

(2009) 09 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 6377 of 2009 and MP No.1/09

A. Rajendran

APPELLANT

Vs

The Tamilnadu Pollution Control Board and Others

RESPONDENT

Date of Decision : 16-09-2009

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21

Water (Prevention and Control of Pollution) Act, 1974 — Section 25

Citation : (2009) 09 MAD CK 0021

Hon'ble Judges : S.J. Mukhopadhaya, J;N. Kirubakaran, J

Bench : Division Bench

Advocate : R. Syed Mustafa, for the Appellant; R. Ramanlal, For Respondents 1, 3 and 4, Mr. D. Sreenivasan, A.G.P., For Respondents 2, 5 and 6 and Mr. K.M. Vijayan, S.C. for Mr. K. Govi Ganesan, For Respondent-9, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This public interest litigation has been preferred by the Petitioner for direction on the respondents not to permit or

to carry on 9th respondent industrial unit at S.F.No.664, Nadupalayam, Mettupalayam Post, Vellakoil Block, Kangeyam Taluk, Tiruppur District,

in contravention of G.O. (MS) No.51 dated 11.2.2004 issued from Public Works Department of the State and without prior consent of the first

and second respondent u/s 25 of the Water (Prevention and Control of Pollution) Act, 1974 and u/s 21 of the Air (Prevention and Control of

Pollution) Act, 1981. The ninth respondent appeared, filed an affidavit and contested the case. According to the learned senior counsel appearing

for the ninth respondent, the writ petition is pre-mature. as the ninth respondent industrial unit is yet to become functional and it is waiting for

consent and operate order from the Tamil Nadu Pollution Control Board and the

matter is pending consideration before the State authority.

Further, according to him G.O. (MS) No.51 dated 11.2.2004 issued from Public Works Department is not applicable to the present case and no

separate permission is required to be obtained from the Public Works Department of the State.

2. The learned counsel appearing for the Pollution Control Board submits that the ninth respondent has already applied for consent and the matter

is under consideration of the Pollution Control Board and certain formalities are yet to be made by the ninth respondent. According to him, as per

G.O. (MS) No.51 dated 11.2.2004, all the schemes should be formulated in consultation with the State Ground and Surface Water Resources

Data Centre of Water Resources Organisation in public works Department and the Unit should obtain water clearance from Public Works

Department prior to apply for consent to establish.

3. According to the learned Additional Government Pleader appearing on behalf of the State, the consent of Public Works Department is required

as per G.O. (MS) No.51 dated 11.2.2004.

4. We have heard the learned counsel for the parties and perused the records.

5. It is not in dispute that the ninth respondent Unit has applied for consent and operate order, by application Form Nos.1 and 2 submitted on

9.6.2009 with the Tamil Nadu Pollution Control Board pursuant to the said letter, the Tamil Nadu Pollution Control Board has addressed the ninth

respondent Unit to comply with certain formalities and to take steps for corrective measures for certain discrepancies, by letter No.DEE/TNPCE/

PND/F.New/2009-1 dated 10.6.2009.

6. The ninth respondent Unit has also applied to Central Ground Water Authority, Government of India for permission with respect to withdrawal

of ground water for the packaged drinking water unit at Village Mettupalauam, Block Vellakoil, Taluka Kangeyam, District Tirupur. The Central

Ground Water Authority, by letter dated 6.7.2009, has granted permission, as the mentioned site falls in ""Safe Category"" area on ground water

resource consideration. Such permission has been granted in the light of the Supreme Court decision in M.C. Mehta v. Union of India, (1997) 11

SCC 312

7. G.O. (MS) No.51 dated 11.2.2004 issued from Public Works Department has been brought on record. The same relates to estimation of

ground water resources as per GEC Methodology 1997 and categorization of Panchayat Union Blocks as over exploited, Critical, Semi Critical

and Safe for ground water development in Tamil Nadu. This will be evident from the said order as quoted hereunder:

ORDER:-

Based on the development of Ground Water Resources The Panchayat Union Blocks in Tamil Nadu were categorized into Dark and Grey areas

in the G.O. first read above. The Blocks with more than 85% to 100% Ground water. Development were categorized as ""Dark block"" and the

blocks with ground water development between 65% to 85% were categorized as ""Grey Blocks"".

This categorization was done in accordance with the then prevailing Ground Water Estimation Committee-1984 (GEC-1984) Norms, Thereafter

the Committee constituted by the Ministry of Water Resources, Government of India has recommended to adopt the GEC-1997 Norms for

estimation of the Ground Water resources in all the States.

2. The Government, in the G.O. second read above constituted a State Level Working Group for the assessment of the ground water potential in

Tamilnadu. The above group have finalized the categorization of the Panchayat Union Blocks as per the GEC 1997 Methodology. The Ground

Water resources have been computed as on January 1998 and the same has been projected to January 2003 on prorata basis as decided during

the Working Group meeting. The above assessment report has been vetted and accepted by the Central Ground Water Board, Ministry of Water

Resources, Govt., of India, New Delhi.

3. In his letter seventh read above the Chief Engineer (State Ground and Surface Water Resources Data Centre) has stated that based on the

GEC 1997 Methodology, the Ground Water Assessment has been worked out and based on the development of Ground Water and the long term

water level trend, the panchayat Union Blocks in Tamil Nadu have been categorized as Over-Exploited, Critical, Semi-Critical and Safe. The

Chief Engineer has proposed that in order to observe certain Ground Water discipline for implementation of Minor Irrigation schemes so as to

conserve and manage the ground water potential the categorization of Panchayat Union blocks in all the districts (except Chennai district) of Tamil

Nadu have to be notified and circulated to all departments and agencies dealing with the ground water development.

4. We have heard the learned counsel for the parties and perused the records.

5. It is not in dispute that the ninth respondent Unit has applied for consent and operate order, by application Form Nos.1 and 2 submitted on

9.6.2009 with the Tamil Nadu Pollution Control Board pursuant to the said letter, the Tamil Nadu Pollution Control Board has addressed the ninth

respondent Unit to comply with certain formalities and to take steps for corrective measures for certain discrepancies, by letter No.DEE/TNPCE/

PND/F.New/2009-1 dated 10.6.2009.

6. The ninth respondent Unit has also applied to Central Ground Water Authority, Government of India for permission with respect to withdrawal

of ground water for the packaged drinking water unit at Village Mettupalauam, Block Vellakoil, Taluka Kangeyam, District Tirupur. The Central

Ground Water Authority, by letter dated 6.7.2009, has granted permission, as the mentioned site falls in ""Safe Category"" area on ground water

resource consideration. Such permission has been granted in the light of the Supreme Court decision in M.C. Mehta v. Union of India, (1997) 11

SCC 312 .

7. G.O. (MS) No.51 dated 11.2.2004 issued from Public Works Department has been brought on record. The same relates to estimation of

ground water resources as per GEC Methodology 1997 and categorization of Panchayat Union Blocks as over exploited, Critical, Semi Critical

and Safe for ground water development in Tamil Nadu. This will be evident from the said order as quoted hereunder:

ORDER:-

Based on the development of Ground Water Resources The Panchayat Union Blocks in Tamil Nadu were categorized into Dark and Grey areas

in the G.O. first read above. The Blocks with more than 85% to 100% Ground water. Development were categorized as ""Dark block"" and the

blocks with ground water development between 65% to 85% were categorized as ""Grey Blocks"".

This categorization was done in accordance with the then prevailing Ground

Water Estimation Committee-1984 (GEC-1984) Norms, Thereafter

the Committee constituted by the Ministry of Water Resources, Government of India has recommended to adopt the GEC-1997 Norms for

estimation of the Ground Water resources in all the States.

2. The Government, in the G.O. second read above constituted a State Level Working Group for the assessment of the ground water potential in

Tamilnadu. The above group have finalized the categorization of the Panchayat Union Blocks as per the GEC 1997 Methodology. The Ground

Water resources have been computed as on January 1998 and the same has been projected to January 2003 on prorata basis as decided during

the Working Group meeting. The above assessment report has been vetted and accepted by the Central Ground Water Board, Ministry of Water

Resources, Govt., of India, New Delhi.

3. In his letter seventh read above the Chief Engineer (State Ground and Surface Water Resources Data Centre) has stated that based on the

GEC 1997 Methodology, the Ground Water Assessment has been worked out and based on the development of Ground Water and the long term

water level trend, the panchayat Union Blocks in Tamil Nadu have been categorized as Over-Exploited, Critical, Semi-Critical and Safe. The

Chief Engineer has proposed that in order to observe certain Ground Water discipline for implementation of Minor Irrigation schemes so as to

conserve and manage the ground water potential the categorization of Panchayat Union blocks in all the districts (except Chennai district) of Tamil

Nadu have to be notified and circulated to all departments and agencies dealing with the ground water development.

4. The Member-Secretary, State Planning Commission has also requested the Government to inform the Collectors of the categorization of the

Blocks as per GEC 1997 Methodology for guidance in implementation of the programmes for Rain Water Harvesting and artificial recharge of

Ground Water.

