

GAHC010217192023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5912/2023

MANOJ KUMAR CHAUHAN
S/O SHRI SHIV PRASAD CHAUHAN
R/O HOUSE NO. 2 SOLAPARA ROAD
PALTA BAZAR GUWAHATI
ASSAM P.S. PALTAN ABAZAR

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP BY THE SECRETARY TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPTT.
DISPUR ASSAM PIN 781006

2:THE HONBLE MAYOR
GAUHATI MUNICIPAL CORPORATION
GUWAHATI P.O. PANBAZAR
KAMRUP (M) ASSAM PIIN 781001

3:THE COMMISSIONER
THE GAUHATI MUNICIPAL CORPORATION
GUWAHATI KAMRUP M ASSAM PIN 781001

4:THE ASSISTANT COMMISSIONER
THE GAUHATI MUNICIPAL CORPORATION
GUWAHATI
KAMRUP M
ASSAM PIN 78100

Advocate for the Petitioner : MR. K SINGHA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 30.07.2024

Heard Ms. N. Begum, learned counsel for the petitioner and Mr. S. Bora, learned counsel for all the respondents.

2. The petitioner was operating a Boring Water Supply Unit after obtaining a Trade Licence from the respondent GMC. The respondent authorities, on and from 10.04.2023, had stopped the petitioner from operating the deep tube-well for extracting ground water. Aggrieved thereby, the petitioner has approached this Court by this writ petition. The petitioner has alleged violation of principles of natural justice, as no prior notice was served upon the petitioner, prior to stopping him from operating the deep tube-well for extracting ground water.

3. The petitioner's counsel submits that when the petitioner applied for a fresh licence with the GMC, the petitioner was informed that he had to apply for obtaining a valid permission for extracting ground water from the Central Ground Water Board, North Eastern Region, vide letter dated 28.08.2023.

4. The petitioner's counsel submits that at the time of sealing of the petitioner's water supply unit, some pipes and machineries were taken by the GMC without issuing any seizure memo. She submits that the same should be returned to the petitioner.

5. Mr. S. Bora, learned counsel for the GDD & GMC submits that the petitioner would first have to make an application to the State Authority under the Assam Ground Water Control and Regulation Act, 2012 (hereinafter referred to as 'the 2012 Act'), for grant of permit to extract ground water. Once, permit

is granted by the State Authority, the petitioner should make an application to the GMC for grant of a trade licence for sale of the extracted ground water through deep tube-well boring, in terms of Section 180 of the GMC Act, 1971. He further submits that the State Authority constituted under the 2012 Act is a body under the Irrigation Department, Government of Assam, whose office is located in Chandmari, Guwahati-03. Mr. Bora further submits that the order No. GCL/33/2023 dated 28.08.2023 issued by the Sasanka Jyoti Deka, Member, office of the GMC to the effect that the petitioner should obtain a valid permission from the Central Ground Water Board, North Eastern Region and thereafter approach the GMC for grant of a trade licence is a incorrect direction/information given, inasmuch as, the petitioner would first have to approach the State Authority under the 2012 Act and thereafter approach the GMC for grant of a trade licence.

6. Mr. S. Bora, learned counsel for the GDD & GMC submits that the stand taken by the petitioner that the GMC had seized some pipes and machineries without issuing any seizure memo is a baseless allegation.
7. I have heard the learned counsels for the parties.
8. Section 2(h) and Section 6 of the 2012 Act states as follows:-

“2.(h) “State Authority” means the Assam State Ground Water Authority established under Section 3 of this Act.

.....

6. (1) Any user of ground water as defined under sub-section (j) of section 2 desiring to sink a well in the notified area for any purpose either on personal or community basis as commercial / industrial user, shall apply to the State Authority in prescribed form of application for grant of a permit for this purpose, and shall not proceed with any activity connected with such sinking unless a permit has been granted by the State Authority

Provided that the person or persons shall not have to obtain a permit if the well is proposed to be fitted with a hand operated manual pump or water is proposed to be withdrawn by manual devices.

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

(b) Each application should accompany an administrative fee of Rs. 100/- (Rupees One hundred) only in case of an individual in rural areas and Rs.200/- (Rupees Two hundred) only in case of an individual in urban areas. In case of application submitted by a Company, Society etc the fee is Rs.1000/- (Rupees One thousand) only for rural areas and Rs.2000/- (Rupees Two thousand) only for urban areas. The fee is payable in favour of Assam State Ground Water Authority.

(3) On receipt of an application under sub-section (1), the application shall be endorsed to an Investigating Officer who shall visit the site and shall after making necessary enquiry on the following points, submit a report with his recommendation to the State Authority:-

- (a) geology and geomorphology of the area;*
- (b) observation of existing well, if any;*
- (c) measurement of non-pumping water level in the surrounding area;*
- (d) brief lithology of the area, if available;*
- (e) spacing of Ground Water structures;*
- (f) prospect of Ground Water availability;*
- (g) feasibility for Ground Water Development;*
- (h) type of well (DTW, STW Due Well);*
- (i) basement structure study in hard rock terrain;*
- (j) quality of Ground Water.*

(4) On the basis of the report received, the authorized officer of the State Authority shall either grant or refuse to grant a permit:

Provided that no person shall be refused a permit unless he has been given a reasonable opportunity of being heard.

(5) The decision regarding the grant or refusal of the permit shall be intimated by the State Authority to the applicant within a period of 45 (forty-five) days

from the date of receipt of the application.

(6) In granting or refusing a permit under sub-section (4), the State Authority shall have regard to

(a) the purpose or purposes for which the water is to be used;

(b) the existence of other competitive users;

(c) availability of ground water:

(d) quality of ground water with reference to use;

(e) spacing of ground water structures keeping in consideration the purpose for which the water is to be used;

(f) long term ground water level behaviour;

(g) any other factor relevant thereto.”

9. A perusal of the above provisions of the 2012 Act shows that the State authority is the authority, who can grant a permit for extraction and use of ground water in a notified area. Once a permit is granted by the State Authority under the 2012 Act, the petitioner would have to approach the GMC for grant of a trade licence in terms of Section 180 of the GMC Act, 1971. The petitioner has however not made any prayer to the State authority for grant of a permit for deep well boring of ground water.

10. In view of the procedure to be followed for grant of a permit for deep ground boring and grant of a trade licence in terms of the GMC Act, the petitioner is given the liberty to approach the concerned authority, as required under the 2012 Act and the GMC Act, 1971 for grant of permit and trade licence respectively. However, with regard to the stand of the petitioner that some materials were seized from his water extraction unit, this Court is of the view that if any material belonging to the petitioner had been seized, the same should be returned to the petitioner. Further, the same being a disputed question of fact the petitioner is given the liberty to approach a Civil Court with

regard to the above issue.

11. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant