

# Thafseel.P.S vs State Of Kerala on 10 March, 2022

**Author: S.Manikumar**

**Bench: S.Manikumar, Shaji P.Chaly**

W.P.(C) No.11388 of 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

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THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 10TH DAY OF MARCH 2022 / 19TH PHALGUNA, 1943

WP(C) NO. 11388 OF 2019

PETITIONER:

THAFSEEL.P.S  
AGED 29 YEARS  
S/O SHAJAHAN, 2/460,PUTHENPARAMBIL, MANJALY,  
KARUMALLOOR-683 520.  
BY ADV MEREENA JOSEPH

RESPONDENTS:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, MINISTRY OF WATER RESOURCES,  
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
- 2 KERALA WATER AUTHORITY,  
VELLAYAMBALAM, THIRUVANANTHAPURAM, REPRESENTED BY ITS CHAIRMAN  
695 001.
- 3 DISTRICT COLLECTOR,  
COLLECTORATE, ERNAKULAM-682 030.
- 4 DISTRICT MEDICAL OFFICER (HEALTH),  
OFFICE OF THE DISTRICT MEDICAL OFFICER OF HEALTH,  
ERNAKULAM-682 011.
- 5 FOOD SAFETY COMMISSIONER,  
OFFICE OF THE COMMISSIONER OF FOOD SAFETY, KODAMKULANGARA,  
ERLOOR SOUTH, THRIPPUNITHURA, ERNAKULAM, KERALA - 682 306.
- 6 SENIOR HYDRO GEOLOGIST AND DISTRICT OFFICER,  
GROUND WATER DEPARTMENT, KAKKANAD CIVIL STATION,  
ERNAKULAM- 682 030  
BY ADVS.  
SRI.K.P.HARISH, SENIOR GOVERNMENT PLEADER - R1, R3 TO R6  
SRI.SAJI VARGHESE KAKKATTUMATTATHIL, SC FOR R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10.03.2022, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) No.11388 of 2019

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JUDGMENT

S.MANIKUMAR,CJ.

Petitioner has sought for the following reliefs:

- i) Call for the entire records pertaining to the facts pleaded in the writ petition.
- ii) Issue a writ of mandamus, any other writ, order or direction, directing the respondents herein to curb the transportation, supply and sale of underground water, extracted from wells, quarries and ponds for human usage otherwise than through the 2nd respondent Kerala Water Authority.
- iii) Such other reliefs that this Hon'ble Court may deem fit and proper to grant in the interest of justice.
- iv) Award cost of the proceedings.

2. Though the petitioner has instituted the writ petition as a Public Interest Litigation, from the averments in paragraph No.3 of the statement of facts, it is clear that petitioner is running a hotel and stated that he has bitter experience with the supply of water, as water is not potable and adverse to the Food Safety Standards. According to the petitioner, water is extracted from private wells and transported in tanker lorries. It is further contended that there are many persons engaged in extraction, transportation and sale of ground water.

3. In support of the above contentions, petitioner has also referred to a news item published, regarding unauthorised extraction of ground water, within the jurisdiction of Aluva Municipality.

4. When the learned counsel for petitioner was posed with a question as to whether, when the petitioner has made specific averments alleging bitter experience from the owners of tanker lorries, who are supplying water, which is not potable, and according to the petitioner, adverse to the Food Safety Standards coupled with the averments made in general, without any supporting documents and without impleading the water suppliers, Ms.Mereena J. Joseph - learned counsel for petitioner, submitted that there is a public interest involved in this writ petition and in support of the above, referred to Exhibit P1 letter dated 10.12.2018 written by a Member of the Legislative Assembly to the Chief Secretary, State of Kerala. Except the above, there is a news item, Exhibit P3, which is, about an inspection said to have been conducted by the Officers.

5. On instructions, Mr.Saji Varghese Kakkattumattathil, learned Standing Counsel for the Kerala Ground Water Authority, Thiruvananthapuram represented by the Chairman - respondent No.2, submitted that Kerala Water Authority, is not dealing with illegal extraction, transportation, supply and sale of ground water.

6. According to him, it is for the authorities under the Kerala Ground Water (Control and Regulations) Act, 2002 and the Rules made thereunder, are competent to take appropriate action against illegal extraction of ground water, transportation and sale. Submission of the Kerala Water Authority, Thiruvananthapuram - 2 nd respondent is placed on record.

7. Mr.K.P.Harish - learned Senior Government Pleader, representing the State of Kerala, Ministry of Water Resources, Thiruvananthapuram, the District Collector, Ernakulam, District Medical Officer (Health), Office of the District Medical Officer of Health, Ernakulam, the Food Safety Commissioner, Office of the Commissioner of Food and Safety, Ernakulam &, Senior Hydro Geologist & District Officer, Ground Water Department, Ernakulam - respondents 1 and 3 to 6, respectively, submitted that, earlier taking note of the extraction of ground water, without permission from the appropriate authority and the provisions of the Kerala Ground Water (Control and Regulations) Act, 2002 and the Rules made thereunder, this Court vide judgment dated 10th November, 2021, in W.P.(C) No.31390 of 2018, has issued directions, which are reproduced herein:

"19. After having analysed the factual as well as legal situations discussed above, we have no doubt in our mind to hold that the State as well as District Authorities & the local bodies are duty bound to ensure that commercial establishments are not exploiting groundwater to an unprecedented level and establish such units for withdrawing groundwater without adequate NOC from the statutory authorities. We also find that under the Kerala Panchayat Raj Act, 1994, Kerala Municipality Act, 1994 and the Building Rules issued thereunder, in order to construct any well, a permit is required from the Secretary of the local body. These are all clear indications to show that the Authorities are vested with ample powers to translate the intention of the Act, 2002 and other legislation discussed above, to avoid dearth of groundwater due to the over exploitation of groundwater by commercial and business establishments. These provisions and others specifically covered under the laws discussed above make it clear there shall be a proper and adequate mechanism in place so as to effectively control , regulate and manage the entire affairs in respect of withdrawing groundwater. Therefore we are of the definite opinion that the contention advanced by the petitioners that there is no law for the licensing of groundwater establishments is not correct. But on the other hand the state and the authorities are not taking adequate measures to curb the misuse of the groundwater, and exploitation done commercially, thus depleting the groundwater level day by day.

20. Taking into account all the above aspects, there will be a direction to the State Government as well as the District Administration & local bodies, to ensure that commercial establishments are operated only in terms of the Act, 2002, the Rules, 2004 and other notifications & guidelines issued by the Central Government, State Government and the Authority under the Disaster Management Act, 2005. We also direct the authority under the Act 2002 and Rules 2004 to conduct periodic inspections in order to identify as to whether the provisions of the said act and rules are to be extended to such areas and require registration of the wells .

The writ petition is disposed of with the above directions and observations."

8. According to the learned Senior Government Pleader, the directions issued in W.P.(C) No.31390 of 2018 would govern the facts of the case and the reliefs sought for.

9. Heard learned counsel for parties, perused the pleadings and materials on record.

10. As stated supra, in the case on hand, there appears to be a personal interest in filing the writ petition, as the petitioner is stated to an owner of a hotel, and aggrieved by the supply of water, which is not potable. For reasons best known, the names of suppliers of water to the petitioner, have not been furnished. Nevertheless, there are general averments as regards extraction of water, transportation & sale, without due permission from the competent authorities.

11. Functions of the Kerala Water Authority in terms of section 14 of the Kerala Water Supply and Sewerage Act, 1986, are as hereunder:

"14. Functions of the Authority.--The Authority shall perform all or any of the following functions, namely:--

(i) preparation, execution, promotion, operation, maintenance and financing of the schemes for the supply of water and for the disposal of waste water ;

(ii) rendering all necessary services in regard to water supply and collection and disposal of waste water to the Government and on request to private the private institutions or individuals ;

(iii) Preparation of State plans for water supply and collection and disposal of waste water on the directions of the Government ;

(iv) fixation and revision of tariffs, taxes and charges of water supply and maintenance service in the areas covered by the water supply and waste water systems of the Authority ;

(v) establishment of State standards for water supply and waste water services ;

(vi) all functions, not stated herein which were being performed by the Public Health Engineering Department of the Government before the commencement of this Act ;

(vii) assessment of the requirements for manpower and training in relation to water supply and sewerage services in the State ;

(viii) carrying out applied research for the efficient discharge of the functions of the Authority ;

(ix) making provision for the supply of wholesome water and efficient sewerage services to the people in the State ;

(x) taking such other measures as may be necessary to ensure water supply in times of emergency ; [\*\*\*\*\*] [(xa) making provision for manufacturing and marketing of packaged drinking water, mineral water, aerated water, or any other processed water and of goods or articles necessary for water supply and sewerage. (xb) any other matter supplemental, incidental, or consequential to any of the above functions of the Authority, and ]

(xi) such other functions as may be entrusted to the Authority by the Government by notification in the Gazette."

12. As rightly submitted, Kerala Water Authority has no power to take appropriate action against illegal extraction of ground water, transportation and sale thereof, and the directions issued by this Court in W.P.(C) No.31390 of 2018, squarely apply to the facts of this case.

Accordingly, instant writ appeal is disposed of, in terms of the judgment in W.P.(C) No.31390 of 2018 dated 10th November, 2021.

Sd/-

S.MANIKUMAR CHIEF JUSTICE Sd/-

smv

SHAJI P.CHALY  
JUDGE

APPENDIX OF WP(C) 11388/2019

PETITIONER EXHIBITS

EXHIBIT P1

TRUE PHOTOCOPY OF INTIMATION GIVEN TO THE  
CHIEF SECRETARY OF STATE GOVERNMENT BY A  
MEMBER OF LEGISLATIVE ASSEMBLY DATED  
10.12.2018

EXHIBIT P1

TRUE ENGLISH TRANSLATION OF EXHIBIT P-1.

EXHIBIT P2

TRUE PHOTOCOPY OF THE NEWS ITEM PUBLISHED IN  
THE MALAYALA MANORAMA DAILY DATED 31.3.2019

EXHIBIT P2

TRUE ENGLISH TRANSLATION OF EXHIBIT P-2.

EXHIBIT P3

TRUE PHOTOCOPY OF THE NEWS ITEM PUBLISHED IN  
THE MALAYALA MANORAMA DAILY DATED 24.3.2019

EXHIBIT P3

TRUE ENGLISH TRANSLATION OF EXHIBIT P-3.