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W.P.No.11565 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.11565 of 2018
and W.M.P.Nos.13528 and 13527 of 2018

M/s.Divagar Enterprises,
Rep. by its Proprietor,
D.No.12, S.No.204/2,
Nellur Amman Koil Selaiyur,
Chennai, District Kanchipuram.

... Petitioner

VS.

1.The Secretary to Government of Tamil Nadu
Public Works (R2) Department,
St.Fort George, Chennai-600 009.

2.The Chairman,
Tamil Nadu Pollution Control Board,
Guindy, Chennai-600 032.

3.The Central Ground Water Board,
Government of India-Ministry of Water Resources,
South Eastern Coastal Region,
Represented by its Regional Director,
E-1, G-Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.



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4.The Chief Engineer,
Public Works Department,
Water Research Organization,
State Ground & Surface Water Resource Data Centre,
Taramani, Chennai-600 113

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the entire records in connection with the impugned G.O.(Ms).No.142 Public Works (R2) Department, dated 23.07.2014 of the first respondent and quash the said impugned G.O. dated 23.07.2014 as it violates the fundamental rights of the petitioner.

For Petitioner : M/s.S.Sankaranarayana Pandian

For R1, R3 & R4 : Mr.U.Bharanidharan
Additional Government Pleader

For R2 : Mr.S.Shanmugavalli sekar
Standing Counsel

ORDER

The relief sought for in the present writ petition is to quash the impugned G.O.(Ms).No.142 Public Works (R2) Department, dated 23.07.2014 of the first respondent.

2.Learned counsel for the petitioner submitted that the petitioner unit is running a packaged drinking water plant and holding valid licenses from



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the authorities concerned. The grievance of the petitioner is that the petitioner unit has been afflicted by the impugned G.O.(Ms).No.142 Public Works (R2) Department, dated 23.07.2014 passed by the first respondent. Challenging the same, the present Writ Petition.

3.Learned Additional Government Pleader appearing for the respondents 1, 3 and 4 submitted that the very same G.O.(Ms).No.142 Public Works (R2) Department, dated 23.07.2014 was challenged before this Court in W.P.No.33457 of 2016, and this Court vide order dated 23.09.2021 disposed of the Writ Petition relying on the judgment dated 03.10.2020, wherein the issue similar to the present case has been dealt with in a batch of Writ Petitions viz., W.P.No.28535 to 28539 of 2014, etc. Hence, he does not raise any objection to the relief sought for by the petitioner.

4.This Court has already dealt with the issues relating to the regulations of ground water, considering the need for regulating such extraction. The judgment was delivered on 03.10.2020 in a batch of writ



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petitions viz., WP No.28535 to 28539 of 2014, etc. The relevant portion of the judgment is extracted hereunder.

“109.Coming to the regulatory part of the Extraction of Ground Water, all these commercial establishments, as discussed in the aforementioned paragraphs, implementation of the regulations are certainly imminent and the same is lacking on account of proper Mechanism and guidelines. Thus, this Court is inclined to pass the following orders:

(1) The impugned order of regulation issued by the 1st respondent in G.O.Ms.No.142, dated 23.07.2014 is confirmed.

(2) The respondents are directed not to grant licence, No Objection Certificate (NOC) or permission for the commercial establishments / person to extract ground water for commercial usage in the absence of fixation of water Flow Meter on the Board outlet, which is to be inspected.

(3) The respondents are directed to inspect the functional quality and other established standards of the Flow Meters fixed by the persons, who all are applying for permissions / No Objection Certificate (NOC) and at the time of granting permission / No objection Certificate (NOC), the



Flow Meter should be sealed properly by the respondents / Public Works Department (PWD) officials.

(4) The Flow Meter must be sealed in such a way to prevent any tampering by any person. Quantum of Water to be extracted by individuals, are to be fixed periodically as per the assessment to be made by the P.W.D. Authorities as per the Regulations.

(5) The respondents are directed to measure the quantum of water extracted by the establishments / persons by taking meter reading every Month and accordingly, the same is to be regulated.

(6) The respondents are directed to follow all other terms and conditions fixed for grant of licence / permission for Extraction of Ground Water for commercial usage as per the guidelines issued in G.O.Ms.No.142, Public Works Department dated 23.07.2014.

(7) The respondents are directed to register the Police complaint in the event of identifying any excess Extraction of Ground Water by tampering the Flow Meters sealed or by any other means by any person. The case must be registered Under



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Section 379 of Indian Penal Code (IPC). In addition, if the water is wasted for causing wrongful loss, then Section 425 of the Indian Penal Code (IPC) will also attract.

(8) The respondents are directed to suspend the licenses by issuing show cause notices and by providing an opportunity to the persons, who have involved in the offence of theft or violation of all other conditions stipulated in the Government Regulations, or if a criminal case is registered. If any person is convicted, then he shall be permanently debarred from getting licence for Extraction of Ground Water.

(9) The District Collectors of all the Districts in the State of Tamil Nadu are directed to issue suitable directions / orders to the Revenue Divisional Officer, Tahsildars and all other officials concerned to inspect and monitor the Extraction of Ground Water by the persons for commercial usage.

(10) The District Collectors of all the Districts are directed to constitute monitoring committees to monitor the Extraction of Ground Water by the individuals for commercial purposes.



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(11) Each Monitoring Committee appointed by the District Collector concerned, shall consists minimum of five persons and the Committee is empowered to monitor the Extraction of Ground Water for commercial purposes by the individual persons and commercial establishments.

(12) The Monitoring Committee shall consists of the following persons:

(i) The District Environmental Engineer from Pollution Control Board of the State of Tamil Nadu.

(ii) One qualified Public Works Department (PWD) Engineer from Water Resources Department.

(iii) The Assistant Director of Zoology and Mining of the State Government.

(iv) The Revenue Divisional Officer of the concerned locality.

(v) One nominee from the office of the Chief Engineer, Central Ground Water Board of the Government of India.



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(13)The Monitoring Committee is entitled to collect proofs and documents in respect of the Extraction of Ground Water illegally and excessively by any person and submit a complaint / report to the District Collector concerned, who in turn, after verifying the same, shall register a complaint with the Jurisdictional Police for registering a criminal case under the provisions of Indian Penal Code (IPC).

(14) It is needless to State that, only in the event of compliance of the regulations and conditions imposed in this order, the persons / establishments shall be allowed to extract the Ground water for commercial usage or for commercial purposes.

(15) The 1st respondent / Secretary, Public Works Department is directed to issue a consolidated instructions in this regard based on the order passed in the present writ petitions to all the District Collectors, enabling them to implement the Court orders promptly.”

3. In view of the above, the case of the writ petitioner is also to be considered in the light of the directions issued in the above judgment.



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4. Thus, the Writ Petition stands disposed of. No costs. Consequently,
the connected Writ Miscellaneous Petitions are closed.

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Index : Yes/No
Speaking order : Yes/No
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M.DHANDAPANI,J.

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