

Item No. 11

Court No. 1

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

I.A. No. 640/2019  
IN  
Original Application No. 176/2015

(Filed by Association of the Industrial Manufactures, Ghaziabad  
seeking impleadment with a view to seek review of order dated  
11.09.2019)

Shailesh Singh

Applicant(s)

Versus

Hotel Holiday Regency, Moradabad &Ors.

Respondent(s)

Date of hearing: 10.10.2019

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

For Applicant (s)  
In I.A. No. 640/2019: Mr. Wasim A Qadri, Sr. Advocate with Mr.  
Anubha Anand, Mr. Abhinav Anand, Advocates

**ORDER**

1. This application has been filed by the Association of the Industrial Manufactures, Ghaziabad seeking impleadment in the main application with a view to appear and seek review of order dated 11.09.2019. Case of the association is that the industrial area has been developed by UPSIDC without any water supply. Vide order dated 15.04.2015 in O.A 204/2014, *Krishankant Singh Vs. M/s Deonia Paper Ltd*, this Tribunal directed CGWA not to allow extraction of groundwater without NOC. This led to CGWA guidelines dated 16.11.2015, requiring such NOC and such permission to be given only for drinking water in over exploited, critically exploited and semi-

critical exploited (OCS). CGWA is not granting any such NOC to the industries. CGWA issued notification dated 12.12.2018 which has been set aside by this Tribunal on 03.01.2019. Thus, guidelines dated 16.11.2015 are applicable. The applicant has further stated that order dated 11.09.2019 prejudices the industries which may need reconsideration.

2. To consider the application, it may be appropriate to make a brief reference to order dated 11.09.2019 in *O.A No. 176/2015, Shailesh Singh v. Hotel Holiday Regency, Moradabad & Ors.* The subject matter of the said order is illegal extraction of ground water in the areas which are declared to be over exploited, critically exploited and semi-critical exploited (OCS) by the CGWA. CGWA has been constituted under direction of the Hon'ble Supreme Court in *M.C Mehta v. Union of India, (1997) 11 SCC 312.* The Hon'ble Supreme Court considered the matter of falling groundwater level in the light of Expert Report from NEERI and found it necessary that the matter is regulated by a statutory authority by a constant study and planning. The Tribunal noted that even though, an authority was constituted, the situation had further deteriorated. Considering the grievance against indiscriminate drawal of groundwater by hotels, industries and builders for commercial purposes, the Tribunal directed CGWA to adopt effective regulatory measures. Reasons for disapproving the notification dated 12.12.2018 have been duly noted in the said order. The main reason is that the policy did not in any way show as to how the situation will improve. It was observed:

*“11. The Tribunal held that the Notification worsened the situation by liberalizing the extraction of ground water even for commercial purposes in violation of spirit of order of the Hon'ble Supreme Court. The objections against the Notification upheld by the Tribunal were:*

- i. *Liberally permitting extraction of ground water and justifying the same on the plea that charges have been prescribed even in OCS areas for commercial/industrial purposes.*
- ii. *Liberally permitting extraction of ground water on the ground that condition was imposed for rain water harvesting without any data of effective compliance of such conditions or even possibility of this being done.*
- iii. *Having exempted categories in OCS areas for purposes other than drinking water, including swimming pools, commercial and industrial uses. Reference has been made to the statistics to show deteriorating status of conservation of water and crises of access to water being available to the common man, as well as its requirement for ensuring e-flow in the rivers.”*

12. It was observed:

21. *The provisions of the impugned notification show that drawal of ground water has been, for all practical purposes, made unregulated in all areas, including the OCS areas.*

22. *The so-called regulation is illusory. The so-called conditions are incapable of meaningful monitoring, as shown by past experience also*

23. *The water conservation fee virtually gives licence to harness ground water to any extent even in OCS areas.*

24. *There is no institutional mechanism to monitor removal and replenishment of ground water.*

25. *Delegation provision is virtual abdication of authority.*

26. *There is no check on injection of pollutants in the ground water in the impugned notification. There is no provision with regard to check on water quality and its remediation, if there is contamination.*

29. *The MoEF&CC is directed to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured for as well as to sustain the floodplains of rivers in terms of e-flows and other water bodies. The MoEF& CC and MoWR may finalize the issue of subject remain inter-se with regard to ground water reserve and its quality.*

31. *The Committee may also indicate the projection of its impact study in light of projected data for the next 50 years (in phased manner with action plan for each decade). Thereafter, fresh guidelines be issued by the concerned Ministry and the report furnished to the Tribunal on or before 30.04.2019.*

32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.”

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	( $\leq 90\%$ , No decline in water levels)
Critical	(>70% and $\leq 100\%$ , decline in water levels)
Semicritical	(<100%, decline in water level)
Overexploited	(>100%, decline in water levels)

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 Intergenerational 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.”*

3. Further report of the MoEF&CC dated 18.07.2019 was also found to be unsatisfactory as follows:

*“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.*

*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”*

4. The matter is to be further considered after receiving the report of the Expert Committee in pursuance of above directions.

5. The Tribunal also considered the methodology of calculating Environmental compensation by CPCB which was directed to be followed as an interim arrangement.

6. Since the OCS areas have been found to be seriously affected by over-drawal of ground water, regulation of such drawal for commercial purposes cannot be dispensed with for any industry even in industrial area. Availability of water for drinking is a first priority. The 'Precautionary' principle, 'Sustainable Development' principle and the Inter-generational equity are part of life and in absence of replenishment of ground water, unregulated drawl thereof cannot be held to be right of any commercial entity. Shortage of availability of water for commercial purposes cannot be remedied by drawal of groundwater in over exploited, critically exploited and semi-critical exploited (OCS) areas. Water is certainly a scarce resource and the industry has to put up with such scarcity. It is for the industry and

the concerned authorities to find out alternative ways and means for sustenance of the industries instead of permitting indiscriminate drawal of groundwater in such areas till situation improves. Alternative means may be shifting to areas where water is not scarce or to processes where water is not required. As already noted, groundwater is depleting in such areas and measures are required to check such depletion. If industries continue to draw ground water without NOC from CGWA as per current guidelines and orders of this Tribunal in OCS areas, the industries will have to face legal consequence of such illegal action.

7. In view of the above, we do not find any merit in the application.

The application stands dismissed.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

October 10, 2019  
I.A. No. 640/2019  
IN Original Application No. 176/2015  
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