

(2022) 09 SHI CK 0065

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No.5153 Of 2022

Ramesh Verma And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 22-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Himachal Pradesh Ground Water Rules, 2007 — Rule 16, 17, 17(a), 17(1), 23(1), 31
Himachal Pradesh Ground Water Act, 2005, — Section 2(d),2(h), 3, 5, 7, 8,. 12, 13
Himachal Pradesh Ground Water (Regulation And Control Of Development And
Management) Act, 2005 — Section 15, 24
Code Of Criminal Procedure, 1973 — Section 93

Citation : (2022) 09 SHI CK 0065

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : B.C. Negi, Nitin Thakur, Ashok Sharma, Rajinder Dogra, Pal
Manhans, Bhupinder Thakur,, Rajat Chauhan, Mohan Goel

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of the following substantive reliefs:-

"I. Issue a writ of Certiorari thereby quashing and setting aside the Annexure P-4 vide which permission to Respondent No.3 has been given by Respondent No.2; or/and

II. Issue a writ of mandamus directing the respondents not to give effect to Annexure P-4 vide which permission to Respondent No.3 has been given by Respondent No.2; or/and

III. Issue a writ of certiorari thereby quashing and setting aside the Annexure P-3 vide which the Respondent No.2 considered the application of Respondent

No.3 in malafide and arbitrary manner in minutes of 42nd meeting; or/and

IV. Issue a writ of mandamus directing the respondents not to give effect to Annexure P-3 vide which the Respondent No.2 considered the application of respondent No.3 in malafide and arbitrary manner in minutes of 42nd meeting; or/and

V. Directing Respondent No.1 to take action against the Respondent No.2 as the Respondent No.2 has not complied with the provision of the Himachal Pradesh Ground Water Act 2005 in right and legal manner.”

2. This Court at an early occasion dealt with an issue of ground water in CWP No. 1809/2018 in case titled Sh. Chetan Kumar and others versus The Chief Secretary to the Government of Himachal Pradesh and others, decided on 22.10.2018, wherein in paragraphs 4 to 15, it was observed as under:-

“4. As noticed at the outset, the petitioners are also residents of village Sanawar and since the 5th respondent did not grant them any water connection as per clause (f) of the permission letter dated 26th February, 2014, as well as allegedly to other residents of the village also, the petitioners have initiated the instant proceedings.

5.The 2005 Act has been enacted with the object to regulate and control the development and management of ground water and matters connected therewith. Section 3 thereof enables the State Government to constitute the Himachal Pradesh Ground Water Authority to perform the duties as enumerated under Section 5 and other provisions of the Act. The Authority has got a mandate under Section 6 of the Act to maintain and update the database on ground water resources of the State. Section 7 of the Act provides that any user of ground water desiring to sink a well within the notified area shall have to apply alongwith prescribed fee to the Authority for grant of a permit and such applicant shall not proceed with any other activity connected with sinking unless a permit has been granted. Sub Section 3 mandates that the Authority shall satisfy itself before granting the permission and such permission may be granted “subject to such conditions and restrictions, as may be specified.” The Authority while granting or refusing permission shall have regard to the objects mentioned in sub section (5) of Section 7 of the Act.

6. As has been noticed earlier, order dated 26th February, 2014 was passed granting permission to respondent No.5 to drill one tube well in purported exercise of powers under Section 7(3) of the Act and while doing so, the Authority imposed the conditions ‘a to f’ mentioned in the said order. The alleged deviation or non compliance of condition (f) has prompted the petitioners to approach this Court.

7.It is not necessary to refer to the reply(s)/written statement(s) filed on behalf of the respondents and suffice it would be to notice that in deference to the order dated 13th August 2018 passed by this Court, Chief Secretary, Government of

Himachal Pradesh has filed an affidavit dated 7.9.2018, relevant part whereof reads as follows:-

"In this respect, it is submitted that the permission to sink a bore well was given to the private respondent No. 5 & 6 with the condition, amongst others, that they shall provide one water connections to the residents of village Sanwara for drinking purpose, which has been done only for limited persons with whom they have entered into an agreement. Besides, they have also not fulfilled the other conditions stipulated in the permit dated 26-02-2014 and thus violated the condition of the said permit. It is pertinent to submit here that in compliance to the orders passed by the Hon'ble Court 07-08-2018 the bore well has been sealed and the permission granted vide permit dated 26-02-2014 has also been withdrawn vide Member Secretary, H.P. GWA-cum-Superintending Engineer, P&I-II, IPH Department, Jal Bhawan, Kasumpti, Shimla-9 vide his office order No. 1592-99, dated 14-08-2018, copy of which is appended as Annexure R-1 for kind perusal of this Hon'ble Court.

