

Item No. 07

Court No. 1

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

(By Video Conferencing)

Original Application No. 685/2019

(With report dated 11.07.2020)

Rakesh Kumar

Applicant(s)

Versus

Govt. of NCT of Delhi

Respondent(s)

Date of hearing: 13.07.2020

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

Respondent: Mr. Rajkumar, Advocate for DPCC

ORDER

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

2. Thereafter the matter was considered on 15.05.2020 in the light of reports dated 06.12.2019 and 03.04.2020 filed by the DJB. It was observed:-

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

5. Needless to say that protection of ground water is of great significance, particularly in view of falling of ground water levels in Delhi. In O.A. No. 176 of 2015, Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors., the matter has been dealt with by this Tribunal in the last about 5 years which was last reviewed on 11.9.2019. Reference was made to the judgment of the Hon'ble Supreme Court in M.C Mehta v. Union of India and Ors (1997) 11 SCC 312 whereby the Hon'ble Supreme Court directed constitution of Central Regulatory Body in the light of the recommendation of an Expert Committee, under Section 5 of the Environment (Protection) Act, 1986 (EP Act). The Central Ground Water Authority (CGWA) has been constituted. The Tribunal found that effective functioning was far from satisfactory in achieving the object of protecting the ground water levels. **With the result, illegal drawal of ground water by the hotels, industries and builders for commercial purposes in over exploited, critical and semi critical (OCS) areas was continuing at large scale. The Tribunal elaborately considered the problem and need for constant action by the regulatory authorities. After noticing the available data, the Tribunal noted the failure of the authorities in performing their duties on the subject on account of which situation continues to deteriorate. The Tribunal also considered and noted the report of the CPCB dated 26.06.2019 dealing with the methodology for assessment of environmental compensation for illegal extraction of ground water.**

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.

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

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

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

3. Accordingly, a report has been filed by the DPCC on 11.07.2020 to the effect that Environment Department, Government of Delhi has prepared SOP titled **‘Regulation of extraction of ground water,**

closure, prohibition of illegal activities relating to use of borewells/tubewells’.

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.

A copy of this order be sent to DPCC by e-mail.

List for further consideration on 29.01.2021.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM

July 13, 2020
Original Application No. 685/2019
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