
(2015) 11 BOM CK 0051

In the Bombay High Court

Case No : Public Interest Litigation Writ Petition No. 22 of 2013

Suresh Anant Kamat

APPELLANT

Vs

The State of Goa and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Goa Ground Water Regulation Act, 2002 — Section 10, 11, 12, 13, 14

Citation : (2015) 11 BOM CK 0051

Hon'ble Judges : F.M. Reis and C.V. Bhadang, JJ.

Bench : Division Bench

Advocate : V. Rodrigues, Government Advocate, for the Respondent

Judgement

C.V. Bhadang, J.—This petition was initially filed by the petitioner in person as a Writ Petition. By an order dated 22/07/2013, the petition was directed to be converted into a P.I.L. The petition, inter alia, seeks implementation of the Goa Ground Water Regulation Act, 2002 (the Act, for short) and the Rules thereunder. It is contended that the State Government is not seriously taking steps and measures for proper implementation of the said Act, causing huge financial loss to the exchequer and the corresponding unjust enrichment to the persons, brazenly flouting the provisions of the said Act.

2. The petitioner happens to be a Science graduate and former public sector employee, claiming considerable technical, commercial and administrative experience. The petitioner had earlier filed W.P. No. 363/2012. This Court, by an order dated 09/08/2012, had directed the petitioner to make a representation to the Chief Secretary, who was directed to take decision in accordance with law, within a period of six weeks. According to the petitioner, no significant steps were taken for redressal of the grievances, which prompted the petitioner to file the present petition.

3. Indisputably, the petitioner is also in the business of Supply of Water and owns a tanker supplying/ transporting non-potable water since 2008-2009. It is

contended that the petitioner was required to stop the business on account of communication from Ground Water Officer (South), who ordered immediate stoppage of the same, claiming that it is illegal. The petitioner submits that as a result thereof, the tanker owned by him, is lying idle. The petitioner also claims that the petition is filed in the interest of those in the water supply business, so as to stop illegalities in the business. In the petition as it originally stood, the petitioner made various prayers, including (i) directing the Water Resources Department to register "without any charges" the water tankers plying in the State of Goa, in co-ordination with the State Transport Authority/ Directorate of Transport, which is the registering authority; (ii) the effective date for implementation of notification for collecting charges for extraction and transportation of ground water being fixed from 08/04/2011 and recovery of all the arrears; (iii) granting compensation to the persons in the water supply business, who have been victimised on account of "fraudulent administrative acts" of the authorities, affecting the livelihood of the said persons and (iv) directing the payment of Rs. 30,000/- to the petitioner as compensation/ expenses incurred on account of filing of the petitions, which have eventually led the Government to recover dues to the extent of more than Rs. 6 Crores. It appears that by an amendment, the petitioner added several other prayers on 29/04/2013.

4. In this regard, it is necessary to state that Voice of Villagers, a Society, registered under the Societies Registration Act, 1860, had filed Public Interest Litigation No. 18/2012, which was disposed of by this Court on 26/03/2013. A perusal of the judgment would show that certain suggestions were made by the petitioners therein as set out in paragraphs 5, 8 and 10 of the judgment. This Court, after accepting the statement on behalf of the respondent that all the suggestions/ recommendations made by the petitioner would be substantially considered while finalising the policy for commercial and domestic use for regulation of the use of the ground water and also while finalising the draft Goa Mining Policy (Major Minerals) 2012. This Court had disposed of the petition, directing the exercise of finalising the policy to be completed within a period of six months. Pursuant to that the State Government has finalised the policy.

5. The respondents have filed various affidavits setting out the steps taken for the implementation of the provisions of Act and in particular, about registration of the wells/ bore wells as also tankers and recovery of the dues. It would be necessary to make a reference to the affidavit filed by Vijay Honawad, Executive Engineer, WD, Tivim, Bardez, Goa, disclosing the action taken. It is claimed that the total number of wells registered are 4044 as against 857 at the time of affidavit filed by the Chief Secretary on 22/04/2013. It is also contended that the Authorities such as, MPT, Goa Shipyard Limited, Western India Shipyard, Star Hotel, Industrial Establishments were asked to inform the quantum of ground water drawn by them and the names of supplier of the water to their establishments. It was also contended that 350 tankers were registered during the year 2013-2014. The revenue collected was Rs. 2,85,62,334/- and from

01/04/2014 to 30/09/2014, the revenue collected was Rs. 76,92,600/-. Thus, the total revenue collection from the year 2009 to 2013 works out to Rs. 6,16,18,229/-.

6. The affidavit of Promod Badami, Executive Engineer and Ground Water Officer, North Goa, dated 08/12/2014 sets out the efforts for registration of wells, public awareness campaign, conducting village level meetings, for awareness, collection of information as to industrial estates, the other establishments in the commercial sector, including hotels, casinos as also Housing Societies. The affidavit further sets out the following details of the wells registered so far.

The revenue collection is as under :

7. In yet another affidavit of Vijay Kumar Honawad, the yearwise collection of the revenue is set out as under :

8. It is also contended that bills for the arrears of Rs. 6,90,37,332/- have been raised and steps for recovery of the same is underway.

9. Lastly, in the affidavit dated 05/01/2015 of Mr. Faizi Hashmi, Secretary, Water Resources, Government of Goa, it is stated that the total wells registered in North Goa both domestic/ irrigation and commercial/ industrial are 2150 while for South Goa, the total wells registered are 2053. The affidavit also sets out that 259 cases of registration of wells are under consideration. The affidavit further sets out the number of permissions granted for sinking of new wells till 2014, as 1054. The number of tankers registered for North Goa is 263 while for South Goa, it is 112. In so far as the revenue collection is concerned, the total revenue collected till 2014 is 11,10,21,033/-. The respondents have also pointed out certain difficulties encountered towards the implementation of the Act in general and the registration of the wells in particular, which are as under :

"(i) Failure of the applicants to submit all the required documents such as records of rights to property on which the well is located, NOCs from co-owners and legal heirs, etc, along with their applications.

(ii) Difficulty in locating absentee landlords.

(iii) Reluctance of the well owners to register the wells."

10. Thus, it is contended that the State Government is taking all out efforts and measures for effective implementation of the Act and the Rules framed thereunder.

11. We have heard the petitioner in person and Shri Rodrigues, the learned Government Advocate for the respondents. We have also gone through the record.

12. The Goa Ground Water Regulation Act, 2002 was framed to regulate and control the development of ground water resources and the matters connected therewith. It, inter alia, envisages the constitution of Ground Water Cell for

carrying out the purposes of the Act. (Section 3). The Chief Engineer of the Department of Water Resources of the Government is ex-officio Head of the Cell, besides other members, who may be appointed by the Government. It also provides for the appointment of Ground Water Officers for the purposes of the Act, who would function under the direct control and superintendence of the Cell. Section 4 of the Act provides for declaration of scheduled, water scarcity and over exploited areas while Section 5 provides for registration of existing wells and permission for sinking of new wells in the scheduled areas. Section 6 provides for grant of permission to transport ground water in the scheduled areas, while Section 7 provides for powers to alter, amend or vary the terms of registrations and permissions. Section 8 of the Act provides for cancellation of permission/ certificate of registration. Section 9 provides for protective measures in water scarcity area or over-exploited areas, while Section 10 specifies protective measures in over-exploited areas. Section 11 provides for closing down of existing wells in over-exploited areas, on payment of compensation, in accordance with Section 12 of the Act. Section 13 of the Act provides for powers of Ground Water Officers, which not only extends to investigation as regards the water located on surface or underground water and inspection of wells, but also to close the use of toilet/ septic tank/ soak pit if found polluting the well water. Subsection (3) of Section 13 provides for search or seizure in terms of the provisions of the Code of Criminal Procedure, 1973. Section 14 of the Act provides for powers of the Ground Water Officers regarding closure of wells and seizure of materials and equipments. Section 17 sets out the offences and penalties for contravention or violation or failing to comply with the provisions of the Act or Rules made thereunder in supplying information as prescribed, obstructing the Ground Water Officers or any other person authorised by him to exercise the powers under the Act as also for illegal sinking / construction and/ or use of the well and/ or transportation of the water and/ or polluting or contaminating the ground water.

The State Government has framed rules in exercise of the powers conferred under Section 26 of the Act which includes the fees to be charged under the Act.

