Groundwater Law and Water Extracting Industries: the Plachimada Case and its Implications

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Background

• Water extracting industries
  – Depletion, pollution
  – Conflicts
• Plachimada – facts
  – water stress area
  – Coca-Cola plant was commissioned in 2000
  – Public protests began within two years
    • Depletion of GW (drinking and agriculture)
    • Pollution of GW
    • Solid waste issue
  – Closure of Coca Cola
    • KPCB order in 2004 – Hazardous waste issue
• Plachimada – one among many…..
  – Pepsi case (Kerala)
  – Kala Dhera (Rajasthan)
  – Mehdiganj (Uttar Pradesh)
The Legal Dispute

- **Perumatty Grama Panchayat v. Coca Cola**
  - State’s power to regulate GW use v. right of landowner to use GW
  - Local government’s power under PRI laws
  - Landowner’s right as part of property right

- Single judge, Kerala High Court, 2003
  - Panchayat has no power to issue closure order
  - But Panchayat can regulate GW use
    - Public Trust Doctrine (*Kamalnath case*, 1997, SC)
• Division Bench, Kerala High Court, 2005
  – Landowner’s right overrides abstract principles
  – “Panchayat had no ownership over such private water resources and in effect denying the proprietary rights of the occupier...is too wide for unqualified acceptance.”
  – “...ordinarily a person has a right to draw water, in reasonable limits, without waiting for permission from the Panchayat and the Government. This alone could be the rule and the restriction is an exception.”
Legal implications

• Non-applicability of PTD in groundwater context
• GW law
  – Common law rule - land-based GW right
    • Facilitating uncontrolled exploitation
  – Tacit approval of land-based GW right
• Diluting power of panchayats
  – Strengthening investment regime
  – *Pepsi case* (Kerala High Court, 2008)
• The human right to water
  – DW as priority
  – State obligation to prevent third parties
Law’s contradictions

• Unpredictable judiciary
  – Property rights prevails over fundamental rights!

• Cunning nature of law
  – Centralisation prevails over decentralisation!
  – Economic development prevails over fundamental rights!

• Forthcoming Supreme Court decision ??