



WP (MD) No.16458 of 2014, etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON: 30.06.2023
PRONOUNCED ON: 22 .12.2023**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.16458, 18015, 18016, 18017, 18241
and 18905 of 2014
and**

MP(MD)Nos.2,2,2,2,3 and 2 of 2014

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M/s.S.Sri Guru Water,
Represented by its Proprietor V.Periyasamy,
S/o.R.Veluchamy,
No.1-2A4, Pateeswaram Main Road,
Thiruvalanzhuli,
Kumbakonam Taluk,
Thanjavur District.

... Petitioner

Vs

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

2.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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3. The Chief Engineer,
Public Works Department,
Water Research Organisation,
State Ground and Surface Water Resources Data Centre,
Taramani, Chennai – 600 113.

... Respondents

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

For petitioner : Mr.Devaraj
For Respondent : Mr.Veera Kathiravan,
Nos.1 & 3 Additional Advocate General
Assisted by Mr.S.Shaji Bino,
Special Government Pleader
For Respondent : Mr.K.Govindarajan,
No.2 Dy Solicitor General of India
for D. Mr.Saravanan
: Mr.A.Robinson,
Amicus Curie

ORDER

This batch of writ petitions is filed challenging the Government Order in GO(Ms)No.142 Public Works (R2) Department dated 23.07.2014 that this government order violates the fundamental rights of the petitioners.



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2. This impugned government order was issued in the year 2014 for regulation of management of ground water and issuance of No Objection Certificate / License for extraction of ground water in the state of Tamil Nadu. This impugned government order was issued in continuance of GO.Ms.No.52 Public Works (R2) Department, dated 02.03.2012 categorizing of blocks as Over Exploited, Critical, Semi - Critical and Safe in the state.

3. The surface water resources data are estimated periodically by the State government in coordination with the Central Ground Water Board, Government of India, SERC Chennai, based on the methodology evolved by Ground Water Estimation Committee 1997. As on March 2009, the Assessment of State Ground Water Resources was taken up jointly with Central Ground Water Board. The Ground Water Assessment 2009 was placed before the "State Level Committee for Re-estimation of Ground Water Resources Assessment" and approved by the said Committee consisting of 18 members under the Chairmanship of the Secretary, Public Works Department. Accordingly, the blocks are categorized as follows,

“6. The Chief Engineer, State Ground and Surface Water Resource Data Centre has also furnished abstract of the categorisation blocks as on March 2009 as below:



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<i>Sl.No</i>	<i>Categorisation of Blocks</i>	<i>As on March 2009</i>
<i>1.</i>	<i>Over Exploited Blocks</i>	<i>138 + 1</i>
<i>2.</i>	<i>Critical Blocks</i>	<i>33</i>
<i>3.</i>	<i>Semi Critical Blocks</i>	<i>67</i>
<i>4.</i>	<i>Safe Blocks</i>	<i>136</i>
<i>5.</i>	<i>Saline / Poor quality blocks</i>	<i>11</i>
<i>6.</i>	<i>Total Blocks</i>	<i>385 + 1</i>

4. The Government accepted the same vide GO.Ms.No.52 Public Works (R2) Department, dated 02.03.2012 and issued further directions that no schemes should be formulated in over exploited and critical blocks. In semi critical and safe blocks the government suggested for a no objection certificate for ground water clearance from the Chief Engineer, Water Resources Department. The Government has also directed to exclude ground water withdrawal for domestic purposes, by individual households and government drinking water supply schemes. Accordingly the government has issued this GO(Ms)No.142 Public Works (R2) Department dated 23.07.2014 with certain regulations for extracting and transporting the ground water. This Government order was already challenged in a batch of writ petitions in WP.No.28535 to 28539 of 2014 and this Court upheld the same by order dated 31.10.2014.



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5. Water is a State subject under the Constitution of India in Entry 17 of the List II in 7th Schedule. So, the State Government is empowered to issue executive orders under Article 162 of the Constitution of India, regulating the extraction of ground water. The potential assessment of ground water in Tamil Nadu are made based on the Ground Water Estimation Committee [GWEC] Norms, 1997 and are approved only with the concurrence of the Central Ground Water Board. Accordingly an assessment was made in India in the year 2003 and thereafter in the year 2009. It appears that no fresh assessment was made after 2009. Previously, 138 Blocks out the total 385 Blocks were declared over exploited and 33 Blocks as critical Blocks. It is not known what is the present condition as on date. The Government is following the procedure regarding the ground water based on an assessment made in the year 2009 and it appears that the Government has not taken any steps to assess the ground water condition after 2009.

