

Item No. 02

Court No. 1

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

(By Video Conferencing)

Original Application No. 176/2015  
(With report dated 16.03.2020)

Shailesh Singh

Applicant(s)

Versus

Hotel Holiday Regency, Moradabad & Ors.

Respondent(s)

Date of hearing: 13.07.2020

Date of uploading of order: 20.07.2020

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

**ORDER**

<b>S. No</b>	<b>CONTENT</b>	<b>Para Nos.</b>
I	Issue: Reviewing the status of compliance of directions of the Hon'ble Supreme Court and NGT to check depleting groundwater levels in the country	1
II	Hon'ble Supreme Court Directions in M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312	2-4
III	Proceedings before this Tribunal from 2012 - 22.11.2018	5-12
IV	Order of this Tribunal dated 03.01.2019, 07.05.2019 and 11.09.2019	13-23
V	Today's proceedings and directions	24-40

**I. The Issue**

1. The issue under consideration is reviewing the status of compliance of directions of the Hon'ble Supreme Court and NGT to check depleting groundwater level in the country.

## **II. Hon'ble Supreme Court Directions in M.C. Mehta v. Union of India & Ors. (1997) 11 SCC 312**

2. The issue was considered by the Hon'ble Supreme Court vide its order dated 05.12.1996 and judgment dated 10.12.1996 on the basis of news item published in Indian Express dated 18.03.1996 under the caption "**Falling Groundwater Level threatens City**". The Central Ground Water Board (CGWB) filed an affidavit before the Hon'ble Supreme Court that **from 1962 onwards the water levels were declining on account of enhanced pumpage**. National Environmental Engineering Research Institute (**NEERI**) was required to examine the matter and its report dated 23.09.1996 was considered. The Ministry of Water Resources (**MoWR**) ("Now, Ministry of Jal Shakti, Department of Water Resources, River Development and Ganga Rejuvenation, **MoJS**, since 2019) filed affidavit dated 24.10.1996 that **there was over exploitation of the groundwater in certain areas**. The Government of India had circulated a model bill to States/UTs in the year 1970 to remedy the situation. It was for the States to take further steps as water is state subject.

3. Vide order dated 05.12.1996, the Hon'ble Supreme Court observed that the matter needed to be dealt with under the Environment (Protection) Act, 1986 (EP Act, 1986) by the Central Government, referable to Entry 13, List I of the Seventh Schedule read with Article 253 of the Constitution. The Court overturned the MoJS's stand that control of groundwater was States' responsibility because water was the State subject. The Court observed that the **management of water resources to achieve overall aspirational goal of sustainable development warrants legal interventions based on the principles of inter and**

**intra generational equity, the precautionary principle, conservation of natural resources and environmental protection are covered by the EP Act, 1986.** Thus, an authority was required to be constituted with the mandate as recommended by NEERI as follows:

*“7. ... The mandate of the authority needs to include the following:*

- \* To deploy river basins as the basis for regional planning for sustainable water resource management (along with commensurate land use).*
- \* To prepare medium and long-term national land use plans inter alia including agricultural practices, human settlement patterns and industrial typology in consultation with Ministries/Departments concerned **based on the regional water supportive capacity.***
- \* To assess the present irrigation practices and cropping patterns, with respect to high water consuming crops and lay down National Agricultural Water Use Policy to **encourage judicious use of water resources.***
- \* **To keep under review groundwater levels and quality, and surface water quantity and quality to devise and implement pragmatic strategies at plan and programme levels.***
- \* **To ensure maintenance of minimum flows in the rivers so as to fulfil the riparian rights, to protect the flood plains, to as also to protect the vital ecological functions of the rivers.***
- \* To ensure techno-economic feasibility and to implement programmes on **reuse of appropriately treated sewage for agriculture, reuse of industrial wastewaters as industrial process water,** use of treated sewage in social forestry and public parks in municipal areas and **reuse of treated wastewater in new housing complexes for non-consumptive usages.***
- \* **To protect, conserve and augment traditional water retaining structures.***
- \* **To protect, conserve and augment natural and manmade wetlands in the country.***
- \* **To promote rain water harvesting in human settlement practices, particularly in cities with more than 10 lakh population in arid/semi-arid regions.***

- \* **To promote and implement modern and traditional water harvesting technologies to ensure minimal expenditure in groundwater harnessing.**
- \* **To design and implement programmes to arrest alarming rates of decline in snowline in the country.**
- \* *To ensure catchment area treatment, including construction of check dams, contour bunding, control of river bank erosion and plantation of endemic fast-growing tree species to arrest soil and water loss in all river basins.*
- \* *To ensure implementation of afforestation programmes for achieving a minimum of 33% forest cover as per the National Forest Policy, 1988.*
- \* **To prepare and implement guidelines on water rate structure for various water usages commensurate with the production and scarcity value of the resource.**
- \* *To ensure **community participation** with a view to harnessing traditional knowledge at all stages in the holo-logical approach to water resource management.”*

4. Finally, on 10.12.1996, the Hon’ble Supreme Court held:

**“8.** *We therefore order and direct as under.*

**9.** *The Central Government in the Ministry of Environment and Forest shall constitute the Central Groundwater Board as an Authority under Section 3(3) of the Act. **The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of groundwater management and development.** The Central Government shall confer on the Authority the power to give directions under Section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section (2) of Section 3 of the Act.*

**10.** *We make it clear that the Board having been constituted an Authority under Section 3(3) of the Act, it can resort to the **penal provisions contained in Sections 15 to 21 of the Act.***

**12.** *The main object for the constitution of the Board as an Authority is the urgent **need for regulating the indiscriminate boring and withdrawal of underground water in the country. We have no doubt that the Authority so constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. This aspect may be taken up by the Authority on an urgent basis.”***

### **III. Proceedings before this Tribunal from 2012 - 22.11.2018**

5. Petitions have been filed before this Tribunal from time to time since 2012<sup>1</sup>, with the grievance of rampant illegal drawal of groundwater by hotels, industries and builders for commercial purposes with no effective check by the CGWA as per mandate of law laid down by the Hon'ble Supreme Court.

6. The Tribunal dealt with the individual matters and directed stopping of such illegal extraction and recovery of compensation. All matters which were earlier tagged to the present matter, have been disposed of on 11.9.2019 leaving the main question pending for consideration herein. In one of the matters<sup>2</sup>, the Tribunal referred to a *Hindustan Times* article that 50 lac litres of ground water was extracted daily by Tanker mafias with no action and a *Times of India* article dated 6.6.2017 that 4 crore litres of water was being illegally extracted in Gurgaon daily. The Tribunal directed remedial action. Such cases are legion. The Tribunal observed that there is need for constant action by the regulatory authorities and a robust mechanism for effective review, to comply with the mandate of law and to avoid unnecessary litigation.

