement from the concerned Deputy Commissioner. The concerned Deputy Commissioner (Revenue), Deputy Commissioner of Police and Deputy Commissioner, Enforcement of Transport Department will be responsible for strict compliance of the guidelines regarding movement of drilling machines/rigs.*
 11. *As provided in the direction dated 18.05.2010 issued under Section 5 of the Environment (Protection) Act, 1986 the Deputy Commissioner of each district will launch prosecution against the offenders related to ground water extraction on the recommendations of the Advisory Committee.*
 12. *The concerned Advisory Committee of each district is responsible to ensure that there is no illegal extraction of ground water in the district.”*
6. *In view of the above, let further steps be taken which may be overseen by the DPCC and compliance status as on 31.12.2020 be brought on record by 15.01.2021.”*
8. In furtherance of order dated 13.07.2020, an action taken report dated 03.09.2021 has been filed by DPCC. Relevant contents of the said report read as under:

“2.the Chief Secretary, Delhi decided that Delhi Jal Board will prepare the list of illegal borewells, Revenue Department will supervise the closure action of the illegal borewell and DPCC was assigned the task to impose EDC on the violators as per the list provided by DJB.

3. That Revenue Authorities provided the details of action taken by them, which is as follows:

District	ATR (Borewell sealed till 31.08.2021)		
	No. of illegal borewells identified in the district	Action taken on illegal borewells till 31.08.2021	No. of illegal borewells to be sealed
North	761	748	13
East	116	116	0
South West	6681	1410	5271
South East	297	231	66
North West	8299	5814	2485
Shahdara	552	552	0
New Delhi	75	75	0
Central	611	412	199
West	2185	1793	392
North East	0	0	0
South	84	84	0
Total	19661	11235	8426

4. DPCC on its part has taken following action to assess the Environmental Compensation to be imposed on the basis of information received from DJB and Revenue Authorities:

- (i) Show cause notices for imposition of EDC issued : 18315
- (ii) EDC amount proposed in above mentioned SCNs: 70,65,80,000/-
- (iii) EDC amount imposed: 70,65,80,000/-
- (iv) EDC amount received: Rs. 23,80,000/-
- (v) EDC amount yet to be recovered: 70,42,00,000/-

Due to continuing pandemic, the process of recovery is very slow and Revenue authorities are not able to spare their manpower for taking action.

5. That many units had mentioned their inability or delay in depositing the EDC due to Covid-19 Pandemic and low economic activity during last few months since March 2020. They have also mentioned that unprecedented health crises and emergency coupled with steep downfall in the revenue earning due to lockdown which has brought down the economic activities to the lowest level. In case of remaining units, recovery certificates was issued to the concerned District Magistrate/SDMs, to recover the amount as arrears of land revenue from the remaining units which have not deposited Environmental Damages Compensation (EDC).”

9. It is surprising that huge environmental compensation of more than Rs. 70 Crores was computed, but a negligible amount of Rs. 23.8 lakhs was recovered. It is not the case of Statutory Regulators that any action for prosecution has been taken against violators. Further, out of 19661 illegal bore wells, identified in various Districts of Delhi, only 11235 were

sealed and 8420 were still to be sealed. No reason was given as to why all illegally running bore wells were not sealed.

10. An additional action taken report dated 02.11.2021 has been filed but there is not much improvement in as much as it is said that out of 19661 illegal bore wells identified by DJB, action was taken by Revenue Authorities against 11235 and further 129 bore wells have been proceeded by the authorities. In the result, action taken by Revenue Authorities, in total, is against 11364 (11235 + 129).

11. With respect of environmental compensation, para 4 of additional report reads as under:

“4. That the status of imposition of Environmental Compensation and its recovery is as follows:

(i) Total EDC amount received till 25.10.2021: Rs. 54,30,000/-

(ii) EDC amount yet to be realised: Rs. 70,05,70,000/-”

12. In our view, situation is disgusting. Report is very disappointing and shows a snail pace level of activities on the part of Statutory Regulators who have permitted extraction of ground water illegally for such a long time and only when we passed order, some action has been taken but that too not in true spirit and to the entirety.

13. The respondent authorities, therefore, are directed to take appropriate remedial action against all the illegally running bore wells identified by DJB and submit a complete compliance report after six months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

14. The application is disposed of accordingly.

15. A copy of this order be forwarded to DJB, DPCC and North Delhi Municipal Corporation by e-mail for compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Brijesh Sethi,
Judicial Member

Prof. A. Senthil Vel,
Expert Member

Dr. Afroz Ahmad,
Expert Member

February 25, 2022
Original Application No. 685/2019
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