

## Varun vs Govt. Of N.C.T. Of Delhi on 30 November, 2023

Item No.08

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. 828/2023 & I.A. No. 829/2023)

Varun

Applicant

Versus

Govt. of NCT of Delhi &Ors.

Respondent(s)

Date of hearing: 30.11.2023

CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

Applicant: Ms. Mansi Chahal & Mr. Kapil Sagar, Advs. for Applicant in E.A 11/2023  
Respondent: Ms. Tanisha Samanta, Adv. with Mr. Harshit, JEE for DPCC  
Ms. Jyoti Mendiratta, Adv. for Govt. of NCT of Delhi (Through VC)  
Mr. Gaurav Kumar Bansal, Adv. in I.A 828-829/2023  
Mr. Gigi. C. George, Adv. for CGWA

### ORDER

1. The issue involved in this original application is in respect of illegal withdrawal of ground water by 536 hotels operating in Paharganj area of Delhi.
2. The Tribunal by order dated 13.04.2023 had constituted a joint committee and had called for the report.
3. The action taken report filed by Delhi Pollution Control Committee was considered in the order dated 04.09.2023 which revealed that out of 536 hotels/guest houses, 296 were inspected, out of which 246 hotels/guest houses were found to be extracting ground water illegally without permission from the competent authority. It was further noted that process of inspection of all the 536 hotels/guest houses was in progress, therefore, the time was granted to the DPCC to file further report.

4. Further action taken report dated 29.11.2023 has been filed by the DPCC disclosing following position in respect of 536 hotels/guest houses:-

"4. That, in compliance of the order passed by this Hon'ble Tribunal, a joint inspection was carried out by the representatives of DPCC, DJB and Revenue Deptt. of all 536 Hotels/ Guest House and the details of 536 hotels/Guest houses inspected are as follows:

Hotels/Guest House found using/extracting the ground water-442 Hotels/Guest House found closed-017 Hotels/Guest House not using ground water-077 Total-536

5. That, out of 536, 185 hotels/guest houses found using/extracting ground water having voluntary disclosure scheme (VDS). The list of 185 units is annexed as ANNEXURE - 1.

6. That, out of 536, 257 hotels/guest houses found using/extracting ground water without having voluntary disclosure scheme (VDS) The list of 257 units is annexed as ANNEXURE-2."

5. It appears that some action against the hotels/guest houses which were illegally drawing ground water was initiated by Sub-Divisional Magistrate, Karolbagh, hence, the report dated 28.11.2023 on behalf of the Sub-Divisional Magistrate, Karolbagh has been filed stating that two borewell connections were sealed on 02.11.2023 and when action was taken for sealing the third borewell, the hotel owners and other persons had created ruckus, as a result of which sealing drive has been temporarily put on hold.

6. An application for impleadment on behalf of the Lodging House Owners Association being IA No. 828/2023 has been filed with the plea that members of the applicant association are operating their hotels/guest houses in the area concerned, therefore, they are affected parties, hence, required to be impleaded and heard. The IA is not opposed by any of the parties present today, I.A. No.828/2023 is accordingly allowed and the applicant in IA is impleaded as respondent.

7. Another IA being IA 829/2023 has been filed on behalf of Lodging House Owners Association-respondent seeking a direction to the respondents not to seal the borewells of the members of the applicant association. Let response to this IA be filed by the concerned respondents within four weeks.

8. Since the action of sealing the borewells has been temporarily put on hold, therefore, consideration of IA is deferred till the filing of reply of IA by the concerned parties and the same can be pressed on next date at this stage no ex-parte orders on IA are necessary.

9. During the course of argument, an issue also came up as to who is the competent authority to regulate and manage extraction of water through borewells in Delhi. The stand of Counsel for DPCC is that the competent authority is the DJB and not the CGWA. To support the contention, the Counsel for DPCC has placed reliance upon Section 9 of the Delhi Jal Board Act, 1998 and has submitted that in terms of Section 9(1)(b) and Section 9(1) (d) the responsibility to regulate and

manage the exploitation of ground water in Delhi is with the DJB.

10. At this stage, it would be proper to take note of the order of the Tribunal in OA 69/2020 dated 25.02.2022, wherein the Tribunal considering the similar issue had held as under:

"89. As already said, issue relating to depletion of ground water, for the first time, caught attention of Supreme Court in M.C. Mehta vs. Union of India & Others (1997) (supra). On 20.03.1996, in daily newspaper "Indian Express", published on 18.03.1996, a news item was published under the caption of "Falling Groundwater Level Threatens City". Court took judicial notice on 20.03.1996 and required CGWB and Delhi Pollution Control Committee to respond. On 03.04.1996, Court issued notices to Municipal Corporation of Delhi and Delhi Waterworks and Sewerage Disposal Undertaking. One Scientist, Dr. P.C. Chaturvedi, (Director), CGWB filed affidavit stating that since 1962 and onwards, water levels in country are declining. During the years 1971 to 1983, fall in water level was 4 meters to 8 meters in National Capital Territory. There was a further fall of water level from 4 meters to more than 8 meters during 1983 to 1985. One of the reasons stated in the affidavit for decline of water level was, enhanced pumpage. Consequently, Supreme Court issued notice to Government of India through Secretary, Ministry of Water Resources and Government of National Capital Territory, Delhi. The factual position regarding fall of water levels in the country was admitted in the affidavits filed by various authorities before Supreme Court. Thereafter, vide order dated 04.09.1996, Supreme Court requested Director, NEERI to examine the matter at institute level, by experts in the field, and submit report. NEERI was also required to submit suggestions and recommendations for checking further decline of underground water level. Consequently, NEERI submitted report dated 23.09.1996 with the title "Water Resources Management in India, Present Status and Solution Paradigm". An affidavit dated 24.10.1996 was filed on behalf of Ministry of Water Resources, by Additional Secretary, making comments on NEERI report, indicating an overall declining water level picture in the country, and also, schemes and activities undertaken by Government of India through various departments to monitor ground water. It was pointed out that in order to arrest depleting trend and to avoid indiscriminate withdrawal of ground water, Government of India had circulated a Model Bill to States/Union Territories, in 1970, to help them to bring out suitable legislation on the lines of Model Bill to regulate and control development of ground water in the respective areas. It was stated in the affidavit that in more than 120 blocks i.e., 231 blocks, in 6 Mandals, and 12 Talukas, level of ground water is over exploited. Noticing all these facts, Supreme Court, accepted one of the suggestions of NEERI, regarding constitution of an Authority under Section 3(3) of EP Act 1986, and passed order on 05.12.1996, over ruling objection taken by Ministry of Water Recourses, Government of India that water being a State subject, it would not be possible to constitute an Authority under Section 3(3) of EP Act 1986, and held that EP Act, 1986 is made by Parliament under Entry 13 List I Schedule 7 read with Article 253 of the Constitution of India and shall have an over-riding effect. There was already an

Organization namely CGWB having its Office across the country, hence Supreme Court directed that Central Government may consider to issue a Notification constituting the "Board" itself as an "Authority" under Section 3(3) of EP Act, 1986. It also observed that the said Authority would have all statutory powers under Section 3(3) of EP Act 1986 and would be in a position to have effective control all over India. Supreme Court also said that any institution/department constituted by State Government can independently function in its own field with the cooperation and under the guidance of the organization set up by CGWB.

90. As a result, thereof, Notification dated 14.01.1997 was issued by Ministry of Environment and Forest (hereinafter referred to as „MoEF ), in exercise of power conferred by Section 3(3) of EP Act 1986 constituting CGWB as an Authority i.e., CGWA, for the purpose of regulation and control of ground water management and development, from the date of publication of the said Notification in the official Gazette. It was published in the Gazette of India on the same date.

91. Para 1 of Notification of 1997 said that CGWA would constitute of the following:

(i) Chairman, CGWB-Chairperson

(ii) Member (Exploratory Drilling and Materials Management), CGWB-

Member

(iii) Member (Sustainable Management and Liaison), CGWB-Member

(iv) Member (Survey, Assessment and Monitoring), CGWB-Member

(v) An officer not below the rank of the Joint Secretary to the Government of India to be appointed by the Central Government-

Member.

92. Para 2 of the said Notification dated 14.01.1997, provided powers and functions of CGWA, and said:

"2. The Authority shall exercise the following powers and perform the following functions, namely: -

(i) exercise of powers under section 5 of the Environment (Protection) Act, 1986 for issuing directions and taking such measures in respect of all the matters referred to in sub-

section (2) of section 3 of the said Act;

(ii) to resort to the penal provisions contained in sections 15 to 21 of the said Act;

(iii) to regulate indiscriminate boring and withdrawal of ground water in the country and to issue necessary regulatory directions with a view to preserve and protect the ground water."

93. The jurisdiction of the said Authority was declared to be whole of India, vide para 3.

102. Perusal of above, shows that Section 5 has been given an overriding effect over any other law but directions issued under Section 5 have to be within the compass of EP Act 1986 and cannot travel beyond. Further sub-section 2 of Section 3 has to be read with sub-section 1 which shows that power to take such measure as deemed necessary and expedient, was conferred with the clear objective that it should be for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Further the aforesaid power is also subject to the provisions of EP Act 1986.

103. Section 24 of EP Act 1986 also made a declaration that subject to sub-section 2, provisions of EP Act 1986 and the rules or orders made therein, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than EP Act, 1986.

104. Therefore, not only provisions of EP Act, 1986 but even rules or orders issued under EP Act 1986 shall prevail over any other enactment except EP Act 1986. In other words, If, there is anything otherwise provided in EP Act 1986, then the rules/orders etc. will have to be read consistent therewith and as per legislative or statutory hierarchy, the one which is superior in hierarchy, shall prevail."

11. Hence above order is relevant while considering the issue about the competent authority to take action in respect of illegal extraction of ground water in Delhi and also while considering the issue in respect of management and control of ground water in Delhi.

12. Having regard to the aforesaid issue involved in the matter, we deem it proper to issue notice to the following parties:-

- i. CEO, Delhi Jal Board;
- ii. Member Secretary, Central Ground Water Authority.

13. Mr. Gigi. C. George, Learned Counsel has accepted notice on behalf of the CGWA.

14. Hence, the applicant is directed to serve the notice upon the newly added DJB.

15. The newly added respondents are directed to file their report clearly disclosing their power and duties for management and control of ground water in Delhi and the action which has been taken by them in this regard.

16. Let these reports be filed within four weeks by 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.

17. List the matter on 06.02.2024.

Prakash Shrivastava, CP Sudhir Agarwal, JM Arun Kumar Tyagi, JM Dr. A. SenthilVel, EM November 30, 2023 Execution Application No. 11/2023 In Original Application No. 89/2021 (I.A. No. 828/2023 & I.A. No. 829/2023) SN