6. The world cannot exist without water. Water is not only essential for human beings, but also for all the living beings. Emphasizing the same, a Division Bench of this Court in a batch of writ petitions in WP.Nos.15304 of 2019, etc. dated 01.10.2019, filed before this Court has held as follows:

“20. Ground water is depleting in the State of Tamil Nadu



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at an alarming rate. Chennai Metropolitan Area Ground Water (Regulation) Act 1987, only regulates extraction of water in Chennai, Kancheepuram and Tiruvallur districts. Since Tamil Nadu Ground Water (Development and Management) Act, 2003 has been repealed, there is no legislation to regulate the extraction of water in the State of Tamil Nadu other than the three districts mentioned above. A perusal of G.O.Ms.No.51, Public Works Department, dated 11.2.2004 and G.O.Ms.No.52, Public Works (R2) Department, dated 02.03.2012, would show that the State Government is aware that there are pockets in the State where there is over exploitation of ground water. The Government has therefore resorted to invoke the powers under Article 162 of the Constitution of India to bring out the above mentioned G.O. There is no machinery to ensure that violators of the directions in the said G.O.s. can be proceeded with under criminal law. There are no effective provisions in the Indian Penal Code to combat illegal extraction of water. The State Government therefore has to bring out effect legislations to ensure that persons involved in illegal and indiscriminate extraction of ground water are dealt with firm and



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iron hands. This Court is aware that a Writ cannot be passed

directing the State Government to bring out legislations. However,

this Court requests the State Government to pass legislations to

cover the entire State of Tamil Nadu to combat the issue of

depletion of ground water.”

7. The Government has already enacted Act and Rules to regulate the extraction of ground water in this State vide, the Chennai Metropolitan Area Groundwater (Regulation) Act, 1987 and the Chennai Metropolitan Area Groundwater (Regulation) Rules, 1988 and the Tamil Nadu Ground Water (Development and Management) Act, 2003. The Act of 1987 is regulating the field in the Chennai City and several villages in the Districts of Chengalpet, Kancheepuram and Tiruvallur. Whereas the other places in Tamil Nadu were governed by the Act of 2003. This Act was in existence only upto 2013 and under the guise of bringing out a comprehensive law the Government of Tamil Nadu by an Ordinance dated 14.09.2013 has repealed the Act of 2003. Therefore, the field is now governed by government orders such as G.O.Ms.No.142, which was introduced in the year 2014. Considering the above aspects, this Court by an order dated 07.03.2023 has appointed Mr.A.Robinson, an Advocate as an Amicus Curie to assist this Court in this issue.



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8. The learned Amicus Curies submits that water being a State subject under the Constitution of India in List II, Entry 17 of the 7th Schedule, the parliament lacked competence to regulate ground water resources. But vide Article 253 of the Constitution of India, the parliament is empowered to enact legislations for giving effect to International Agreements, Treaties and Conventions. Further vide Model Bills 1974, 1992, 1996, 2005, 2011 and 2015, the Central Government has been continuously stressing upon the State Governments to enact their own Laws in order to regulate the usage and extraction of ground water. The Government of India is a signatory to the United Nations Organisation 2013 Agenda for sustainable development, which consists of 17 sustainable development codes that are to be developed by 31.12.2013. In which, code number 6 is related to clean water and sanitation which seeks to ensure the availability of sustainable management of water and sanitation for all.

9. The learned Amicus has also relied on the judgment of the Hon'ble Supreme Court in **M.C.Metha Vs Union of India** reported in (1997) 11 SCC page 312, wherein the Hon'ble Supreme Court has held as under:

“8. We therefore, order and direct as under.

9. The Central Government in the Ministry of Environment



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and Forest shall constitute the Central Groundwater Board as an Authority under Section 3(3) of the Act. The Authority so constituted shall exercise all the powers under the Act necessary for the purpose of regulation and control of groundwater management and development. The Central Government shall confer on the Authority the power to give directions under Section 5 of the Act and also powers to take such measures or pass any orders in respect of all the matters referred to in sub-section (2) of Section 3 of the Act.

10. We make it clear that the Board having been constituted an Authority under Section 3(3) of the Act, it can resort to the penal provisions contained in Sections 15 to 21 of the Act.

11. It has been stated by Dr P.C. Chaturvedi and Mr Arun Kumar in their respective affidavits that enhanced and unregulated pumpage of the water is primarily responsible for the decline in the water levels of the country.

12. The main object for the constitution of the Board as an Authority is the urgent need for regulating the indiscriminate boring and withdrawal of underground water in the country. We have no doubt that the Authority so constituted shall apply its mind to this urgent aspect of the matter and shall issue necessary regulatory directions with a view to preserve and protect the underground water. This aspect may be taken up by the Authority on an urgent basis.



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13. The Central Government in the Ministry of Environment and Forest shall issue the necessary notification under Section 3(3) of the Act as directed by us before 15-1-1997.”

10. On the above directions of the Hon'ble Supreme Court, the Central Government constituted the Central Ground Water Board as the authority vide notification number S.O. 38 (E) dated 14.01.1997 and the authority has been regulating the ground water development and management by way of issuing no objection certificates for ground water extraction to industries, infrastructure projects or mining projects, etc., and also framing guidelines in this connection from time to time applicable in all the States and Union Territories where ground water development is not being regulated by the State Governments and Union Territories Administration. The Government of India has also issued the “Guidelines to regulate and control groundwater extraction in India” vide notification S.O. 3289(E) dated 24th September, 2020, under Section 5 of the Environmental Protection Act, 1986. These guidelines will have Pan-India applicability and the States, which do not have any regulations, shall continue to be regulated by the Central Ground Water Authority [CGWA].



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11. The learned Amicus further submits that if any State or Union Territory has come out with their own ground water extraction guidelines, which are inconsistent with the Central Ground Water Authority (CWGA), the provisions of Central Ground Water Guidelines will prevail over it. However the States may be at liberty to suggest additional conditions / criteria based on the local hydro geographical situations. In fact, the Hon'ble National Green Tribunal being not satisfied with the notification issued by the Government of India has pointed out certain defects in the guidelines issued by the Central Ground Water Authority and directed the Central Ground Water Authority to forthwith issue appropriate orders / guidelines regulating the ground water extraction in the light of the observations made by the Hon'ble Supreme Court in M.C.Metha's case (cited supra).

12. As far as the State of Tamil Nadu is concerned, an Act which was existence in the year 2003 was repealed in the year 2013 that a comprehensive law would be brought in. However, the Government of Tamil Nadu has not taken any steps to bring a legislation for the past 10 years. A committee has also been constituted pursuant to the orders of this Court in the year 2020. This Committee has also submitted a draft bill on 13.01.2020. However, this bill has not been



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placed before the Assembly for the past three years. Therefore, this Court directed the learned Additional Advocate General to get instructions from the Government as to the stand of the Government on draft bill submitted by the High Level Committee by an order dated 06.04.2023. On compliance of that, the Deputy Director (Geology), Ground Water Circle, Public Works Department has filed an affidavit on 19.06.2023, which is extracted as follows,

“The Draft of Water Resources Act of Tamil Nadu is prepared in a Holistic manner to regulate and manage the water resources of the State for sustainable utilization. And the same was reviewed and comments of officials of WRD, and Additional Chief Secretary on 02.06.2023, 14.06.2023, and 15.06.2023 and the suggestions have also been incorporated in the proposed draft Act. Now, the draft of Water Resources (Regulation, Management & Augmentation) Act is under active consideration by the Government and now rigorous steps are being taken up by the Government for the enactment of the Act.”

13. The Tamil Nadu Ground Water (Development and Management) Act 2003 governed the usage of ground water for the entire State of Tamil Nadu and it was in the line with the Chennai Metropolitan Area Ground Water (Regulation)



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Act 1987. This Act has been repealed by the Tamil Nadu Ground Water (Development and Management) Repeal Act, 2013. After which, no legislation was brought in to regulate the extraction of ground water in the State of Tamil Nadu. As a substitute, the Government has issued G.O.Ms.No.51, Public Works Department, dated 11.2.2004, G.O.Ms.No.52, Public Works (R2) Department, dated 02.03.2012 and G.O.(Ms).No.142, Public Works (R2) Department dated 23.07.2014, for regulating the extraction of ground water. In which, the GO(Ms)No.142 Public Works (R2) Department dated 23.07.2014 is under challenge and such government orders are issued by invoking the powers under Article 162 of the Constitution of India which is extracted as follows,

162. Extent of executive power of State. - *Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:*

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.



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14. Under Article 162, the executive power of the State extends to matters with respect to which the Legislature of the State has the power to make laws.

However, it is a residue of what remains after the legislative and judicial functions.

The Hon'ble Supreme Court in *Union of India v. Central Electrical & Mechanical Engg. Service (Ce&Mes) Group 'A' (Direct Recruits) Assn., CPWD*, reported in (2008) 1 SCC 354 held that it is a well-settled principle of law that an executive order under Article 162 must be passed in conformity with the rules and the power of the State Government to issue executive instructions is confined to filling up of the gaps or covering the area which otherwise has not been covered by the existing rules. It can be understood that the scope of Article 162 is restricted only to fill up the gaps in the existing legislations. However, the Tamil Nadu Ground Water (Development and Management) Act 2003, the extensive legislation which governed the area was replaced with various government orders including the impugned government order. Therefore, the constitutional power which can be used to supplement the state legislation is being used to supplant the same.

15. Moreover, the Hon'ble Supreme Court has defined the scope of executive power in *Rai Sahib Ram Jawaya Kapur v. State of Punjab*, reported in AIR 1955 SC 549 as follows,



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“12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws.”



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16. As held by the Apex Court, executive functions have been deemed to be what remains after legislative and judicial functions have been taken away. The state cannot go beyond the doctrine of separation of powers and usurp the powers of the legislature. The Tamil Nadu Ground Water (Development and Management) Act, 2003 was brought in with an objective to protect groundwater resources to provide safeguards against hazards of its over exploitation and to ensure its planned development and proper management in the State of Tamil Nadu. Whereas the by the G.O.Ms.No.52 and G.O.(Ms).No.142 of the Public Works Department, the areas were categorised and the No Objection Certificate/ License was introduced for extraction of ground water. The 2003 Act, for ensuring compliance with the provisions, has given the offences and penalties for the same under the Act. On the other hand, there is no machinery to ensure the compliances of the said G.O.s. or any criminal sanctions to combat illegal extraction of water. Therefore, the state cannot leave the vital subject of ground water which was governed earlier by extensive law, to inadequate executive orders.

17. The right to water is the right to life and thus it is a fundamental right. In **Re A.P. Pollution Control Board II v. Prof. M.V. Nayudu**, reported in (2001) 2 SCC 62, the Hon'ble Supreme Court has held as follows:



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“ 3. Drinking water is of primary importance in any country. In fact, India is a party to the resolution of the UNO passed during the United Nations Water Conference in 1977 as under: “All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.”

18. It is also the fundamental duty of a State to apply directive principles of the State Policy as enshrined in Part IV and Part IV-A of the Constitution to protect and improve the natural environment including forest, lakes, rivers and wild life to have a compassion for living creature. The Andhra Pradesh High Court in **P.R.Subas Chandran Vs Government of A.P.** Reported in (2001) 5 ALD 771 has held as follows:

“26. Therefore, under the Constitution, the role of the State to provide every citizen with adequate clean drinking water and to protect water from getting polluted is not only a fundamental Directive Principle in the governance of the State, but is also a penumbral right under Article 21 of the Constitution of India.

27. The State is assigned a positive role to help people realise their rights



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and needs. The Roman Law principle “salus populi est suprema lex” (welfare of the people is paramount law) is the abiding all pervasive preambular faith of the Constitution of India. Fundamental Rights and Directive Principles of State Policy, the Legislative Entry 17 in List II of the VII Schedule to the Constitution of India places “water” for drinking and for irrigation at the disposal of the State. The Public Trust Doctrine is now part of Indian Constitutional Law. In M.C. Mehta v. Kamalnath, (1997) 1 SCC 388 (supra) the Apex Court categorically ruled that the doctrine of Public Trust demands the sovereign to protect and regulate all environmental aspects of water and land, and therefore, there cannot be any doubt that the State is not only bound to regulate water supply, but should also help realise the right to healthy water and prevent health hazards.”

