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WP No.15161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP No.15161 of 2023
and WMP Nos.14656 and 14657 of 2023

R.Suresh

.. Petitioner

-VS-

1. Union of India,
Rep. by The Administrator/Lt.
Governor of U.T. of Puducherry,
Rajnivas, Puducherry 605 001.
2. The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.
3. The Secretary to Government (Revenue),
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.
4. The Secretary to Government (PWD),
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.
5. The Chairman (PGWA)-cum-Secretary (Agri.),
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.



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6. The Deputy Secretary to Government (Agri.),
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.
7. The Director of Agriculture & Farmers
Welfare, Office of the Director of Agriculture
& Farmers Welfare, Government of
Puducherry, Puducherry.
8. Directorate of Science, Technology and
Environment (DSTE), III Floor,
PHB Building, Anna Nagar, Near Indira
Gandhi Statue, Puducherry 605 005.
9. Puducherry Ground Water Authority,
Rep. by its Member Secretary,
No.15, 3rd Cross Street,
Mariamman Nagar, Karamanikuppam,
Puducherry 605 004.
10. The Chief Engineer,
Public Works Department (PWD),
Government of Puducherry,
PWD Complex, N.S.C. Bose Salai
(Gingee Salai), Puducherry.
11. The Secretary,
Ministry of Environment Forest and
Climate Change, Indira Paryavaran
Bhawan, Jorbagh, New Delhi 110 003.
12. The Secretary,
Ministry of Jal Sakthi,
Department of Water Resources,
Rafi Marg, New Delhi 110 001.
13. The Chairman/Member Secretary,
Central Ground Water Authority,
No.18/11, Jam Nagar House,
Mansingh Road, New Delhi 110 011.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to impugned notification vide G.O.Ms.No.2/Ag dated 12.04.2023 issued by the 6th respondent and quash the same and consequently direct the respondents to conduct survey/study about availability and quality of ground water resources in area wise and thereafter frame new guidelines for granting permission for sinking of tube-wells for extraction of ground water based on the availability and quality of ground water resources in area wise in U.T. of Puducherry strictly in accordance with Sections 6(5) and 7(5) of the Pondicherry Ground Water (Control and Regulation) Act, 2002 as well as scheme and object of the Pondicherry Ground Water (Control and Regulation) Act, 2002 and also direct the respondents to take appropriate action for shutting down of all industries/companies/commercial entities which are functioning in U.T. of Puducherry and sucking/extracting ground water for their business needs illegally, unlawfully and unlimitedly exceeding their permissible limit and also industries/companies/commercial entitles sucking/extracting ground water for their business needs illegally, unlawfully without any valid licence/permission from competent authorities.

For the Petitioner : Mr.Prakash Adiapadam

For the Respondents : Mr.S.Raveekumar
Government Pleader (Puducherry)
for RR 1 to 10
: Mr.S.Janarthanam
Special Panel Counsel
for RR 11 to 13.

* * * * *



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ORDER

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(Order of the Court was made by The Hon'ble Chief Justice)

We have heard Mr.Prakash Adiapadam, learned counsel for the petitioner, Mr.S.Raveekumar, learned Government Pleader (Puducherry) for respondents 1 to 10 and Mr.S.Janarthanam, learned Special Panel Counsel for respondents 11 to 13.

2. The petition has been filed in the nature of public interest. The petitioner assails the Government Order dated 12.04.2023 issued by the sixth respondent. The petitioner further seeks directions against the respondents to conduct survey/study about the availability and quality of ground water resources area wise and thereafter frame new guidelines for granting permission for sinking of tube-wells for extraction of ground water based on the availability of ground water resources strictly in accordance with Sections 6(5) and 7(5) of the Pondicherry Ground Water (Control and Regulation) Act, 2002 (in short 'the Act of 2002') as well as scheme and object of the Act of 2002.



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3. The learned counsel for the petitioner submits that the petitioner is not challenging the entire Government Order dated 12.04.2023 but has restricted his challenge to Clause 5.2 therein. According to the learned counsel, indiscriminate permission for tube-wells, that too for commercial users, cannot be granted at the cost of the depleting water level in the Union Territory of Puducherry. Unless a study is made and survey conducted, the permission cannot be granted for tube-wells. Clause 5.2 of the impugned Government Order is not in tune with Sections 6(5) and 7(5) of the Act of 2002. No survey or study has been conducted by the respondent authorities. The respondent authorities should first conduct a survey and then issue the guidelines in tune with the survey and the study made.

