

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

ORIGINAL APPLICATION NO. 25/2019

IN THE MATTER OF:

ABDUL FARUKH

156, Village Chandanhulla
New Delhi-110074

Applicant

Verses

Government of NCT of Delhi

Delhi Secretariat Complex
Delhi

Respondent

Counsel for Respondent(s):

Mr. Balendu Shekhar, Advocate for DPCC

PRESENT:

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

Reserved on: 19th January, 2022

Pronounced and uploaded on: 25th February, 2022

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. Letter dated 05.12.2018 sent by one Abdul Farukh was received by Tribunal on the administrative side complaining that in village Chandanhulla, there is a bore-well of Delhi Jal Board (hereinafter referred to as '**DJB**') and the same is being misused by private tankers for using the said bore-well for commercial supply of water privately and thereby precious ground water is being abstracted and misused in most illegal manner. The letter petition was registered as Original Application No. 25/2019 (hereinafter referred to as '**OA**') and

taken up on 15.01.2019 when Tribunal found it appropriate to obtain an action taken report from DJB. Vide e-mail dated 27.05.2019, DJB submitted report stating that the tube-well mentioned in the letter petition does not belong to DJB but a private tube-well near Barat Ghar Chandanhulla and the ground water is being illegally extracted therefrom and being sold by water tankers. It was also stated that earlier the said bore-well was sealed by Sub-Divisional Magistrate, Mehrauli but seal was broken by unknown person and in respect thereof, Naib Tehsildar, Mehrauli sent a letter to SHO P.S. Fatehpur Beri, New Delhi to register First Information Report (FIR) and take appropriate action. However, after receiving order of Tribunal, further survey has been made and bore-well has again been sealed by Tehsildar, Mehrauli on 19.03.2019.

2. This report was considered on 30.05.2019 and Tribunal observed that once illegal installation of tube-well has been found, it was incumbent upon Statutory Regulator under environmental laws to initiate prosecution apart from recovering environmental compensation for the damage and to take all deterrent measures and remedial steps. Tribunal required a further action taken report from DJB and Delhi Pollution Control Committee (hereinafter referred to as '**DPCC**'). Para 3 and 4 of the order dated 30.05.2019 said as under:

“3. We find that illegal installation of tube-well being an offence under the Environment (Protection) Act, 1986, the DJB in coordination with the Delhi Pollution Control Committee (DPCC) must initiate prosecution, apart from recovering compensation for the damage caused which should be deterrent having regard to the financial capacity of the polluter and also dismantle and seize the equipment so as to prevent any reopening of the seal in future, as happened earlier.

4. The DPCC and the DJB may adopt a policy in this regard for universal approach to be adopted against illegal drawal of water.

A further action taken report in the matter be furnished in the matter within one month by e-mail at judicial-ngt@gov.in.”

3. Pursuant to the above order dated 30.05.2019, two reports were submitted. One dated 12.09.2019 by DJB and another dated 28.10.2019 by DPCC.
4. The report of DJB states that there are 19,154 illegal bore wells out of which 2630 have been sealed. The tub-well near Barat Ghar Chandanhulla which was subject matter of consideration in the present matter stood sealed. Further action of sealing of remaining bore well has to be taken by District Magistrates.
5. The report of DPCC is that compensation has been assessed for illegal operation of the tube well which is the subject matter of consideration in the present matter.
6. The above resume shows that even though 19,154 illegal bore well are acknowledged and action is said to have been taken against 2630, status of action against remaining 16524 illegal bore wells is not known. Only plea is that such action has to be taken by DMs concerned. Even if it is so, operation of extraction of ground water being regulated under the provisions of Environment (Protection) Act, 1986, jurisdiction is also vested with DPCC, apart from other Authorities, including the CGWA and DMs. DPCC can either directly take action or coordinate with DMs/SDMs on regular basis and ensure that appropriate legal action is taken against operation of illegal bore wells for protection of the ground water. The action has to be by way of closing the operation of the illegal bore-wells, prosecuting such operators and by recovering compensation on

'Polluter Pays' principle as has been done for one tube well, mentioned earlier.

7. Consequently, Tribunal directed a further action taken report to be filed by DPCC and also directed Chief Secretary, Delhi to look into matter having regard to seriousness of the problem and submit report.

8. DPCC thereafter filed report vide e-mail dated 18.11.2019 stating that on the directions of Chief Secretary, Delhi, a meeting was held in the office of Divisional Commissioner on 19.11.2019 wherein all District Magistrates and Officials of DJB were present. The decisions taken therein stated in para 2 are as under:

“(i) Delhi Jal Board shall provide the list of 16524 illegal bore wells to the concerned DM.

(ii) The concerned DM after receiving the list from DJB shall ensure the sealing of bore wells. Also, they will initiate the prosecution proceedings against all the illegal bore well owners.

(iii) The DJB shall also provide the list of units to DPCC alongwith the vital information i.e. capacity of the motor installed with the bore wells etc. After receiving the same, DPCC shall calculate the quantum of EDC to be imposed upon bore well owners and pas the necessary orders.

(iv) EDC amount shall be recovered by the concerned SDM, after DPCC issues the recovery certificate.”

9. Another meeting was held on 15.11.2019 by Chief Secretary, GNCTD with Officials of DJB, DPCC and Revenue Department and therein following decisions were taken:-

“(i) Delhi Jal Board shall give the complete list of 19154 illegal bore wells to District Magistrate (HQ) who shall prepare district wise list and send the same to concerned DMs for sealing of illegal bore wells and prosecution of their owners.