3. That the State Water Policy-2013 emphasises the need for scientific management, conservation and regulatory mechanism with regard to the development and exploitation of resource in the State vis-a-vis its periodical re-assessment for regulation so as not to exceed recharging possibilities and also to ensure social equity taking into consideration the quality of available ground water recharge and economic viability of its extraction."

8. It may thus be seen that the official respondents after noticing the violation of terms and conditions of the permission, have vide office order dated 14.08.2018 withdrawn the permission granted to respondent No. 5. The aforesaid action has been taken in deference to the powers vested under Section 11 of the 2005 Act.

9. True it is that with the withdrawal of permission earlier accorded to respondent No.5, the writ petition as such no longer survives. On merits, we cannot, however, be oblivious of the fact that the order now passed by State Government under Section 11 of the Act is appealable under its Section 27 and respondent No.5 thus might assail the same before the Appellate or any other Forum. The State Government would thus again be in a fix as to how it should regulate the extraction of drinking water/ground water by private entities under the permits issued under Section 7 of the 2005 Act and how to ensure that the terms and conditions imposed while granting such permission are meticulously complied with.

10. This Court has no hesitation in observing that the condition (f) mentioned in the letter dated 26th February, 2014, is totally vague, evasive and is capable of misuse. It does not specify several factors like as to whether respondent No.5 will bear the expenses for providing water connectivity to the residents of village Sanawar and if so what will be the upper limit/rationing of the water to be supplied to them, hours of supply, the rotation in which the water will be released or how much water shall be consumed by the permit holder for his/its

private use etc. and such other relevant considerations are conspicuously missing from this order.

11. Coupled with this is a list Annexure R6/7, which contains the details of permits issued by Himachal Pradesh Ground Water Authority under Section 7 of the Act and in Solan district alone the total permits issued are more than 125. Lakhs of litres of water has been permitted to be extracted everyday through these permits. Water is an invaluable gift by nature to all beings including the mankind. Owing to its scarcity, it has to be saved for the posterity as well. Should, therefore, water be allowed to be used only by the permit holders or to the society at large through its equitable, proportionate and optimum distribution etc., are several burning issues which will have to be addressed by the State Authorities.

12. Ground water is a precious asset. It cannot be allowed to be misused or used with luxury. There is an onerous duty on Himachal Pradesh Ground Water Authority to ensure that every permission is conditional with an obligation like rain harvesting to ensure that the ground water level is not depleted. Extraction of water has to be permitted only when the Authorities through scientific process are satisfied about availability of water at the identified spots.

13. Still further, the distribution of the extracted water is a major administrative issue. It involves the rights of village community, gram panchayats, municipalities, private users and several other stakeholders. We are thus of the view

that unless the Himachal Pradesh Ground Water Authority, in consultation with and approval of the State Government, formulates a comprehensive policy for the entire State to save, regulate, recycle and harvest the ground water level, it should be reluctant and refrain itself from issuing permits merely for the reason that the Statute has conferred such power on it.

14. We lay emphasis on the fact that the Authority is creation of the 2005 Act and the legislative policy of the Statute very emphatically casts an obligation as to how to regulate and control the development and management of ground water. The time has come to take strict regulatory and reformatory measures to save the ground water even in such areas in the entire State, which are not declared as 'notified areas' within the meaning of Section 2(h) of the Act.

15. In light of the above discussion, the writ petition stands disposed of with a direction to the State Government and the Himachal Pradesh Ground Water Authority to examine each and every aspect illustrated above and re-visit the existing Rules and Regulations and take an appropriate policy decision, preferably within a period of eight weeks before granting further permits under the Act."

3. It is after the aforesaid verdict that the State Government vide its Notification dated 29.11.2019 declared the whole area of the State of Himachal Pradesh to

be notified area for controlling and regulating the extraction of ground water in any form in the public interest.

4. Adverting to the facts of the case, it appears that respondent No.3 filed an online application for grant of permit for sinking borewell under Section 7 and certification of registration under Section 8 of the Himachal Pradesh Ground Water Act, 2005, (for short 'Act') which was processed and thereafter in the meeting held under the Chairmanship of respondent No.2 and it was approved by granting permit for extraction and augmentation of ground water vide Annexure P-4.