7. Reference may also be made to some other news items/articles. In a recent news item dated 15.7.2020<sup>3</sup> in *Tribune* under the title "**Decline in water table caused crack in Mahendragarh field: Experts**", pathetic ground situation has been reported. In the news item dated 17.9.2018<sup>4</sup> in *Mongabay* under the title "**As India's Ganges runs out of water, a potential food shortage looms**", it is stated that in the last 3 decades **groundwater input to the river ganga has declined by 50%**.

---

<sup>1</sup> Order dated 11.9.2019 in OA No. 59/2012, Vikrant Tongad; OA No. 108/2013, Legal Aid Committee, NGT Bar; OA No. 179/2013, Raj Hans Bansal; [OA No. 484/2015; OA No. 327/2018; OA No. 115/2017] Shailesh Singh; [OA No. 613/2017; OA No. 614/2017] Mohd Javed

<sup>2</sup> OA 458/17, Harinder Dhingra, order dated 11.9.2019

<sup>3</sup> <https://www.tribuneindia.com/news/haryana/decline-in-water-table-caused-crack-in-mahendragarh-field-experts-112461A458/2017>

<sup>4</sup> <https://news.mongabay.com/2018/09/as-indias-ganges-runs-out-of-water-a-potential-food-shortage-looms/>

This has resulted **due to the unsustainable groundwater extraction** which could severely affect the availability of water for surface water irrigation with potential decline in food production. In the news item dated 20.8.2018<sup>5</sup> in the *Hindu Business Line* under the title "**Ganga drying up in summers due to groundwater depletion: Study**", it is stated that decline in the groundwater inflow is hurting the health of river Ganga. In the news item dated 5.10.2019<sup>6</sup> in *the Print* under the title "**Water bodies running dry at alarming rate due to groundwater depletion**", it is mentioned that groundwater depletion at a rapid rate will affect the flow of river and stream which will lead to disruption of aquatic ecosystems and global food security. In the *National Geographic resource library*<sup>7</sup>, titled "**Water table**", it has been highlighted that the groundwater extraction can result in the fall of the water table beyond the level of replenishment. There is further article dated 2.10.2019 in National Geographic titled "**We pump too much water out of ground – and that's killing our rivers**"<sup>8</sup> The article states that by 2050, thousands of rivers and streams worldwide could pass a critical ecological threshold. Such reports abound and the Tribunal is confronted with the same frequently.

8. As in other cases, it is stated herein that there is fast depletion of ground water in NOIDA and Greater NOIDA, District Gautam Budh Nagar, U.P., due to large scale extraction of groundwater by various commercial entities, **including hotels in Ghaziabad, Moradabad and Agra**, where ground water levels were unsafe. There was no effective regulation on account of which situation was worsening. Contentions of

---

<sup>5</sup> <https://www.thehindubusinessline.com/news/science/ganga-drying-up-in-summer-due-to-groundwater-depletion-study/article24736218.ece>

<sup>6</sup> <https://theprint.in/science/water-bodies-running-dry-at-alarming-rate-due-to-groundwater-depletion-reveals-study/301311/>

<sup>7</sup> <https://www.nationalgeographic.org/encyclopedia/water-table/>

<sup>8</sup> <https://www.nationalgeographic.com/science/2019/10/groundwater-pumping-killing-rivers-streams/>

learned counsel for the applicants are that directions relating to water harvesting are not being complied with. There is no effective monitoring after NOC for extraction for commercial purposes is granted subject to conditions of replenishments or restricted quantum or uses which conditions are held in breach. There is no published data of level of depletion nor any impact study before granting NOC. No realistic roadmap to remedy the falling level has been provided. This has affected flow of rivers. Water bodies are drying up. Charges for extraction are a pittance even though in OCS areas ground water is scarce and even for drinking purposes there are difficulties in supplying water to all. There are allegations of **extraction of ground water for horticulture, watering playfields, construction and industrial and other secondary purposes for which treated water could be easily used**. This was not happening in absence for regulatory and enforcement measures.

9. **Significant orders of the Tribunal include orders dated 23.04.2015, 26.07.2018, 28.08.2018 and 22.11.2018**. Reference to orders passed thereafter will be made later. It was noted in the order dated **23.04.2015** (in OA 59/2012) that **ground water level has gone down in NOIDA by 15 mtrs. between 2007-2014**. The Tribunal issued directions to regulate the problem.

10. **On 26.07.2018** (in OA 59/2012) it was noted that the problem was **not confined** to NOIDA, Greater NOIDA, Delhi and NCR, the situation in Over exploited, critical and semi critical (OCS) regions throughout India called for stringent regulation for ground water extraction. The Tribunal thus took up the issue of effective enforcement of regulatory measures **pan India** in all OCS areas. It required an expert

from the MoJS to be present to assist. The order was uploaded on Tribunal's website so that all stake holders could participate.

11. Vide order dated **28.08.2018**, the Tribunal noted the CGWA stand that it was **regulating only some areas notified by it and its notification did not include all the OCS areas** which had already been identified and notified by the CGWA, having regard to the depletion of groundwater level. **There was no basis for limiting monitoring to only some of the OCS areas leaving out others though the CGWA was under legal obligation to regulate ground water management throughout India.** Accordingly, the Tribunal directed the MoJS in consultation with the Ministry of Environment, Forest and Climate Change (MoEF&CC) and Ministry of Agriculture (MoA), **to review the existing mechanism for effective conservation of ground water resources in all OCS areas in the country.** It was directed that the policy framework must include monitoring mechanism by way of provision for coercive measures, **consistent with the mandate in the judgement of the Hon'ble Supreme Court of India in M.C Mehta (supra).** The CGWA guidelines that permission to extract ground water in OCS areas is to be given only for drinking and domestic purposes were noted and directed to be acted upon. **The unsatisfactory situation continues ignoring various orders of the Tribunal on untenable pleas as can be seen from later part of the order.**

12. On **22.11.2018**, the matter was further considered in the **presence of the Secretary, Water Resources** who stated that the **CGWA was ill equipped to handle all areas and the regulatory framework was 'under consideration'.** After making reference to the

2012 Guidelines issued by the CGWA and Draft Guidelines dated 16.11.2015, the Tribunal noted the following points:

- i. CGWA was repeatedly disowning its responsibility on the plea that regulation of ground water was a State subject, **contrary to the mandate in the judgement of the Hon'ble Supreme Court** in M.C Mehta (Supra).
- ii. CGWA was **failing to regulate drawal of ground water in OCS on the ground that it had not issued a notification except for some areas**, and without such notification, there was no need for regulating extraction of ground water even in OCS.
- iii. **Extraction of ground water for commercial purposes was being allowed** in OCS just by a mechanical condition that the ground water will be recharged, without ensuring compliance of such condition.
- iv. Underground water was being illegally allowed to be extracted for constructions, bottling plants, swimming pools etc. without any **impact study or effective steps for rain water harvesting for recharge of the ground water in OCS areas**.
- v. CGWA was repeatedly taking the plea that **charges were being collected for permitting drawal of underground water for commercial purposes in OCS against the Precautionary Principle, Sustainable Development as well as Intergenerational Equity Principles. The charges were too less compared to the cost to the environment**.
- vi. While the use by agriculturists needed to be appropriately addressed, **extraction for commercial purpose in OCS areas stood on different footing** in law from extraction for drinking purposes and agriculture.