13. It can, thus, be seen that the Act aims at making elaborate provisions for regularisation, control and development of water /resources as also prescribes stringent measures in the form of defining offences and prescribing punishment and penalties.

14. It is pointed out by the learned Government Advocate that vide notification dated 05/11/2007, the State Government had notified certain areas as set out therein under subsection (1) of Section 4 of the Act as scheduled areas. However, by a subsequent notification dated 13/04/2012, the entire State has been declared as the scheduled area. It is, thus, submitted that the State Government is closely monitoring the implementation of the Act so as to effectuate the object thereof and is taking steps for recovery of the charges.

15. We have given our anxious consideration to the circumstances and the

submissions made.

16. At the outset, it is necessary to state that this being a Public Interest Litigation, no relief can be granted to the petitioner on personal ground for compensation or otherwise. It is also not possible to ascertain or arrive at an amount of compensation in exercise of the writ jurisdiction of this Court, which would essentially involve disputed questions of fact, requiring recording of evidence, both documentary and oral. For these reasons, we find that, in so far as the claim for compensation is concerned, the petitioner will have to be relegated to the remedy of filing a civil suit.

17. Nonetheless having regard to the fact that on account of the persistent efforts taken by the petitioner, the State Government has been able to streamline the implementation of the Act as also, has effected recovery of huge revenue, we find it appropriate to direct payment of Rs. 25,000/- to the petitioner by way of ex-gratia payment. It is made clear that this is dehors of any claim based on any right, made by the petitioner, for which, we have relegated the petitioner to the remedy of filing a civil suit.

18. The petitioner, who appears in person, submitted that he will file such a suit. However, this Court may direct expeditious disposal of the said suit. Considering the fact that the petitioner is espousing the cause both personal and in public interest since 29/04/2013, we find that it would be appropriate to direct that if the petitioner files any such suit, the same shall be decided as expeditiously as possible and preferably, within a period of two years from the filing of the same.

19. This takes us to the larger issue, which arises in public interest. Indeed, the various affidavits filed on behalf of the respondents show that measures are being taken for implementation of the provisions of the Act and the Rules framed thereunder, which certainly indicate that violations were rampant hitherto before, causing consequent loss of huge revenue to the exchequer. We are constrained to note that although the Act was enacted as far back as in the year 2002, the Government took five years for notifying the scheduled areas, which happened only in the year 2007, when certain areas were notified as scheduled areas. Perhaps on account of the experience gained and the seriousness of the issue, the State Government has now notified the entire State as the scheduled area. It is now pointed out that the State Government has also framed draft Goa Ground Water Policy, governing various aspects of the issue. A perusal of the said policy shows that efforts are on to identify Hydro-physical Zones and it aims at not only regulation, control and development of the ground water resources, but also for steps to prevent ground water pollution and augmentation and replenishing of the water resources by measures such as rain water harvesting and efforts for encouraging recharging of the ground water resources. It also envisages, employment of all modern and scientific technics and tools by development of human resources, including the Ground Water Officers and Managers, etc. It is necessary to state that the salutary object of the Act and the draft policy framed, have to be translated in action in all earnest so as to effectually implement the

provisions of the Act and also to curb the violations thereof and preventing loss of revenue on account of the water resources being frittered away. We hope and trust that the State Government shall continue with the efforts in this regard. In such circumstances, we dispose of the petition with the following directions :

"(i) The State Government shall take effective steps for identifying/ registration of the wells and this exercise shall be completed within a period of 6 months from today.

(ii) The State Government shall take effective steps for registration of all the tankers employed for transportation of the potable/ non-potable water in association with the Directorate of Transport and shall complete this exercise within a period of 6 months from today.

(iii) Effective steps shall be taken for recovery of the arrears of the charges and a proper machinery shall be put in place for monitoring/ recovery of such charges, so as to prevent loss of revenue to the Government.

(iv) Efforts shall be taken for creating public awareness on the necessity to replenish and recharge of ground water resources as also necessity for proper/ optimum utilisation of the same.

(v) The State Government shall also take steps to identify the persons / entities responsible for violation of the provisions of the Act and the Rules framed thereunder and shall take steps for registration of the offences wherever necessary, in accordance with the provisions of the Act.

(vi) The State Government shall file an interim compliance report after three months.

(vii) The petition shall be listed only for reporting compliance on 18/02/2016."