

Item No. 03

Court No. 1

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

Execution Application No. 11/2023
IN
Original Application No. 89/2021
(I.A. No. 110/2023)

Varun

Applicant

Versus

Govt. of NCT of Delhi & Ors.

Respondent(s)

Date of hearing: 13.04.2023

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

Applicant Ms. Mansi Chahal & Mr. Kapil Sagar, Advocates for Applicant in E.A
11/2023

ORDER

1. This application seeks execution of order of this Tribunal dated 08.04.2021 in OA No. 89/2021, *Varun vs. Govt. of NCT of Delhi & Ors.* which is reproduced below:-

*"1. This application seeks injunction against **illegal withdrawal of ground water by 536 hotels operating in Paharganj area of Delhi of which list has been filed.** The applicant has relied upon judgment of this Tribunal dated 20.07.2020 in O.A. No. 176/2015, *Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors.* to the effect that **ground water extraction has to be regulated as per orders of the Hon'ble Supreme Court in MC Mehta vs UOI, 1997 11 SCC 312. Regulation requires that such extraction is allowed ensuring replenishment and that ground water table does not get depleted.** The Tribunal having already adjudicated upon the question of law, the matter is only of execution which issue needs to be looked into by the concerned statutory authorities, in accordance with law.*

2. *Since the present application on multiple causes of action is not permissible as per statutory procedural rules, **we permit the applicant to move the concerned SDMs or other authorities and the Chief Secretary, Delhi, who have to enforce/oversee the compliance of norms on the subject.***”

2. While procedurally the above order does not give rise to any ground for seeking execution as it merely observed that the applicant can approach the concerned authority, the application clubbing multiple causes of action not being permissible under the NGT (Practice and Procedure) Rules, 2011. However, it is permissible to this Tribunal to exercise *suo-motu* jurisdiction if there are serious violation of environment norms, relaxing such procedure.

3. Accordingly, we propose to go into the merits in view of serious allegations which if true show serious violation of norms and also judgement of the Hon'ble Supreme Court by the individuals as well as authorities. As per averments in the application, on intervention of the Environment Minister, illegalities have been allowed to continue to the detriment of environment and the rule of law. The SDM and DPCC issued show cause notice dated 04.08.2021 to 536 hotels and other such establishments for violations. 206 hotels gave reply. Closure order was passed against 330 hotels. In spite of this, notices were withdrawn and not acted upon in breach of rule of law and environmental norms. The matter appeared in media news dated 23.04.2022 (Annexure-A-6) but clear violation is allowed to continue which needs to be remedied.

4. Our attention has been drawn to an order dealing with illegal extraction of ground water by hotels in UP i.e. order dated 17.10.2022 in *O.A. No. 438/2018, Arti vs Central Ground Water Authority & Ors.*, as follows:-

“22. Under the circumstances, case appears to be made out for directing sealing of all establishments operating without mandatory consents to operate as per Water Act, till compliance and registering criminal cases for theft of groundwater against owners of the establishments. We have already referred to, in para 18 above, the law on the point that ground water vests in the State and extraction is not permissible without consent of the State. Further, such extraction can only be on payment of laid down charges. There is also need to recover compensation for illegal drawal of groundwater equal to the cost of such water with deterrent element with reference to the turnover of such establishment and also equal to the cost of restoring the environment. We leave this course to be adopted as per law by concerned statutory authorities.

23. However, we find it necessary to direct deposit of interim compensation atleast at the floor level. We called upon learned Counsel to assist as about the quantum of interim compensation.

Quantum of interim compensation and basis thereof

24. Learned Counsel for UP Jal Nigam suggests that interim compensation may be as per guidelines dated 24.09.2020 (though found to be inadequate by the Tribunal in earlier judgement dated 25.2.2022 in OA2015). According to him, such interim compensation should be for atleast five years prior to filing of this application as per section 15 of the NGT Act but in any case from 1.10.2017 to 30.9.2022. It works out to Rs. 50 lakhs per establishment having more than 100 rooms, Rs. 25 lakhs per establishment having 50-100 rooms and Rs. 10 lakhs per establishment having upto 50 rooms. This is calculated at the rate of Rs. 80 per KL/cubic metre, taking consumption to be 350 KL per room per day, which comes to be Rs. 10,000 per room per year. For 100 rooms, it will be Rs. 10 lakhs per year and for five years Rs. 50 lakhs. Same basis applies to other calculations. No other basis is suggested by any learned Counsel. We find the suggestion to be acceptable.