The Tribunal deferred the matter to 3.1.2019 to enable the Ministry to take steps for effective regulatory framework in the light of the above.

#### **IV. Orders of this Tribunal dated 03.01.2019; 07.05.2019 and 11.09.2019**

***Tribunal Order dated 03.01.2019, considering MoJS Notification dated 12.12.2018***

13. In **purported compliance of order of this Tribunal (but actually against its letter and spirit)**, MoJS issued Notification dated 12.12.2018. The notification, far from bringing forward an effective model of regulation as mandated in the Supreme Court and Tribunal orders, **liberalized drawal of ground water in OCS areas**. No roadmap was shown projecting impact of regulation in the form of control of extraction, increase/ projected increase in water levels in immediate future and policymaking with such goals.

14. The CGWA's affidavit stated that utilizable water in India is 1137 BCM which comprised of 690 BCM of surface water and **447 BCM** of replenishable ground water resources, while in the year 2009, about **2700 BCM** of ground water was available in deeper aquifers, below the zone of water level fluctuations. Thus, ground water over exploitation was required to be restricted to the level of annual replenishment in order to facilitate long term **sustainability of ground water**.

The Tribunal noted further averments that annual extraction was 253 BCM, **25% of the global ground water extraction**. Out of total 6,584 assessment units, **1,034 fall in overexploited category (where extraction is more than 100%of recharge), 253 fall in critical**

**category (where extraction is 90-100% of the recharge), 681 fall under semi-critical category (where extraction is 70-100% of the recharge) and 4,520 were under safe category (where extraction is 90% of the recharge).**

**According to CGWA, about 90% extraction was for agricultural purposes, 10% for drinking, domestic and industrial purposes. Industrial use was 5%.** Their contention was that no purpose is achieved by stringent regime against industrial use, it being a lower percentage. Regulating extraction for agricultural use was otherwise difficult as agriculturists were struggling for survival.

CGWA appeared to be content with some steps taken like Model building bye-laws 2016<sup>9</sup> **without showing the extent of implementation and results achieved or projected.** They also cited some other policies<sup>10</sup> and programs, mostly in the nature of advisories, guidance and directions, but with no specific monitoring mechanisms, or attending consequences for non-compliance. In respect of all these programs too, CGWA failed to show the extent of implementation, nor actual results or enhancement in groundwater levels.

---

<sup>9</sup> The said bye laws had measures including – made a provision of rain water harvesting in all new buildings on plots of 100 sq. mtrs. and above. Entire storm water is required to be captured for water harvesting through suitable structures in all public and open spaces of more than 500 sq. mtrs. Buildings having minimum discharge of 10,000 liters and above are required to have waste water recycling system for horticulture purposes.

<sup>10</sup> 'Mission Water Conservation' has been introduced by the Ministry of Agriculture, GOI. Inter-Ministerial Committee has been constituted under the chairmanship of the Secretary, MoJS. The Ministry is also carrying out training programme and Information, Education & Communication (IEC) activities for awareness. The Department of Land Resources is implementing water-shed development projects. Certain States have taken initiatives including Punjab Preservation of Subsoil Water Act, 2009 which ban early sowing of paddy nursery and transplantation of saplings. Maharashtra Groundwater (Development and Management) Act, 2009 prohibits drilling of deep wells within for agriculture or industrial usage, pumping of ground water for deep well of depth of 60 mtrs. or more. The CGWA issued advisories and it requires taking of NOC for ground water withdrawal but the agriculture section is not subjected to ground water regulation on account of socio-economic implications. The steps taken by the CGWA include directions for rooftop rain water harvesting systems, ground water recharge measures along the National highways, State national highways, railway tracks, etc., artificial recharge in over-exploited areas, large and medium industries using ground water to take up the ground water conservation measures.

**CGWA further stated that they impose conditions while granting NOC for withdrawal of ground water but the Tribunal found that compliance of such conditions was not effectively monitored. Further, the Tribunal noted deficiencies in CGWA policy as follows:**

- Industries in safe category are exempted from NOC but in OCS areas, condition for grant of NOC is rain water harvesting/ground water recharge measures.
- **In semi critical areas, non-water intensive industries drawing ground water up to 100 m<sup>3</sup>/day are exempted from NOC.** Ground water extraction is restricted to 200% and 100% of proposed recharge for non-water intensive and water intensive industries respectively.
- **In critical areas, non-water intensive industries drawing up to 50 m<sup>3</sup>/day are exempted from NOC.** Ground water extraction is permitted up to 100% and 50% of proposed recharge for non-water intensive and water intensive industries respectively.
- **In over-exploited areas, non-water intensive industries are exempted which are drawing ground water up to 25 m<sup>3</sup>/day.** Ground water extraction should not exceed 500m<sup>3</sup>/day for each unit. Permitted water extraction is restricted to 60% of the proposed recharge.

**In States/UTs without functional ground water authorities, NOCs are granted online in an applicant - friendly manner.**

Till 2015, existing industries were not required to seek any NOC. In compliance of order of the Tribunal dated 15.04.2015, existing industries were brought within the purview of NOC with effect from 16.11.2015.

15. **In its order of 03.01.2019, the Tribunal disapproved the notification, holding that ultimately, it is the result of all the measures, shown by the data on the ground, which has to be the basis of any policy and not just laying down of measures.** It was observed that the notification granted exemptions in OCS areas without having regard to the impact on groundwater, or a roadmap for controlling the falling ground level. Doing so without impact assessment was against sustainable development.

Some further vulnerable features of the notification were noted as follows:

- i. Exemption of individual households to draw ground water from single dug well/bore well/tube well through delivery pipe of upto 1" diameter and certain other categories, even if there is an existing supply of drinking water.

Beyond the said exemption, ground water withdrawal can be permitted on the basis of NOC where water supply is not adequate subject to certain conditions.

- ii. Infrastructural projects including water supply agencies could be allowed to get NOC and the said industries are in Annexure-VI.