5. Aggrieved thereby, the petitioners, who are villagers of Basa Panchayat have filed the instant petition mainly on the ground that the official- respondents while granting permit have not adhered to the provisions of the Act and the Himachal Pradesh Ground Water Rules, 2007 (for short 'Rules').

6. The official-respondent Nos.1 and 2 have contested the petition by filing a joint reply wherein it is averred that online application submitted by respondent No.3 was forwarded to Senior Hydrogeologist GWO, Una for getting field report after spot inspection as per the documents received online and to float the public notice (Form-2) for permit rule 17(1)/Form-5 for registration rule 23(1) in the offices of the concerned Gram Panchayat, Executive Engineer, Assistant Engineer and Junior Engineer.

Thereafter, the Executive Engineer, Jal Shakti Division, Matiana, forwarded the above requisite report through Single Window Clearance System to Senior Hydrogeologist GWO, Una and after completing requisite formalities, the permit was issued in favour of respondent No.3 on 20.06.2022 for sinking borewell for commercial use subject to the following conditions amongst others:-

"i) That the permission/sanction can be withdrawn or the quantity of water to be extracted can be restricted in case the ground water in the area is adversely affected in terms of quantity and/or quality.

ii) The applicant shall construct a rain water harvesting structure for conservation and recharge of grounder water in his/her/their premises as per section 15 of the Himachal Pradesh Ground Water (Regulation & Control of Development and Management) Act, 2005 and as per Guidelines to regulate and Control Ground Water Extraction in the State of Himachal Pradesh notified vide Notification No. IPH-B(A)3-1/2019-II dated 03.05.2021 within six months of issuance of this certificate of Permit and shall intimate the Executive Engineer, JSV Division Matiana on its completion.

iii) That the applicant shall install a water meter/bulk meter on the ground water extraction pipe so as to check the water drawl at any time will maintain its log book.

iv) Actual water requirement be computed taking into account recycling/reuse of treated water for flushing etc.

v) The firm/applicant shall be required to adopt latest water efficient technologies so as to reduce dependence on ground water resources.

vi) The Firm/applicant drawing water more than 10 m³/day of ground water shall construct Piezometer, equipped with DWLR of latest version as per Guidelines to regulate and control Ground Water Extraction in the State of Himachal Pradesh notified vide Notification No. IPH-B A) 3-1/2019-II dated 03.05.2021 within six months in consultation with the Senior Hydrogeologist GWO, JSV Una (HP) and monthly water level shall be submitted to the Ground Water Organization Una and Himachal Pradesh Ground Water Authority. A copy of permit dated 20-06-2022 annexed as Annexure R-II for kind perusal of this Hon'ble Court."

7. In addition to the above, it is also averred that the instant petition is not maintainable on the ground of alternate and efficacious remedies as available to the petitioners under Section 24 of Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act, 2005 (for short 'Act') which reads as under:-

"24. Appeals.- (1) Any person aggrieved by an order of the officer exercising powers delegated under this Act may, within a period of thirty days from the date of such order, on payment of such fee as may be prescribed, prefer an appeal to the State Government:

Provided that the State Government may entertain an appeal after the expiry of said period of 30 days, if satisfied that the applicant was prevented by sufficient cause from filing the appeal within time.

(2) On receipt of an appeal under sub-section (1), the State Government shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible but not later than six months and the decision of the State Government shall be final."

8. As regards respondent No.3, it has filed a separate reply wherein various provisions of the Act have been quoted and thereafter it has been averred in para-3 of the preliminary submissions/objections as under:-

"3. That the replying respondent further submits that the TAJ THEOG RESORTS AND SPA, SHIMLA, A UNIT OF MAHAMAYA INFRASTRUCTURE is a tourism unit of the company registered under Himachal Pradesh Tourism Development and Registration Act, 2002 by the Government of Himachal Pradesh, Department of Tourism and Civil Aviation. The unit is having around about 100 rooms and is located near Theog, District Shimla. It is further submitted on behalf of the replying respondent that the Irrigation and Public Health Department do not supply water to the replying respondent unit and the replying respondent unit has to make its own arrangement for the purposes of drinking water for their residents and other clients who visit the replying respondent unit. It is in this background that the replying respondent unit after getting a report from Himachal Ground Water Consultancy Service who are expert in investigation of

ground water for hand pumps/tube wells, who had recommended that in view of the hydrogeological set up of the area the site was feasible for sinking of bore well. It was thereafter that the replying respondent unit under the single window clearance system online applied under Section 7 of the H.P. Ground Water (Regulation and Control of Development and Management) Act, 2005 applied vide application dated 1.4.2022. The online application of the replying respondent was processed by the respondent No.2 and it was thereafter after getting the report from Senior Hydrogeologist, Ground Water Organization, JSV, Una after completing all the codal formalities in its 42nd meeting of the Sub Committee of H.P. Ground Water Authority processed the application for sinking of bore well under Section-7 of the H.P. Ground Water (Regulation and Control of Development and Management) Act, 2005 approved the application of the replying respondent subject to certain conditions. After examination of the application the Permit for Extraction and Augmentation of Ground Water Source was issued in favour of the replying respondent. The copy of the permit dated 20.6.2022 issued in favour of the replying respondent is appended as Annexure R3/3. In this background the replying respondent submits that the writ petition is not maintainable since the permit granted in favour of the replying respondent for extraction and augmentation of ground water source is strictly in accordance with the H.P. Ground Water (Regulation and Control of Development and Management) Act, 2005."

9. We have heard the learned counsel for the parties and have gone through the records of the case.

10. It is not in dispute that the permission for extraction of ground water is governed and regulated by the Act and Rules referred to hereinabove. It shall be apt to reproduce the relevant provisions of the Act as contained in Sections 2(d), 7, 12 and 13 which read as under:-

"2(d) "drinking water" means water for consumption or use by human population for drinking and for other domestic purposes, which shall include consumption or use of water for cooking, bathing, washing, cleansing and other day-to-day activities and shall include water meant for consumption by the livestock ;"

"7. Grant of permit to extract and use ground water.-

(1) Any user of ground water desiring to sink a well within notified area, for any purpose shall, on payment of such fee as may be prescribed, apply to the Authority for grant of a permit, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the Authority.

(2) Every application made under sub-section (1) shall be in such form and contain such particulars as may be prescribed.

(3) The Authority shall consider the application made under sub-section (1) and if satisfied, may grant a permit, in such form as may be prescribed, subject to such conditions and restrictions as may be specified, within sixty days from the

date of receipt of the application:

Provided that while considering the application the Authority shall give first priority for drinking water needs in preference to other needs:

Provided further that no permit shall be refused without affording an opportunity of being heard.

(4) The decision regarding grant or refusal of the permit shall be intimated by the Authority to the applicant within a period of thirty days from the date of decision.

(5) In granting or refusing a permit under sub-section (3), the Authority shall have regard to-

- (a) the purpose or purposes for which water is to be used;
- (b) the existence of other competitive users;
- (c) the availability of water;
- (d) quality of ground water to be drawn with reference to proposed usage;
- (e) spacing of ground water structures keeping in view the purpose for which water is to be used;
- (f) minimum distance of two hundred meters in case of shallow well and three hundred meters in case of tube well from the existing source of water supply scheme or irrigation scheme, as the case may be;
- (g) long term ground water level behaviour; and
- (h) any other factor relevant thereto."

"12. Royalty in respect of use of ground water.- (1) Every user of ground water in a notified area shall pay to the State Government a royalty for extraction of ground water at such rates and in such manner as may be prescribed:

Provided that a user of ground water who irrigates less than one hectare of land, whether owned or leased or both, shall be exempted from payment of royalty under this section.

(2) The State Government may, assign such proportion of the royalty, as may be prescribed, for development of ground water resources."

"13. Powers of the Authority.- (1) The Authority or any person authorized under section 17 of this Act in this behalf shall have the following powers, namely :-

- (a) to inspect the well, which has been or is being sunk and the soils and other materials excavated therefrom;
- (b) to take specimens of such soils or other materials or of water extracted from such wells;

(c) to require, by order, in writing the person sinking a well to keep and preserve in the prescribed manner specimens of soil or any material excavated therefrom for such period not exceeding three months from the date of completion or abandonment of such work, as may be specified by the Authority, and there upon such person shall comply with such order;

(d) to inspect and to take copies of the relevant record or documents and seek any information including diameter or depth of the well which is being or has been sunk; the level at which the water is or was struck and subsequently restored/rested, the types of strata encountered in the sinking of the well and the quality of the water struck, required for carrying out the purposes of this Act;