25. After hearing learned Counsel for the appearing establishments, we direct interim compensation at above rate be deposited by all the establishments identified as extracting groundwater without permission as well those not having consents to operate under the Water Act. Any earlier deposit will be adjusted in the interim compensation, subject to verification by the District Magistrate. This will be without prejudice to further action by statutory regulators as per law. Deposit may be made within one month with the respective District Magistrates, failing which theft cases be registered against the concerned establishments and borewells sealed. The compensation deposited will be kept in separate accounts by the District Magistrates for utilisation in accordance with the respective District Environment Plans within six months for improving water quantity and quality, restoring water bodies and taking other relevant measures in their respective

Districts. This task may be given specifically to an officer of level of ADM, who may report to the District Environment Committee already constituted as per directions of this Tribunal dated 26.09.2019 in OA No. 360/2018, Shree Nath Singh vs. Union of India & Ors.

26. We also direct the joint Committee constituted by CGWA, mentioned in para 11 above, to assess final compensation as per above guidelines, after giving opportunity to the concerned establishments, within three months. Any party aggrieved by such orders can take their statutory or other remedies as per law. This order may be served by the Committee by email on all the identified violators individually within one week.

27. We further direct the Committee constituted by CGWA as mentioned above in para 11 may verify the compliance status in respect of establishments for whom such status has not been so far verified either on account of such establishments being closed or having not furnished the information. This may be done within one month. On such verification, above course of action may be followed for them.

28. Action may also be taken for the establishments having not taken requisite consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

29. We further direct that while granting consents, requirement of installing digital water metres connected to central servers may be laid down. Concerned establishment may be required to furnish an 'Appraisal report' with regard to the quantity of ground water available for extraction in the area and replenishment measures proposed by the concerned establishment such as rain water harvesting, sewage treatment, use of treated sewage. Such Appraisal report may be duly verified by the State PCB by an appropriate mechanism. Such project proponents may also undertake measures to compensate environment, particularly augmenting water quantity and improve water quality by afforestation, education and other measures which may be mentioned in the consent conditions and NOCs for extraction of ground water. Further, in respect of establishments having water supply from the local bodies and also extracting ground water, there should be separate digital metres in respect of both sources.

30. We also direct the concerned statutory regulators to look into and regulate use of potable water for non-contact purposes for which non potable water can be used to augment availability of potable water for drinking. If consents/NOCs are not applied for within one month, the establishments may be closed by the State PCB. If filed, such applications may be examined within next one month. Consent mechanism may also cover conditions in terms of order of this Tribunal dated 23.07.2020 in O.A. No. 400/2017, Westend Green Farms

Society vs. Union of India & Ors. applicable to such establishments.

31. The States other than Uttar Pradesh may also study above directions and take further action by issuing necessary SOP through their Water Resources Departments and State PCBs within one month from today.”

5. In view of above, let a joint Committee of MoEF&CC, CPCB, DPCC, CGWA, and District Magistrate, New Delhi may look into the matter and take remedial measures in coordination with concerned authorities, following due process. CPCB and DPCC will jointly act as nodal agency for coordination and compliance. The Committee may meet within two weeks and give its factual and action taken report within two 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. The Committee may look into issue of status of legality of ground water extractions and compliance of norms for such extractions, ground water availability at relevant locations and replenishment measures being done and status of compliance with consent conditions granted under Water Act, 1974 and Air Act, 1981.

List for further consideration on 14.07.2023.

A copy of this order be forwarded to CPCB, DPCC, CGWA, MoEF&CC and District Magistrate, New Delhi by e-mail for compliance.

I.A. No. 110/2023 will stand disposed of in terms of the above order.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

April 13, 2023
Execution Application No. 11/2023
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