19. As stated supra the right to water is guaranteed as a fundamental right in the Constitution of India as right to life under Article 21. In the absence of a proper mechanism to regulate the extraction of water, water in this State is extracted indiscriminately. People who are extracting the water for commercial purpose are indiscriminate in extracting the ground water. Ultimately others citizens who are living adjacent to these commercial exploitations have to suffer



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for a pot of water. For example an hotelier can extract any amount of water by going deep for his swimming pool. Whereas the adjacent ordinary citizen has to suffer on account of that. The water being a natural resource, every citizen is entitled for an equal ration of the same.

20. The available mechanism in the Government order are not sufficient to control the indiscriminate extraction and transportation of ground water. Some of the orders are not even respected by the government officials themselves. The implementation of G.O.Ms.No.24, Personnel and Administrative Department dated 17.02.2010 itself can be an example on how the government orders are implemented in this State. This Government Order was passed in the year 2010 to fix certain accountability and responsibility on the government officials at every stage. The Heads of the Departments are expected to fix the accountability and responsibility. However, it has not been made in most of the departments for the past 15 years. Pointing out this, this Court has also issued various directions in WP(MD)No. 14481 of 2020 dated 17.08.2021. Even thereafter, the Government orders are not implemented in a strict sense by the Principal Secretaries of the Departments concerned. With the impugned Government order the desired results cannot be achieved, ultimately the common man suffers. Only a proper legislation



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alone can achieve the object of conserving the ground water.

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21. The Indian National Water Policy of 2012 states that groundwater “needs to be managed as a community resource held, by the state, under public trust doctrine to achieve food security, livelihood, and equitable and sustainable development for all”. The "Public Trust Doctrine" was explained by the Supreme Court in **Karnataka Industrial Areas Development Board v. C. Kenchappa**, reported in **(2006) 6 SCC 371** as follows,

"83. The concept of public trusteeship may be accepted as a basic principle for the protection of natural resources of the land and sea. The public trust doctrine (which found its way in the ancient Roman Empire) primarily rests on the principle that certain resources like air, sea, water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature should be made freely available to everyone irrespective of their status in life. The doctrine enjoins upon the Government and its instrumentalities to protect the resources for the enjoyment of the general public."



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22. This Court by order dated 26.04.2023 directed the learned Additional Advocate General as to the Stand of the Government in bringing a legislation on the extraction of ground water for which the respondents have taken a stand that the entire Bill is ready and it will be placed before the assembly very soon. This Stand has been taken on 19.06.2023. Till this date the bill has not been placed before the assembly. It is unfortunate that an Act which was in existence till 2013 was repealed that the comprehensive law would be enacted. The additions if any required could have been brought in the existing Act by way of amendments. However, under the guise of bringing out a comprehensive law, the law which was in existence was repealed in the year 2013 and the government has not taken any steps for regulating the extract of the ground water.

23. As pointed by the learned Amicus, though water being a State subject under Article 253 of the Constitution, the parliament is empowered to enact a legislation on the state subject. The Hon'ble Supreme Court has also pointed the same in the case of M.C.Metha Vs Union of India reported in (1997) 11 SCC page 312 and directed the Ministry of Environment and Forest, Government of India to constitute the Central Ground Water Board as Authority vide notification number S.O. 38 (E), dated the 14th January, 1997 to exercise powers under sub section (3)



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of section 3 of the Environment (Protection) act, 1986 for the purposes of regulation and control of Ground Water Management and Development.

24. The Ministry of Jal Shakti along with the Central Ground Water Authority, vide notification S.O. 3289(E) dated 24th September, 2020, has notified the “Guidelines to regulate and control groundwater extraction in India”. There has to be a regulation in place to control extraction of ground water until the proposed legislation is enacted. Therefore, the State Government shall adopt the guidelines issued by the Government of India in its notification dated 24.09.2020 as an interim arrangement, till an Act is enacted by the Government of Tamil Nadu.

These writ petitions are disposed of in the above terms. No costs. Consequently connected miscellaneous petitions are closed.

22.12.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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To

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1. The Secretary to Government of Tamil Nadu,
Public Works (R2) Department,
St.Fort George,
Chennai – 600 009.
2. The Regional Director,
The Central Ground Water Board,
Government of India – Ministry of Water Resources,
South Eastern Coastal Region,
E-1 G Block,Rajaji Bhavan,
Besant Nagar, Chennai – 600 090.
3. The Chief Engineer,
Public Works Department,
Water Research Organisation,
State Ground and Surface Water Resources Data Centre,
Taramani, Chennai – 600 113.



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