(e) to seize any equipment or device utilized for illegal sinking and destroy the work executed fully or partly ;

(f) to require, by order, any user of ground water who does not comply with the provisions of this Act or the rules made there under to close down any water supply or destroy any hydraulic work found to be in contravention of the provisions of this Act or the rules made there under:

Provided that where the user of ground water does not comply with such order within a period of sixty days from the date of issue of the same, the Authority or any person authorized in this behalf may carry out the necessary work and recover the cost from such user of ground water ;

(g) to enter and search with such assistance, if any, as it considers necessary, any place in which it has reason to believe that offence under this Act has been or is being committed, and order, in writing, the person who has been or is committing the offence, not to extract ground water for a specified period not exceeding thirty days;

(h) to direct an appropriate body to assess exploitation limit of ground water in different areas and submit periodic report for consideration of the Authority ;

(i) to exercise such other powers as may be necessary for carrying out the purposes of this Act or the rules made there under.

(2) The power conferred by this section includes the power to break open the door of any premises where sinking, extraction and use of ground water may be going on:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, refuses to open the door on being called to do so.

(3) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under section 93 of the said Code.

(4) Where the Authority or any person authorized by it seizes any mechanical equipment or device under clause (e) of sub-section (1) it shall, as soon as may be, inform a Magistrate having jurisdiction and take his orders as to the custody thereof."

11. It shall also be relevant to reproduce the necessary provisions of the Rules as contained in Rules 16 and 17 which read as under:-

"16. Application for permit for extraction and use of ground water.- (1) Any user of ground water desirous of sinking new well in a notified area shall apply to the Authority for grant of permit to extract and use ground water, in Form-I for domestic/ irrigation purposes and Form-I-A for commercial/industrial purpose, in triplicate and application shall be accompanied by documentary proof of having paid non-refundable fees as specified in rule 31, and other documents as specified in the note below the said forms.

(2) The applicant shall maintain at his residence or office, as the case may be, office and at such other place as may be designated by the Authority, the copies of the documents referred to in sub-rule (1) for public inspection and furnish to the persons applying for them the copies of such documents at a price not exceeding rupee 1/- per page."

"17. Publication of notice of application for permit.-

(1) If the Authority finds the application for grant of permit in the notified area is complete in all respects and is accompanied by the requisite information and documents, it shall publish notice of the application in Form-2 appended for inviting objections from the interested persons: -

(a) In case of commercial/industrial use, in two leading daily news papers and also display a copy thereof on the notice board of the Gram Panchayat or urban local authority having jurisdiction, as the case may be; and

(b) In case of irrigation, display a copy of the notice on the notice board of the local authority having jurisdiction.

(2) If no objections are received from any quarter by the due date given in the notice, the Authority shall proceed further for the grant or refusal of the permit in accordance with the provisions of the Act and under these rules."

12. It is not in dispute that after the receipt of online application of the applicant/respondent No.3, the official-respondents did not publish the notice in two leading daily newspapers, as is otherwise provided in terms of Rule 17 and only displayed a copy of the notice of application in Form-2 of the Notice Board of the Gram Panchayat. Respondent No.3 including official respondents have made a faint attempt to claim that the provisions as contained in Rule 17 are only directory and not mandatory. However, we are not in a position to accede to such contention.

13. It is more than settled that even though the Government enjoys great

freedom while entering into contracts with the private parties, but even that freedom is circumscribed by the rule of fairness, transparency and objectivity. Fairness in State action is the soul of good-governance. Therefore, every action of the State where it infringes the constitutional mandate or is opposed to basic rule of law or suffers from an infirmity of patent arbitrariness, judicial intervention is inevitable.

14. This is all the more so where the Government is dealing with State largesses. The State holds monopoly in certain fields and where this privilege of monopoly is utilized for the purposes of allocation of works or distribution of largesses, it takes the colour of State largesses since both the statutory bodies as also the bidders or allottees are expected to benefit from distribution and allocation of such works by way of contracts. Fairness then becomes the hallmark of such decision or else it could suffer from vice of arbitrariness.

15. That apart, every citizen has a fundamental and legal right to tender for allocation of such largesses. It is more than settled that wherever a contract is to be awarded or otherwise is to be given, the public authority must adopt a transparent and fair method for making selection, so that all the eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. Where, it comes to alienation of natural resources like water, etc., it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national interest.