4. The learned Government Pleader for the respondent Nos.1 to 10 submits that the Government Order is in no way deviating from the requirements under the Act of 2002. The same is only supplementing the statutory provisions. An affidavit has been filed



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by respondent Nos.5, 6 and 7 stating that the permit/licence to extract and use of ground water is granted as per Sections 6 and 7 by conducting field inspection in respect of agriculture category and in respect of industrial units and infrastructure, the permits are issued based on the recommendations given by the Pondicherry Pollution Control Committee. The permissions are granted in accordance with the statutory provisions.

5. We have considered the submissions.

6. The grant of permit/licence to extract the ground water is provided under the provisions of the Act of 2002 and the Pondicherry Ground Water (Control and Regulation) Rules, 2003 (in short 'the Rules of 2003'). The said Act and the Rules are complete code in itself.

7. The Government resolution in issue does not provide for the procedure to be adopted before issuing the licence/permit. The same would be regulated by the Act of 2002 and the Rules of 2003. The impugned Government Order is in the nature of guidelines and



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the same is issued after the directions of the Apex Court in the case of **MC Mehta vs. Union of India** [Civil Writ Petition No.4677 of 1985 dated 10.12.1996] reported in **(1997) 11 SCC 312**. The reference is made to the various Acts. The purpose, intent and object of the impugned executive instructions is to regulate the ground water extraction and conserve the scarce ground water resources. Laying down the restriction, viz., not permitting extraction of ground water above 10000 LPD within 6 km. from the coastal line, is certainly in the interest of conservation of water. It is the misconception of the petitioner to contend that because provision is made in the impugned government order permitting extraction of more than 1 lakh LPD of the ground water beyond 6 km. and/or 10000 LPD beyond 6 km. from the sea coast, the regulatory provision under the Act of 2002 and the Rules of 2003 would not apply. The provisions of the Act of 2002 and the Rules of 2003 will apply with all its rigor while obtaining permission for extraction of ground water, be it below 10000 LPD or above 10000 LPD.

8. The Court, in exercise of its power of judicial review, would



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not, as a matter of course, interfere with the policy decision of the Government. The Government has authority to take a policy decision under its executive powers resorting to Article 162 of the Constitution of India. This Court would entertain a challenge to the executive policy of the State Government only if the executive policy is manifestly arbitrary, irrational or is supplanting the provisions of the Statute, in other words, is overriding the provisions of the Statute and/or the Rules. In the present case, we do not find the Government Order in any way overriding the provisions of the Statute and/or the Rules.

9. We would have entertained the challenge to Clause 5.2 had the same been unreasonable or arbitrary. Arbitrariness has no role in the society governed by rule of law. Arbitrariness is antithesis to the rule of law, justice, equity, good conscience and fair play. However, in the present case, we do not find the guidelines so also Clause 5.2 of the impugned government order arbitrary. It could not be pointed out that the same is contrary to the provisions of the Act of 2002 and/or the Rules of 2003. The government order is not supplanting, but supplementing the provisions of the statute and



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the Rules in force.

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10. Needless to state, the State Government, while granting permission for extracting ground water, will strictly adhere to the provisions of the Act of 2002 and the Rules of 2003, which they have also undertaken in the affidavit filed herein.

In light of the above and with the aforesaid observations, the writ petition is dismissed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : yes/no

Neutral Citation : Yes/No

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To:

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Union of India,
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2. The Chief Secretary to Government,
Government of Puducherry,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.
3. The Secretary to Government (Revenue),
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Puducherry 605 001.
7. The Director of Agriculture & Farmers
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& Farmers Welfare, Government of
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8. Directorate of Science, Technology and
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9. The Member Secretary,
Puducherry Ground Water Authority,
No.15, 3rd Cross Street,
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10. The Chief Engineer,
Public Works Department (PWD),
Government of Puducherry,
PWD Complex, N.S.C. Bose Salai
(Gingee Salai), Puducherry.
11. The Secretary,
Ministry of Environment Forest and
Climate Change, Indira Paryavaran
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12. The Secretary,
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