16. The Tribunal noted a **2009 study<sup>11</sup> based on NASA Gravity Recovery and Climate Experiment satellites, finding that the ground water level depletion between 2002-2008 in north India was continuous and at a net loss equivalent to double the capacity of India's largest surface-water reservoir, due to anthropogenic causes.**

The Tribunal also referred to the publication of the Niti Ayog<sup>12</sup>:

" As per publication of NITI Ayog, India is placed at 120<sup>th</sup> amongst 122 countries in water quality index. **Most states have achieved less than 50% of the total score in augmentation of**

---

<sup>11</sup>

[https://www.researchgate.net/publication/26736936\\_Satellite\\_Based\\_Estimates\\_of\\_Groundwater\\_Depletion\\_in\\_India](https://www.researchgate.net/publication/26736936_Satellite_Based_Estimates_of_Groundwater_Depletion_in_India)

<sup>12</sup> Composite Water Management Index: A Tool for Water Management, June 2018, Niti Aayog in association with MoWR, Ministry of Drinking Water and Sanitation and Ministry of Rural Development

**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."**

17. The Tribunal noted another survey on the subject as follows:

*"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."*

18. The Tribunal held that the blanket exemptions rendered regulatory regime illusory, resulting in no impact assessment. There was no application of mind shown as to how such policy will prevent extraction of water beyond desired levels in OCS areas. Exemptions were in clear breach of public trust doctrine and intergenerational and precautionary principles. The nominal charges had no nexus to the cost of restitution or value.

19. 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, as well as the Tribunal's specific directions. The Tribunal upheld the following objections against the Notification:

*"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.”**

20. The Tribunal 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 flow of rivers in terms of e-flows and other water bodies.** The MoEF& CC and MoWR may finalize the issue of subject matter 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.”*

21. 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 Inter-generational 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.”*

The Tribunal sought reports from the MoEF&CC for remedial measures and from CPCB to evolve compensation regime.

### ***Tribunal Order dated 07.05.2019***

22. The matter was thereafter considered on 07.05.2019 and since the report was not furnished by the MoEF&CC in terms of order dated 03.01.2019, the matter was deferred for the purpose. However, the CPCB report of 30.04.2019 with regard to the compensation regime was considered. It was found unsatisfactory and a fresh report was required to be filed for the following reasons:

*“(i) **The compensation to be recovered for illegal extraction has to be deterrent specially when it is for commercial or industrial purpose and linked to the quantum of ground water extracted and the period for which such extraction takes place.***

*(ii) Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms which has not been done in the present report.”*

**Tribunal order dated 11.09.2019, considering MoEF&CC Report of 18.7.2019 and CPCB report of 26.6.2019**

23. The matter was thereafter considered by the Tribunal on 11.09.2019. The Tribunal **noted MoEF stand that in OCS areas, ground water extraction could be allowed only for drinking and domestic purposes.** However regulatory regime suggested was not effective. The CPCB report regarding compensation was accepted as interim arrangement and directions were issued for further examination to lay down stringent regulatory regime. The Tribunal held, in relevant part:

*“16. Accordingly, affidavit filed by the MoEF&CC on 18.07.2019 and report of the CPCB dated 26.06.2019 have been put up for consideration today. We take up the said reports for consideration.*

*17. The report dated 18.07.2019 gives statistics as follows:*

*“As per the latest assessment in categories of OCS areas Delhi is ranked first as 82% of total number of assessed units followed by Rajasthan (81%), Punjab (81%), Haryana (75%), and Tamil Nadu (50%)*

*In order to regulate ground water abstraction in Over Exploited / Semi – critical areas, CGWA notifies areas (blocks / talukas/ mandals/ firkas areas) under Environment (Protection) Act, 1986 for regulation of ground water development and management. **In these notified areas, abstraction of ground water is not allowed for any purpose other than drinking and domestic use.** For monitoring and supervision of notified area, CGWA has empowered district level authorities of State Government under Section 4 of the Environment (Protection) Act, 1986. **CGWA has notified total 162 areas in the country till 2012 out of 1033 identified Over Exploited areas.”***

*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.***

20. *The report of CPCB dated 26.06.2019 deals with methodology for assessing environmental compensation (EC), Formula for Environmental Compensation for illegal extraction of ground water, Environmental Compensation Rate (ECRGw) which has been further dealt with in different categories, i.e. ECRGw for Drinking & Domestic use for household purposes and those for institutional activity, commercial complexes, townships etc., ECRGw for Packaged Drinking Water Units, ECRGw for Mining, Infrastructure and Dewatering Projects, ECRGw for Industrial Units, Deterrent factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes) and Deterrent Factor . Formula for Environmental Compensation for illegal extraction of ground water is as follows:*

**“5. Formula for Environmental Compensation for illegal extraction of ground water**

*The committee recommended that the formula considering water consumption, no of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:-*

$$\text{EC}_{\text{GW}} = \text{Water consumption per day} \times \text{Environmental Compensation rate for illegal extraction of ground water (ECR}_{\text{GW}}) \times \text{No. of Days} \times \text{Deterrent Factor}$$

*Where, water consumption is in m<sup>3</sup>/day and ECRGw in Rs/m<sup>3</sup>”*

*All other details can be seen from the report which is available on the website of CPCB. The report also gives recommendations as follows:*

21. The committee has given following recommendations:

1. In case of fixation of liability, it always lies with current owner of the premises where illegal extraction of groundwater is taking place.
2. Violation duration may be assumed as at least one year in case where no evidence for period of installation of borewell could be established.
3. For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.
4. Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in overexploited area.
5. Water in over-exploited area should be permitted only for drinking purposes and industries established in this area without prior consent or NOC from CGWA or another concerned department must be closed down with immediate effect. No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.
6. Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.
7. In case of all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.
8. The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period. The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.
9. In addition, all repeated violations will attract EC at 1.25 times the previous EC.
10. Authorities assigned for levy EC and taking penal action are listed below:

S.	Actions	Authority
----	---------	-----------

1.	To seal illegal bore-well/tube-well to stop extraction of water and further closure of project	District Magistrate
2.	To levy EC <sub>GW</sub> as per prescribed method	District Magistrate/ CGWA
3.	To levy EC on industries involved in illegal abstraction of Groundwater , as per the method prescribed in report of CPCB- "EC for industrial units"	CPCB/SPCB/PCC
4.	Prosecution of Violator	CGWA under Environment (Protection) Act, 1986 (or)
		SPCB/PCC under Water (Prevention and Control of Pollution), Act, 1974

22. CGWA shall maintain a separate account for collection and utilization of environmental compensation levied for illegal extraction of ground water on the violators. For easy understanding w.r.t levying of EC on violators as per the recommendation of CPCB, case studies given at **Annexure II** may please be referred.

23. **The report may need further consideration by Committee that we propose to constitute, particularly permitting water intensive industries except in safe areas.** This recommendation being against the order dated 03.01.2019 of this Tribunal may not be acted upon till further orders. The compensation aspect may be acted upon by the regulatory authorities as an interim measure on same pattern as in O.A. No. 593/2017, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.<sup>13</sup> and compensation recovered from the violators, for the period of violation, which may be assessed on case to case basis. Once violation is found, the burden of proving that there was no violation earlier, will be on the violator.

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 unauthorizedly extracted, including review of manning and functioning of CGWA.**

<sup>13</sup> Order dated 28.08.2019

- (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*

***The nodal agency will be the Joint Secretary, MoWR for coordination and compliance. The Committee may look into the reports already submitted. The report may be furnished within two months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in).***

- (iii) The report of CPCB with regard to compensation is accepted by way of an interim arrangement and the same may be acted upon by the regulatory authorities and compensation recovered from the violators, for the period of violation, which may be assessed on case to case basis. The report of CPCB that water intensive industries can be allowed even in semi-critical and critical area without any further safeguards may not be acted upon till further orders.”***

## **V. Today’s proceedings and directions**

### ***Review of CGWA/MoJS position and the Committee’s report pursuant to the Tribunal order dated 11.9.2019***

24. The matter is being taken up in continuation of order dated 11.09.2019. We have heard Shri Vikramjit Banerjee, learned ASG appearing for MoJS and CGWA, We have considered the CGWA affidavit dated 16.3.2020 filed for MoJS which annexes the report of the Committee purporting to be in compliance of Tribunal order dated 11.9.2019. The situation continues to be entirely unsatisfactory. Several issues in the report are same which were rejected in the order dated 3.1.2019. The MoJS appears to be avoiding its Constitutional obligation of complying with the judgement of the Hon’ble Supreme Court and

repeated directions of this Tribunal. Surprisingly and regretfully, a wholly untenable prayer is made that the Tribunal should review its earlier orders, which have attained finality, never having been challenged. It is thus clear that there is no intent or effort to comply with the said orders. **The report is not in compliance of this Tribunal's orders but rather, largely violates the spirit of the said mandate.** We proceed to record the reasons.

25. The CGWA affidavit states that **the restriction on extraction of groundwater in OCS areas is likely to have adverse impact on industrial production, employment opportunities and GDP of some States.** It seeks vacation of the Tribunal order dated 03.01.2019, so as to issue NOCs for groundwater extraction as per proposed guidelines or as per 2015 guidelines<sup>14</sup>.

26. **As mentioned earlier, the report practically reiterates the regime earlier brought out on 12.12.2018, which was rejected by the Tribunal on 3.1.2019** being against sustainable development and mandate of law laid down by the Hon'ble Supreme Court. We do not find it necessary to reproduce the report *in extenso* but refer to and comment upon the main aspects thereof.

- a. The report states at the outset, contrary to the Hon'ble Supreme Court judgment:

*“Water being a State subject, **initiatives on water management including conservation and water harvesting in the Country is primarily States' responsibility.** Further, to supplement the efforts of the State Governments, Government of India provides technical and financial assistance to encourage sustainable development and efficient management of water resources through various schemes and programmes.”*

---

<sup>14</sup> Dated 16.11.2015, and which were earlier disapproved

However, as against the above stand, the report also mentions that the CGWA is vested with the regulation, control, management and development of groundwater in the country. It has issued guidelines (including the 2015 and the 2018 guidelines), and enumerated its various initiatives and policy decisions.

- b. For the same reasons for which notification dated 12.12.2018 was found unacceptable, the proposed recommendations, **liberalizing groundwater extraction across the board to certain categories without any impact assessment and effective checks, are against law.**
- c. Exemptions for infrastructure projects, MSMEs or other industries or commercial purposes except drinking water, where supply is not otherwise available in water stressed areas, will be against **sustainable development and public trust doctrine unless individual impact assessment is conducted and permitting such extraction found viable.**
- d. There has to be listing of priorities within available limited resources and unlimited demands and impact assessment of such activity and policy of permitting extraction has to be based on carrying capacity in the form of the water levels.
- e. **No road map has been provided how the new regime will check and neutralize falling ground water levels. There is neither a claim that in the last 24 years of regulation by the CGWA, ground water levels have improved, nor any projection for future improved.** Data compiled by Niti Ayog in its report

published in 2018 'composite water index' is clear evidence of over exploitation at several locations. Moreover, CGWA itself has conducted survey and identified 1868 out of 6585 assessment units as OCS areas. Its failure is in not having effective regulatory regime. There is no adequate implementation of conditions for drawal of ground water for commercial purposes. Such failure is shown by falling levels and news of **mafias engaged in illegal drawal of ground water in OCS areas without effective check.** Further liberalization will defeat the purpose of having CGWA and be contrary to the mandate of public trust doctrine. Effective steps for protecting ground water in OCS areas against **singularly commercial considerations** are critical.

f. The report observes:

*“During the discussions, it was observed that ground water is a replenishable resource and the aquifer zones from which ground water is extracted gets replenished every year from rainfall and other sources. **Therefore, there is a need to extract groundwater by various users including industries/agriculture needs in safe, semi-critical and critical areas as space is to be created in the aquifers for replenishment of water through rainfall/other sources.** It is pertinent to mention here that in case we do not allow extraction of ground-water in these areas the precious rainfall may be lost through runoff as the void in aquifers may not be available for recharge purposes through rainfall.*

*In safe, semi-critical and critical areas, annual ground water withdrawal is less than the annual ground water recharge and in over-exploited areas, it exceeds annual recharge. In view of this,, the Committee was of the view that it may not be appropriate to club semi-critical and critical with over-exploited assessment units, provided necessary measures to compensate the ground water withdrawal are ensured and at no point groundwater extraction exceeds 100% of recharge. **Hence, the committee was of the opinion that two broad categories of assessment units namely i) over-exploited and ii) critical, semi-critical & safe be considered for framing the guidelines. Stricter regulatory regime was suggested for over-exploited assessment units to avoid further deterioration.”***

We find the statement that withdrawal to the extent of replenishment **must be done** to avoid wastage of rain water is contradicted by **continually falling levels of ground water in OCS areas**. There is no question of *wastage* of rain water where water level is falling. In such areas, the withdrawal has to be reduced not only to the extent of replenishment but to enhance the ground water to safe and sustainable levels. Replenishment and raising of water level are both important in OCS areas. Falling groundwater levels dry up water bodies and reduce the flow of the rivers. CPCB website acknowledges **351 river stretches as polluted for reasons including non availability of flow which prevents adequate dilution capacity. This affects the aquatic life, wildlife and food-chain and the entire eco-system.**<sup>15</sup>

- g. The report states, under the heading ‘**action being taken for preventing depletion of groundwater and recharge**’:

*“The focus of this report is therefore to create a balanced approach, **with emphasis on demand side management and practical regulation that does not impede development.** Committee was also apprised about the fact that Water being a State subject, initiatives on **water management including conservation of ground water is primarily States’ responsibility.** However, Central government supplements the efforts of states Government through technical and financial assistance.”*

There is clear contradiction in mentioning need for balanced approach on the one hand and **emphasis on the demand side.** Such approach is against the mandate of ‘Sustainable Development’, including Precautionary principle, intra and inter-generational equity and ‘public trust’ doctrine.

