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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3933/2015**

RAMESH AILAWADI

..... Petitioner

Through: Mr. Pranav Sachdeva & Mr. Govind
Jee, Advs.

Versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Ms. Zubeda Begum with Ms. Sana
Ansari & Ms. Vanessa Singh, Advs.
for R-1.

Mr. Jasmeet Singh, CGSC for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.04.2015**

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks a direction to the Government of National Capital Territory of Delhi (GNCTD) and the Union of India (UOI) to price the groundwater resource in a manner that discourages its wasteful use, by mandating installation of meters for every groundwater user / installation, including on construction sites, as is done in the case of water being supplied by the Delhi Jal Board.

2. It is the case of the petitioner that underground water forms part of natural resources and of which Government is the guardian and has the responsibility to ensure that the same is distributed to subserve the common good. It is further the case of the petitioner that wastage of this precious

resource by those who have been able to obtain groundwater installations, violates Articles 14 and 21 of the Constitution of India.

3. The counsel for the petitioner agrees that measures for regulating groundwater are in force, at least as far as the city of Delhi is concerned. He however states that the same should not be allowed to be drawn free and should be made a paid commodity.

4. In our opinion, the decision whether groundwater is allowed to be drawn free or to be made a paid commodity is a policy matter outside the domain of the Courts and it is not for the Courts to adjudicate whether it should be free or the consumers thereof be made to pay therefor to the Government.

5. The counsel for the petitioner has been unable to cite any obligation of the Government to charge for the groundwater or a duty of the people to pay therefor. Similarly, the counsel for the petitioner has been unable to cite any principle on the anvil whereof it can be said that the failure of the Government to charge for groundwater is such which requires intervention of the Court.

6. Supreme Court, answered the Presidential Reference as to the permissible method for disposal of natural resources, in ***Re: Special Reference No.1/2012*** (2012) 10 SCC 1 by opining, (a) that the Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious one, if at all there is one universal efficacious method in the first place; (b) the Court respects the mandate and wisdom of the executive for such matters; (c) the methodology

pertaining to disposal of natural resources is clearly an economic policy—it entails intricate economic choices and the Court lacks the necessary expertise to make them; it shall not be the endeavour of the Court to evaluate the efficacy of the methods of disposal of natural resources; (d) the Court can however test the legality and constitutionality of the methods of distribution when question; the Court however cannot compare which policy is fairer than the other—only if a policy is patently unfair to the extent of falling foul of the fairness requirement of Article 14, will the Court interfere; (e) market price, in economics, is an index of a value that the market prescribes to a good; however this valuation is a function of several dynamic variables and is a question of science and not law; (f) thus auction as a mode cannot be conferred the status of a constitutional principle.

Justice J.S. Khehar in his concurring opinion further stated that the wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases and it is not for the Courts to recast the policy or to substitute it with another which is considered to be more appropriate.

7. There is thus no merit in the petition which is dismissed. We refrain from imposing any costs on the petitioner.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

APRIL 22, 2015

‘gsr’..