5. The Government have decided to approve the above proposals of the Chief Engineer (State-ground and Surface Water Resources Data

Centre). Accordingly the Government approve the categorization of the Panchayat Union blocks in Tamilnadu as Over-Exploited, Critical, Semi

Critical and Safe Blocks for ground water development as on January 2003 as

detailed in the Annexure to this order.

6. The Government also direct that no schemes should be formulated in over exploited and critical blocks, and in semi critical and safe blocks all

the scheme should be formulated in consultation with State Ground and Surface Water Resources Data Centre of Water Resources Organisation

in public Works Department. The term ""Scheme excludes energisation of agricultural pump sets by the Tamil Nadu Electricity Board.

7. The Government further direct that appropriate rainwater harvesting and artificial recharge schemes be carried out in all the categories of blocks

and while carrying out the above schemes priority shall be given to the over exploited and the critical blocks so as to avoid further deterioration.

8. From the aforesaid G.O. (Ms) No.51 dated 11.2.2004, it will be evident that the Government has directed that no scheme should be

formulated in over-exploited and critical blocks and that, only in semi critical and safe blocks, all schemes should be formulated in consultation with

State Ground and Surface Water Resources Data Centre of Water Resources Organisation in Public Works Department. There is no mandate

issued by the State Government by the said order to obtain prior permission to lift ground water from semi critical or safe blocks (safe category area).

9. The learned counsel appearing for the petitioner referred to Circular Memo No.T 10/TNPCB/17787/2002 dated 13.7.2004 issued from Tamil

Nadu Pollution Control Board and submitted that the Pollution Control Board has opined that in terms with the G.O. (Ms) No.51 dated

11.2.2004, proposed packaged drinking water and soft drink units in the over exploited and critical blocks as defined in G.O. Ms.No.51 will have

to get ground water clearance from PWD/CMWSSB based on the micro watershed based recharge potential without any threshold limit - i.e.

whatever be the level of water drawl. In all such cases, consent will be issued by the Board Office, i.e. such units will be treated as falling under

Red Category.

10. In this connection, we may only mention that a Government order including G.O. (Ms) No.51 dated 11.2.2004 can be clarified by the State

Government only and no other authority can clarify, adding or altering the meaning of Government Order. In any case, the aforesaid observation

made in the Circular dated 13.7.2004, cannot be made applicable in the present case of the ninth respondent, as the proposed packaged drinking water and soft drinking units are not falling in the "over exploited and critical blocks". As per G.O.Ms. No.51 dated 11.2.2004, it falls within the semi critical or safe category.

11. That apart, it will be evident from the letter dated 6.7.2009 issued by the Central Government Ground Water Authority that the mentioned

area falls in "safe category". It even does not say that it is even semi critical (70 and 90%). Further, from G.O.Ms. No.51 dated 11.2.2004, it will

be evident that the Government has directed that no scheme should be formulated in over-exploited and critical blocks and only in semi critical and

safe blocks, all schemes should be formulated in consultation with the State Ground and Surface Water Resources Data Centre or Water

Resources Organisation in Public Works Department. As this is not a question of determination of a scheme, but relates to grant of permission by

Pollution Control Department to allow and operate, G.O. (Ms) No.51 dated 11.2.2004 cannot be made applicable to the case of the ninth

respondent. In this regard, it is to be noticed that the State Government has already framed an Act to regulate and control extraction, use or

transport of ground water and to conserve ground water in Chennai and adjoining areas of Chennai, i.e. Chennai Metropolitan Area Ground

Water (Regulation) Act, 1987. The said Act is not applicable to regulate and control the extraction, use or transport of ground water and to

conserve ground water in Erode District. If further appears that an Act to protect ground water resources to provide safeguards against hazards of

its over exploitation and to ensure its planned development and proper management in the State of Tamil Nadu, the State Government enacted

Tamil Nadu Ground Water (development and Management) At, 2003 (Tamil Nadu Act No.3 of 2003). Though the assent of the President was

received on 4.3.2003 and the Act was published in the Tamil Nadu Government Gazette Extraordinary Part IV on 4.3.2003, the appointed date

having not notified till date, Tamil Nadu Act No.3 of 2003 has not yet been given effect. Therefore, in terms of the said Act also, the ninth

respondent cannot be directed to obtain any permission from the State Government, particularly from its Public Works Department. We find no

merit in the writ petition and accordingly, the same is dismissed. There shall be no order as to costs. Consequently, M.P.No. 1 of 2009 is also dismissed.