---

<sup>15</sup> See recent order dated 22.6.2010 in OA No. 673/2018, In Re: News item published in “The Hindu” authored by Shri Jacob Koshy, titled “More river stretches are now critically polluted: CPCB”

- h. The report's recommendation under the heading '**Industry, Infrastructure and Mining projects**' that extraction of groundwater by existing industries need not be checked as it may obstruct growth, is an argument against the principle of 'Sustainable Development'. **There is no absolute right even of existing industries to continue to draw ground water without regard to depleting groundwater levels as held even in 2015.** Such extraction cannot be at the cost of environment and ignoring intra and intergenerational, precautionary and sustainable development principles. **Development and growth must be undertaken but not without ignoring the sustainable groundwater level.**
- i. Recommendation for robust monitoring mechanism by restructuring CGWA, strengthening manpower having network upto District Level etc. may be looked into by the concerned authorities and action taken for implementation so as to ensure that there is effective regulatory mechanism as per the mandate of law. Our observations are same with regard to robust mechanism to monitor conditions laid down for grant of permission for extraction of groundwater.
- j. Recommendation in para 13.0, on quantum of compensation and action required against violators, are contrary to CPCB recommendations for closing down industries in over exploited areas for extracting groundwater illegally, and cannot be accepted. The present proposal is against stringent action against violators committing criminal offence which cannot be appreciated. To regulate and control groundwater extraction in India, the

overriding principle of carrying capacity has to apply to every category of commercial use of groundwater, including industrial use, mining projects, infrastructure projects. Compensation for unlawful groundwater extraction must be on the bases of **restitution and deterrence.**

- k. The water rates in para 6.0 of the report with regard to various categories including packaged water and beverages and mining infrastructure projects **in OCS have to be in the nature of deterrent because groundwater extraction for such purposes is not permissible beyond carrying capacity. The proposed rates do not meet such test.** Thus, unregulated drawal of water being a criminal offence under the law, compensation may be recovered as per CPCB report dated 26.06.2019 until any further appropriate mechanism is prepared. The 2015 CGWA guidelines and the MoEF report itself provides that groundwater extraction for commercial purposes was impermissible in OCS areas. Instead of moving in that direction, present proposal is in reverse direction which is not permissible.

27. In terms of the Tribunal's previous orders (dated 03.01.2019, Paras 29 and 31<sup>16</sup>, and dated 11.09.2019, Para 24<sup>17</sup>), **the core issues that are required to be considered are:**

- a. Has a robust institutional monitoring mechanism been evolved**
- i. To define 'assessment unit' - wise carrying capacity and accordingly set (a) target replenishment levels and (b)**

---

<sup>16</sup> Quoted supra, Para 20

<sup>17</sup> Quoted supra Para 23

**plan for permissible levels of extraction, of ground water levels in OCS areas;**

- ii. to assign individual target replenishment levels as a condition for granting extraction permits, and to audit such replenishment by those who are extracting groundwater; as well as to audit and measure actual carrying capacity periodically;**
- iii. to monitor real-time implementation of conditions for permitting extraction of ground water;**
- iv. to withdraw permits for extraction of ground water failing target replenishment levels; as well as**
- v. to sustain the flow of rivers in terms of e-flows and sustain other water bodies?**

**b. Is there a provision for an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise)?**

**c. Has an effective and measurable plan been prepared for preventing depletion and unauthorized extraction of ground water backed by requisite mechanism in the form of manning and effective functioning of CGWA so as to ensure sustainable ground water management in terms of the Hon'ble Supreme Court mandate by which CGWA was created?**

**d. Is the compensation regime against violators adequately deterrent?**

28. The answer is 'no'. If implemented, **the current report would nullify the mandate of the Hon'ble Supreme Court by seeking to deregulate ground water extraction, ignoring its impact on the e-flow of rivers, water bodies and overall sustainable management of**

**scarce natural resources with emphasis on industrial development, without balancing development and environment. Irreversible damage cannot be allowed by extracting water beyond safe levels, without impact assessment.**

29. We, thus, hold that as per mandate of sustainable development under Section 20 of NGT Act, 2010, which has been held to be part of right to life under Article 21 of the Constitution, the regulatory authority must direct its policy towards preventing further depletion of and upgrading the groundwater levels based on impact assessment. Extraction can neither be unregulated or allowed across the board without individual consideration. For this purpose, there is need to compile data by **mapping all the assessment units individually in terms of current and estimated water level, drawal and replenishment and preparing a management plan for all such units.**

The CGWA being a statutory regulator for the country has to exercise overriding power in the form of statutory regulatory orders. It may have its own network and, to the extent found viable, utilize the network of existing Authorities like District Magistrates, Environment Departments, Departments of Irrigation and Public Health etc. The ground water assessment has to be done annually and placed on the respective websites of the Districts or States. Any extraction of groundwater has to be permitted keeping in mind availability of groundwater ensuring that there is no further depletion and ground water level remains at safe level.

30. At this stage, we may notice that the regulatory mechanism of the CGWA has not been adequate, as the report also notes. CGWA does not appear to have requisite strength nor enforcement mechanism nor strategies. This may be one of the reasons for failure in effective

monitoring, defeating the object of law. This has led to large number of petitions before this Tribunal pointing out that illegal groundwater extraction was rampant. The plans for **rain water harvesting and many other steps to a great extent remain largely only on paper**. Remedial measures need to be taken in view serious challenges in protection of groundwater level, to save rivers and water bodies and the entire chain of environment.

### ***Roundup of other relevant cases before the Tribunal***

31. In O.A. No. 496 of 2016<sup>18</sup>, the issue of **rain water harvesting** systems and regulating extraction of groundwater in Delhi is subject matter of consideration. This Tribunal constituted a Monitoring Committee headed by a former Judge of the High Court. The Committee reported that **14,231 number of borewells were illegally operating in Delhi and there was over exploitation of the groundwater adversely affecting the flow of river Yamuna. Though provision was made for rain water harvesting, compliance thereof was not adequate. Large number of water bodies needed to be restored. Sealing of illegal borewells was inadequate.**

32. We reiterate that mandate of law is sustainable development and **only economic consideration is not enough** for a policy, if it results in damage to the environment in violation of intra and inter generational equity and precautionary principle. Once potential for damage to environment is patent, precautionary approach is to prevail. In OA 681/2018<sup>19</sup>, the Tribunal, vide order dated 20.11.2019, considered the

---

<sup>18</sup> Order dated 11.09.2019 in News Item Published in "Hindustan Times" dated 19.06.2015 Titled "Dirty flows your drinking water" authored by Ritam Haldar"

<sup>19</sup> News item published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with multiple timelines to clean air in 102 cities to be released around August 15"

concept of sustainable development and carrying capacity in the context of air pollution in 122 cities in the country which are declared 'non-attainment'. The Tribunal directed review of Master Plans consistent with the principle of 'Sustainable Development' and **carrying capacity** as per judgment of the Hon'ble Supreme Court in (2004) 6 SCC 588<sup>20</sup>.

33. The Tribunal has directed undertaking of carrying capacity study carrying capacity assessment with regard to hill cities of Shimla<sup>21</sup>, Kasuali<sup>22</sup> and Mcleodganj<sup>23</sup>, finding threat of earth quakes on account of excessive constructions already undertaken.<sup>24</sup> The Tribunal had to restrict constructions in such areas.

34. In O.A. No. 1038 of 2018<sup>25</sup>, the Tribunal considered the application of concept of Sustainable Development to polluted industrial clusters, in the light of law laid down by the Hon'ble Supreme Court.

35. In OA 325/2015<sup>26</sup>, the Tribunal considered the issue of protection of water bodies and noted that groundwater conservation was essential to protect the water bodies and to maintain flow of river stretches. The data furnished was noted showing serious challenge for restoration of water bodies in the country. In OA 148/2016<sup>27</sup>, this Tribunal has been monitoring use of treated water for secondary purpose. For this purpose, directions have been issued for preparation of action plans and execution thereof. The last order was passed on 21.05.2020 directing as follows:

***"26. Summary of directions:***

---

<sup>20</sup> M.C. Mehta v. Union of India

<sup>21</sup> Order dated 16.11.2017 in O.A. No. 505(THC)/2015, Yogindra Mohan Sengupta v. Union of India & Ors.

<sup>22</sup> Order dated 05.10.2018 in OA No. 218/2017, Society for Preservation of Kasauli and its Environs (SPOKE) v. M/s Kasauli Galaxie Resorts

<sup>23</sup> Order dated 19.09.2018 in OA No. 635/2017, Ramesh Chand v. State of Himachal Pradesh & Ors.

<sup>24</sup> Vide order dated 19.09.2018 in OA 635/2017

<sup>25</sup> Order dated 14.11.2019, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels"

<sup>26</sup> Lt. Col. Sarvadaman Singh Oberoi v. Union of India & Ors

<sup>27</sup> Order dated 21.05.2020 in Mahesh Chandra Saxena v. South Delhi Municipal Corporation & Ors.

- i. All States/UTs through their concerned departments such as Urban/Rural Development, Irrigation & Public Health, Local Bodies, Environment, etc. may ensure formulation and execution of plans for sewage treatment and utilization of treated sewage effluent with respect to each city, town and village, adhering to the timeline as directed by Hon'ble Supreme Court. STPs must meet the prescribed standards, including faecal coliform.”***

In the context of Delhi, the Tribunal noted that as per report of the DJB dated 16.11.2018, 460 MGD **waste water was being treated but reuse was not being ensured.** Thus, there is a need to ensure that the entire treated water is reused so as to reduce dependence on ground water.

### ***Review of pertinent case law re. Sustainable Development***

36. The principle of sustainable development is well established. We may refer to certain well-known decisions. In (1996) 3 SCC 212, Indian Council for Enviro-Legal Action and Ors. v. Union of India & Ors., the Hon'ble Supreme Court considered and explained the principle and laid down that compensation has to cover cost of remediation.<sup>28</sup> The report in the present case is not compliant with this principle as observed above. The principle of sustainable development, as a balancing concept, has been further discussed and explained in (1996) 5 SCC 647, Vellore Citizen's Welfare Forum v. Union of India & Ors.<sup>29</sup> The Public Trust Doctrine has been discussed and explained in (1997) 1 SCC 388, M.C. Mehta v. Kamal Nath & Ors.<sup>30</sup> There **can be no exemption to industries against sustainable development principle** as held in (2001) 2 SCC 62, A.P. Pollution Control Board II v. Prof. M.V. Nayudu (Retd.) & Ors.<sup>31</sup> In

---

<sup>28</sup> ¶ 67, 68 & 70

<sup>29</sup> ¶ 11 to 15

<sup>30</sup> ¶ 25 & 34

<sup>31</sup> ¶ 44

(2004) 10 SCC 201, State of W.B. v. Kesoram Industries Ltd. & Ors., there are observations to the effect that **deep underground water belongs to the State and is governed by the Public Trust Doctrine** (Para 387). Use of water for irrigation purpose may be permissible but it cannot affect reuse of water by others. Reference was made to the judgement of the Kerala High Court in (2004) 1 KLT 731 restraining Hindustan Coca Cola Beverage from using groundwater for its plant. It was observed that the State was under duty to protect ground water against excessive exploitation (para 389). The issue involved therein was justifiability of levy of cess on minor minerals by the Central Govt which was upheld by majority. These observations are in the minority judgement but on this issue, there is no contra view in majority judgement. In (2006) 3 SCC 549, Intellectual Forum, Trupathi v. State of A.P. & Ors., the said principles have been reiterated.<sup>32</sup> We may refer to the need for impact assessment to give effect to sustainable development and precautionary principle. In recent judgement in (2019) 15 SCC 401, Hanuman Laxman Aroskar v. Union of India<sup>33</sup>, the environmental rule of law has been discussed as follows:

*“35. The Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3-1-1977, inserted Article 48-A to the Constitution which mandates that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51-A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm (the Stockholm Conference) in June 1972 in which India participated, Parliament enacted the Environment (Protection) Act, 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.*

---

<sup>32</sup> ¶ 68 to 82

<sup>33</sup> ¶ 35, 42, 144, 149 & 150

144. **The environmental rule of law** provides an essential platform underpinning the four pillars of sustainable development — economic, social, environmental and peace [ United Nations Environment Programme, *First Environmental Rule of Law Report*.... The environmental rule of law becomes a priority particularly when **we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector**. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, **supports sustainable economic and social development, protects public health**, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.... Similarly, the rule of law in environmental matters is **indispensable “for equity in terms of the advancement of the Sustainable Development Goals (SDGs), the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socioeconomic rights ...**

149. In 2015, the International Community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs. These 17 goals are:

- (i) Eradication of poverty;
- (ii) Eradication of hunger;
- (iii) Good health and well-being;
- (iv) Quality education;
- (v) Gender equality;
- (vi) **Clean water and sanitation;**
- (vii) Affordable and clean energy;
- (viii) Decent work and economic growth;
- (ix) Industry, innovation and infrastructure;
- (x) Reduced inequalities;
- (xi) Sustainable cities and communities;
- (xii) Sustainable consumption and production;
- (xiii) Climate action;
- (xiv) Protecting life below water;
- (xv) Life on land;
- (xvi) Peace, justice and strong institutions; and
- (xvii) Partnerships to achieve the goals.

150. Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. UNEP recognises that the natural environment—forests, soils and wetlands—contributes to the management and **regulation of water availability and water quality**, strengthening the resilience of watersheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.”

37. In a recent judgement, Madras High Court<sup>34</sup> considered the issue of regulation of the groundwater<sup>35</sup>. It was also observed that drawal of groundwater without authority will be criminal offence of theft and mischief under Section 379 and 425 IPC. Such extraction must be scientifically monitored Districtwise with punitive consequences against violations. Following order was passed:

- “(1) The impugned order of regulation issued by the 1st respondent in G.O.Ms.No.142, dated 23.07.2014 is confirmed.*
- (2) The respondents are directed not to grant licence, No Objection Certificate (NOC) or permission for the commercial establishments / person to extract ground water for commercial usage in the absence of fixation of water Flow Meter on the Board outlet, which is to be inspected.*
- (3) The respondents are directed to inspect the functional quality and other established standards of the Flow Meters fixed by the persons, who all are applying for permissions / No Objection Certificate (NOC) and at the time of granting permission / No objection Certificate (NOC), the Flow Meter should be sealed properly by the respondents / Public Works Department (PWD) officials.*
- (4) The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.*
- (5) The respondents are directed to measure the quantum of water extracted by the establishments / persons by taking meter reading every Month and accordingly, the same is to be regulated.*
- (6) The respondents are directed to follow all other terms and conditions fixed for grant of licence / permission for Extraction of Ground Water for commercial usage as per the guidelines issued in G.O.Ms.No.142, Public Works Department dated 23.07.2014.*
- (7) The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.***
- (8) The respondents are directed to suspend the licenses by issuing show cause notices and by providing an opportunity to the persons, who have involved in the offence of theft or violation of all other conditions stipulated in the Government Regulations, or if a criminal***

---

<sup>34</sup> Dated 03.10.2018, M/S. Sarooja Agro Foods v. The Chief Engineer

<sup>35</sup> ¶ 69 to 82

**case is registered. If any person is convicted, then he shall be permanently debarred from getting licence for Extraction of Ground Water.**

- (9) The District Collectors of all the Districts in the State of Tamil Nadu are directed to issue suitable directions / orders to the Revenue Divisional Officer, Tahsildars and all other officials concerned to inspect and monitor the Extraction of Ground Water by the persons for commercial usage.**
- (10) The District Collectors of all the Districts are directed to constitute monitoring committees to monitor the Extraction of Ground Water by the individuals for commercial purposes.**
- (11) Each Monitoring Committee appointed by the District Collector concerned, shall consist minimum of five persons and the Committee is empowered to monitor the Extraction of Ground Water for commercial purposes by the individual persons and commercial establishments.**
- (12) The Monitoring Committee shall consist of the following persons:**
- (i) The District Environmental Engineer from Pollution Control Board of the State of Tamil Nadu.**
  - (ii) One qualified Public Works Department (PWD) Engineer from Water Resources Department.**
  - (iii) The Assistant Director of Zoology and Mining of the State Government.**
  - (iv) The Revenue Divisional Officer of the concerned locality.**
  - (v) One nominee from the office of the Chief Engineer, Central Ground Water Board of the Government of India.**
- (13) The Monitoring Committee is entitled to collect proofs and documents in respect of the Extraction of Ground Water illegally and excessively by any person and submit a complaint / report to the District Collector concerned, who in turn, after verifying the same, shall register a complaint with the Jurisdictional Police for registering a criminal case under the provisions of Indian Penal Code (IPC).**
- (14) It is needless to State that, only in the event of compliance of the regulations and conditions imposed in this order, the persons / establishments shall be allowed to extract the Ground water for commercial usage or for commercial purposes.**
- (15) The 1st respondent / Secretary, Public Works Department is directed to issue consolidated instructions in this regard based on the order passed in the present writ petitions to all the District Collectors, enabling them to implement the Court orders promptly.”**

38. We round up the discussion of case law by referring to the recent judgement of the Hon'ble Supreme Court dated 14.7.2020 in CIVIL APPEAL NO. 6932 OF 2015, *The Director General v. Aam Aadmi*

*Lokmanch*, reiterating the earlier judgements on environmental law and adding that “given the panoply of the **NGT’s powers under the NGT Act**, which include considering regulatory directions issued by expert regulatory bodies under the Water(Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that **general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.**” (para 75)

### ***Directions***

39. In the light of the above discussion, we direct as follows:
- a. MoJS may ensure requisite manning and effective functioning of CGWA so as to ensure **sustainable ground water management** in terms of the Hon’ble Supreme Court mandate by which CGWA was created.
  - b. Let CGWA and MoJS comply with the directions of this Tribunal in orders dated 3.1.2019, 7.5.2019 and 11.9.2019, to have a meaningful regulatory regime and institutional mechanisms for ensuring prevention of depletion and unauthorized extraction of ground water and sustainable management of groundwater in OCS areas. **Regard must be had to water availability and safe levels to which its drawal can be allowed, especially for commercial purposes, based on available and assessed data in each “Assessment unit”.** Procedures for assessment of individual

applications and institutional mechanism may be clearly laid down.

- c. As per orders dated 3.1.2019, undertaking an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise).
- d. There must be **no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual Assessment units in cumulative terms covering carrying capacity aspects by an expert committee.** Such permission should as per Water Management Plans to be prepared in terms of this order based on mapping of individual assessment units. Any permission should be for specified times and for specified quantity of water and not in perpetuity, and be necessarily subject to digital flow meters which cannot be accessed by proponents, with mandatory annual calibration by authorized agency at proponents' cost. **An annual review by independent and expert evaluation must audit and record ground water levels as well as compliance with the conditions of the permission.** Such audits must be published online for transparency and to track compliance and year-on-year change in ground water levels, and swift action taken against those who fail audit, including withdrawal of permission, blacklisting, initiation of prosecution and recovery of deterrent compensation as per CPCB regime. Records must be maintained online and for a sufficient and reasonable time.

e. As observed in para 27(a) and 29(a) above, **all OCS assessment units must undergo water mapping. Water Management Plans need to be prepared for all OCS assessment units in the country based on the mapping data, starting with Over-exploited blocks. The Water Management Plans, data on water availability or scarcity and policy of CGWA must be uploaded on its website for transparency and public involvement. Such exercise may be done expeditiously, preferably within next three months.**

40. An action taken report may be filed by 31.1.2021 by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.

List again on February 11, 2021.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM

July 20, 2020  
Original Application No. 176/2015  
DV