(ii) Since, most of illegal bore wells are concentrated in three districts, SDMs from other districts shall also be deployed by constituting appropriate no. of teams under the supervision of SDMs so that all these illegal bore wells could sealed by

expeditiously. Necessary orders for constituting the teams shall be issued by Revenue Department immediately.

(iii) The prosecution proceedings should also be initiated against the owners of illegal bore wells under Environmental Protection Act by the District Magistrate before the designated court as notified by Hon'ble High Court of Delhi.

(iv) DPCC shall ensure the levying of Environmental Damage Compensation upon owners of illegal bore wells and send a copy to concerned SDM so that EDC could be recovered by them.”

10. For computation of compensation, report says in para 4 that DPCC shall follow formula as per CPCB recommendations which was referred to in the order dated 28.08.2019 in OA 593/2017, ***Paryavaran Suraksha Samiti & Anr v. Union of India***. An action taken plan was also prepared by Divisional Commissioner at district level and according to the said plan all remaining bore-wells are targeted to be sealed by 20.03.2020. Further, necessary action including, prosecution and levy of compensation as per 'Polluter Pays' principle will be initiated for which 52 teams have been formed for sealing action which include Revenue and DJB officials.

11. This report was considered on 19.11.2019. Tribunal noticed that the statutory regulators assured to complete entire action by 31.03.2020, hence, adjourned the matter with the direction to submit compliance report by the next date.

12. DPCC, thereafter, submitted an action taken report dated 11.07.2020 giving status of illegal bore-wells in Annexure-1 to the report as under:

“Status of action taken against illegal bore-wells in Delhi

<i>Sl. No.</i>	<i>Name of the District</i>	<i>No. of illegal bore-wells</i>	<i>No. of illegal bore-wells</i>
-----------------------	------------------------------------	---	---

		identified in the District	effectively closed
1	North	761	196
2	South	84	84
3	East	116	40
4	West	2185	1211
5	North East	0	0
6	North West	8299	3700
7	South East	297	169
8	South West	6681	1176
9	Central	611	153
10	New Delhi	75	68
11	Shahdara	552	451
	Total	19661	7248

13. A similar matter was considered on 13.07.2020 by Tribunal in **OA 685/2019, Rakesh Kumar vs. Govt. of NCT of Delhi** in which also action plan prepared by Delhi Government was approved and directed to be acted upon, hence, Tribunal deferred the matter for further consideration in the light of the status report.
14. DPCC has filed action taken report dated 03.09.2021 giving status of the bore-well sealed up to 31.08.2021 as under:

District	ATR (Borewell sealed till 31.08.2021)		
	No. of illegal borewells identified in the District	Action taken on illegal borewell till 31.08.2021	No. of illegal borewells to be sealed
North	761	748	13
East	116	116	0
South West	6681	1410	5271
South East	297	231	66
North West	8299	5814	2485
Shahdara	552	552	0
New Delhi	75	75	0
Central	611	412	199
West	2185	1793	392
North East	0	0	0
South	84	84	0
Total	19661	11235	8426

15. Further, action taken report with regard to compensation is stated in para 4 as under:-

“4. DPCC on its part has taken following action to assess the Environmental Compensation to be imposed on the basis of information received from DIB and Revenue Authorities:

(i) Show cause notices for imposition of EDC issued: 18315

(ii) EDC amount proposed in above mentioned SCNs ₹70,65,80,000/-

(iii) EDC amount imposed: ₹70,65,80,000/

(iv) EDC amount received: ₹23,80,000/-.

(v) EDC amount yet to be recovered: ₹70,42,00,000/-”

16. An additional action taken report dated 02.11.2021 has been filed stating that between 31.08.2021 to 25.10.2021 further action has been taken against 129 bore-wells, besides the action already taken up to 31.08.2021. With regard to environmental compensation the status is given in para 4 as under:-

“4. That the status of imposition of Environmental Compensation and its recovery is as follows:

(i) Total EDC amount received till 25.10.2021: ₹54,30,000/-

(ii) EDC amount yet to be realized: ₹70,05,70,000/-

Due to continuing pandemic, the process of recovery is very slow and revenue authorities are not able to spare their manpower for taking action.”

17. Illegal abstraction of ground water is not only a violation of environmental laws but also an offence as it amounts to theft of the property of State and also an offence under Prevention of Money Laundering Act, 2002 wherein Environmental (Protection) Act 1986, Water Act 1974 and Air Act 1981 are notified in part A Schedule I. Any proceeds of such violation of laws amounts to a dirty money

constitute an offence under Section 3 of the said Act. Be that as it may, since we have already directed for assessment of compensation in this case and nothing has been done, it is fault of Statutory Regulators in failure to do their statutory duties and obligations and has to be deprecated.

18. Statutory Regulators now shall proceed to determine environmental compensation against all the violators and for this purpose, they may collect detailed information from DJB and other authorities who shall co-operate and co-ordinate with the statutory regulators i.e., Delhi Pollution Control Committee (DPCC). The compensation shall be determined by giving due notice and opportunity of hearing to all concerned violators, in accordance with law. DPCC may also take steps for prosecution of violators.
19. The respondent authorities, therefore, are directed to take appropriate remedial action against the illegally running bore well and submit a complete compliance report by 15.09.2022 before Registrar General, NGT, PB. If any further direction is found necessary, matter shall be placed before Tribunal by Registrar General.
20. With the above directions, OA No. 25/2019 is disposed of.
21. A copy of this order be forwarded to DJB, all District Magistrates of Delhi and DPCC by e-mail for compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Brijesh Sethi,
Judicial Member

Prof. A. Senthil Vel,
Expert Member

Dr. Afroz Ahmad,
Expert Member

February 25, 2022
Original Application No. 25/2019
R & AVT