16. It is with a view to achieve all the aforesaid purposes that the provisions of Rule 17 providing for publication of notice in two leading daily newspapers have been provided so as to ensure that the procedure adopted by the respondents is fair and impartial or else the other method like "first come and first serve" is likely to be exercised by unscrupulous people in garnering maximum benefit and have no respect to the constitutional ethos and values. In other words, while alienating the natural resources, the State is duty bound to adopt the method as provided under the Act and Rules, so that all the eligible persons cannot only participate in the process, but can also file objections.

17. It is more than settled that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed or not at all. More than eighty years back, the Hon'ble Privy Council in *Nazir Ahmad vs. King Emperor* (AIR 1936, PC 253) held that where a power is given to do a certain thing in a certain way, the things must be done in that way or not at all and this has been approved and further expanded by the Hon'ble Supreme court in catena of judgments (Refer: *Rao Shiv Bahadur Singh and anr. vs. State of Vindh-P*, AIR 1954, SC 322; *Deep Chand vs. State of Rajasthan*, AIR 1961 SC 1527; *State of Uttar Pradesh vs. Singhara Singh and Ors*, AIR 1964, SC 358; *Chandra Kishore Jha vs. Mahavir Prasad*, 1999 (8) SCC 266 ; *Dhananjaya*

Reddy vs. State of Karnataka, 2001 (4) SCC 9; State of Jharkhand & Ors vs. Ambay Cements and anr. (2005) 1 SCC 368 ; Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited, 2008 (4) SCC 755 ; Zuari Cement Ltd vs. Regional Director, ESIC, Hyderabad & Ors., AIR 2015, SC 2764 ; and Uddar Gagan Properties Ltd. vs. Sant Singh and Ors. 2016 (5) JT 389).

18. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius" meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following some other course is not permissible.

19. It has repeatedly been held by the Hon'ble Supreme Court that even in the matters of grant of largesses, award of jobs, contracts, quotas and licences, the Government must act in a fair and just manner and any arbitrary distribution of wealth would violate the law of land. (Refer: Ramana Dayaram Shetty vs. International Airport Authority of India and others (1979) 3 SCC 489).

20. Apart from the above, once the application for grant of extraction of ground water is to be regulated by the statute, the State can only be the last in line who could be exempted or permitted to deviate from the provisions much less violate the statutory provisions as contained in the Act and Rules.

21. Learned counsel for respondent No.3 tried to impress upon the Court that since a procedure as prescribed for dealing with the application for grant of permit for extraction of ground water has been scrupulously followed, therefore, the petitioners be granted the requisite permit.

22. We do not find any merit in this contention as the same is clearly fallacious as if we fail to understand how an action like the one in the instant case which is bad at the threshold when the official-respondents processed the application without resorting to and complying with the provisions of Rule 17(a) in its entirety would be legalized or become legal only because the respondents thereafter complied with the other procedural formalities as envisaged under the Act and Rules. In other words, the publication of notice of application for permission under Rule 17(a) is not only mandatory but a sine-qua-non before granting a permit for extraction and use of ground water.

23. Lastly, as regards the writ petition being not maintainable in view of the availability of an alternate remedy of an appeal to the petitioners, we really find no merit in the said contention. For, it is more than settled that an alternate remedy is not an absolute bar for entertaining the writ petition under Article 226 of the Constitution of India.

24. Having regard to the facts of a case, the High Court has a discretion to entertain or not to entertain a writ petition. The High Courts have only imposed upon themselves certain restrictions one of which is the availability of an alternate remedy. However, once the records establish the failure on the part of the official-respondents to follow the rules as mentioned above, we see no

reason why should we relegate the petitioners to the alternate remedy of filing an appeal under Section 24 of the Act. The rule of exclusion of writ jurisdiction by availability of an alternate remedy is a rule of discretion and not one of compulsion.

25. Having said so, we find merit in this petition and the same is accordingly allowed. Consequently, the permission granted in favour of respondent No.3 in the 42nd meeting and thereafter the permit issued to respondent No.3 in Form-3 for extraction and augmentation of ground water are both quashed and set aside, leaving the parties to bear their own costs. However, this order will not come in the way of the official-respondents in processing the application filed by respondent No.3 by complying with the provisions of the Act and Rules and taking a decision in accordance with the Act and Rules.

26. Pending application, if any, also stands disposed of.